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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/466 /2011-469 /2011 - CU[DB], C/STAY/2469, 2476-2478/2011 — Date **05/06/2012**

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

* SH. DEEPAK BHANDARI SON OF
  SHRI N.D. BHANDARI,
  R/O 18/1, JAGJIT NAGAR, LUDHIANA.

SH. DEEPAK BHANDARI & OTHERS — Appellant

Vs

C.C. (PREVENTIVE) AMRITSAR — Stay Order No. CS/158-161/2012 — Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/155-158/ 2012 CU[DB]** dated 16.05.2012 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
C.C. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE, C.R.BUILDING,
THE MALL, AMRITSAR 143001.

2. Adv. / Consult
MR.GAURAV KALIA,ADV
1145/A, GURU AMAR DASS NAGAR,
NEAR LODHI CLUB, LUDHIANA

MR. PRADEEP JAIN, (ADVOCAT)
370-371/2, FIRST FLOOR, SAHI
HOSPITAL ROAD, JANGPURA,
NEW DELHI-110014

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

*** PLEASE SEE REST OF THE ADDRESSES AT BACK.**

Assistant Registrar
(Customs Appeal Branch)

14 SHRI SANJEEV KUMAR, EX-PARTNER
15. SMT. RAJESH KUMARI, EX-PARTNER
M/S PARVEEN KUMAR HOSIERY,
NEW BAJWA NAGAR,
CIRCULAR ROAD, LUDHIANA.

16. SHRI PARVEEN KUMAR, PROP.
M/S PARVEEN KUMAR HOSIERY,
NEW BAJWA NAGAR, CIRCULAR
ROAD, LUDHIANA.

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

Date of Hearing : 16.5.2012

For Approval & Signature :

Hob'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

Custom Stay No. 2469 of 2011 & Custom Appeal No. 466 of 2011

[Arising out of the Order-in-Original No. 6/CUS/2011 dated 31.3.2011/24.4.2011 passed by the Commissioner, Customs (Preventive), Amritsar]

Deepak Bhandari son of Shri N.D. Bhandari Appellants

Vs.

CC, Amritsar Respondent

Appearance :

Appeared for Appellant : Shri G.K. Sarkar, Advocate
Appeared for Respondent : Shri P.K. Sharma, A.R.

Custom Stay No. 2476 of 2011 and Custom Appeal No. 467 of 2011

(Arising out of Order-in-Original No. 6/CUS/2011 dated 20.4.2011 passed by the Commissioner of Customs (Preventive), Amritsar)

Shri Parveen Kumar Appellant
Proprietor M/s Parveen Kumar Hosiery

Vs.

CC, Amritsar Respondent

Custom Stay No. 2477 of 2011 and Custom Appeal No. 468 of 2011

(Arising out of Order-in-Original No. 6/CUS/2011 dated 20.4.11 passed by the Commissioner of Customs (Preventive), Amritsar

Smt. Rajesh Kumar
Ex-Partner of M/s Parveen Kumar Hosiery — Appellant

Vs.

CC, Amritsar — Respondent

Custom Stay No. 2478 of 2011 and Custom Appeal No. 469 of 2011

(Arising out of Order-in-Original No. 6/CUS/2011 dated 20.4.11 passed by the Commissioner of Customs (Preventive), Amritsar)

Shri Sanjeev Kumar
Ex-Partner of M/s Parveen Kumar Hosiery — Appellant

Vs.

CC, Amritsar — Respondent

Appearance:

Appeared for Appellant : Shri Pradeep Jain, Advocate

Appeared for Respondent : Shri P.K. Sharma, A.R.

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Final Order No. C/A/155-158/12-Cus dated............
Stay Order No. C/S/158-161/12-Cus

Per **Mathew John :**

The main appellant in this case is M/s Parveen Kumar. This appellant is a manufacturer of readymade garments. The appellant had imported certain goods under advance licence declared as 100% Nylon Yarn, Nylone Viscose Blended Yarn, Polyester Yarn etc. When the factory was visited on 5.11.2007 the Revenue officers found that the goods seen in the factory were actually Nylon Lurex Yarn of a much higher value than that for ordinary Nylon Yarn declared at the time of import. Samples were drawn and were sent for testing. In testing, it was found that it was Nylon Lurex Yarn. Therefore, Revenue made out a case of mis-declaration of the goods at the time of import and under valuation of the goods. The matter relating to goods detected at the time of visit has been dealt with separately in another Show Cause Notice which is not a subject matter of the present appeal.

