FAX : 0532-2400149

REGISTERED / AD

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

To

Dated: 30/11/2017

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71737-71740/2017-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
1	C/50306/2014	**Shri Kamlesh Gupta Proprietor** C/o.m/s. Gupta Trading Company Company Nauria Gadaura MAHARAJGANJ UTTAR PRADESH
2	C/50307/2014	**Shri Rahul Mishra** R/o-128/16,y-block, Kidwai Nagar KANPUR UTTAR PRADESH
3	C/50308/2014	**Shri Bhola Shanker Pandey** R/o-village Dada Mau, Post &police Station-bighapur UNNAO UTTAR PRADESH
4	C/50309/2014	**Shri Vijay Shankar Tripathi** R/o.44,rafigarhi,hassanganj UNNAO UTTAR PRADESH

	Name and Address of Respondent
5	C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001
6	C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001
7	C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001
8	C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Other Appellants and Respondents as per Annexure
Copy To
9Advocate(s) / Consultant(s):

Ms. Surabhi Sinha, Advocate
A-103, DEFENCE COLONY,
NEW DELHI,
DELHI
110024

10 Bar Association, CESTAT, Allahabad

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

12 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

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

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

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

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

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

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

20 C.D.R. 21 Office Copy 22 Second Folder Copy 23 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. C/50306-50309/2014-CU[SM]

(Arising out of Order-in-Original No. 03/Commissioner/LKO/2013 dated 26/09/2013 passed by Commissioner of Customs (Preventive), Lucknow)

M/s Shri Kamlesh Gupta, Proprietor (In Appeal No. C/50306/2014),

Shri Rahul Mishra (In Appeal No. C/50307/2014),

Shri Bhola Shanker Pandey (In Appeal No. C/50308/2014) &

Shri Vijay Shankar Tripathi (In Appeal No. C/50309/2014)

Appellant

Vs.

Commissioner of Customs (Preventive), Lucknow **Respondent**

Appearance:

Ms. Surabhi Sinha, Advocate, for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

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

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

FINAL ORDER NO. 71737-71740/2017

Per: Archana Wadhwa

All the fours appeals are being disposed of by a common order, as these are arising out of same impugned order passed by the Commissioner of Customs (Preventive), Lucknow, vide which he has confiscated "Urad Ki Dal", valued at Rs.14.20 Lakhs, with an option to the appellant to redeem the same on payment of Redemption Fine of Rs.3.55 Lakhs, on the findings, the said "Urad Ki Dal", admittedly seized from the Indo-Nepal Border was meant for illegal exports to Nepal. In addition, two trucks, belonging to Shri Bhola Shanker Pandey & Shri Vijay Shanker Tripathi, which was loaded with the said "Urad Ki Dal", stands confiscated with an option to them to redeem the same on payment of Redemption Fine

Rs.2 Lakhs each. Further penaltis of Rs.14 Lakhs stands imposed upon Shri Kamlesh Gupta – Owner of "Urad Ki Dal", Rs.1 Lakh on Shri Rahul Mishra – Supplier, from whom "Urad Ki Dal" was purchased by Shri Kamlesh Gupta, Rs.10,000/- on Shri Bhola Shanker Pandey – Driver of the Truck & Rs.10,000/- on Shri Mahesh Kumar Yadav, in terms of the provisions of Section 114 of the Customs Act, 1962.

2. As per the facts on record, the DRI Officers intercepted two trucks near the Indo-Nepal Border, which were found to be carrying "Urad Ki Dal", on a reasonable belief that the same were meant for illegal export to Nepal. Further investigations were carried out and statements of various persons were recorded. As noticed by the DRI Officers that the owner of the Dal in question was Shri Kamlesh Gupta, his residential premises were put to search but nothing incriminating was found from there. The statement of Shri Kamlesh Gupta was recorded, wherein he deposed that the trucks were meant for moving towards Indo-Nepal Border where near about 40 labourers with small vehicles were waiting. The Dal was to be unloaded from the trucks and to be loaded in such small vehicles, who would have crossed the border illegally. He also gave the names and addresses of the buyers of the pulses in question, located in Nepal. The Officers, however, could not find either the labourers or the small vehicles, near the Indio-Nepal Border, nor the buyers mentioned by Shri Kamlesh Gupta.

3. Subsequently, the statements of the drivers were also recorded, which were, more or less, to the same effect.

4. On the above basis proceedings were initiated against all the appellants for confiscation of the Dal, of the trucks and for imposition of penalties upon them, resulting in passing of the present impugned orders.

