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

Appeal No. C/59-61 & 523 /2006 - CU[DB] Date 16/03/2009

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

To :
RAM NATH, S/O KHEM KARAN,
VILLAGE- UTTAHANIA, P.O. - MAHEWAGANJ,
P.S.KOTWALI, DISTT. LAKHIMPUR, U.P.

RAM NATH Appellant
Vs
COMMISSIONER OF CUSTOMS, Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/103-106/09** **CU[DB]** dated 06.03.09 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

**Copy to :**
1. Respondent
COMMISSIONER OF CUSTOMS, KENDRIYA BHAWAN,
SECTOR-H, ALIGANJ, LUCKNOW, U.P.
2. Adv. / Consult
MR.H.S.BHULLAR, ADV.
E-69, G.K. – I, NEW DELHI – 48.
3 S.D.R
4 J.C.D.R.
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kuni. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 Office Copy
16 Guard file
17. SHRI SADIQUE, S/O YASEER MISTRY,
P.S. MAILANI, DISTT. LAKHIMPUR, U.P.
18. SHRI VED PRAKASH, S/O RAMU LAL
VILL. HAKKALPUR, P.O. CHEDUI PATIA,
P.S. NIGHASAN, DISTT. LAKHIMPUR, U.P.

Assistant Registrar
(Customs Appeal Branch)

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

Customs Appeals Nos.59 to 61 of 2006 –Customs Branch & Customs Appeal No.523 of 2006

[Arising out of common Order-in-Original No.02/Commissioner/Lucknow/05 dated 30.08.2005 passed by the Commissioner of Customs, Lucknow,]

**Date of Hearing/ Decision:3.3.09**

**For approval and signature:**
**Hon'ble Mr. M. Veeraiyan, Member (Technical)** M Veeraiyan
**Hon'ble Mr. P.K. Das, Member (Judicial)**

| | | | |
|---|---|---|---|
| 1. | Whether Press Reporters may be allowed to see 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 |

(1) Ram Nath
(2) Ved Prakash
(3) Sadique
(4) Vishamber Gupta ...Appellants

[Rep. by Shri H.S. Bular, Advocate]

Vs.

CC, Lucknow ...Respondent

[Rep. by Shri Fateh Singh, JDR]

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

Final Order No. C/103-106/09 Dated:03.03.2009

**Per M. Veeraiyan:**

These appeals arise out of common Order-in-Original No.02/Commissioner/Lucknow/05 dated 30.08.2005 passed by the

M Veeraiyan

Commissioner of Customs, Lucknow and are being dealt with by a common order.

2. Hard ld. Advocate, Shri H.S. Bullar, Advocate on behalf of Shri Ramnath, Shri Ved Prakash and Shri Sadique. None appears for Shri Vishamber Gupta in spite of notice. Heard the ld. DR on behalf of the Department.

3. The relevant facts, in brief, are as follows:-

(a) Two trucks, One Truck with Shri Ram Nath as Driver and Shri Ved Prakash as Cleaner and another truck with Shri Sadique as Driver with another cleaner were intercepted on 12.07.2003. The trucks were officially carrying sugar bags but search of the vehicle led to recovery of spectacles and shoes of foreign origin from 21 cartons and 2 gunny bags totally valued at Rs.25,91,000/-.

(b) Both Shri Ram Nath and Shri Sadique stated that they were transporting sugar bags with relevant documents and enroute, they got the above mentioned goods loaded and kept them hidden among sugar bags; that they have done the same for monetary considerations of Rs.2,000/- each. Initially, they submitted that details of the person, who handed over the goods was not known to them. Shri Ved Prakash, Cleaner collaborated the version of the drivers and admitted that he himself participated in loading of the goods into the Trucks.

(c) The name of Shri Vishambhar Gupta was later on revealed as owner of the goods by Shri Ram Nath and Shri Sadique, while they were in the judicial custody in the jail. It appears that Vishambhar Gupta had

M Veeraiya

not responded to the repeated summons and no statement was recorded from him. At the time of personal hearing, on behalf of Shri Vishambhar Gupta, the allegations that the goods belonged to him, were denied.

