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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/589 /2009 – SM[BR] Date 29/03/2010

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 DINESH KUMAR S/O SHRI GAJENDRA SHAH, Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 363 / 2010 –SM[BR] dated 22.3.2010 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 DINESH KUMAR S/O SHRI GAJENDRA SHAH,
C/O DEV NARAYAN PRASAD, R/O LOHA MANDI, RAXAUL, BIHAR.
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 22.3.2010

Central Excise Appeal No.589 of 2009-SM

Arising out of the order in appeal No.8~~7~~4-CUS/ALLD/09 dated 29.5.2009 passed by the Commissioner(Appeals), Customs & Central Excise, Allahabad.

For Approval and Signature:

Hon'ble Mr. 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?	Yes
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.(Preventive),Lucknow ... Appellant

Vs.

Shri Dinesh Kumar ... Respondent

Appearance:

Shri R.K. Saini , SDR for the Revenue
Ms. Asmita Nayak, Advocate for the respondent

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

Oral Order No. 363/2010-SM (Br)

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No.84-CUS/ALLD/09 dated 29.5.2009.

2. Heard, both sides.

3. The relevant facts, in brief, are that the officers of DRI seized a consignment of 572 kgs. of scrap of copper wires and brass and steel scrap valued at Rs.1,50,300/- booked from Rauxal Border consigned to Delhi. The consignment was intercepted en route at Gorakhpur Railway Station on 9.6.2007 and the same was seized under reasonable belief that it was goods of Nepalese origin brought to India illegally. Shri Dinesh Kumar came forward and claimed the consignment and submitted that the scrap was material was collected by him from different villages in that area and was being consigned to Delhi. The original authority ordered absolute confiscation of the goods and imposed penalty of Rs.1000/- on the respondent.

4. On appeal by the party, the Commissioner (Appeals) set aside the order of the original authority.

5. Learned SDR reiterates the grounds of appeal and seeks setting aside the order of the Commissioner (Appeals) and restoration of the order of the original authority.

6. Learned Advocate for the respondent submits that seizure relates to a consignment booked from one Railway Station in India to another railway station in India. No evidence whatsoever has been produced to show that the consignment originated from Nepal.

7. I have carefully considered the submissions from both sides. It is not disputed that the goods have been consigned from a railway station in India (claimed to be close to Nepal border) and the consignor was identified who claimed that old utensils as scrap and damaged armature of motor fans were procured from various villages. It is also not disputed that the scrap is not notified goods under Section 123 of the Customs Act. To come to a conclusion that the goods were of Nepalese origin based on the nature of the packing i.e.

compressed form may not be proper. No evidence has been relied upon. It is also seen that no investigation has been conducted at the end of the consignee.

8. In view of the above, I do not find any reason to interfere with the finding of the Commissioner (Appeals) that the Department has failed to prove that the impugned scrap were of foreign origin.

9. The appeal is, therefore, rejected.

(M. Veeraiyan)
Member (Technical)

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