2. Revenue was of the view that the goods imported under 18 Bills of Entry for the period 18.11.2004 to 12.10.2007, that is prior to the date of visit by the officers, also involved such mis-declaration. It was also Revenue's case that the goods imported were actually sold in the local market and the appellants actually exported final products made out of indigenous raw material thus violating the condition of the advance licence under which these goods were imported. Therefore Revenue issued a Show Cause Notice demanding duty along with interest on the goods which were imported and supposed to have been sold in the local market. Further there was proposal

for imposition of redemption fine in respect of goods which were already exported and which were not available for confiscation and which were not released under any bond. There was also a proposal for imposing penalty. On completion of the adjudication a duty demand of Rs.1,22,25,908/- is confirmed along with interest and penalties on the main appellant. On the other three appellants penalties of Rs.40 lakhs and 10 lakhs and Rs.10 lakhs were imposed. Aggrieved by the order the appellants have filed this appeal.

3. The main argument of the appellants is that the only evidence appearing against the appellants are their own inculpatory statements and the statements of job workers to the effect that they never processed any type of yarn that was said to be imported under the advance licenses. The appellants wanted to cross examine the job workers but the adjudicating authority refused such cross examination on the ground that he had no reason to doubt the correctness of their statements. In the case of their own inculpatory statement under Section 108, the submission of the Appellants is that such statements were recorded under duress and it was retracted at the earliest opportunity and therefore it cannot be admitted as an evidence. They also submit that in the case of past consignment the goods

were exported after proper examination prescribed for goods to be exported in discharge of obligation under Advance Authorisation Scheme and they have already produced Export Obligation Discharge Certificates from the DGFT to the effect that their obligation under such licenses have been discharged. Revenue is trying to reopen all the past cases on the basis of the goods they saw on the visit of the factory which goods related only to the Bill the Entry just prior to the date of visit.

4. Countering the arguments of the appellants. Ld. AR submits that this is a case where certain documents like proof of additional consideration which was remitted to the consignor of the goods abroad have been seized at the time of their visit to the factory. These documents clearly show the intention of the Appellants to evade duty. He also points out that the inculpatory statements by the appellants clearly shows that there was a mis-declaration at the time of import and there was diversion of the goods imported under the advance licence, for sale in local market.

5. We have considered arguments given by both the sides. We find that one of the main evidence in this case are the statements given by the job workers who are third party to the

proceedings before us. Such persons might have just given such statements just to get rid of the investigating officers. Such statements cannot be blindly relied upon without allowing cross-examination. In fact we also see that the statements given some of the job workers were equivocal and it cannot lead to a conclusion regarding all the imports made by the Appellants. Therefore, denial of opportunity for cross-examination has been a major defect in the impugned adjudication proceedings and we are of the view that the appellants should be given an opportunity for cross examining the main witnesses in the case. We make it clear that we are not expressing any opinion about the merits of the case because we would like to see all the evidences including statements that may be tested in cross-examination.

6. Thus at this prima facie stage, we find that there is major flaw in the adjudication proceedings for the reasons that principles of natural justice has not been followed we do not find any reason to call for pre-deposit of dues for admission of appeal. So the same is waived and we proceed to decide the appeal itself. We remand the matter for giving adequate opportunity to the appellant to cross-examine the witnesses

whose statements Revenue wants to rely on. If Revenue is not able to make available the witnesses for cross-examination such evidence is to be ignored in the case and the case is to be decided on the basis of rest of the evidence that may be available against the appellant. We make it clear that we are not giving any opinion on the merits of other evidence.

7. Thus stay petitions as well as appeals are disposed of by remanding the mater for fresh adjudication after allowing cross-examination of witnesses whose statements are to be relied upon.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM*