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/336 - 340 /2010 – SM[[BR], C/341 – 346 /2010 ,C/ 355 – 359 / 2010-SM[BR] Date 20/10/2010

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 JADURAM HARIJAN, S/O SHRI GULEY
HARIJAN,

Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 1128 – 1143 / 2010-SM[BR] dated 30.9.2010 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 JADURAM HARIJAN, S/O SHRI GULEY HARIJAN,
R/O VILL. KUNSERWA, P.S.TERAWA GAON, DISTT. MAHARAJGANJ (U.P.)
2. Adv. / Consult
NONE;--------------

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 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file
16 CBEC CHAIRMAN

Assistant Registrar
(SM Appeal Branch)

[2]MOHIT CHAMAR, S/O LATE SHRI SUKHU CHAMAR,
R/O SAROJINI NAGAR, NATANWA, DISTT; MAHARAJGANJ.

P.T.O.

3. SHRI MOHAN LONIA, S/OSHRI PYARE LONIA,
R/OVILL. KUNSERWA, P.STERAWA GAON, DISTT; MAHARAJGANJ.

4. SHRI MUNI RAM PRASAD CHAUDHARY, S/O SHRI CHIANGUT PRASAD CHAUDHARY,
R/O VILL, KUNSERWA, P.S. TERAWA GAON, DISTT.
MAHARAJGANJ (U.P.)

5. SHRI RAMDEV HARIJAN , S/O LATE SHRI SUCHIT HARIJAN,
R/O VILL, RAGARJANWA, P.S. TERAWA GAON, DISTT.
MAHARAJGANJ (U.P.)

6. SHRI TOSHIF, S/O SHRI HAQIL R/O MOHALL TANDA,
BAHERI, BAREILLY

7. SHRI SALMANS, S/O SHRI HABIB, R/O ISLAM NAGAR,
BAHERI, BAREILLY,

8. SMT,SARU DEVI, W/O LATE JANGAN SINGH GARBYAL,
R/OGARBYANG HALL, MALLI BAZAR, KOTWALI
DHARCHULA, PITHORAGARH.

9. SMT KUNTI DEVI ,W/O SHRI DHANKA SINGH GARBYAL,
R/O GARBYAL KHERA, KOTWALI DHARCHULA,
PITHORAGARH.

10. SHRI VIRENDRA SINGH SAMANT, S/O SHRI MOHAN SINGH
R/OSUGARIKHAL, WARD NO.8, BATARI, NEPAL

11. SHRI RAKESH SINGH @ RAHUL, S/O SHRI BHAGAN SINGH@
BHUPI,R/O CHAKARPUR, P.O. CHAKARPUR, DISTT.UDHAM
SINGH NAGAR [UTTARKHAND]

12. SHRI ROHIT SINGH, S/O SHRI GAJPAL SINGH
R/O446, BIHARIPUR, CIVIL LINES, BAREILLY.

13. SHRI HASNAIN, S/O SHRI RAIS MIAN
R/O 335, OLD CITY, BAREILLY.

14. SHRI SANTOSH SHARMA, STATE BANK COLONY BAREILLY.

15. SHRI RAMANDEEP SINGH KHURANA S/O SHRI INDERJEET
SINGH KHURANA R/O NEAR BALAJI TEMPLE, NANKMATTA
UDHAM SINGH NAGAR [UTTARKHAND]

16. SHRI PRAKASH RAI, S/O LATE SHRI VIJAY RAI,
R/O NEAR BALAJI TEMPLE, NANKMATTA, UDHAM SINGH
NAGAR [UTTARAKHAND]

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: 30.09.10
Date of decision: 30.09.2010

Customs Appeal Nos. 336-340 of 2010-SM (Branch)

[Arising out of Order-in-Appeal No.05-CUS/Alld/2010 dated 26.02.2010 passed by the Commissioner of Customs and Central Excise (Appeals), Allahabad].

CC, Lucknow ...Appellant

Vs.

(1) Shri Jadu Ram Harijan
(2) Shri Mohit Chamar
(3) Shri Mohan Lonia
(4) Shri Muni Prasad Chaudhary
(5) Shri Ram Dev Harijan ...Respondents

Customs Appeals Nos.C/341-346/10

[Arising out of common Order-in-Appeal No.06-09-CUS/MRT-II/2010 dated 15.02.2010 passed by the Customs and Central Excise (Appeals), Meerut-II].

CC, Lucknow ...Appellant

Vs.

(6) Shri Toshif
(7) Shri Salmans
(8) Smt. Saru Devi
(9) Smt. Kunti Devi
(10) Shri Virendera Singh Samant
(11) Shri Rakesh Singh ....Respondents

Customs Appeals No.C/355 to 359/10

CC, Lucknow ...Appellant

Vs.

(12) Shri Rohit Singh
(13) Shri Hasnain
(14) Smt. Santosh Sharma
(15) Shri Ramandeep Singh
(16) Shri Prakash Rai

...Respondents

[Arising out of Order-in-Appeal No.11-CUS/MRT-II/2010 dated 22.03.2010 and Order-in-Appeal No.10-CUS/MRT-II/2010 dated 22.03.2010 passed by the Commissioner (Appeals), Customs and Central Excise, Meerut-II]

For approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

---

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.

