TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

# 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/692 /2008, C / 153 - 155 / 2009 – SM [BR] Date 14/05/2010

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

To :
C.C.(PREVENTIVE)
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT, NEW
DELHI 110037.

C.C.(PREVENTIVE) Appellant

Vs

M/S NATIONAL STAR GOODS CARRIERS., Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 521 – 524 / 2010 –SM[BR] dated 22.4.2010 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
   M/S NATIONAL STAR GOODS CARRIERS.,
   2255, SARAI TOP KHANA, NEAR KODIA PUL, DELHI.
2. Adv. / Consult SHRI ANIL KUMAR GUJRAL ADV.
   CH. NO. 131, PATIALA HOUSE COURTS,
   NEW DELHI =110001.

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 Office Copy
14 Guard file
15 TAXINDIAONLINE. COM PVT. LTD. UNIT NO. 1, 2ND FLOOR VASANT ARCAD, NELSON MANDELA ROAD, VASANT KUNJ NEW DELHI-70.

Assistant Registrar
(SM Appeal Branch)

2. SHRI PREM CHANDER, MANAGER,
   2255, SARAI TOP KHANA, NEAR KODIA PUL, DELHI.

3. M/S NATIONALSTAR GOODS CARRIER
   5, NANIYAN STREET, WALTAKS ROAD CHENNAI -03.

4. SHRI UDAYPAL SINGH, MANAGER,
   5, NANIYAN STREET, WAITAKS ROAD, CHENNAI.

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No.2, R.K.Puram, New Delhi-110066.**
**Principal Bench, New Delhi.**

**C/692, 153-55/09-SM**

[Arising out of Order-in-Appeal No.CC(A)256/08 dt.31.7.08 passed by Commissioner(Appeals), New Delhi)

For approval and signature

Hon'ble Mr. 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: :

CC(Preventive), New Delhi — Appellant

Versus

M/s. National Star Goods Carriers
Sh. Prem Chander, Manager
M/s. National Star Goods Carriers
Sh. Udaypal Singh — Respondent

Appearance
Sh. S.K.Bhaskar, DR For Appellant
Sh. A.Gujral, Adv. For Respondent

Final Date of decision: 22.4.2010
Order No. 521-524/2010 SM(BR)

Per Rakesh Kumar:

The facts leading to these appeals are, in brief, as under:

1.1 M/s. National Star Goods Carriers are railway agents and other respondents are the employees of M/s. National

Star Goods Carriers. M/s. National Star Goods Carriers, the respondent company, have offices at Chennai, Mumbai and Delhi. They book parcels from different parties and hand over the bags containing the parcels to the railways for transportation and on reaching of the bags containing the parcels at their destination, their employee receive the same and distribute the parcels to the respective consignees. In this case, on 24.8.05, two parcel bags which had been received by Sh. Prem Chander, an employee of the respondent company, were intercepted by the Customs Officers outside the New Delhi Railway Station and on examination of those bags in presence of the independent witnesses, the same were found to be containing five parcels, which on being opened were found to be containing ICs, Capacitor, Motorola Talkabout T5720, Seiko battery cells, Digital Video Cameras, i Pod mini, Walkman, Cameras, AC adopter, VCDs, MP3, Discman with remote and ear phone, etc. of foreign origin totally valued at Rs.6,42,800/-. The parcels had came from Chennai. Since there were no documents showing the legal import of the goods recovered from the parcels, the same were placed under seizure. Notices were issued to the consignees for producing the import documents, but only two appeared who could not produce any documents for legal import. Other three consignees did not appear and there was no response from them.

