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: 20/09/2017

To

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

Final Order No. A/71105/2017-SM[BR] dated 12/09/2017

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/50511/2014	**Commissioner of Central Excise and Service Tax-Lucknow** 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH 226001
		Name and Address of Respondent
2		Shri J P Dubey C/o.s/o. Shri.kaushal Kumar, R/o. C-49, Vikas Nagar Colony,Baradwa, GORAKHPUR ,UTTAR PRADESH

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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
REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. C/50511/14-CU[SM]

(Arising out of Order-in-Appeal No.31, 32, 33, 34, 35, 36, & 37/CUS/ALLD/2013 dated 01/10/2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Allahabad)

Commissioner of Customs, Lucknow **Appellant**

Vs.

M/s Shri J. P. Dubey **Respondent**

Appearance:

Shri Pawan Kumar Singh, Superintendent (AR), for Appellant
None, for Respondent

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Date of Hearing & Date of Decision : 12/09/2017

FINAL ORDER NO. 71105/2017

Per: Ashok Jindal

The Revenue is in appeal against the order of ld. Commissioner (Appeals) dated 01/10/2013, wherein the ld. Commissioner (Appeals), reduced the penalty from Rs.50,00,000/- to Rs.2,00,000/- against the respondent.

2. The brief fact of the case are that respondent is owner of the vehicle involved in smuggling of Red Sandal. On 12/02/2011 one Shri Dinesh Kumar Chauhan, the clearing agent, presented the Bil of Export at the land customs station, Barhni for export of 25 tons of Gypsum loaded in Truck No. HR38K-1491, from India to Nepal. On the above

Bill of Export, the value of Gypsum, was shown as Rs.5,000/-. M/s Agarwal Traders Nohar was show as exporter and M/s Buddha Cement was shown as the Recipient, Invoice was issued by M/s Agarwal Traders. Customs Officers had advance information of Red Sandal, having been loaded on this truck. Therefore, Customs Officers along with the clearing agent Shri Dinesh Kumar Chauhan, reached near the Truck No. HR38K-1491, which was parked in front of the gate of Custom Office. On query, the truck driver - Shri Radhe Shyam, informed that truck is loaded with Powder and further told that Sheesham Wood. Thereafter, investigation was conducted and it was found that the said Sheesham Wood is Red Sandal. Therefore, proceedings were initiated and the vehicle in question was seized. After adjudication, a penalty of Rs.50,00,000/- was imposed on the respondent. On appeal before the ld. Commissioner (Appeals) reduced the penalty from Rs.50,00,000/- to Rs.2,00,000/-. Being aggrieved by the said order, Revenue preferred appeal before me.

3. The ld. A. R. for Revenue submits that it is a case of smuggling of Red Sandal which is prohibited goods in that circumstance the respondent is required to be dealt sterny and no mercy is to be given to the respondent. Therefore, the order of the ld. Commissioner (Appeals) reducing the penalty is to be set aside.

4. On the other hand, none appeared on behalf of the respondent and the matter is taken up for consideration.

5. I have gone through the records and perused the same. I find that in this case only the truck driver has given inculpatory statement that on the instruction of the respondent, the Red Sandal was loaded in the truck but no other evidence is on record to implicate the respondent in the proceedings. Moreover, the person who found to be the owner of Red Sandal, penalty of Rs.5,00,000/-, has been imposed, whereas on the respondent, the penalty was imposed to the tune of Rs.50,00,000/- without any reason.

6. In that circumstance, the ld. Commissioner (Appeals) has rightly observed as under:-

> *"The appellant in their grounds of appeal has submitted that he was not aware of loading of any kind of wood. Neither, the appellant had told about loading of Sheesham (Indian Rosewood) nor the Driver has disclosed this fact to officers of Customs Barhni.*
>
> *On the other hand, it is on the record that driver of the truck has admitted in his statement that appellant has directed him to load the wood in truck.*
>
> *When, I exclaimed this issue in detail then found that no one in his statement has admitted that appellant had any connection with Balram, Pinto and Dinesh Kumar Chauhan who are main accused of this case. The only evidence against appellant is statement of driver. It is also an established fact that appellant was not owner of*

above said "Red Sandal". In such a situation, when neither any specific role of the appellant is defined in the Show Cause Notice nor his active involvement in the case was established nor it has been alleged in the Show Cause Notice that appellant was engaged in the case for monetary gains, the only charge against appellant is statement of driver, under such circumstances imposition of hefty penalties amounting to Rs.50,25,000/- under Section 114 & 117 appears to be on higher side after considering the fact that Adjudicating Authority has imposed lesser penalty of Rs.5,00,000/- on Balram & Pintoo who appears to be owner of the Red Sandal Wood as well as master mind of the case. Therefore, I reduce the penalty amount imposed upon appellant from Rs.50,00,000/- to Rs.2,00,000/- under Section 114 of the Act and set aside the penalty imposed under Section 117 of the Act."

7. I have gone through the said observations made by the ld. Commissioner (Appeals), which are justified.

8. Therefore, I do not find any infirmity with the impugned order and the same is upheld.

9. In result, I dismiss the appeal filed by the Revenue.

(Dictated & Pronounced in Court)

Sd/-

(Ashok Jindal)

Member(Judicial)

Ansari

प्रमाणित प्रति/Certified True Copy
28/09/17
सहायक रजिस्ट्रार/Asstt. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर
अपील अधिकरण(C.E.S.T.A.T.)
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG,ALLAHABAD-211001