FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 15/09/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71054/2017-SM[BR] dated 13/09/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/70595/2016	**Commissioner of Central Excise and Service Tax-Lucknow** 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH 226001
		Name and Address of Respondent
2		Mohd Halim Mohd Shamim Khan R/o Kailash Prabhat,b-wing,flat No. 007,kalina,, SANTACRUZ(E) ,MUMBAI400098

--

Copy To

3 Bar Association, CESTAT, Allahabad

4 Director Publications, Customs, Excise. I.P. Estate, Delhi

5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

6 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

7 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

8 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

9 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

11 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

12 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad – 211 001

COURT NO. II

DATE OF HEARING/DECISION : 13/09/2017.

Customs Appeal No. 70595 of 2016 (SM)

[Arising out of the Order-in-Appeal No. 371-CUS/APPL-LKO/LKO/2016 dated 13/05/2016 passed by The Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow.]

CCE & ST, Lucknow Appellant

Versus

Mohd. Halim Mohd. Shamim Khan Respondent

Appearance

Shri Mohd. Altaf, Authorized Representative (DR) – for the Appellant.

None – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No.71054/2017 Dated : 13/09/2017

Per. Ashok Jindal :-

Revenue is in appeal against the impugned order wherein the learned Commissioner (Appeals) hold the order of adjudication that the gold which has been seized is to be released on redemption fine in lieu of confiscation and imposed penalty on the respondent. The appeal has been filed by the Revenue on the ground that the learned Commissioner (Appeals) has fall in error

Ashok

by allowing to redeem the gold seized to be released on payment of redemption fine.

2. Heard the learned AR and consider his submissions.

3. As per Section 125 of the Customs Act, 1962 which has been reproduced herein as under :-

> **Option to pay fine in lieu of confiscation.** - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [1][or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:
>
> Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.
>
> [2][(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1) the owner of such goods or the person referred to in sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods.]

4. Only prohibited goods cannot be released on payment of redemption fine. Admittedly, the gold in question is not prohibited goods under the Customs Act or any other law in force.

Ashbyw...

5. In that circumstances, the goods in question cannot be absolutely confiscated in terms of Section 125 of the Customs Act, 1962. Therefore, I do not find any infirmity in the impugned order. The same is upheld. The appeal filed by the Revenue is dismissed.

(Dictated and pronounced in open court.)

Sd/-

(Ashok Jindal)

PK Member(Judicial)

प्रमाणित प्रति/Certified True Copy
28/09/17

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG,ALLAHABAD-211001