(d) The Commissioner ordered absolute confiscation of the goods valued Rs.25,91,000/-; he also confiscated sugar valued about Rs.4 Lakhs and allowed the same to be redeemed on payment of fine of Rs.75,000/-. The trucks were confiscated and allowed to be redeemed on payment of fine of Rs.50,000/- each. He imposed a penalty of Rs.2,00,000/- each on Shri Ram Nath and Shri Sadique and also imposed a penalty of Rs.20,000/- on Shri Ved Prakash and Rs.3,00,000/- on Shri Vishambhar Gupta.

(e) There are other parties on whom the penalties have been imposed and their appeals, if any, are not before us in the present proceedings.

4.1 Ld. Advocate submits that Shri Ram Nath and Shri Sadique as drivers were not aware of the contraband nature of the goods while they were agreed to transport the goods for small monetary considerations. Out of fear, they initially submitted that they were not aware to whom the goods belonged to. Subsequently, they helped the Investigating Authorities by revealing the details of the owners. They are poor drivers and they had no intention to knowingly transport the contraband goods and, therefore, seeks for setting aside the penalties on them.

4.2 As regards the appeal by Shri Ved Prakash, cleaner, he submits that no evidence of any monetary benefit accruing to him has been relied upon.

5. As regards the appeal by Shri Vishambhar Gupta, we have considered the Grounds of Appeal wherein, he denied ownership of the confiscated goods and also denied any knowledge about smuggling activities.

6. Ld. DR submits that the involvement of two drivers and the cleaners is evident as the trucks carrying sugar and the imported goods were loaded without any documents for high monetary considerations. The seizure was effected on the basis of specific information. He also submits that the statements of both the drivers clearly implicate the role of Shri Vishambhar Gupta as the owner of the smuggled goods, who was an ex-cofeposa detenu.

7. We have carefully considered the submissions from both the sides. We find that Ram Nath and Sadique as drivers of the truck carrying sugar bags have consciously allowed the vehicle for carrying goods of foreign origin without bill and admittedly, they have done this for monetary considerations. The amount of Rs.2,000/- charged by each of them appears on the higher side clearly indicating that the consignments are not ordinary goods. Further, admittedly the goods were found concealed. Therefore, we hold that the plea, that they were not aware of the contraband nature of the goods, is not acceptable. As regards the Cleaner, Shri Ved Prakash, no specific evidence about his knowledge about the nature of the goods and about monetary considerations for his work has been relied upon. The Commissioner relying on the evidence given by Shri Ram Nath and Shri Sadique and one Shri Anil Jaiswal came to the

conclusion that Vishambhar Gupta is the owner of the goods. He has also noted that in spite of repeated summons by the investigating authorities, he has not come forward and tendered any evidence. We do not find any reason to disregard the findings based on the above evidence. Accordingly, we hold that Shri Vishambhar Gupta is also liable for penalty.

8. Accordingly, penalty imposed on Shri Ved Prakash is set aside. Taking into account the entire facts and circumstances of the case including the poor financial status of the Drivers, we intend to show some leniency in the quantum of penalties imposed. We reduce the penalty imposed on Shri Ram Nath from Rs.2,00,000/- to Rs.20,000/- (Rupees Twenty Thousand only) and the penalty imposed on Shri Sadique from Rs.2,00,000/- to Rs.20,000/- (Rupees Twenty Thousand only). The penalty imposed on Shri Vishambhar Gupta is reduced from Rs.3,00,000/- to Rs.1,00,000/- (Rupees One lakh only).

9. The appeals of Shri Ved Prakash is allowed. Others appeals are disposed of in the above terms.

Order dictated & pronounced in open court on 3.3.2009.

( M. Veeraiyan )
Member (Technical)

( P.K. Das )
Member (Judicial)

Ckp.