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REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **20/08/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/52602/2015-CU[DB]** dated **12/08/2015**

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(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	C/Stay/1987/2010	C/367/2010	**INDIAN ART GALLERY,** C-24 HAZRAT ALI NAGAR COLONY, RAMGARH MOR KARBALA JAIPUR (RAJ.)
			Name and Address of Respondent
2			-C.C. (EXPORT) NEW DELHI Air Cargo Export, New Custom House, New Delhi 110037

Copy To

3Advocate(s) / Consultant(s):

M. S. Bhatia & Associates,
G-11, MAGNUM HOUSE-II,
KARAMPURA
COMMERCIAL COMPLEX,
NEW DELHI,
DELHI-110015

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise, I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
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 C.D.R. **15** Office Copy **16** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order : 12.8.2015

Appeal No. C/367/2010-CU(DB)

(Arising out Order-in-Appeal No. CCA/Exp/36/10 dated 15.4.2010 passed by the Commissioner, Customs (Appeals), New Delhi)

For Approval & Signature :

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

M/s Indian Art Gallery Appellant

Vs.

CC, New Delhi Respondent

Appearance:

None - for the Appellant

Shri B.B. Sharma, D.R. - for the Respondent

Coram : **Hon'ble Mr. Justice G. Raghuram, President**
Hon'ble Mr. R.K. Singh, Member (Technical)

F. Order No. 52602/2015

Per R.K. Singh:

Appeal is filed against the order in appeal dated 18.4.2010 which upheld the order in original dated 29.12.2009 in terms of which 41 shawls were confiscation under Section113(d), (e) and (l) of the Customs Act, 1962 and penalty of Rs.50,000/- was imposed on the appellant under Section 114 ibid.

2. The brief facts of the case are as under:

The appellant filed a Shipping Bill dated 4.12.2008 for the export of 1290 number of Pashmina and wool shawls falling under Chapter Heading 62142010 and declared C&F value of Rs.10,56,419/-. Those shawls which were of "Dyed Pashmina Wool" were marked for getting No Objection Certificate from Wildlife authorities. Accordingly, sample of five shawls from packet number 4 was taken up for testing in the laboratory of Wildlife Institute of India, Dehradun. The test confirmed the presence of hair to Tibetan Antelope in the said five shawls. The hair of Tibetan Antelope is listed at Sl No. 36A of Schedule 1 of the Wildlife (Protection) Act, 1972 and export of this item is prohibited. In the wake of this the consignment was examined 100% and 36 more shawls were identified by the Wildlife officer from the same packet No. 4 (from which the said five shawls were drawn as sample) to be similar to the said 5 shawls. The adjudicating authority thus confiscated the said 41 shawls under 113(d), (e) & (l) of the Customs Act, 1962 for being attempted to be exported and penalty of Rs.50,000/- was imposed.

3. When the case was taken up today for hearing there was no representation on behalf of the appellant nor was there any request for adjournment. Therefore we take up this appeal on merits.

4. In its appeal, the appellant has contend that the prohibition was application only to 41 shawls found in packet No. 4 which contained 249 other shawls and the adjudicating authority has not given any reasoning for confiscation of the rest of the shawls of packet No. 4. It also questioned the test report of the Wildlife authorities pleading that Wildlife authorities did not conduct any chemical analysis or any forensic analysis as the report was silent about that.

5. We have considered the facts of the case. As stated earlier, no one on behalf of the appellant appeared for personal hearing. We also find that in the reply to the Show Cause Notice the appellant did not seek any cross-examination of the Wildlife authorities. In its appeal it has stated that proper chemical analysis of the shawls was not conducted by wildlife authorities. The appellant has no basis to assert that when it did not seek any cross-examination of the wildlife authorities who tested the samples. There can be various ways to test a sample depending upon the purpose of test. In these circumstances, the order of confiscation of 41 shawls for containing material prohibited for export is sustainable. As regards the

contention that other shawls (other than 41) found in packet 4 should not have been confiscated, we find that the primary adjudicating authority has ordered confiscation of only 41 shawls and has categorically stated, "I order for unconditional release of remaining shawls out of 1290 shawls seized along with their respective packet." Thus, it is obvious that the confiscation ordered by the primary adjudicating authority and upheld by the first appellate authority was only with regard to the 41 shawls. As 41 shawls were liable to confiscation on account of being attempted to be exported in spite of being prohibited for export, the appellant is clearly liable to penalty. The penalty of Rs.50,000/- imposed is neither unreasonable nor ~~unreasonable nor~~ arbitrary.

6. In the light of the foregoing discussion, we do not find any infirmity in the impugned order warranting appellate interference. Appeal is dismissed.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM