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

Appeal No. C/705-706 /2005 Date 08/07/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
THE COMMISSIONER, CONTAINER FREIGHT STATION, LUDHI
ASSISTANT COMMISSIONER, CONTAINER FREIGHT STATION (PSWC), FOCAL POINT, PHASE-V, LUDHIANA
THE COMMISSIONER, CONTAINER FREIGHT STATION, LUDHIANA · Appellant

Vs

SH PRITAL SINGH, PROP M/S PALI CREATIONS Respondent

I am directed to transmit herewith a certified copy of Final order No.C/157-158/08-CUS. DATED 27/6/08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar

(Customs Appeal Branch)

Copy to :

1 Respondent SH PRITAL SINGH, PROP M/S PALI CREATIONS
SHOP NO.101, TALAB MANDIR BAZAR,
GUR MANDI, LUDHIANA

2. MR. SARABJIT SINGH BINDRA,
H.NO.3422, SECTOR 35-D,
CHANDIGARH.

MR. SUDHIR MALHOTRA, ADV.
C/O H.NO.3422, SECTOR 35-D,
CHANDIGARH.

3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications. M-93, Marg. 46. Saket. New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

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

**COURT NO. II**
**Customs Appeal No. 705-706 of 2005**

[Arising out of the Order-in-Appeal No. 2-3/CUS/LDH/2004 dated 30/09/2004 passed by The Commissioner of Central Excise (Appeals), Ludhiana.]

For Approval and signature :
**Hon'ble Shri S.S. Kang, Vice President**
**Hon'ble Shri Rakesh Kumar, Member (Technical)**

| | | |
|---|---|---|
| 1. | Whether Press Reporters 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? | : |

CC, Ludhiana — Appellant

Versus

1. Sh. Pritpal Singh ]
2. Sh. Sarabjit Singh ] — Respondent

**Appearance**

Shri B.K. Singh, Authorized Representative (DR) – for the appellant.

Shri Sudhir Malhotra, Advocate - for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
**Hon'ble Sh. Rakesh Kumar, Member (Technical)**

**DATE OF HEARING : 27/06/2008.**

Final Order No. C/157-158/08 Dated : 27/6/08

**Per. S.S. Kang :-**

Revenue filed these appeals against the common impugned order, whereby the goods were allowed to be released on redemption fine of Rs. 50,000/- and personal penalty was reduced from Rs. 25,000/- to Rs. 5,000/-.

2. Brief facts of the case that one of the respondents purchased the Cell Phones from Chennai and it was dispatched by speed post to Chandigarh. At Chandigarh these were intercepted by the Customs Authorities. The Adjudicating Authority absolutely confiscated the goods and imposed penalty of Rs. 25,000/- each on the ground that the goods are smuggled in nature. Respondents filed appeal and Commissioner (Appeals) upheld the order of confiscation, however, allowed for released the goods on payment of redemption fine of Rs. 50,000/- and penalty was reduced to

Rs. 5,000/-. Revenue's contention is that goods are smuggled in nature and respondent's fail to show the proof of legal import into India. Therefore, the goods were rightly confiscated and respondents were liable for higher penalties. We find that Cell Phones are not notified goods under Section 123 of Customs Act and the onus is on revenue to show that goods in question are smuggled into India. In absence of such evidence, and admittedly the goods were purchased from Chennai, we find no merit in the present appeals and the same are dismissed.

(Dictated and pronounced in open court)

**(S.S. Kang)**
**Vice President**

**(Rakesh Kumar)**
**Member (Technical)**

PK