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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/215 /1999 – SM[BR] Date 17/08/2009

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

To :
M/S WAHAB KHAN S/O SHRI DANE
R/O VILL-AMAULI, P.O. DHAMAULI DISTT; GONDA [U.P]

WAHAB KHAN Appellant

Vs

C.C.ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 929 / 2009 –SM[BR] dated 29.7.2009

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.ALLAHABAD

38,M.G.MARG, CIVIL LINES, ALLAHABAD
2. Adv. / Consult SHRI HAMANT BAJAJ ADV.
A-5, BASMENT LAJPAT NAGAR-III
NEW DELHI-24.

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)
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Assistant Registrar
(SM Appeal Branch)

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

Customs Appeal No. 215 of 1999-SM(BR)

[Arising out of Order-in-Appeal No. 34/Cus/LKO/1997 dated nil passed by Commissioner (Appeals), Central Excise & Customs, Allahabad]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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

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M/s. Wahab Khan Appellant

Vs.

Commissioner of Central Excise & Customs, Allahabad Respondent

Appearance:

Mr. Hemant Bajaj, Advocate for the Appellant
Mr. S.N. Srivastava, SDR for the Respondent

Date of Hearing/decision : 29.7.2009

ORAL ORDER NO. 929/2009 SM (BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) upholding the order of absolute confiscation by the original authority ~~by~~ of ~~which~~ a sum of Rs.2,90,000/- stated to be sale proceeds of goats in Nepal brought by four persons and imposition of penalty on Shri Wahab Khan who is the owner of goats and consequently owner of the currency.

2. Heard both sides.

3. It is admitted that the recovery of cash of 2,90,000/- was made in the year 1994 from four persons who were coming from Nepal. All of them have given statements that they brought the currency which is the sale proceeds of goats in Nepal and the money belonged to the appellant. Their statements have not been retracted in the proceedings before the authorities below. They were imposed penalties and it appears that they have not filed any appeal before the Commissioner (Appeals). The present appeal of Shri Wahab Khan is challenging the confiscation of currency of Rs.2,90,000/- belonging to him and imposition of penalty of Rs.20,000/-.

4. Learned advocate submits that the show cause notice did not disclose any authority to show that the export of goats to Nepal is prohibited. It only alleged that bringing of sale proceeds in Indian currency is an offence and the same are liable for confiscation under section 120 (1) of the Customs Act. He submits that the confiscation of the currency has rendered his client a pauper. He seeks setting aside the order of confiscation of the currency and setting aside the penalty.

5. Learned SDR submits that bringing in of Indian Currency in such a large quantity in the year 1994 is clearly unauthorised and it is a case of smuggling; it is also admitted to be sale proceeds of goats exported from India and the money being brought illegally.

6. I have carefully considered the submissions from both sides. The seizure was effected in the year 1994. The persons from whose possession currency was seized have clearly admitted that they were sale proceeds of goats in Nepal and that the same belong to the appellant. Clearly the importation of currency is in contravention of FERA Regulations ~~of~~ as well as provisions of Customs Act. Learned SDR fairly submits that the show cause notices did not indicate the specific provision/ notification under which the export of goats were held to be prohibited. Taking entire facts and circumstances of the case into account, I hold that the confiscation of currency has to be upheld. However, I hold that this is a case where option of redemption may be warranted. In view of the above, while upholding the confiscation, I allow redemption of the confiscated currency on payment of fine of Rs.50,000/- (Rupees Fifty thousand only).

7. The penalty is reduced to Rs.10,000/- (Rupees Ten thousand only). After adjusting the amount of Redemption fine and penalty sustained, the balance amount shall be paid to the appellant.

(M. Veeraiyan)
Member(Technical)

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