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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/84 /2009-85 /2009 – SM[BR] Date 02/09/2009

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

SHRI KAMAL BHANDARI, Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1100 - 1101 / 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 :

1. Respondent

SHRI KAMAL BHANDARI,

S/O SH. GANPATI BHANDARI R/O CHHAPAHILE, V D C WARD NO. 4, DITT. GULMI, ANCHAL LUMBINI, NEPAL.

2. Adv. / Consult SHRI K.K. ANAND ADV.
A-5, BASMENT LAJPAT NAGAR -III
NEW DELHI

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)

SHRI KAMAL PRAKASH BHUSAL,
S/O SH. THANESHWAR BHUSAL, R/O BAJHHA KATERI, V D C
WARD NO.3. DISTT. GULMI. ANCHAL LUMBINI. NEPAL.

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.84, 85 of 2009

Arising out of the order in appeal No.43, 44-CUS/ALL/08 dated 18.11.08 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?	No
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.

Shri Kamal Bhandari .... Respondents
Shri Kamal Prakash Bhusal

Appearance:

Shri S. Gautam, Authorized Departmental Representative (SDR) for the Revenue and Shri Hemant Bajaj, Advocate for the respondents

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

Oral Order No. 1100 - 1001/2009 SM (BR)

Per M. Veeraiyan :

These two appeals by the Department arise out of common orders in appeal No. 43, 44-CUS/ALL/08 dated 18.11.08 of the Commissioner (Appeals).

2. Heard both sides.

3. The relevant facts, in brief, are that Mr. Kamal Bhandari , owner of Budh Copy Udyog was found with Indian currency of Rs.6,46,100/- out of

which currency worth of Rs.4,50,000/- consisted of currency in denomination of Rs.500, and Rs.1000/- and he was accompanied by Shri Kamal Prakash Bhusal. They were intercepted by Border Security Police officials (SSB) under the belief that they were intending to cross over to Nepal with the said currency and handed over to the Customs authorities. Shri Kamal Bhandari claimed that that they were wanting to convert the Rs.500 and Rs.1000 notes into Indian Notes of Rs.100 denomination and as the bank counter was closed, they were returning to the hotel at night and they were intercepted by the said police authorities. The original authority confiscated Rs.4,50,000/- and imposed penalty of Rs.50,000/- on Shri Kamal Bhandari and Rs.25,000/- on Shri Kamal Prakash Bhusal. On appeal, Commissioner (Appeals) set aside the order of the original authority with the finding that there was no tangible evidence that the two persons were intending to cross over to Nepal with the said currency.

4. Learned SDR submits that they were near to the Border and they were apprehended at odd hours by the SSB authorities and handed over to the Customs authorities. The statement of Shri Kamal Bhandari and the statement of the person who is said to have given by Shri Kamal Prakash Bhusal are contradictory. The finding of the Commissioner (Appeals) that they were apprehended near exchange counter is not based on fact. He seeks setting aside the order of the Commissioner (Appeals) and restoration of the order of the original authority.

5. Learned Advocate for the parties reiterates the finding and reasoning of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. Shri Kamal Bhandari and Shri Kamal Prakash Bhusal were apprehended by the police authorities within the Indian territory and were handed over to the Customs authorities. No evidence that they were about to cross the Border and enter Nepal has been relied upon. There was discrepancy about time of apprehension of the two persons by the SSB authorities as recorded by the Commissioner (Appeals). The versions of Shri Kamal Bhandari and Shri

Kamal Prakash Bhusal were that they went to the Exchange counter and as the same was closed they were planning to stay in the hotel and proceed only the next day. No investigation has been conducted by the Customs authorities bringing out any evidence that they were intending to cross the Border with the said Rs.500, Rs.1000/- denomination currency. It appears that there was also no investigation about the claim that they went to exchange counter and the same was found closed. There is no dispute that the export of currency of Rs.1000, Rs.500 denomination to Nepal is prohibited. But there is no evidence about the two persons intending to leave for Nepal with the said currency. In fact, the place of apprehension of these two persons is vaguely mentioned as near Nepal Border without even specifying the distance from the Border. In view of the above, no ground has been adduced to interfere with the order of the Commissioner (Appeals).

7. Appeals by the Department are , therefore, rejected.

(M. Veeraiyan)
Member (Technical)

scd/