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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/258 /2010 – SM[BR]** Date **09/06/2011**

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

To :
M/S SHAMSHAD AHMAD

S/O LAGE MOHD. MASHUK AHMAD R/O RAZAQ
MANZIL DANGIPRARA, WARD NO 6, SILIGURI
DISTT- DARJEELING(WB)

M/S SHAMSHAD AHMAD Appellant

Vs

C.C. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No. 306 / 2011 –SM[BR]** dated 28.4.2011

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.NAVEEN MULLICK
B-388, MERA BAGH, NEW DELHI-63.
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Customs Appeal No. 258 of 2010 (SM)

[Arising out of the Order-in-Appeal No. 12-CUS/LKO/2009 dated 11/11/2009 passed by The Commissioner (Appeals), Customs & Central Excise, Lucknow.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

M/s Shamshad Ahmad — Appellant

Versus

CC, Lucknow — Respondent

Appearance

Shri Naveen Mullick, Advocate – for the respondent.

Mrs. Rim Jhim Prasad, Authorized Representative (SDR) – for the appellant.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 28/04/2011.

Final Order No. 306/2011 SM(BR) Dated : ____________

Per. Rakesh Kumar :-

In this case, the officers of Directorate General of Revenue Intelligence, Lucknow, seized at Lucknow Railway Station, two parcels one parcel from Awadh Assam Express on 1/4/07 and the second parcel from Amarnath Express on 12/4/07. Both the parcels had been loaded at Siliguri. On examination of the parcels in presence of independent Panchas, the same were found to be containing copper scrap in form of old and used parts of radiators. The goods valued at Rs. 1,07,700/- and Rs. 81,900/- were seized on the ground that the same were of third country origin and had been imported illicitly from Nepal. In this regard, the officers had obtained an opinion from the trader M/s Bharat Trading Company, Aishbagh, Lucknow. The consignor of both the parcels was the appellant Shri Shamshad Ahmed. Subsequently, Shri Shamshad Ahmed wrote to the Assistant Commissioner claiming that the goods seized are of Indian origin and that the same had been purchased from M/s Azad Radiators, M/s Punjab Radiators and M/s Krishna Motors of Siliguri. Inquiry was made with them and they informed the investigating officers that they had not sold any copper scrap. It is on this basis that show cause notices were issued to the appellant for confiscation of the seized goods and imposition of penalty. Both the show cause notices were adjudicated by the Assistant Commissioner vide order dated 31/3/09 who, holding that the seized goods are of third country origin and had been illicitly imported from Nepal, ordered their absolute confiscation and imposed penalty under Section 112 of Customs Act, on the appellant Shri Shamshad Ahmed. On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide order-in-appeal dated 11/11/2009 upheld the Assistant Commissioner's order. It is against this order of the Commissioner (Appeals) that this appeal has been filed.

2. Heard both the sides.

2.1 Shri Naveen Mullick, Advocate, the learned Counsel for the appellant, pleaded that though the seizure Panchnama mentioned the goods as copper scrap, the Panchnama also mentions that the same are in form of parts of radiators, that there is absolutely no evidence that the goods are of third country origin and had been illicitly imported from Nepal, that the only basis of the department's claim that goods are of third country origin is the opinion given by M/s Bharat Trading Co. which is also not a clear opinion as it states that, the goods "appear" to be of third country origin, that just because the suppliers had stated that they had not supplied any copper scrap to the appellant, it cannot be concluded that the goods are of third country origin illicitly imported from Nepal, and that in view of this, the impugned order upholding confiscation of the goods and imposing penalty on the appellant is not correct. He also pleaded that the goods not being covered Section 123 of the Customs Act, 1962, the burden of proving that the same are of smuggled origin is of the department and this burden of proof has not been discharged by the department and that in view of this, the impugned order is not correct.

2.2 Mrs. Rimjhim Prasad, the learned Departmental Representative defended the impugned order by reiterating the Commissioner (Appeal)'s findings and emphasized that in view of the opinion given by M/s Bharat Trading Co., it is clear that the third country origin goods have been illicitly imported from Nepal, that a small place like Siliguri cannot generate such quantity of scrap in form of old and damaged radiators, that the persons named by the appellant as the suppliers of the goods, in question, have declined to have supplied the same and that from this evidence it is clear that the goods seized are of third country origin which had been illicitly imported from Nepal.

3. I have carefully considered the submissions from both the sides and have perused the records.

4. The goods had been seized at Lucknow Railway Stations and the same had been booked by the appellant from Siliguri. The goods are scrap in form of old and damaged part of radiators. There is no dispute that there is no mark of country of origin ~~of~~ on the goods and it is only on the basis of trade opinion of M/s Bharat Trading Co. that the department alleges that the goods are of third country origin. On going through the trade opinion given by M/s Bharat Trading Co., I find that it is also not a conclusive opinion as what has been

mentioned is that the goods "appear" to be third country origin and for this no basis has been mentioned. I also find that though the appellant requested for cross examination of the person of M/s Bharat Trading Co., the same had also not been allowed. Since the goods are not covered by Section 123 of Customs Act, 1962, the burden of proving that the same are smuggled is on the department, which has not been discharged, as other than the opinion of M/s Bharat Trading Co., there is no other evidence that the goods are of third country origin. Just from the statement of the suppliers in Siliguri that they had not supplied any copper scrap to the appellant, it cannot be concluded that the goods are of third country origin smuggled into India from Nepal. In view of these circumstances, I hold that the impugned order upholding confiscation of the goods and imposition of penalty on the appellant is not sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK