

\* **HIGH COURT OF DELHI : NEW DELHI**

+ **CUS.A.C. 3/2007**

% Judgment reserved on: 19<sup>th</sup> January, 2007  
Date of Decision : 24<sup>th</sup> January, 2007

SATISH GUPTA ..... Petitioner  
Through: Mr. Jayant Bhushan, Sr. Advocate  
with Mr. Rohit P. Ranjan, Adv.

versus

UOI & ORS. .... Respondent  
Through

Coram:

**HON'BLE MR. JUSTICE MADAN B. LOKUR**  
**HON'BLE MR. JUSTICE V.B. GUPTA**

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**V.B. GUPTA, J.**

Present appeal has been filed under Section 130 of the Custom Act by the Appellant for setting aside the impugned order dated 21<sup>st</sup> November, 2005 passed by Custom, Excise and Service Tax Appellate Tribunal, Principal Bench, Court No.II, New Delhi (herein after referred to as Tribunal).

2. Brief facts of this case are that five firms namely M/s Sharanpur Handicrafts, M/s Deepshikha Overseas, M/s Himgiri

Overseas, M/s Stitch & Style and M/s R.S. & Co. approached M/s Sharp Cargo Movers a Custom House Agent Company (for short CHA) of which the appellant was Director for handling their export of ready made garments, under the Duty Draw Back Scheme. These firms filed 100 shipping bills for export of ready made garments. The export of ready made garments entitles the exporters to claim duty draw back at the rate prescribed under the schedule. Out of 36 containers, in respect of 100 shipping bills filed by the above mentioned exporting firms, 12 containers were detained at Mumbai port and another 10 containers were detained at Nahva Sheva Port before their placement on board on vessels bound for Dubai. The four containers which were already sailed from Mumbai Port to Dubai were called back. The contents of these containers were re-examined by the custom officers and it was found that description of the goods was not as per the declaration filed in the shipping bills. As per the shipping bills, the description of the goods were "Ready Made Garments" whereas infact the goods were old and used garments. These goods were seized and it was also found that these goods were overvalued to claim the higher rate of drawback.

3. Show cause notices were issued for confiscation of the

seized goods and for disallowing the draw back already sanctioned to the exporter and the demand for draw back was also made. In the show cause notice, proposal for imposition of penalty was also made and thereafter the adjudicating authority confiscated the garments valued at Rs. 31,39,72,656.77 declared by the exporter under Section 113 of the Custom Act and allowed the same on payment of by redemption fine of Rs.65 lacs. The adjudicating authority also ordered that no draw back shall be allowed in respect of these goods. Insofar as the Appellant is concerned, the adjudicating authority imposed a penalty of Rs.1 lac.

4. Appeal filed by the Appellant against the adjudication order dated 19<sup>th</sup> August, 2003 has been dismissed by the Tribunal vide the impugned order.

5. It has been contended by the learned counsel for the Appellant that the role of CHA in any export is only limited to submission of export documents with the Custom Department and it is the legal duty of the Department to verify the facts mentioned in those documents and examine the goods before granting the certificate of export. The Appellant has neither submitted any documents nor signed any documents and there is nothing on record to show the involvement of the Appellant is

there in the said export. The CHA Company of which the Appellant was an employee, had complied with all the requirements and obligations caused upon the CHA Company as per the Custom House Agent Licensing Regulations.

6. For the disposal of the present appeal, relevant clauses of Custom House Agent Licensing Regulation, 1984 are 14(e) and (l) which read as under:-

14.Obligations of Custom House Agent:-  
A Custom House Agent shall:

.....

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

.....

(l) ensure that all documents prepared or presented by him or on his behalf are strictly in accordance with orders relating thereto;

.....

7. According to these regulations, the agent is duty bound to exercise due diligence to ascertain the correctness of information which he imparts to his client with regard to work relating to clearance of cargo and shall also ensure that all documents prepared or presented by agent on behalf of his client are strictly in accordance with the export orders relating therein.

8. As per finding of the Tribunal, the Appellant was well

aware of the fact that the goods were overvalued and were not as per the declaration made in the shipping bill. The Appellant has admitted in his statement dated 12th February, 1999 that, exporter disclosed to him that the goods are being exported to claim fraudulent drawback by mis-declaring the value of the goods. This statement is said to have been retracted, but the fact remains that the Appellant has not taken any precaution and filed the shipping bills regarding which on re-examination the goods were found “ not as per the declaration”.

9. These are finding of facts and we do not find any reason to disagree with these findings of the Tribunal, which are not perverse.

10. Since, very beginning the Appellant knew that the goods were mis-declared by the exporter and higher value was also mentioned to draw higher rate of duty drawback, we find no merit in this appeal and accordingly the present appeal is, hereby, dismissed.

**(V. B. GUPTA)**  
**JUDGE**

**(MADAN B. LOKUR)**  
**JUDGE**

**JANUARY 24, 2007**  
**sb**