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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/638 /2007 - CU[DB] Date **11/10/2011**

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

To :
C.C. (EXPORT) NEW DELHI

AIR CARGO EXPORT, NEW CUSTOM HOUSE,
NEW DELHI 110037

C.C. (EXPORT) NEW DELHI Appellant

Vs

M/S BHARAT HOTELS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/434/ 2011 CU[DB]** dated 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
M/S BHARAT HOTELS LTD.
BARAKHAMBA ROAD,
CONNAUGHT P;ACE, NEW DELHI

2. Adv. / Consult **MR.PRABHAT KUMAR**
B-51(BASEMENT)SARVODAYA ENCLAVE,
NEAR MOTHER INTERNATIONAL SCHOOL,
NEW DELHI – 110 017.

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 (Haryana)
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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Customs Appeal No. 638 of 2007

[Arising out of Review Order No. 3/2007 dated 24.9.2007 passed by the Committee of Commissioner of Customs, New Delhi]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No

3. Whether Their Lordships wish to see the fair copy of the Order? : Seen

4. Whether Order is to be circulated to the Departmental authorities? : Yes

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Commissioner of Customs
New Delhi — Appellants

Vs.

M/s. Bharat Hotels Ltd. — Respondent

Appearance:

Shri Sunil Kumar, SDR for the Appellants
Shri S. Dabbas, Advocate for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/decision : 21.09.2011

Final **ORAL ORDER NO.** C/434/11

Per Archana Wadhwa (for the Bench):

Being aggrieved with the order passed by the Commissioner (Appeals) vide which he has set aside the penalty imposed upon the respondents, the revenue has filed the present appeal.

2. We have heard both sides duly represented by Shri Sunil Kumar, learned SDR for the revenue and Shri S.Dabbas, learned Advocate for the respondent.

3. As per facts on record, the respondents imported 10,000 pieces of "Smart Card" (part of door lock) and declared the assessable value as US $ 100 in the Bill of Entry. As the value declared appeared to be on lower side, the revenue called for explanation from the respondents. The respondents produced a purchase order in which the unit price of Smart Card was US $ 48 and total value of the consignment was US $ 4800. It is seen that the said amount was also ordered by the importer to their foreign supplier. However, they clarified that the value was declared in the Bill of Entry on the basis of commercial invoice forwarded by the supplier, which inadvertently mentioned the wrong value. The supplier has subsequently, vide his declaration letter dated 11.8.06 apologised for the mistake for issuing an incorrect invoice and affirmed the correct value of the shipment as US $ 4800. As such, they contended that there was no intention on their part to undervalue the goods or to evade the duty. It was a bonafide mistake committed by them. The original appellate authority did not accept the above

contention of the importer and imposed penalty of Rs.86,991/- under Section 112(ii) of the Customs Act, 1962. However, on appeal against the above order, the Commissioner (Appeals) granted relief by observing as under:-

> "Acceptance of misdeclaring the value of the impugned goods in the said invoice by the supplier confirms that the appellant in India had no intention to evade customs duty by undervaluing the goods. From this point only it is established that the mistake committed by the appellant was just a bonafide mistake. I find that the adjudicating authority in para 2 of the adjudication order himself conifmed about the transfer of US$ 4800 by the appellant in the supplier's account and this fact was ascertained by the "Fund transfer report" dated 19.7.06. As entire amount of US$ 4800 was already made to the supplier and thus requirement of submitting assessed copy of the bill of entry to the appellant's banker ruled out of any possibility of the appellant's indulging in any manipulation or involvement in the evasion of customs duty. As the supplier took the responsibility of submitting incorrect invoice no. TT06A068, malafide intention of the appellant is beyond doubt. Thus the appellant can not be penalised for the mistake which he never committed.
>
> As discussed above, I am of the considered opinion that the appellant did committed a mistake by submitting an incorrect and under valued invoice. But at the same time, I find that this mistake committed was unintentional, bonafide and non-malfide on the appellant's part as the overseas supplier of the goods took the responsibility of sending a wrong invoice. I, therefore, uphold the order of the lower adjudicating authority to the extent of confiscation of the impugned goods. However, penalty imposed upon the appellant was not

warranted and the same is waived off. Keeping in view, the above and the appellant's appeal is disposed off in the above manner"

4. The revenue's only contention is that even if there is no malafide on the part of the appellants, the provisions of section 112 of the Customs Act would get attracted inasmuch as ~~they~~ it did not require any malafide for their invokation. For the above purpose, reference is drawn to the Hon'ble Supreme Court's decision in the case of Pine Chemical Suppliers vs. CC reported as [1993 (67) ELT 25 (SC)].

5. We find that as per the above judgment, the question of mens area is not ~~relied~~ relevant for the liability to penalty under the said section but the same may be ~~relied~~ relevant for the quantum of penalty. Inasmuch as it stands admitted that there was no malafide on the part of the importer, we find that the token penalty would serve the interest of justice. We accordingly, enhance the penalty from 'NIL' as held by the Commissioner (Appeals) to Rs. 1,000/- (Rupees One thousand only). The appeal of the Revenue is disposed of in the above terms.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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