

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

Appeal No. C/533 /2007-SM[BR]

Date 31/01/2008

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

To :
GULSHAN SETHI
S/O SHRI GOPAL CHAND SETHI R/0 HOUSE NO 269 ANAND
NAGAR, CHARMARLA, SONEPAT HARHARYANA

GULSHAN SETHI

Appellant

Vs
Respondent

C.C.E. LUCKNOW

I am directed to transmit herewith a certified copy of Final order No. 209/2008-SM[BR] dated 7.1.2008 passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax


Assistant Registrar
(SM-Appeal Branch)

Copy to :

1. Respondent

C.C.E. LUCKNOW

7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult

MR.NAVEEN MULLICK

B-388, MERA BAGH, NEW DELHI-63.

3. S.D.R.

~~4. J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(SM-Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Custom Appeal No. 533 of 2007-SM(BR)

(Arising out of Order-in-Appeal No. 32,33/CUS/All/2007 dated 17.5.2007 passed by the Commissioner of Central Excise (Appeals), Jaipur)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

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 Departmental authorities.	

Gulshan Sethi

Appellant

Vs.

CC, Lucknow

Respondent

Appearance:

Shri Naveen Mullick, Advocate

- For appellant

Shri S.L. Meena, SDR

- For respondent

CORAM:

HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 7.1.08

Final Order No. 209/08 SM(BR) dated 7.1.08

Per S.S. Kang

Heard both sides.

2. The appellant filed this appeal against the impugned order whereby a jeep was confiscated under Section 115 of the Custom Act and the same was released on payment of redemption fine of

- Rs.50,000/- and personal penalty of Rs. 2 lakhs was imposed under Section 112 of the Customs Act.

3. The brief facts of the case are that on 15.1.2003 the Custom officer intercepted one armada jeep No. UP-26/A-3268, the driver of the jeep stopped the jeep and ran away. The Custom officers found two persons sitting in the jeep i.e. Shri Jwala Prasad Gupta and Shri Vinod Kumar sitting in the jeep. The jeep was searched and it was found that the goods of foreign origin collectively valued at Rs.3,35,850/- in the jeep and the occupants could not produce or explain the lawful import of the goods in question. Statement of Shri Jwala Prasad Gupta and Shri Vinod Kumar under the Customs Act was recorded. Both explained that the goods were brought from Nepal to Dudhwa via jungle and the same were carried by them in the jeep and were to be handed over to the present appellant. They also submitted that when they travelled through Dudhawa to Palia the UP registration number is used and from Palia to Shahjahanpur the Haryana number is being used on the jeep. A number plate bearing number HR-31/A-7259 was also recovered from the jeep.

- 4. The adjudicating authority confiscated the goods as well as the jeep and imposed penalty. The Commissioner (Appeals) modified the order to the extent that the release of the jeep was allowed on payment of redemption fine of Rs.50,000/-.
5. The appellant is not challenging the confiscation of the goods. The contention is that the appellant are not anywhere related to the impugned goods. The appellant also tried to submit that the impugned goods are not smuggled into India. However, the appellant claimed the ownership of the jeep and submitted that the jeep was purchased for Rs.1,10,000/- from Shri Raj Kumar. The appellant relied upon the agreement entered between Shri Raj Kumar for purchase of the jeep.
6. The appellant also submitted that in the show-cause notice there is no allegation which attracts the penal provisions under the Customs Act.
7. The contention of the Revenue is that the appellant is owner of the jeep in question. The jeep was handed over to Shri Jawala Prasad and Shri Vinod Kumar and at the time of recovery the goods in question both stated that the goods were brought from

- Nepal to Dudhwa and they were carrying the goods and the goods were for the present appellant and these statements were never retracted. The contention is that the statement of co-noticee where they described their roll and as well as of the other co-noticee is admissible and relied upon the decision of Hon'ble Supreme Court in the case of **Naresh J. Sukhawani Vs. Union of India** reported in 1996 (83) ELT 258 to submit that statement of co-noticee made under Custom Act is a material piece of evidence collected by Customs official. The material can certainly be used to connect the defaulter in contravention of the provisions of Customs Act.

8. I find that in the present case the goods of foreign origin were recovered from the jeep belongs to the appellant. The statement of the occupants are very specific which that goods are for the present appellant. In the statements occupants also explained the modus operandi regarding carriage of contraband goods. In their statement the occupants of the jeep specifically submitted that the goods were smuggled into India from Nepal and from Dudhwa they used to carry the goods and the same were handed over to the present appellant. In these circumstances, I find no infirmity in the impugned order whereby jeep in question which is used in

smuggling of the goods was confiscated. Therefore, I find no infirmity in the impugned order whereby the vehicle was confiscated and penalty is imposed on the appellant. The appeal is rejected.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM