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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

Date 02/12/2009

Appeal No. C/331 - 333 / 2009 –SM[BR]

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

To :-
SHRI INDERPREET SINGH S/O LATE JAGHAL SINGH,
R/O 156/10 A, B.T.ROAD, DUNLOP, KOLKOTA.
700108

Appellant

SHRI INDERPREET SINGH S/O LATE JAGHAL SINGH,

Vs
Respondent

C.C. LUCKNOW

I am directed to transmit herewith a certified copy of **Final order No.** 1473 – 1475 / 2009 –SM[BR] dated 12.11.2009 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. LUCKNOW
   HALL NO. 3,5TH AND 11TH FLOOR, KENDRIYA BHAWAN, SECTOR -H, ALIGANH, LUCKNOW 226024.
2. Adv. / Consult
   MR.PRITAM JAISWAL,ADVOCATE
   147,BALAJI NAGAR COLONY, SAMANE GHAT, LANKA, VARANASI

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~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
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10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
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13 Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
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S/O AJAYAB SINGH,R/O VILL. SARBHA SADDAAHAR,
LUDHIANA (PB)
3. SMT. SIMRAN KAUR W/O INDERPREET SINGH,
R/O 156/10 A, B.T.ROAD DUNLOP KOLKOTA

Assistant Registrar
(SM Appeal Branch)

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

Customs Appeal No. 331-333 of 2009-SM(BR)

[Arising out of Order-in-Original No. 1-Commr/Lucknow/2009 dated 16.2.2009 passed by Commissioner of Customs, , Lucknow]

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? : 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

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Shri Inderpreet Singh. Appellants
Shri Major Singh
Smt. Simran Kaur

Vs.

Commissioner of Customs Respondent
Lucknow

Appearance:

Shri Pritam Jaiswal, Advocate for the Appellants
Shri S.K. Bhaskar, DR for the Respondent

Date of Hearing/decision : 12.11.2009

ORAL ORDER NO. 1473 - 1475/2009 SM(BR)

Per M. Veeraiyan:

These three appeals arise out of common order-in-original No. 1-Commr/Lucknow/2009 passed by Commissioner of Customs, Lucknow dated 16.2.09.

2. Heard both sides.

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

In a truck No. WB 23A 8257 which was said to transport consignment of veneer, was found to contain 260 numbers of foreign origin refrigerant 22 (monochlorodifluromethane / chlorordifluromethane) , hereinafter referred to as CFC cylinders, concealed below the veneer sheets and the same was valued at Rs.15,60,000/- and were seized by the officers of DRI, Varanasi. The driver of the vehicle Shri Major Singh, (one of the appellants) admitted carrying the CFS cylinders clandestinely and he revealed that it was loaded by Shri Daljeet Singh, brother-in-law of Shri Inderpreet Singh (Shri Inderpreet Singh is one of the appellants). He also admitted that on earlier occasions also, he has transported such consignments to Ghaziabad and the same were delivered as instructed by Inderpreet Singh. The truck is owned by one Smt. Simran Kaur (she is one of the appellants) who is wife of Shri Inderpreet Singh. Shri Inderpreet Singh has admitted that though the truck is owned by his wife, he only was looking after the entire transport business. On a finding that Shri Inderpreet Singh was actively and knowingly engaged in procuring the CFC cylinders and transporting them to Ghaziabad, the Commissioner absolutely confiscated the 260 number of cylinders. He also confiscated the consignment of veneer valued at Rs.3,61,772/- but allowed the same to be redeemed on payment of fine of Rs. 70,000/-. He ordered confiscation of truck used for transporting the CFC cylinders and allowed redemption on payment of fine Rs. 1,40,000/-. He imposed penalty of Rs. One lakh on Shri Major Singh and Rs. 90,000/- on Smt. Simran Kaur and Rs. 1,50,000/- on Shri Inderpreet Singh.

