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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/309 /2007 - CU[DB] Date **18/10/2011**

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

To :
M/S ANIKETA KRISHNA INTERNATIONAL
(100% EOU, C-953, SHED NO 3, ROAD NO 14,
V.K.I. AREA, JAIPUR.

M/S ANIKETA KRISHNA INTERNATIONAL Appellant

Vs

C.C. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/441/ 2011 CU[DB]** dated 14.10.2011 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
C.C. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME,
JAIPUR 302005.

2. Adv. / Consult
MR.PANKAJ MALIK, CHARTERED ACCOUNTANTS
207-208, SHREE GOPAL TOWER,
KRISHNA MARG, C-SCHEME, JAIPUR-302001

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 04.10.2011

For approval and signature:

Hon'ble 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.	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

Custom Appeal No. 309 of 2007
(Arising out of order in appeal No. 6(GRM) Cus/JPR-I/2007 dated 13.04.2007 passed by the Commissioner (Appeals) Customs, Jaipur).

M/s Aniketa Krishna International — Appellant

Vs.

CC, Jaipur — Respondent

Appearance:

Rep. by Ms. Sukriti Das, Advocate for the appellants.
Rep. by Sh. K.K. Jaiswal, SDR for the respondent.

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

Final Order No. C/441/11

Per: Archana Wadhwa:

After hearing both sides, we find that the appellant filed a bill of entry dated 08.08.2006 for clearance of the imported goods declared as "Old & Used Electrical Transformer without Oil". The said bill of entry covered four containers. All of them were put to 100% examination and it was found that three containers were in accordance with the declaration. However, the fourth container was found to be "Secondary/ Defective CRGO Electrical Grade Steel Strips in regular Shape & Size". In the meanwhile, the appellant wrote a letter to the customs indicating that as per their information one container was interchanged with the container of another importer M/s Dynamo Stamping Industries at Bombay. As such, they requested that the container which was offloaded at Bombay should be interchanged with the container found to be containing goods of Bombay importer.

2. Proceedings were initiated against the appellant for mis-declaration of the goods resulting in confiscation of the same with an option to the appellant to redeem on payment of redemption fine of Rs. 1 lakh. In addition, penalty of Rs. 25,000/- was imposed upon the importer. ~~Appellant~~ Appeal against the order of the original adjudicating authority did not succeed before the Commissioner (Appeals). Hence, the present appeal.

3. It is on record that the another importer at Bombay M/s Dynamo Stamping Industries addressed a letter dated 17.08.2006 to the Deputy Commissioner of Customs, Jaipur. It stands addressed in the said letter that they are regular importer of prime/ secondary defective CRGO Electrical Steel in coil and strips at Nhava Sheva Port. They have ordered one

container of the said goods to their supplier M/s Henrich Brunbjerg APS, Denmark. The container shipped by the supplier arrived at Nhava Sheva Port and a bill of entry dated 28.6.2006 was filed by them. However, the goods were found to be old and used electrical transporter. They reported the matter to their supplier and on rechecking, they informed the possibility of cargo interchanged by mistake between the containers of M/s Aniketa Krishna International, Jaipur i.e. the appellant. It is further disclosed in the said letter that as per the supplier five containers were loaded in the ship from the same place and at same time. Four containers belonged to M/s Aniketa Krishna International and one to them. It seems that the container numbers were interchanged by mistake. As such M/s Dynamo Stamping Industries had made a request to the Deputy Commissioner of Customs, Jaipur to allow interchange of container without any fine and penalty.

4. To the more or less, same effect is the letter addressed by the appellant to the Assistant Commissioner of Customs making a prayer for interchange of the containers, which stand wrongly shipped by the supplier.

5. It is further seen that the Assistant Commissioner, Jaipur addressed a letter to the Deputy Commissioner of Customs, Bombay seeking the status of the bill of entry filed by M/s Dynamo Stamping Industries and the decision taken in the matter. Subsequently, another letter was written by the appellant to the Assistant Commissioner of Customs, Jaipur on 10.10.2006 making a request for interchange of the container and releasing the correct container to them, which was the ordered goods and permitted to be imported in terms of LOP.

6. It is seen that there is no dispute about the facts of the case. Sufficient material is available on record to arrive at a finding that the two containers were interchanged at the supplier end. In fact, on receipt of such an information, the appellant themselves made a request for 100% examination of the goods. Admittedly, the goods imported by Bombay importer are of no use and avail to the appellant and vice-versa.

7. The issue to be decided is as to whether the mis-declaration, in above circumstances on the part of the importer can be held to be malafide so as to confiscate the goods and to impose penalty upon them. Tribunal in the case of **Guru Ispat Ltd. vs. CC (Port) Calcutta reported in 2003 (151) ELT 384 (Tri. Kolkata)** has held that when there is a wrong shipment by foreign supplier, it cannot reflect upon any malafide on the part of the importers. The said decision of the Tribunal stands confirmed by the Hon'ble Supreme Court, when the appeal filed by the revenue was dismissed as reported in 2005 (157) ELT A87 (SC). Further, the Tribunal in the case of **West Coast Papers Mills Ltd. vs. CC, Chennai reported as 2001 (130) ELT 259 (Tri-Chennai)** held that letter of supplier indicating possible mistake in sending goods to India shows bonafides of importer and as such confiscation of goods or imposition of penalty upon the importer is not sustainable, especially when bonafides of importer are not in doubt, there being no intent to mis-declare goods. To the same effect is the Tribunal decision in the case of **HCL Comnet Systems & Services Ltd. vs. CC, New Delhi reported in 2003 (158) ELT 349 (Tri. Del.)**.

8. By applying the ratio of the above decision to the facts of the present case, we find that admittedly the interchange of containers has taken place at the hands of the supplier, without any involvement of the appellant. The mis-declaration of the goods, if at all is only a technical lapse on the part of the importer, who without even knowing about such interchange has declared the goods as per the orders placed by him. He cannot be held guilty of any malafide mis-declaration so as to attract confiscation or penalty. We accordingly allow the appeal with consequential relief.

(Operative portion of the order already pronounced in the Court)

[Archana Wadhwa]
Member (Judicial)

[Rakesh Kumar]
Member [Technical]

/Pant/