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: 27/09/2017

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/71158-71160/2017-CU[DB] 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/70252/2016	AJAY KUMAR S/O SHRI RAM CHARAN PRAJAPATI,35/444,LOHAMANDI,NAUBASTA AGRA UP
2	C/70253/2016	RUCHI RASTOGI W/O VINEET KUMAR RASTOGI 35- C,CIVIL LINES, JANKI FLATS BAREILLY UP
3	C/70254/2016	SWADESH VERMA DIRECTOR C/O AIMR JEWELS PVT LTD,15/55, BHAGAT SINGH GATE AGRA,AND A/2,AMBA TOWER,KHABNDARI AGRA UP
		Name and Address of Respondent
4		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001
5		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

C.C.E. & S.T.-Lucknow
7-A...ASHOK MARG,
LUCKNOW,
UTTAR PRADESH-226001

--

--

Other Appellants and Respondents as per Annexure
Copy To
7Advocate(s) / Consultant(s):

LASA CONSULTANCY PVT LTD
D-60, GROUND FLOOR, SECTOR-2,
NOIDA DISTRICT GAUTAM BUDDH
NAGAR UP

8 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

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

18 C.D.R. 19 Office Copy 20 Guard File

Asstt. Registrar

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

APPEAL Nos. C/70252-70254/2016

(Arising out of Order-in-Original No. 03/Commr./2015 dated 27/11/2015 passed by Commissioner of Customs (Preventive), Lucknow)

Shri. Ajay Kumar (in Appeal No. C/70252/2016),

Smt. Ruchi Rastogi (in Appeal No. C/70253/2016) &

Shri. Swadesh Verma, Director of M/s AIMR Jewels Pvt. Ltd.

(in Appeal No. C/70254/2016) **Appellant(s)**

Vs.

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

Appearance:

Shri S.K. Mathur (Advocate) & Shri Rishi Kumar Singh (Advocate) for Appellant(s)

Shri Mohd Altaf (Asst. Commr.) AR for Respondent(s)

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 13/09/2017
Date of Decision : 13/09/2017

FINAL ORDER NO.-71158-71160/2017

Per: Anil Choudhary

These three appeals are arising out of common Order-in-Original No. 03/Commr./2015 dated 27.11.2015.

2. The appellant herein Shri Swadesh Verma is the Director of M/s AIMR Jewels Private Ltd, Ruchi Rastogi is the owner of Toyota Etios Liva car bearing Registration No. UP-25/AV-2429 and Shri Ajay Kumar was the driver of the car.

3. Earlier these appeals, alongwith the appeal of M/s AIMR

Jewels Private Ltd. being Appeal No. C/70251/2016-CU[DB] was decided by a Single Member Bench of this Tribunal. Against the said order of Single Member Bench the Revenue preferred appeal before Hon'ble Allahabad High Court in Custom Appeal No. 163/2017 and by order dated 30th May, 2017, the Hon'ble High Court was pleased to set aside the order of Single Member Bench holding that as the goods in question are worth more than Rs. 50 lakhs under seizure and/or confiscated value, the appeal needs to be heard and disposed by a Division Bench of this Tribunal. Pursuant to remand the Division Bench of this Tribunal vide Final Order No. 70625/2017 have disposed of the appeal of M/s AIMR Jewels Pvt. Ltd. holding as follows: –

"Having considered the rival contentions and on perusal of the facts on record and particularly the Show Cause Notice and Section 123 of the Customs Act, 1962, we find that Section 123 of the Customs Act, 1962 is made applicable to Gold through Sub-section (2) of Section 123 of the said Act and the said Section provides that if the goods to which said Section is made applicable are seized under the reasonable belief that they are smuggled goods than the burden to prove that the goods are not of smuggled nature was on the person from whose possession the goods were seized or the person who claims the ownership of the same. Though the appellant has shown that he purchased the said gold from M/s Bilasa & Sons Pvt. Ltd., Delhi vide tax invoice dated 07/07/2014 and another dated

11/07/2014 and M/s Bilasa & Sons Pvt. Ltd., Delhi have proved that they had purchased said Gold from M/s Supreme Gold, Delhi vide invoice dated 07/07/2014 and further that Supreme Gold, Delhi have proved that they had purchased said gold from M/s H.H.E.C. of India who had imported and got said gold cleared through Bill of Entry No. 5913058 dated 25/06/2014 in the said Show Cause Notice Revenue is not accepting that the owner of Gold has discharged his burden to prove that the goods seized were not of smuggled nature only on the basis of a so-called certificated dated 04/08/2014 stated to have been issued by Suppliers M/s INTL Commodities DMCC wherein as stated in the said Show Cause Notice the brand name mention by M/s INTL Commodities DMCC was 'AL ETIHAD' whereas the good under seizure are having brand name as 'VALCAMBI SUSSIE.' We find that the contention of Revenue is that the said certificate dated 04/08/2014 is made relied upon documents at Serial No. 20 of list of relied upon documents stated in the said Show Cause Notice dated 09/01/2015 is not tenable because the entry at Serial No. 20 of relied upon documents stated in the said Show Cause Notice is as follows:-

Sr. No.	Particulars	No. of pages
20	Statement dated 04/08/2014 of Shri Ujjal Datta, authorized signatory of M/s HHEC and certified copies of	16

	documents submitted by him	

On reading the said entry the meaning is not emerging that said certificate dated 04/08/2014 is made relied upon document for issue of said Show Cause Notice dated 09/01/2015. Therefore, we find that the appellant have discharged burden to establish that the Gold under seizure was legitimately possessed by them and the same was legitimately cleared through filing Bill of Entry and payment of Customs duty as required under Section 123 of the Customs Act, 1962. Therefore, we find that the said Show Cause Notice dated 09/01/2015 is not tenable in law. As a result, we set aside the impugned Order-in-Original dated 27/11/2015 and held that appellant is entitled for release of said Gold under seizure within a period of 21 days from the receipt of the copy of this order. In terms of above finding the appeal is allowed."

4. In view of our categorical findings in the main appeal of M/s AIMR Jewels Private Ltd., we find that the penalty imposed on the appellants herein is not maintainable as well as the confiscation of the car owned by the appellant-Smt. Ruchi Rastogi is also fit to be set aside. Accordingly, we allow these appeals and order as follows: –

(a) The penalties imposed against all the appellants herein is set aside.

(b) The confiscation of the car Toyota Etios Liva bearning No. UP-25/AV-2429 is also set aside. We further direct the concerned Customs Authority to release the said car forthwith within a period of one week from the date of service of a receipt of a copy of this order. We also grant liberty to the appellant-Smt. Ruchi Rastogi to approach the concerned authority for releasing of the car with a copy of this order.

The appellants are entitled for consequential benefit, if any.

Order be given **DASTI**.

(Dictated and pronounced in Court)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Ankit

प्रमाणित प्रति/Certified True Copy
03/10/17

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