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: 19/09/2017

To

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

Final Order No. A/71084/2017-SM[BR] dated 15/09/2017

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/70870/2016	**Harjinder Singh** S/o Gopal Singh,1-5/894 Namdev Colony,sultan Mind Road,near Gil Chakki AMRITSAR PUNJAB
		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):

**BIPIN GARG & CO.
ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE (ADJ. INCOME TAX OFFICE), STANLEY ROAD, CIVIL LINES, ALLAHABAD (U.P.)-211001**

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, 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 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines, Allahabad – 211 001

COURT NO. II

DATE OF HEARING/DECISION : 15/09/2017.

Customs Appeal No. 70870 of 2016 (SM)

[Arising out of the Order-in-Appeal No. 387-CUS/APPL-LKO/LKO/2016 dated 14/06/2016 passed by The Commissioner (Appeals), Customs & Central Excise, Lucknow.]

Shri Harjinder Singh — Appellant

Versus

CCE, Lucknow — Respondent

Appearance

Ms. Stuti Saggi, Advocate – for the Appellant.

Shri Mohd. Altaf, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri Ashok Jindal, Member (Judicial)**

Final Order No. 71084 /2017 Dated : 15/09/2017

Per. Ashok Jindal :-

The appellant is in appeal against the impugned order wherein he has confiscated the seized goods and allowed to be redeemed on payment of redemption fine of Rs. 1 lakh and penalty of Rs. 1 lakh under Section 112 (b) of Customs Act, 1962.

2. The brief facts of the case are that the appellant on 05/04/2014, was coming from Nepal to India by rikshaw and

intercepted by the officers of Sashastra Seema Bal (SSB) who found that the appellant is carrying 93.74 gm. pure gold of 99.99% purity and 239 gms. Gold nose pins valued at Rs. 6,26,258/-. The statement of the appellant was recorded who stated that the said goods has been handed over to him at Bageshwari Mandir, Nepalganj, Nepal by a person named Shera, who lived in Amritsar, whose address is not known and he was carrying the said goods to Rupaidiha bus stand, where those goods were being received by Shera who has paid him Rs. 2,000/- for carrying such goods. On the basis of that statement and the recovery of gold from the appellant, it was alleged that same is smuggled goods as source of the same could not explained by the appellant, therefore, proceedings were initiated for confiscation of seized goods and for imposition of penalty. The matter was adjudicated. The Adjudicating Authority relying on the invoice produced by the appellant, dropped the proceedings against the appellant. The said order was challenged before the learned Commissioner (Appeals), who after going through the evidences placed on record hold that the seized goods are liable for confiscation and same can be redeemed on payment of redemption fine of Rs. 1 lakh and penalty of Rs. 1 lakh under Section 112 (b) of Customs Act, 1962. Aggrieved from the said order, the appellant is before me.

3. The learned Counsel for the appellant submits that the appellant have explained the source of procurement of seized goods in question that the same has been purchased from M/s

D.S. Traders, Amritsar and the appellant has gone to Nepal for having the holy darshan in Bageshwari Mandir, Nepalganj, Nepal. As the source of procurement of goods in question has been explained, therefore, the gold is not liable for confiscation. It is also submitted that the panch witnesses has not been allowed to be cross examined and the department has failed to give any evidences that the goods are all smuggled in nature.

4. On the other hand learned AR reiterated the findings of the impugned order.

5. Heard the parties considered the submissions.

6. In this case, the appellant was intercepted by officers of SSB whereas the appellant was returning from Nepal to India and carrying pure gold with him and 239 gms. of gold nose pins. A person who is coming form abroad and having gold item which is restricted item, as per Section 123 of Customs Act, 1962, the custom officer can ask for source of the procurement of the said goods. At the time of search, the appellant fail to explain the real source of procurement of the said good. Moreover, at the time of search, he stated that the goods has been handed over to him by Shri Shera whom he does not know. In that circumstances, the genuineness of the appellant is doubted and the goods were rightly seized. Later on, the appellant produced the invoice issued by one M/s D.S. Traders, Amritsar. All these are after-thought. In fact, if he had purchased the goods from M/s D.S. Traders, Amritsar, when he is carrying the gold in his pocket going to

Nepal he should have the invoice also with him. Moreover, no prudent man will go to temple with such precious metal with him in pocket. In every big temple, on their notice board mention that Beware from the thief and keep belongings. In that circumstances, carrying the gold in temple is doubtful, therefore, it is a case of smuggling of gold by the appellant from Nepal to India. In that circumstances, I do not find any infirmity in the impugned order, qua confiscation of goods in question. Therefore, order of confiscation of the goods in question is affirmed.

7. The learned Counsel for the appellant has submitted that no cross-examination of panch witnesses was granted. I find that in the case of **Surjeet Singh Chhabra vs. Union of India** reported in **1997 (89) E.L.T. 646 (S.C.)**, the Hon'ble Apex court has held that when the goods have been recovered in the custody of the appellant itself during the course of investigation, in that circumstances by providing cross-examination of the witnesses is of no help. Admittedly, the goods in question has been recovered from the personal custody of the appellant. Therefore, there is no requirement to give cross-examination to the appellant of the panch witnesses.

8. Further, I find that the value of gold is Rs. 6,26,258/- and redemption fine and penalties are imposed of Rs. 1 lakh each which are highly excessive, therefore, the redemption fine and penalty are reduced to Rs. 50,000/- (Rupees Fifty Thousand) each.

Ashokjain

9. With these terms, appeal is disposed of.

(Dictated and pronounced in open court.)

Sd/-

(Ashok Jindal)

PK

Member(Judicial)