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/71103-71104/2017-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/70357/2016	**Firoz Ansari** S/o Shri Safiq Ahmad, R/o Mohalla-paharpur,ambedker Carrom Club,p.o.-gita Press GORAKHPUR UP
2	C/70449/2016	**Zubair Ahmad** S/o Shri Ishaq Ahmad, R/o Vill. & P.o. Bahrampur, Near Ilahaibagh, GORAKHPUR U.P.
		Name and Address of Respondent
3		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001
4		C.C. & C.E. & S.T.-Allahabad 38...M G MARG...CIVIL LINES, ALLAHABAD, UTTAR PRADESH-211001

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Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

AJAY RAJENDRA ADVOCATE
19, ALGIN ROAD, CIVIL LINES,
NEAR PLACE CINEMA ,
ALLAHABAD-211001

6 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

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

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

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com).FF-19.1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R. 17 Office Copy 18 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. C/70449 & 70357/2016-CU[SM]

(Arising out of Order-in-Appeal No. 01-02/CUS/ALLD/2016 dated 11/01/2016 passed by Commissioner of Central Excise (Appeals), Allahabad)

M/s Zubair Ahmad (In Appeal No. C/70449/2016) &

Firoz Ansari (In Appeal No. C/70357/2016) **Appellant**

Vs.

C. C. & C. E. & S. T. - Allahabad **Respondent**

Appearance:

Shri Ajay Rajendra, Advocate, for Appellant
Shri P. K. Dubey, Superintendent (AR), (In Appeal No. C/70449/2016) &
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), (In Appeal No. C/70357/2016) for Respondent

CORAM:

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

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

FINAL ORDER NO. 71103-71104/2017

Per: Ashok Jindal

The appellants are in appeal before impugned order.

2. The brief facts of the case are that acting on an information that betel nuts is being smuggled. Therefore, the Mahindra Pickup Van bearing Registration No. UP53 BT-3326 was searched wherein 2030 kg of betel nuts (split) packed in 35 jute bags valued at Rs.2,03,000/- was found. The investigation was conducted with the driver – Shri Zubair Ahmad s/o Shri Ishaq Ahmad. He stated that the said betel nuts were loaded in van from Jugauli Road in Sonauli for

Ashok Jindal

Gorakhpur and during the said transportation the van was intercepted by the Customs Officers. He further stated that on 04/09/2013 at about 2:00 P. M. he reached Village – Misrawli carrying with 30 bags of potato from Mahewa Sabzi Mandi Gorakhpur and after unloading the potato he returned to Gorakhpur. Thereafter, at about 7:00 P.M. when he reached at Thoothi Bari Chauraha, Nautanwa, one person stopped him and told that there is some consignment which is carrying from Sonauli to Gorakhpur and for that he will get the fare of Rs.4,000/- He immediately proceed with that person to Sonauli and stopped the vehicle on Jugauli Road near a lane. When he saw that jute bags were filled with betel nuts, then he questioned that fellow about the betel nuts. He said that some extra money will be paid and total 35 bags loaded in the pickup van and said to proceed Gorakhpur. He did not know the name and address of the person who loaded the betel nuts in pickup van. He also did not disclose about the carrying of betel nut to his vehicle owner. He also admitted his crime before the officers. In that circumstance, the goods were seized and proceedings were initiated against both the appellants. The Appellant No. 2 Shri Firoz Ansari s/o Sadiq Ali is owner of the vehicle which was carrying the betel nuts. Proceedings were initiated against both the appellants and in adjudication, penalty was imposed on both the appellants under Section 112 of the Customs Act, 1962 and vehicle in question was confiscated and allowed to redeem payment of redemption fine of Rs.90,000/-. The said order was challenged before the ld. Commissioner (Appeals) who dropped the penalty on Shri Firoz Ansari s/o Sadiq Ali but uphold the order of confiscation of the vehicle and penalty on Shri Zubair Ahmad. Being aggrieved by the said order, both the appellant are before me.

3. Heard the ld. Counsel for the appellants who submits that the transportation of betel nuts was not in the knowledge of the vehicle owner – Shri Firoz Ansari. He has not entrusted to the driver to transport any contravened goods. In that circumstance, vehicle cannot be confiscated in terms of Section 115(2) of the Customs Act, 1962 the order of confiscation of the vehicle in question is illegal. He further submitted that there is no sign, mark, level, packing or expert opinion or proof of evidence that jute bags of said betel nuts have been smuggled by the driver. In absence of any evidence to show that the said betel nuts is not smuggled by the driver therefore, no penalty is imposable on the driver.

4. On the other hand, ld. A. R. for Revenue reiterated the findings of the impugned order is justified.

5. Heard both the parties and considered the submissions.

6. On careful consideration of both the parties, I find that in this case, the driver has admitted that he was transporting the said betel nuts and failed to explain the source of procurement of betel nuts, he only said that one person stopped him and told that there is some consignment which

is carrying from Sonauli to Gorakhpur and for that he will get the fare of Rs.4,000/- and he failed to explain the name and address of the person who loaded the betel nuts in pickup van. He also did not disclose about the carrying of betel nut to his vehicle owner. He also admitted his crime before the officers. In the absence of the explanation by the Appellant No. 1 – Shri Zubair Ahmad, the penalty imposed on him is justified. The contention of the appellant that he being a poor man and sole bread earner of his family and earning Rs.4,000/- per month as a driver. It is not acceptable that the driver is receiving a salary of Rs.4,000/-. Moreover, he himself has admitted that he transported the betel nuts for getting more money. In that circumstance, I hold that penalty imposed on Shri Zubair Ahmad of Rs.25,000/-, qua on Appellant No. 1 is justified.

7. With regard to the confiscation of the vehicle in question, I find that the vehicle in question was involved in transportation of betel nuts whom source could not be explained by the Appellant No. 1 in that circumstance, vehicle is liable for confiscation, and the order of confiscation is justified. In this case, I find that redemption fine has been imposed to the tune of Rs.90,000/- is highly excessive. In that circumstance, the interference of this Tribunal is required. Hence, I reduced the redemption fine from Rs.90,000/- to Rs.40,000/- on the vehicle which can be

redeemed on payment of fine of Rs.40,000/- by the owner of the vehicle.

8. In view of the above observations, the appeals are disposed of.

(Dictated & Pronounced in Court)

Sd/-

(Ashok Jindal)

Member(Judicial)

Ansari