TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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/114 /2009-118 /2009 – SM[BR] Date 01/09/2009

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

To :
C.C. LUCKNOW

HALL NO. 3,5TH AND 11TH FLOOR, KENDRIYA
BHAWAN, SECTOR -H, ALIGANH, LUCKNOW 226024.
C.C. LUCKNOW Appellant

Vs

SH KAPIL PRASAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1090- 1094 / 2009–SM[BR]** dated 25.8.2009

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 :
Respondent
1. SH KAPIL PRASAD
2. SH VISHWANATH PRASAD
3. SH DINESH TIWARI
4. SH CHANDAN KUMAR
5. SH MANOJ PRASAD

VILLAGE- PAREO, POLICE STATION - BIHTA, DISTT- PATNA(BIHAR)

2. Adv. / Consult
NONE;------------

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 25.8.2009

Customs Appeals No.114, 115, 116, 117, 118 of 2009

Arising out of the order in appeal No.25 to 29-CUS/ALLD/07 dated 16.10.08 passed by the Commissioner (Appeals), Customs & Central Excise, Allahabad.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, 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?	Yes
2	Whether it should be released under Rule 27 of 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

C.C. (Prev.), Lucknow ... Appellant

Vs.

1. Shri Kapil Prasasd
2. Shri Vishwanath Prasad
3. Shri Dinesh Tiwari
4. Shri Chandan Kumar
5. Shri Manoj Prasad

Respondents

Appearance:

Shri S. K. Bhaskar, Authorized Departmental Representative (JDR) for the Revenue and none for the respondents

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 1090 – 1094/2009 SM(BR)

Per M. Veeraiyan :

All these five appeals by the department arise out of a common order in appeal No.25-29/Cus/Alld/07 dated 16.10.08.

2. Heard the learned JDR for the Department. None appears for the respondents.

3. The relevant facts, in brief, are that on 5.10.05, the officers of DRI unloaded 10 parcels packets from Lal Quila Express at Allahabad Junction and they were covered by RR Nos.053079 to 0530083 and were booked in the name of 5 persons on self basis for transport from Arrah to Delhi. On examination , the parcels were found to contain 270 kgs. of copper scrap and 635 kgs. of aluminium scrap totally valued at Rs.1,02,100/-. The consignments were seized on the belief that the scrap originated from Nepal and mixed with the indigenous scrap. There was claim by the four of the respondents namely, Shri Chandan Kumar, Dinesh Tiwari, Manoj Prasad and Shri Vishwanath Prasasd that the consignments sent by them to Delhi were procured from APS Organisation, Kolkata under the invoices issued by them. The other respondent Shri Dinesh Tiwari claimed that he has procured the scrap form M/s Laxmi Bartan Bhandar, Begusarai (Bihar). According to the Department, APS Organisation, Kolkata was closed in 2000 and the invoices issued in 2005 in the name of said firm are not genuine (there appears to have been no investigation regarding M/s Laxmi Bartan Bhandar, the other supplier). The original authority ordered absolute confiscation of the scrap valued at Rs.1,02,100/-. He also imposed penalty of Rs.5000/- each of the five respondents. Commissioner (Appeals) in his de novo proceedings [the matter came before the Tribunal and was sent back to Commissioner (Appeals) on remand for fresh decision] held that there was no evidence that the goods were of foreign origin and that the Department failed to discharge its burden to prove that the goods were smuggled and allowed the appeals. The department has preferred appeals against the said order.

4. Learned JDR reiterates the finding of the original authority and the grounds of appeal.

5. I have carefully considered the submissions of the learned JDR and perused the record. At the outset, it is to be noted that the aluminium scrap and copper scrap are not goods notified under Section 123 of the Customs Act. As a result, the burden to prove that the goods are of foreign origin and that they are smuggled is mainly on the Department. The goods have been

booked from Arrah to Delhi and the same have been intercepted and seized at Allahabad Junction. Four of the respondents have produced tax invoices claiming to have procured the goods from APS Organisation. The Department's contention is that the said firm had been closed as notified in newspaper 'Telegraph' on 11.6.2000. However, the respondents have produced affidavit of Shri Ajit Kumar Sarkar dated 14.8.06 that due to his old age and ill health he closed the firm but his son continued to deal with the left over quantities of scrap. This has been taken note of by the Commissioner (Appeals). No investigation appears to have been undertaken in respect of the other supplier. The evidence relied upon by the Department does not discharge the burden cast on them that the goods emanated from foreign country and they have been illegally imported into India. In the absence of evidence that the goods are of foreign origin ,the confiscation of the goods under the Customs Act and imposition of penalties on the respondents do not arise. Therefore, the decision of the Commissioner (Appeals) in setting aside the order of the original authority is legal and proper. Therefore, I hold that no valid grounds have been adduced to interfere with the orders of the Commissioner (Appeals).

6. The appeals by the Department are, therefore, rejected.

(M. Veeraiyan)
Member (Technical)

scd/