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

Dated: 23/02/2018

To

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

Final Order No. C/A/70389/2018-CU[DB] dated 22/02/2018

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/MISC/70039/2018	C/70839/2016	**Deepak Bajaj** C/o Shri Dushyant Kumar, 19/849, Ring Road, Indira Nagar, LUCKNOW UP 226022
		Name and Address of Respondent
2		-Lucknow Prev Additional Commissioner, Customs(Preventive) Commissionerate 5th Floor Kendriya Bhawan, Sector-H, Aliganj, Lucknow LUCKNOW Uttarpradesh-226024

Copy To
3Advocate(s) / Consultant(s):

DUSHYANT KUMAR
19/849 INDIRA NAGAR
LUCKNOW 226016

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
E/MISC/70039/2018
APPEAL No.C/70839/2016-CU[DB]

(Arising out of Order-in-Appeal No. 03/CUS/ALLD/2016 dated 13/01/2016 passed by Commissioner of Central Excise (Appeals), Allahabad)

M/s Deepak Bajaj **Appellant**

Vs.

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

Appearance:

Shri Dushyant Kumar, Consultant for Appellant
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

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

Date of Hearing : 22/02/2018
Date of Decision : 22/02/2018

FINAL ORDER NO.70389/2018.........

Per: Anil G. Shakkarwar

Heard on Miscellaneous Application through which the appellant submitted to add the grounds that under similar circumstances this bench has allowed re-export of gold through Sonauli Customs land station under Section 80 of Customs Act, 1962 through final order No.C/A/71928/2017-CU dated 07.11.2017. The Miscellaneous Application was allowed and since the matter is covered, with the consent of both the sides matter was taken up for Final Hearing.

2. The present appeal is arising out of Order-in-Appeal No.03/CUS/ALLD/2016 dated 13/01/2016 passed by Commissioner (Appeals) Central Excise, Allahabad.

3. The brief facts of the case are that the appellant is a holder of British Passport and on 02.04.2014 ~~and~~ he was entered into India from Nepal through Sonauli Land Customs Station. After he crossed the no man's land, SSB officers at Sonauli conducted search on him and effected seizure of 4320 gms gold having 999.9 purity valued at Rs.1,09,12,590/- since the said gold was found to be of third country origin. The SSB officers handed over the appellant and seized gold to Customs officers at land customs station Sonauli. The appellant was issued with a show cause notice dated 27.08.2014 wherein it was contended that appellant was trying to smuggle third country origin gold into India and that the same was prohibited under Notification No.9/96-Cus dated 22/01/1996 issued under Section 111 of Customs Act, 1962 and therefore, the same was liable for confiscation. It was therefore, through the said show cause notice the said gold was proposed to be confiscated under Section 111(d) of Customs Act, 1962 and there was proposal to impose penalty on appellant under Section 112 of Customs Act, 1962. The said show cause notice was adjudicated through

Order-in-Original No.23/2015 dated 02/03/2015. Before the Original Authority appellant submitted that he did not have any intention to smuggle gold into India and that he was British citizen and he had no criminal record. The Learned Original Authority ordered for confiscation of seized gold and did not give any option to redeem the same and imposed penalty of Rs.25 lakhs on the appellant under Section 112 of Customs Act, 1962. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals) which was decided through impugned Order-in-Appeal. It was submitted by the appellant before the Learned Commissioner (Appeals) that he requested to the SSB officers to take him to Customs officers for doing the required formalities of declaration etc. because of fact that he had to take said gold back to UK after making jewelry from said gold being carried by the appellant and that appellants efforts went in vain and that the proceedings carried out by SSB officers were without any witness. The Learned Commissioner (Appeals) did not interfere with the said Order-in-Original dated 02/03/2015 and dismiss the appeal. Aggrieved by the said order, appellant is before this Tribunal.

4. In the grounds of appeal appellant submitted that appellant purchased gold from UK which was purchased

under invoices issued on 31/03/2014 and 25.02.2014 by Jewelry Quarter Bullion limited Burmigham and that the said gold was purchased by the appellant from his own saving and that the appellant was not allowed to declare gold at land Customs station at Sonauli and that before he reached land Customs Station at Sonauli, SSB officers seized gold without any authority of law and without following any procedure for seizure provided under Section 102 of Customs Act, 1962.

5. Heard the Learned Counsel for appellant who has submitted that the gold was seized by SSB officers without following the procedure in Customs Act and the appellant was not allowed to make declaration before the Customs officers at Land Customs Station Sonali and said gold was absolutely confiscated and as held by this Tribunal through the above stated Final Order dated 07/11/2017 the appellant is entitled for return of all the said gold for taking away from India, as provided under Section 80 of Customs Act, 1962.

6. Heard the Learned A.R. for Revenue who has supported the impugned Order-in-Appeal.

7. Having considered the rival contentions, we find that any passenger entering into India is empowered to make a

declaration of his baggage before entering into India as provided under Section 77 of Customs Act, 1962. Further, if it is found that goods accompanying him which are also called as baggage, import of which is prohibited and in respect of which true declaration has been made under Section 77 of Customs Act, 1962 proper officer may at the request of the passenger detained such articles for the purpose of being returned to him on his leaving India under Section 80 of Customs Act, 1962. We are of the view that the appellant was entitled for the benefit of provisions of Section 80 of Customs Act, 1962. We, therefore, set aside the impugned Order and allow option provided under Section 80 of Customs Act, 1962 to the appellant. The option under Section 80 of Customs Act, 1962 shall be exercised at Land Customs Station Sonali. Further, seizure Memo indicates that passport was detained by Customs Authorities and that the adjudication proceedings did not indicate the authority under which the same is not returned to the appellant. Therefore, the passport may be returned to the appellant immediately to enable him to travel out of India and take back said gold at Land Customs Station Sonali on Indo Nepal border to be taken out of India.

8. Accordingly, the impugned Order-in-Appeal is set aside and appeal is allowed. Further, we direct the respondent to return goods confiscated to the appellant at Land Customs Station Sonali at Indo Nepal border to be carried out into India by the appellant. Order to be issued **Dasti**.

(Dictated in Court)

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

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

akp

प्रमाणित प्रति/Certified True Copy
23/02/18
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