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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/435 /2006 - CU[DB]

Date **28/09/2011**

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S RECO INDUSTRIES
437/5, GOVINDPURI, KALKAJI,
NEW DELHI 110019

M/S RECO INDUSTRIES Appellant

Vs

COMMISSIONER OF CUSTOMS Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/428/ 2011 CU[DB]** dated 26.09.11 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
COMMISSIONER OF CUSTOMS
ICD, TUGHLAKABAD,
NEW DELHI

2. Adv. / Consult **MR. P.C. JAIN,**
332, ARAVALI APPARTMENTS,
ALAKNANDA, NEW DELHI – 110 019.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

Customs Appeal No. 435 of 2006

[Arising out of the Order-in-Original No. 19/2006 dated 29/03/2006 passed by The Commissioner of Customs ICD, New Delhi.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Reco Industries — Appellant

Versus

CC, New Delhi — Respondent

Appearance

Shri P.C. Jain, Advocate – for the appellant.

Shri Amrish Jain, Authorized Representative (SDR) - for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 07/09/2011.
DATE OF DECISION : 07/09/2011.

Final Order No. C/428/11 Dated : 26.9.11

Per. Rakesh Kumar :-

The appellant filed three shipping bills No. 1155499 dated 28/5/01, 1155487 dated 28/5/01 and 1155486 dated 28/5/01 for export of readymade garments under drawback claim. The declared FOB value of these consignments was Rs. 25,77,413/-, Rs. 25,84,153/- and Rs. 27,45,539/- respectively and the drawback claimed was Rs. 4,22,500/-, Rs. 4,23,605/- and Rs. 4,50,060/- respectively. The goods on being examined were found to be of much inferior quality, used, soiled and damaged, which according to the Department could appropriately be called rags and their market value found to be much less than the drawback amount claimed. Statements of Shri M.D. Sharma, Proprietor of the exporter firm ~~was~~ were recorded on 6/6/01, 7/6/01 and 22/6/01 under Section 108 of Customs Act, 1962 wherein he stated that though he had got the fabrics fabricated through M/s Shivalik International, Govind Puri, New Delhi; M/s S.K. Garment, Tughlakabad; and M/s Jaiveer Garments, Sunlight Colony, Maharani Bagh, Delhi, the fabrics got damaged in heavy rains and since the export quota was expiring, he purchased export surplus fabrics for export, that the fabrics had been purchased from M/s Ramlal Gulshan Kumar, Chandni Chowk, Delhi, that he agrees that the said readymade garments were of sub-standard quality not ~~fixed~~ fit for export, and that heavy rains in the month of May had spoiled a part of the shipment and for this reason only he had purchased the garments from other sources to meet the export commitment, and had tried to export those goods. In these statements he also stated that he knew that the goods were heavily over invoices and the drawback claim was much more than the market value of the goods. On trade inquiry, the market value of the goods was ascertained to be Rs. 5,98,230/- as against the total declared FOB value of Rs. 79,07,105/-. In view of the above facts, a show cause notice was issued to the appellant for –

(a) disallowing the drawback amount of Rs. 12,96,165/- claimed by them ;

(b) confiscation of the goods declared to be valued at Rs. 79,07,105/- and appraised value of Rs. 5,98,230/- and

(c) imposition of penalty on the appellant under Section 114 (3) of the Customs Act, 1962.

1.1 The show cause notice was adjudicated by the Commissioner of Customs, Tughlakabad, vide order-in-original No. 19/2006 dated 29/3/06 by which the drawback claimed by the appellant was disallowed, the three consignments of readymade garments attempted to be exported under drawback claim were confiscated with option to be redeemed for taking back to domestic market on payment of redemption fine of Rs. 5,00,000/- and beside this, penalty of Rs. 10,00,000/- was imposed on Shri M.D. Sharma, Proprietor of the appellant firm. Against this order of the Commissioner (Appeals), this appeal has been filed.

2. Heard both the sides.

2.1 Shri P.C. Jain, Advocate, the learned Counsel for the appellant, pleaded that, from perusal of the examination report on each shipping bill, it will be seen that while the goods are mentioned as inferior quality, the same are nowhere mentioned as rags, that only in one shipping bill the goods are mentioned as soiled, that from the examination report, it cannot be said that the goods being exported were used, and soiled ~~and~~ rags of very low value, that the cross examination of the traders whose opinion has been relied upon by the department was not allowed, that the Commissioner's finding that the goods are rags of very low value, less than the drawback claimed, is arbitrary and that in view of this, the impugned order is not correct.

2.2 Shri Amrish Jain, the learned Senior Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) in it and emphasised that Shri M.D. Sharma, Proprietor of the appellant firm in his statements dated 6/6/01, 7/6/01 and 22/6/01 had clearly admitted that the goods were of sub-standard quality – export surplus, not fit for export, that the buyer of the goods in the U.S.A. was his brother and that he had purchased the goods being exported in the market in Rs. 5,00,000/- in cash, that these statements of Shri Sharma have not been retracted by him, that the statement of Shri Sharma stating that the goods being exported had been purchased by him in the market in Rs.

5,00,000/- tallies with the valuation of the goods determined at Rs. 5,98,230/- from market inquiry, that all the three examination reports clearly show that the goods are of sub-standard quality, and that in view of this evidence on record, it is clear that this is an attempt to fraudulently claim drawback by export of sub-standard garments of very low value by declaring a highly inflated FOB value. He, therefore, pleaded that there is no infirmity in the impugned order.

3. We have carefully considered the submissions from both the sides and perused the records.

4. On perusal of the examination report on each of the three shipping bills, we find that each ~~shipping bills~~ examination report mentions the goods as of inferior quality and one of the ~~shipping bills~~ examination report, also mentions the goods ~~of~~ as soiled. Shri M.D. Sharma, the Proprietor of the exporter firm in his three statements dated 6/6/01, 7/6/01 and 22/6/01 has clearly stated that the ~~exports~~ goods being exported had been purchased by him from open market in cash in Rs. 5,00,000/- and that the same were of export surplus of sub-standard quality and not fit for export. These statements of Shri Sharma have not been retracted by him. The statement of Shri Sharma regarding the prince in which the goods, in question, had been purchased by him is corroborated by ~~value~~ valuation of the goods as determined by the traders at Rs. 5,28,230/- as against the declared FOB value of Rs. 79,07,105/-. Since the statements of Shri Sharma have not been retracted by him and the same are corroborated by the other independent evidence, we hold that

the goods being exported were of sub-standard quality of prevailing market value less than the draw back amount claimed. In view of this, we hold that the value of the goods had been grossly misdeclared with intention to fraudulently claim the drawback in respect of the same. In view of this, we do not find any infirmity in the impugned order disallowed the drawback, ordering confiscation of the goods and imposing penalty on the appellant. However, looking to the circumstances of the case, the redemption fine in lieu of confiscation is reduced to Rs. 4,00,000/- and penalty on the appellant under Section 114 of Customs Act, 1962 is reduced to Rs. 1,00,000/-. The appeal stands disposed of, as above.

(Operative part of the order pronounced in the open court.)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

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