5. The appellants' contentions, represented through their ld. Advocate, Ms. Surabhi Sinha, are to the effect that the statement of Shri Kamlesh Gupta has been found to be incorrect by the Adjudicating Authority himself, when he himself observed that the names of the buyers disclosed by the appellants were found to be fake/non-existing, as also the fact that he had to receive an amount of Rs.2.59 Crores from his said buyers. As such, the Commissioner has himself concluded that Shri Kamlesh Gupta has given false statement. Nevertheless, he has relied upon the same very statement of Shri Kamlesh Gupta disclosing that the pulses in question were meant for illegal export from India to Nepal.

6. The appellants' contention is that they requested for cross-examination of all the various deponents of the statements, so as to arrive at correct factual position. She clarifies that in the Panchnama, the place of seizure has been shown as near Indo-Nepal Border but the trucks were seized from the godown of Shri Kamlesh Gupta. The pulses in question were duly covered with the documents, showing the purchase of the same. To establish that the interception and

seizure of the trucks was at the godown premises, cross-examination of the Officers as also other deponent of the statements was requested for. The said prayer stands rejected by the Commissioner by simplicitor observing that such request is irrelevant and cross-examination cannot be allowed on flimsy grounds and in a routine manner.

7. I note that the issue whether cross-examination is required or not, depend on the facts and circumstances of each and every case. If the appellant is disputing the factual positions and if the various deponents' statements have retracted from their earlier statements, such cross-examination is required to test the veracity of their statements as also to establish the factual position. Such cross-examination was necessary, especially in view of the fact that the Adjudicating Authority himself found incorrectness of the statement of Shri Kamlesh Gupta. In fact, I find that the Hon'ble Punjab & Haryana High Court in the case of M/s Ambika International *Versus* Union of India & Another reported at 2016-TIOL-1238-HC-P&H-CX, has held that not only cross-examination but examination-in-chief is also required to be undertaken by the Adjudicating Authority before the statement of any person is relied upon. The Hon'ble Supreme Court in the case of Arya Abhushan Bhandar *Versus* Union of India reported at 2002 (143) E.L.T. 25 (S.C.), has observed that non-production of such witnesses for cross-examination results in breach of natural justice. To the

same effect is the decision of the Hon'ble Delhi High Court in the case of Basudev Garg *Versus* Commissioner of Customs reported at 2013 (294) E.L.T. 353 (Delhi). Further the Hon'ble Supreme Court in the case of Andaman Timber Industries *Versus* Commissioner of Central Excise, Kolkata-II reported at 2015 (324) E.L.T. 641 (S.C.), has held the effect of the cross-examination of the witnesses is to judge the testimony of the witnesses.

In as much as, the Adjudicating Authority has not provided the cross-examination, I am of the view that the impugned order is in violation of the principles of natural justice and is required to be set aside on the said ground itself. Accordingly, I set aside the same and remand the matter to the Lower Authorities for afresh decision, after affording the cross-examination of the witnesses, as prayed for by the appellant.

8. However, as regards the appeal of Shri Rahul Mishra, a separate penalty of Rs.1 lakh has been imposed upon him on the ground that he was the seller of the Dal in question and as such, has contributed to the illegal activities of Shri Kamlesh Gupta. I note that apart from the fact that the said appellant sold the pulses to Shri Kamlesh Gupta there is virtually no evidence on record reflecting upon the involvement of Shri Rahul Mishra on his knowledge that the said Dal in question was meant for illegal export. The charges of collusion against the said appellant are not substantiated by any evidence. As stand rightly argued by ld. Advocate that

selling of pulses from the factory does not fall under any category of crime, in as much as, it is not the concern of the factory owner as to how the buyer of the same is going to deal with the pulses. The pulses were sold under invoices and the other relevant documents and there is no doubt about the same. As such in the absence of any evidence to the contrary, I find no justiciable reason to impose penalty on the said appellant. Accordingly, his appeal is allowed and the other three are remanded.

9. At this stage, ld. Advocate submits that the trucks having been confiscated with a huge redemption fine and the truck owners being poor persons cannot afford to redeem the same. She also submits that the said confiscation has resulted in making the said owners out of business, she prays for release of the trucks, pending denovo-adjudication.

10. In as much as, the matter has been remanded, I ~~expept~~ expect the Commissioner to complete the remand proceedings, as soon as possible, so as not to make for any further delay in the matters. The truck owners are at liberty to approach the Commissioner for release of the truck on provisional basis.

(Dictated & Pronounced in Court)

Sd/-
(Archana Wadhawa)
Member(Judicial)

प्रमाणित प्रति/Certified True Copy
02/01/18
सहायक रजिस्ट्रार/Asstt. Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर (C.E.S.T.A.T.)
ALLAHABAD-211001

Ansari