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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/882 /2005 - CU[DB] Date 15/12/2009

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

To :
KISHAN LAL MALL
HARMESH KUMAR LAL, 97-BHORA COLONY.
G.T. ROAD, JALANDHAR, BYE-PASS, LUDHIANA
KISHAN LAL MALL Appellant

Vs

C.C. NEW DELHI (IMPORT & GENERAL) Respondent

I am directed to transmit herewith a certified copy of Final order No. C/428/ 2009 CU[DB] dated 09.12.09 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 C.C. NEW DELHI (IMPORT & GENERAL),
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT,
NEW DELHI 110037.

2. Adv. / Consult
MR.JAGMOHAN BANSAL
1640/1,SECTOR-40B,CHANDIGARH

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
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Assistant Registrar
(Customs Appeal Branch)

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

Customs Appeal No. 882 of 2005 (Cus.Br.)

[Arising out of Order-in-Appeal No. 26/2005 dated 31.8.2005 passed by Commissioner of Customs (Appeals), New Delhi.]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. D.N.Panda, Member (Judicial)

1.	Whether Press Reporters 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 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

Mr. Krishan Lal Mall — Appellants

Vs.

Commissioner of Customs
New Delhi. — Respondent

Appearance: Mr. Bipin Garg, Advocate for the Appellants
Mr. Mahesh Rastogi, SDR for the Respondent

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. D.N.Panda, Member (Judicial)

Date of Hearing/decision : 19.11.2009

(Final) **ORDER NO. C/428/08**

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner (Appeals) No.CC(A)/354/AIR/D-I/2005 dated .7.05 issued on 30.8.05.

2. Heard both sides.

3.1. The relevant facts, in brief, are that during the intervening night of 26th / 27th of July, 2002, two French nationals Rubert Olivier and Michel Kame were intercepted after they had completed immigration and customs clearance. Foreign currency of US $ 1,23,000 equivalent to Rs.58,88,960/- (as per then exchange rate), in 7 bundles, was found tied with rubber bands around Robert Olivier's waist and the same was seized. The other person Michel Kame was allowed to proceed as nothing incriminating was found from his possession.

3.2. In his statement dated 27.7.2002 recorded under section 108 of the Customs Act, Shri Olivier stated that the currency was given to him by one Mr. Lucky Bedi for the purpose of carrying to Paris for some monetary consideration. He admitted that he has no permission of the RBI to carry the currency.

3.3. The appellant is claiming that the currency seized from Robert Olivier as his own. His version runs as follows:-

He is a resident of Canada and he transferred foreign currency equivalent to about Rs. 60 lakhs through banking channel. He came to India and his friend Shri Lucky Bedi arranged for purchase of land from two foreign nationals. The said foreign nationals wanted the sale proceeds in foreign currency. He has already got the transferred money in Indian currency. He, out of money transferred by him, procured foreign currency from a money changer in Ludhiana (it came out in investigation that the Ludhiana based money changer was not authorised to issue foreign currency, as apparent in para 14 of order in original). The appellant along with some friends came to Delhi and stayed in Taj Hotel where the two French nationals were also staying and they visited him in his room and were discussing business with him; he went for a while out of his room with his friends who came from Ludhiana and returned back to resume the discussion with the French nationals. Two foreigners left the room thereafter. Next day, he found that currency he was carrying, was missing and apparently taken away. On finding that the foreign currency kept by him was not available, he rushed to the air port and went to complain to the air port police station. On advice, he returned back to Chankya Puri police station and preferred a complaint about the theft of the foreign currency. Later on Rubert Olivier from whom the currency was seized has given a letter addressed to ACMM, New Delhi in reply to the application of Krishan Mall stating that the foreign currency was handed over to him by Michel Kame who was travelling with him in the same flight. Michel Kame has told him that he was having business dealing with Krishan Mall - and told him that money was given to him by Krishan Mall .

3.4 The original authority did not find the claim of ownership by the appellant justified. On the other hand, the original authority held that the appellant along with Lucky Bedi abated in the offence by Rubert Olivier in the attempted export of foreign currency without the required permission of Reserve Bank of India and accordingly, rejected the claim of ownership and also imposed a penalty of Rs. 3 lakhs on the appellants. Commissioner (Appeals) has upheld the said order of the original authority.

4. Learned advocate for the appellant took us through the statement of appellant before the Customs authority; he also took us through an FIR filed by him (hindi version). He submits that he has been robbed of the money brought by him from Canada which was converted into foreign currency and the money belonged to him.

5. Learned SDR reiterates the finding of the Commissioner (Appeals).

6. We have carefully considered the submissions from both the sides and perused the records. It is to be noticed that the seizure was made from Mr Olivier, a French national at the time when he was about to leave India on 26/27.7.02. Mr Olivier in his statement given before the Customs authorities did not mention the name of appellant and also did not mention that the money was given to him by Michel Kame. He subsequently claimed in a letter dated 18.12.02 to the ACMM that the money, as told by his friend Kame, belonged to the appellant. This claim is not only hearsay in

nature but made much belatedly to give any credibility to such claim, especially in the light of his admission on 27.7.02 that Mr. Lucky handed over the currency to him to be taken to Paris. It is not the case ~~of~~ that the statement of Shri Michel Kame rebutted promptly. Under these circumstances, the reliance placed by the appellant on the claim of Robert Olivier before the Magistrate in the form of the statement in the reply has been rightly ignored by the lower authorities. After claiming that the money was missing why the appellant rushed to air port has not been stated by the appellant. Was he aware of their travel programmes? Further, it is not the case that the appellant has produced any evidence about the actual conversion of Indian currency to foreign currency, through the money changer. No such evidence was produced before the lower authorities and Commissioner (Appeals). Further no such evidence has been produced before us as well. Further, the original authority has clearly indicated the discrepancy in the denominations of the foreign currency seized from Mr. Olivier and the denomination as per the claim of the appellant which was in his possession. Thus the evidence relied upon by the appellant before the authorities were found to be unreliable, inconsistent and not creditworthy. It was claimed that the foreign nationals wanted the sale proceeds of land in foreign currency. However, no evidence of the alleged land deal has been submitted. It is basically an attempt to mitigate the offence of attempted illegal export by Robert Olivier. Therefore, there is abetment on the part of the appellant in the offence of attempted illegal export of foreign currency by Robert Olivier. We also do not find any reason to interfere with the findings of the Commissioner (Appeals) in rejecting the claim of ownership of the currency under confiscation. However, taking into consideration all the facts and circumstances, the penalty imposed is reduced from Rs.3 lakh to Rs.1,00,000/- (Rupees One lakh only).

7. The appeal is disposed of in the above terms.

(M. Veeraiyan)
Technical Member

(D.N.Panda)
Judicial Member

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