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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/274 /2008 - CU[DB] Date **25/05/2012**

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

To :
C.C. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE, CENTRAL REVENUE BUILDING,
THE MALL, AMRITSAR 143001.

C.C. (PREVENTIVE) AMRITSAR Appellant

Vs

M/S MAHALAXMI SALES CORPORATION Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/143/ 2012 CU[DB]** dated 21.05.2012 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 MAHALAXMI SALES CORPORATION
HINDU SABHA MARKET CHAMBER,
DHABWASTI RAM,AMRITSAR.

2. Adv. / Consult MR. JAGMOHAN BANSAL,
1640/1, SECTOR-40B,
CHANDIGARH.

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-3
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.II, R.K. PURAM, NEW DELHI-110066

COURT NO. II

Customs appeal No.274 of 2008

[Arising out of Order-in-appeal No. 8-9/CUS/appl/ldh/2008 dated 17.01.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Jalandhar]

Date of Hearing/decision: 21st May, 2012

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 should 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 Departmental authorities?	

CC (Preventive), Amritsar — Appellant

Vs.

M/s. Mahalaxmi Sales Corporation,
M/s. Saab & Company — Respondents

Present for the Appellant : Shri B.L. Soni, D.R.
Present for the Respondent : Shri Naveen Bindal, Advocate

Coram: Hon'ble Shri D.N. Panda, Judicial Member;
Hon'ble Shri Mathew John, Technical Member

FINAL ORDER NO. C/A/143/12-Cus

Per D.N. Panda:

Revenue's grievance is that redemption fine of Rs. 17 lakhs and penalty of Rs. 5 lakhs imposed on the appellant i.e.

M/s. Mahalaxmi Sales Corpn. in adjudication was justified and that should not have been reduced to Rs. 1.5 lakhs and Rs. 50,000/- respectively in first appeal. Shri Soni, learned D.R. states that there is mis-declaration of the goods for undervaluation. Customs duty to the tune of Rs. 16,57,594/- was evaded. When mis-dclaration of description of goods was proved, undervaluation of the goods was also proved. Accordingly, differential duty of Rs. 16,57,594/- was recoverable. Such aspect remained undisputed. There was no cogent reason to reduce redemption fine from Rs. 17 lakhs to Rs. 1.5 lakh and penalty from Rs. 5 lakhs to Rs. 50,000/-.

2. Learned Counsel appearing on behalf of the respondent submits that there was justification for the learned Commissioner (Appeals) to reduce redemption fine and penalty. He considered the demurrage cost incurred and also margin of profit as the basis for reduction in redemption fine and penalty reduction was reasonably considered.

3. Heard both sides and perused the record.

4. If the adjudication finding is looked into, mis-declaration of description of goods and undervaluation seems to have been proved fact remaining undisputed. Profit aspect in a mis-declaration case is not only a consideration for imposition of redemption fine, but there are surrounding circumstances like evasive practice adopted in import and wilful evasion connected to the illegal import making undervaluation of the goods equally contribute to the determination of redemption

fine. We are unable to find any bona fide intention in import. Revenue's interest to the extent of Rs. 16,57,594/- was endangered. Keeping the intention of evasion and the quantum of the goods imported as well as the gravity of mis-declaration, imposition of redemption fine of Rs. 5 lakhs as against imposition of Rs. 17 lakhs shall not be unreasonable. Similarly, we direct that penalty shall be Rs. 1.5 lakh as against imposition of Rs. 5 lakhs. This calls for modification of first appeal order and we order so.

5. Dose of redemption fine and penalty should be deterrent measure against evasion. Message should reach to the society that law does not permit evasive practice. Therefore, serious dose of redemption fine and penalty shall desist and seize evasive practice of mis-declaration and undervaluation.

6. Revenue has also come in appeal against C.H.A. respondent i.e. M/s. Saab & Company by the aforesaid common appeal making this respondent as respondent no. 2 in the Appeal Memo. Prayer of the Revenue is to sustain adjudication consequence against C.H.A. From the adjudication order, severity of commitment of offence is not apparent. Accordingly, Revenue's appeal is dismissed against C.H.A.

7. In the result, Revenue succeeds partly in appeal against the importer which is Mahalaxmi Sales Corpn. and appeal of Revenue CHA is dismissed.

(Dictated & pronounced in the Open Court.)

(D.N. PANDA)
JUDICIAL MEMBER

Rk.

(MATHEW JOHN)
TECHNICAL MEMBER