2. Whether it should 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 Departmental authorities?

Appearance: Rep. by Shri K.P. Singh and Shri Anil Khanna, SDRs,
Rep. by none for the respondent.

CORAM: **Hon'ble Shri Rakesh Kumar, Member (Judicial)**
FINAL Order No.1128-1143/2010-SM(Br)/Dated
<u>Per Rakesh Kumar</u>

Since the issue involved in these 16 appeals is common, the same were heard together and are being disposed of by this common order.

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

2.1 In respect of appeals at Serial Nos. 1 to 5, the respondents were intercepted while coming from Nepal on their bicycles carrying foreign origin metal scrap totally valued at Rs.5,390/-. The goods along with bicycles (valued at Rs.1500/-) were placed under seizure. The Asstt. Commissioner confiscated the goods and the bicycles and imposed penalty of Rs.200/- on each of the respondents under Section 112 of the Customs Act, 1962. The Department filed review appeals before the Commissioner (Appeals) for enhancement of penalty on the ground that the minimum penalty, which can be imposed under Section 112 of the Customs Act, 1962 is Rs.5,000/-. But the Commissioner (Appeals) by the impugned order dismissed the Department's appeals. The Department has come in appeal before the Tribunal against the Commissioner's (Appeals) order.

2.2. The respondents at S.No.6 & 7 were intercepted coming from Nepal with foreign origin fabrics and cosmetics valued at Rs.36,950/-. They were carrying the goods on their bicycles. The goods valued at Rs.36,950/- and the bicycles valued at Rs.600/- were placed under seizure. The goods along with bicycles were confiscated by the Asstt. Commissioner and the penalties of Rs.1000/- each were imposed on the respondents under Section 112 of the Customs Act, 1962. The Department filed review appeals against the Asstt. Commissioner's orders before the Commissioner (Appeals) for enhancement of penalties to at least Rs.5,000/-.

2.2.1 The Respondents at S.Nos.8 & 9 were intercepted while coming from Nepal with cigarettes valued at Rs.3600/- which were confiscated by the Asstt. Commissioner, who also imposed penalty of rs.200/- on each of the Respondents under Section 112. Department filed review appeals to Commissioner (Appeals) for enhancement of penalty to at least Rs.5,000/- each.

2.2.2 The Respondents at Sl.Nos.10 & 11 were intercepted while coming from Nepal with miscellaneous goods of foreign as well as Indian origin valued at Rs.10,835/- which were confiscated by the Asstt. Commissioner who besides confiscation also imposed penalty of Rs.500/- and Rs.1000/- on Shri Rakesh Singh and Shri Virender Singh Sampat respectively under Section 112. Department filed review appeals before the Commissioner (Appeals) for enhancement of penalty to at least Rs.5000/- each.

2.2.3 The Commissioner (Appeals) dismissed the above six appeals of the Department for enhancement of penalty. Against this order of the Commissioner (Appeals), the Department has come in appeal before the Tribunal.

2.3. In appeals at serial numbers 12, 13 and 14, the respondents were intercepted while coming from Nepal with miscellaneous foreign origin goods valued at Rs.4,390/-. The goods were confiscated by the Asstt. Commissioner and penalties of Rs.300/- Rs.100/- and Rs.100/- were imposed on Shri Rohit Singh, Shri Hasnain and Shri Santosh Sharma respectively under Section 112 of the Customs Act,1962. Here also, the Department filed review appeals before the Commissioner of Central Excise (Appeals) for enhancement of penalties as according to the Department under Section 112 of the Customs Act, 1962, the minimum penalty which can be imposed is Rs.5,000/-. The Commissioner (Appeals) dismissed the Department's appeals. Against this order of the Commissioner (Appeals), these three appeals mentioned from Sl.12 to 14 have been filed by the Revenue before the Tribunal.

2.4. In appeals nos.15 & 16, the respondents were intercepted while coming from Nepal with velvet clothes valued at Rs.5,000/- and on a motorcycle. These goods were confiscated and penalty of Rs.2000/- on each of the respondents at Sl.Nos.15 and 16 was imposed by the Asstt. Commissioner under Section 112 of the Customs Act, 1962. The Commissioner (Appeals) dismissed the Department's appeals, which had been filed by the Department for enhancement of penalty to at least Rs.5,000/-. Against this order of the Commissioner (Appeals), the Department has come in appeal.

3. None appeared for the respondents.

4. Heard Shri K.P. Singh and Shri Anil Khanna, ld. Departmental Representatives for the Department, who pleaded that as per the provisions of Section 112 (a) & (b) of the Customs Act, 1962, the minimum penalty prescribed is Rs.5,000/- and penalty below Rs.5,000/- cannot be imposed on a person in respect of whom these penal provisions

are attracted, that in this regard, they rely upon the judgement of the Tribunal in the case of Commissioner of Central Excise, Kanpur Vs. Narayan Das reported in 2008 (222) ELT 215 (Tribunal-Delhi), wherein it was held that Section 112 (b) of the Customs Act, 1962 prescribes a minimum penalty of Rs.5,000/- and penalty lower than this amount cannot be imposed and also the Tribunal's judgement in the case of Commissioner of Customs (Import), Nhava Sheva Vs. Prakash Oriental Manufactures Micro Inks Ltd. reported in 2009 (247) ELT 779 (Tribunal-Mumbai), wherein the same view was taken.

