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

Dated: 24/10/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71269/2017-SM[BR] dated 23/10/2017

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/70751/2016	**Vinod Sah Proprietor** C/o Laxmi Battery Works,rajendra Path SIWAN BIHAR 841226
		Name and Address of Respondent
2		C.C.E. & S.T.-Lucknow 7-A...ASHOK MARG, LUCKNOW, UTTAR PRADESH-226001

Copy To

3Advocate(s) / Consultant(s):

A. P. Mathur
167, TAGORE TOWN,
Allahabad,
Uttar Pradesh

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/70751/2016-CU[SM]

(Arising out of Order-in-Appeal No. 07 to 10 – CUS/LKO/2012 dated 16/08/2011 passed by Commissioner of Central Excise, Service Tax & Customs (Appeals), Lucknow)

Shri Vinod Sah, Proprietor **Appellant**

Vs.

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

Appearance:

Shri A.P. Mathur (Advocate) for Appellant
Shri Gyanendra Kumar Tripathi (AC) AR for Respondent

CORAM:

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

Date of Hearing : 23/10/2017
Date of Decision : 23/10/2017

FINAL ORDER NO-71269/2017...........

Per: Anil G. Shakkarwar

Present appeal is directed against Order-in-Appeal No. 07 to 10 – CUS/LKO/2012 dated 16.08.2011 passed by Commissioner (Appeals) Customs, Central Excise and Service Tax, Lucknow.

2. Brief facts of the case are that on 24.07.2010 a truck bearing Registration No. UP 78 – BT 3585 loaded with battery scrap travelling from Siwan to Kanpur was intercepted in Lucknow by officers of Customs (Preventive) Division Lucknow and was detained and subsequently seized on

reasonable belief that the battery scrap loaded in the said truck violated Section 7(1)(c) of Customs Act, 1962 and Notification No. 9/96-CUS dated 22.01.1996 issued under Section 11 of Customs Act, 1962. The value of the battery scrap was Rs. 04,76,250/-. Further, the said truck valued at Rs. 6 lakhs was also seized. A show cause notice dated 18.01.2011 was issued wherein it was stated that the said goods contravened the said provisions and there was proposal to confiscate the goods valued Rs. 04,76,250/- and the said truck value Rs. 6 lakhs. Further, there was a proposal to impose penalty on the appellant under Section 112 of Customs Act, 1962. The issue was adjudicated through Order-in-Original dated 05.03.2012 wherein the Original Authority on page 11 of his Order-in-Original has held that the battery scrap was of foreign origin or illegally brought from Nepal into India through off route and, therefore, it violated provision of said Notification No. 9/960-CUS and hence Section 11 of Customs Act, 1962 and provisions of Section 7(1)(c) of the said Act and, therefore, the same was liable for confiscation and Shri Vinod Sah was liable for penalty. The Original Authority confiscated old battery scrap valued Rs. 04,76,250/- and gave an option to redeem the same on payment of fine of Rs. 01,19,063/-. Further, the Original Authority confiscated the said truck and gave an option to redeem the same on payment of fine of Rs. 01,50,000/-. The Original Authority also directed to recover customs duty on the said battery scrap and imposed penalty of Rs. 1 lakh on the appellant under Section 112 of Customs Act, 1962. Aggrieved by the said order appellant preferred appeal before learned Commissioner (Appeals). Learned Commissioner (Appeals) decided the appeal through impugned Order-in-Appeal alongwith other appeals and did not interfere with said Order-in-Original dated 05.03.2012. Aggrieved by the said order appellant is before this Tribunal.

3. The grounds of appeal are as follows:-

(i) The entire case is made out on the basis of presumptions.

(ii) Old battery scrap is not prohibited item.

(iii) Old battery scrap was not imported in India from Nepal by the appellant.

(iv) Old battery scrap was purchased by appellant from open market.

(v) There is no evidence on record that the old battery scrap was brought to India from Nepal via unauthorized route.

4. Heard the learned counsel for the appellant who has presented above stated grounds of appeal and taken me through the Panchnama, show cause notice, Order-in-Original and Order-in-Appeal.

5. Heard the learned AR who has supported the impugned Order-in-Appeal.

6. Having considered the rival contentions and on perusal of record I do not find any evidence on record to establish that the old battery scrap which was subject matter of the proceedings was brought into India from Nepal through either designated routes or undesignated routes. Therefore, there is no evidence on record to establish that there was any violation of said Notification No. 9/96-CUS. There is no evidence on record to know through which route the goods were brought for the simple reason that there was no evidence that they were brought from Nepal to India. Therefore, there is no evidence to establish that there was violation of Section 7(1)(c) of Customs Act, 1962. I, therefore, set aside the impugned Order-in-Appeal. As a result the impugned Order-in-Original dated 05.03.2012 does not exist in law. I allow the present appeal. The appellant shall be entitled for consequential relief as per law.

(Dictated and pronounced in Court)

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

Ankit

प्रमाणित प्रति/Certified True Copy
02/11/17
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