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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/812 /2008 – SM[BR] Date 29/06/2009

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

To :
MRS. SHASHI GOYAL
B-1/578, JANAK PURI, NEW DELHI 110058.

MRS. SHASHI GOYAL Appellant

Vs

C.C.(PREVENTIVE) Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 633 /2009 –SM[BR] dated 21.5.2009 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.(PREVENTIVE)
   NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT, NEW DELHI 110037.
2. Adv. / Consult SHRI C.M. SHARMA CON.
   CHAMBERS;- NO. 32, 6TH FLOOR
   TARDEO AC MARKET BLDG, TARDEO ROAD
   TARDEO, MUMBAI – 400034.
3. S.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg, 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Customs Appeal No.812 of 2008-SM (BR)

Arising out of Orders-in-Appeal No.CC(A)Cus/Prev/393/2008 dated 14.10.2008 passed by the Commissioner of Customs (Appeals), New Delhi]

Date of Hearing/ Decision:21.05.2009

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

Mrs. Shashi Goyal .....Appellants
[Rep. by Shri C.M. Sharma, Consultant]

Vs.

CC, New Delhi ...Respondent
[Rep. by Shri M.M. Singh, DR]

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**

Final Order No. 633/2009 SM (BR)/Dated:21.05.2009

Per P.K. Das:

The relevant facts of the case, in brief, are that on 18.12.93 a sum of Rs.3,44,000/- of Indian Currency was seized from the appellant's bedroom on the reasonable belief that the said Indian Currency was sale proceeds of the smuggled goods, Ball Bearings. A proceeding was initiated against Shri H.P. Goyal, Husband of the appellant against the seizure of ball bearings and the Indian Currency and the trucks. The Original Authority confiscated the goods and imposed penalties. Ultimately, the matter went to the Tribunal. By Final Order No.A/311-314 of 2000-NB (DB) dated 5.4.2000, the Tribunal set aside the confiscation of Rs.3,44,000/- of Indian Currency and extended other reliefs, which are not relevant here. In view of the order of the Tribunal, the appellant filed a refund claim on 30.11.2007. The appellant claimed the refund of the Indian Currency of Rs.3,44,000/- with interest. The Original Authority held that the refund of Rs.3,44,000/- is to be made by Shri H.P. Goyal (i.e. Husband of the appellant). It has been observed that the appellants have no valid ground to sustain the claim for Rs.3,44,000/-. The Commissioner (Appeals) upheld the Adjudication Order.

2. Ld. Consultant on behalf of the appellant drew the attention of the Bench to the Panchnama dated 18.12.93, which reveals that the Indian Currency was seized from the possession of the appellant and also from the appellant's bedroom. He also drew the attention of the Bench to the Adjudication Order dated 19.11.2007, whereby it was stated by Shri H.P. Goyal that the Indian Currency seized from the residential premises and the same belonged to his wife. At the time of personal hearing before the Adjudicating Authority, in the earlier proceedings, Shri H.P. Goyal stated that the Indian Currency seized belonged to his wife. He also drew the attention to the findings of the Adjudicating Authority that the claim

of Indian Currency by the appellant is just an afterthought and without any basis. The claim was rejected because she could not produce any documentary evidence. He also submits that in view of the provisions of Section 110(2) of the Customs Act, 1962, goods shall be returned to the person from whose possession they were seized.

3. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that it is revealed from the Panchnama that the appellant did not claim the sale proceeds at the time of seizure. He also submits that the amount was not seized from her possession and it was in fact seized from her bedroom.

4. After hearing both the sides and on perusal of the records, the relevant provisions of Section 110(2) is reproduced below:-

> "(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized :
>
> **Provided** that the aforesaid period of six months may, on sufficient cause being shown, be extended by the [Commissioner of Customs] for a period not exceeding six months."

5. The Tribunal in the case of Commissioner of Customs, Kandla Vs. Deluxe Exports reported in 2001 (137) ELT 1336 (Tribunal-Mumbai) following the decision of the Hon'ble Karnataka High Court in the case of Kantilal Somehand Shah Vs. Collector reported in 1982 (10) ELT 902 (Calcutta) held that the goods are to be directed to be released to the

person from whose possession they were seized as witnessed in the Panchnama.

6. In the present case, it is seen from the Panchnama dated 18.12.93 that Smt. Shashi Goyal, appellant herein, could not produce any evidence for lawful acquisition of the Indian Currency seized under Section 110 of the Act. It was also recorded that Shri H.P. Goyal was not present and his wife, the appellant herein, was present during search. In the entire proceedings, Shri H.P.Goyal stated that the seized Indian Currency belonged to his wife. In this connection, ld. Consultant drew the attention of the Bench to the letter dated 17.03.2008 addressed to the Commissioner of Customs (Preventive) issued by Shri H.P. Goyal declaring that he has no claim on the said amount and he has no objection for release of the amount by the Customs to Smt. Shashi Goyal as it belonged to her. The main contention of the ld. DR is that the appellant had not claimed the ownership of the said currency in the Panchnama. The Commissioner (Appeals) in the impugned order observed that at the material time, she did not take the stand that the said Currency was out of her agricultural income. It is observed by the Commissioner (Appeals) that the stand taken by the appellant is an afterthought.

7. I find that Section 110 (2) of the Act provides that "the goods shall be returned to the person from whose possession they were seized". It appears from the Panchnama that the goods were seized from the possession of the appellant. The Original Authority observed that the

amount may be refunded to Shri H.P. Goyal, Husband of the appellant. It is a fact that the amount was seized neither from the possession of Shri H.P. Goyal nor he has claimed for it. On the other hand, it is revealed from the Panchnama that the Indian Currency was seized as the appellant could not produce any evidence for the legal acquisition. Therefore, the amount should be released to the appellant.

8. In view of the above discussions, the impugned order is set aside and it is directed to release the amount to the appellant, from whose possession it was seized. In this context, ld. Consultant submits that they have claimed interest also. The Original Authority is directed to decide the issue of payment of interest in accordance with law. The appeal filed by the appellant is allowed with consequential relief.

Order dictated & pronounced in open court on 21.05.2009.

(P.K. Das)
Member (Judicial)

Ckp.