5. I have carefully considered the submissions made by the ld. Departmental Representatives and have also gone through the Memorandum of Appeal filed by the Department. The common issue involved in these appeals is as to whether penalty less than Rs.5,000/- can be imposed on a person in respect of whom the provisions of Section 112 (a) or 112 (b) are attracted. According to the Department, the minimum penalty prescribed in respect of the offences covered under Section 112 (a) or (b) is Rs.5,000/- and penalty lower than this amount cannot be imposed.

6. Section 112 of the Customs, 1962 is reproduced below:-

"Any person --

(a) who, in relation to any goods, does or omits to do any act, which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this act or any other law for the time being force, to a penalty, not exceeding the value of the goods or five thousand rupees, whichever is greater;

(ii) in case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sough to be evaded on such goods or five thousand rupees , whichever is the greater.

...."

6. From a plain reading of this Section, it is clear that for the contraventions of the type mentioned in Clause (a) and Clause (b) of Section 112, the penalty prescribed, when in respect of the offending goods any prohibition is in force, is ***"not exceeding the value of the goods or Rs.5,000/-, whichever is greater*** and in case of dutiable goods other than prohibited goods the penalty prescribed is "***not exceeding the duty sought to be evaded on such goods or Rs.5,000/- whichever is greater"***. Thus when the value of the offending goods or the duty sought to be evaded is less than Rs.5,000/-, penalty imposable would be not exceeding Rs.5,000/- and when the value of the offending goods or duty involved is more than Rs.5,000/-, the penalty imposable would be not exceeding the value of the offending good or the duty involved, as the case may be. The Department's contention would have been correct if

instead of the words "***not exceeding***" before the expression – "***the duty on such goods or Rs.5,000/- whichever is greater***", the words "***equal to***" had been used, as in that case, the penalty imposable would have been greater of the value of offending goods/duty involved and Rs.5,000/-. ~~and~~ Use of the word "not exceeding" indicates what is prescribed is the upper limit of penalty and within that upper limit, the adjudicating authority has discretion to determine the quantum of penalty depending upon the gravity of the offence. The words "not exceeding" can not be read as "equal to".

7. Rule 25 (1) of the Central Excise Rules, 2002 has penal provisions similar to Section 112 of the Customs Act, 1962 wherein for the contravention enumerated in Clause (a), (b), (c) and (d) of Rule 25 (1), the penalty prescribed is "***not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clauses (a), (b), (c) and (d) has been committed or rupees two thousand, whichever is greater.*** In respect of this Rule, Larger Bench of the Tribunal in the case of ***Commissioner of Central Excise, Bhopal Vs. Rama Wood Crafts (P) Ltd. reported in 2008 (225) ELT 348*** (Tribunal-LB) has held that what this rule prescribes is an upper limit of penalty within which the adjudicating authority can determine the quantum of penalty and this rule does not prescribe a minimum penalty. Section 112 (i) & (ii) is in para- materia with penal provisions Rule 25 (i) of Central Excise Rules, 2002 and therefore, the judgement of the Larger Bench in

the case of Rama Wood Crafts (P) Ltd. (supra) is squarely applicable to this case. The judgements cited by the learned Departmental Representative and the judgements of Single Member Bench. In view of the above discussion, I do not find any infirmity in the impugned orders. The Revenue's appeals are, therefore, dismissed.

8. Before parting with this matter, I can not help observing that the amounts involved in all these appeals are petty and I wonder as to what the department wants to achieve by filing appeals for enhancement of penalties in such petty cases before the Tribunal-more so when from a plain reading of clause (i) and (ii) of Section 112 of the Customs Act, 1962 it is clear that the interpretation sought by the Department is not possible and this issue has been settled against the Department by a Larger Bench of the Tribunal. In any case, is it worthwhile for two Commissioner of Customs, at Lucknow and [illegible] Patna to spend their time in convening a meeting for taking a decision for filing of appeals before the Tribunal for enhancement of penalties to Rs.5,000/- and thereafter the time and efforts of the other officers spent in preparing the appeal memorandums and filing of appeal. The expenditure involved in filing such appeals may be much more than Rs.5,000/-. This is not the first time that I have come across Departmental appeals being filed for enhancement of penalty to Rs.5,000/- or Rs.10,000/-. There are a large number of such Departmental appeals clogging the Registry of this Tribunal. The manner in which appeals

against Commissioner's (Appeals) orders in such petty matter are being filed before the Tribunal clearly shows that the litigation policy being actually followed by the Commissioners in the field is totally at variance with the recently announced National Litigation Policy.

8.1 Registry is directed to endorse a copy of this order to Chairman, Central Board of Excise & Customs.

(Rakesh Kumar)
Member (Technical)

Ckp.