REGISTERED / AD

FAX : 0532-2400149

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

Dated: 28/11/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71657/2017-SM[BR] dated 23/11/2017

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
:	C/135/2011	**Shri Nayaz Khan @ Raju Khan,** Ghumti No. 33, Commercial Duty Chowk, Tamkuhi Raj, Kushi Nagar.

Name and Address of Respondent

: C.C.E. & S.T.-Lucknow
7-A...ASHOK MARG,
LUCKNOW, (UP) -226001

Copy To

3Advocate(s) / Consultant(s):

K. K. Anand, Advocate
A-103, DEFENCE COLONY,
NEW DELHI,- 110024

4 Bar Association, CESTAT, Allahabad

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

6 M/s Centax Publications 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 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

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

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

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

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

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.C/135/2011-CU[SM]

(Arising out of Order-in-Original No.04/Commissioner/Lucknow/2009 dated 30/11/2009 passed by Commissioner(Appeals), Central Excise, Lucknow)

Shri Nayaz Khan @ Raju Khan **Appellant**

Vs.

C.C.E.- Lucknow **Respondent**

Appearance:

Ms. Surabhi Sinha (Adv) for Appellant

Shri Gyanendra Kumar Tripathi, (AC) AR for Respondent

CORAM:

Mrs. Archana Wadhwa, Hon'ble Member (Judicial)

Date of Hearing : 23/11/2017
Date of Decision : 23/11/2017

FINAL ORDER NO-71657/2017

Per: Mrs. Archana Wadhwa:

The challenge in the present appeal is to imposition of penalty of Rs.1,00,000/- on the appellant in terms of Section 112 of the Customs Act, 1962.

2. After hearing both the sides duly represented by Ms. Surabhi Sinha for the appellant and Shri Gyanendra Kumar Tripathi, (AC) AR for the respondent, I find that the said penalty stands

imposed upon the appellant on the ground that he aided and abetted the illegal crossing of the Nepal border in respect of the betel nuts. On the other hand the appellant's contention is that being a local person, he was only helping the truck driver to fill the forms ect. for crossing the border.

3. I find from the relevant paragraph of the impugned order that there is virtually no evidence to show that the said appellant, in any way, aided or abetted the crossing of the truck carrying the betel nuts. The truck was intercepted by the Customs Officers while crossing the border and it was for the Customs Officers to find out as to whether the same was loaded with any contraband items or not. The Commissioner has observed that as per Shri Nayaz Khan, he had told the officers to take samples but there is nothing in the statement of the driver or the cleaner that there were any directions from the said appellant to take the samples. However, I find for penalizing a person under section 112 of the Customs Act, there has to be an evidence to show that he was concerned with the illegal smuggling of the goods. In absence of any such evidence the imposition of penalty upon him is neither justified not warranted. Accordingly, I set aside the same and allow the appeal to the extent with consequential relief to the appellant.

(Dictated and pronounced in Court)

Sd/-
(Archana Wadhawa)
Member(Judicial)

GS