1.2. On completion of enquiry, a show cause notice dt.10.2.06 was issued to the consignees as well as to M/s. National Star Goods Carriers, Sh. Prem Chand, Manager, M/s. National Star Goods Carriers, Delhi and Sh. Udaypal Singh, Manager, M/s. National Star Goods Carriers, Chennai and the consignees of the parcels for confiscation of the seized goods and imposition of penalty. The show cause notice was adjudicated by the Additional Commissioner vide order-in-original dt.1.5.07 by which the goods seized were confiscated under Section 111(a), 111(b) and 111(d) of Customs Act,1962 and besides this, penalty under Section 112 of Customs Act,1962 of Rs.50,000/- each was imposed on M/s. National Star Goods Carriers, Delhi and M/s. National Star Goods Carriers, Chennai penalty of Rs.10,000/- each was imposed on Sh. Prem Chander, Manager, M/s. National Star Goods Carriers, Delhi and Sh. Uday Pal Singh, Manager, M/s. National Star Goods Carrier, Chennai and penalty of Rs.5,000/- each imposed on Sh. Umesh Kumar, Prop. Of Nikhil Electronics, Lajpat nagar Market, Delhi, and Sh. Kanhaya Lal, Lajpat Nagar Market, Delhi and penalty of Rs.10,000/-each was imposed on the other three consignees. M/s. National Star Goods Carrier, Delhi/Chennai, Sh. Prem Chand and Sh. Uday Pal Singh filed appeals to Commissiner(Appeals) against the Addl. Commissioner's order and the Commissioner(Appeals) vide order-in-appeal dt.31.7.08 set aside the Addl. Commissioner's order with regard to penalty on these noticees. It is against this order that the present appeals have been filed by the Revenue.

2. Heard both the sides.

2.1 Sh. S.K.Bhaskar, learned DR, assailing the impugned order pleaded that the respondents are involved in transportation of the imported goods which have been held to be of smuggled nature; that while booking the parcels at Chennai, the full addresses of the booking persons had not been recorded; that the respondent had not taken precaution to ensure that the goods accepted by them for transportation through railways are not smuggled goods and that in view of this, the impugned order setting aside the penalty on these respondents is not correct. He relied upon the judgment of the Hon'ble Calcutta High Court in the case of Commissioner of Customs(Preventive)W.B. Kolkata vs Suresh Kumar Nyollywalla reported in 2006(204)ELT.525 wherein it was held that penalty on the transporters would be justified under Section 115 of the Customs Act when the transporter had accepted the goods from a consignor but the declared consigner was found to be a fictitious person.

2.2 Sh. A.Gujral, Advocate, learned Counsel for the respondents pleaded that the respondent company is railway booking agents and the other two respondents are its employees; that they have their offices at New Delhi, Chennai and Mumbai where they accept parcels from different persons for delivery, that the parcels accepted for transportation through railways are put in a bigger bag and handed over to the railways for carriage, that on reaching of the parcels at destination, the same are received by the staff who arranges the delivery of the same to the respective consignees, that they had no system of verification of the address of the consignors or verifying the contents; that in this case, there is no evidence that the respondent company or its employee had knowledge about the smuggled nature of the goods but still accepted the same for carriage; and that in view of this, imposition of penalty on them was not called for and same was rightly set aside by the Commissioner(Appeals). He also pleaded that the judgment of the Hon'ble Calcutta High Court in the case of CC(Prev.) W.B. Kolkata vs Suresh Kumar Nyollywalla(supra) cited by the learned DR is not applicable to the facts of the case, as in that case there was a single transporter who had accepted the consignment of smuggled goods from a person and subsequently when the goods were intercepted and inquiry was made, the consignor's address was found to be fictitious. Therefore, he pleaded that this judgment of the Hon'ble Calcutta High Court is not applicable to the fact of the case.

3. I have carefully considered the submissions from both the sides and perused the records. The Department seeks imposition of penalty on the respondent company and its employees on the basis that they had accepted the parcels for carriage and delivery to the addressees without recording full and complete address of the consignors and without verifying the contents of the parcels and that they did not take precautions to ensure that the goods being accepted by them for carriage and delivery are not smuggled goods. However, in the entire case, I find that there is no positive evidence indicating that the Respondents had knowledge about the smuggled nature of the goods which had been seized. In absence of such evidence, it would not be correct to impose penalty on them. I agree with the plea of the respondent that judgment of the Hon'ble Calcutta High Court in the case of CC(Prev.)W.N.Kolkata vs Suresh Kumar Nyollywalla(supra) is not applicable to the facts of this case, as in that case the transporter had accepted a huge consignment of

goods of foreign origin from a person in a border area and on truck being intercepted when the enquiry was made, the consignor was found to be fictitious person. In the present case, the respondents are railway agents who book parcels from a large number of persons and in normal course of their business, they do not check the contents of the parcel. Moreover, even by checking the contents of the parcels, it would not be possible to ascertain whether the goods like ICs, Capacitors, Seiko Battery cells, Cameras etc. are of smuggled nature as such goods are also imported legally in large quantities. In view of these circumstances, I hold that there is no infirmity in the impugned order. The Revenue's appeals are dismissed.

Order dictated in the open Court.

(Rakesh Kumar)
Member(Technical)

km