4.1. Learned advocate, on behalf of Smt. Simran Kaur, submits that she is a housewife and loan was arranged from the Bank in her name for purchase of the truck, and therefore, she is the registered owner of the seized truck. However, she is not looking after day to day work related to transport business and same was looked after by Shri Inderpreet Singh, her husband . There is no justification for imposition of any penalty on her. None of the alleged participants in the crime have implicated her. He also submits that since the vehicle has been used without her knowledge, confiscation of the same should be set aside. At an rate, imposition of any penalty or redemption fine would cause hardship in business and therefore, he seeks leniency in terms of redemption fine if the same is sustained.

4.2. On behalf of Shri Inderpreet Singh, learned advocate submits that during the period when the goods were seized, Shri Inderpreet Singh was in Punjab along with his family; that he has not given any instructions to procure or transport the CFS cylinders. He submits that though, his wife is the owner of the truck, he was only looking after transport business. He also submits that Shri Daljeet Singh, his brother in law was assisting him in transport business.

4.3. On behalf of Shri Major Singh, the learned advocate submits that he is a poor person. His statement was recorded by the officers. He only admitted to have concealed the CFC cylinders and he did not say that he was receiving any instruction from from Shri Inderpreet Singh. Considering the meagre income earned as a driver, he sumits that imposition of penalty of Rs.One lakh is very harsh on him and he seeks leniency.

5. Learned DR reiterates the finding of the Commissioner. He particularly draws my attention to the statement of Shri Major Singh giving the role of Shri Inderpreet Singh. As per the confession of Shri Major Singh , the vehicle with the consignment was to wait near one Sitara Hotel at Ghaziabad and the consignment was to be delivered at Ghaziabad.and Shri Inderpreet Singh, was to give direction about the person to whom and the place at which delivery was to be given. He also draws my attention to his admission for similar supply of CFS cylinders on earlier occasions.

6. I have carefully considered the submissions from both sides. It is not in dispute that the truck which was said to transport the consignment of veneer, was found with 260 numbers of CFC cylinders of foreign origin valued at Rs.15,60,000/-. The involvement of Shri Major Singh, driver is not in dispute. Shri Major Singh has clearly implicated Shri Inderpreet Singh, and explained the role of Shri Inderpreet Singh and the modus

operandi of transporting and delivering the prohibited CFS cylinders of foreign origin. It has not been shown that he has not retracted his statement. Shri Major Singh has admittedly requested and sought for the help of Shri Inderpreet Singh for getting released from jail. If Shri Major Singh was acting on his own and transported the contraband without the knowledge of Shri Inderpreet Singh, the question of his seeking help of Shri Inderpreet Singh may not arise. The submission on behalf of Shri Inderpreet Singh that he had no role in the procurement and transport of CFC cylinders lacks credibility in view of the submission of Shri Major Singh that Shri Inderpreet Singh was behind the activities of procuring and transporting CFS cylinders and their subsequent conduct. The fact that during the period of seizure he was away at Punjab has no significance and cannot mitigate the role attributed to him. As regards the penal action taken against Smt. Simran Kaur, except the fact that she is the registered owner of the vehicle, none of the participants in the loading, transporting the contraband had named her. Therefore, the penalty on her is not justified. In the present case, admittedly Shri Inderpreet Singh was running the business though the owner of the truck is his wife. In other words, Shri Inderpreet Singh has been functioning as defacto owner of the vehicle. In such a situation, it cannot be treated as a case of transportation without the knowledge of the owner of the vehicle. The confiscation of the vehicle therefore, deserves to be upheld. However, considering the value of goods involved, and considering the facts and circumstances of the case, some leniency may be justified in matters relating to redemption fine on the truck and penalties imposed on Shri Major Singh and Shri Inderpreet Singh.

9. In the light of the above, the appeals are disposed of as follows:-

a) The appeal of Smt. Simran Kaur is partly allowed by setting aside the penalty of Rs.90,000/- imposed on her. The redemption fine imposed on the truck is reduced to Rs.75,000/- (Rupees Seventyfive thousands only);

b) The penalty imposed on Shri Major Singh is reduced from Rs. One lakh to Rs. 25,000/- (Rupees Twentyfive thousands only);

c) The penalty imposed on Shri Inderpreet Singh is reduced from Rs.1,50,000/- to Rs. 1,00,000/- (Rupees One lakh only).

(M. Veeraiyan)
Member(Technical)

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