

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

C/S/1951/00-NB(S)

BENCH NB(SM)

Appeal No. C/442/00-NB(S)

Dated : 9/2/07

CEGAT
NEW DELHI

To,

M/s S. N. Soni

Adsar ka Bass, ward No. 22,

Sri Doongar garh, Churu (Raj)

In the matter of :

M/s S. N. SONI

Appellant

vs.

CCE Jaipur

Respondent

Stay order No. S/86/01-NB(SM)

I am directed to transmit herewith a certified copy of Final Order No. A/216/01-NB(SM)

Dated : 1-2-07.....passed by the Tribunal under Section 35-C(1) of Central Excise & Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

CCE Jaipur

221
Asstt. Registrar
NB(SM)

1.

2. CCE/EE/(Appeal) Jaipur

3. Chief Commissioner of Central Excise / Customs. Jaipur

4. Adv. / Consult. Sh. S. C. Puri Adv. Jaipur

82, Patiala House

5. S.D.R. M/S New Delhi

6. JCDR

7. Bar Association, CEGAT, New Delhi

8. Library, CEGAT, New Delhi

9. Director (Review), C.B.E.C. North Block, New Delhi

10. Guard File.

11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.

12. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah Marg, opp. Sachdeva P.T. College of Defence Colony, New Delhi-110003

13. M/s Lex Site Com. Ltd., Mumbai

14. Office Copy

15. M/s census publication

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Asstt. Registrar

**In the Custom, Excise & Gold (Control) Appellate Tribunal
New Delhi**

APPEAL NO. C/Stay/1951/00-NB(S) in
OF 19 (.....)
C/442/00

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

29 (KDT) CUS/JPR/2000 DATED 11.9.2000

PASSED BY Commissioner of Customs (Appeal),
Jaipur.

Date of decision 1.2.2001

M/s S.N. Soni APPELLANT (S)

Represented by Sh./Smt. S.C. Puri, Advocate

VERSUS

CCE, Jaipur RESPONDENT (S)

Represented by Sh./Smt. A.K. Jain, JDR

CORAM :

SHRI P.G. CHACKO, MEMBER (JUDICIAL)

To be referred to the Reporter or not ?

FINAL ORDER NO. A/216/01/NB (S/M)
STAY ORDER NO. S/86/01/NB (S/M)

Per P.G. Chacko :

Indian currency worth Rs. 2,73,750 and a Maruti Van belonging to the present applicant were seized by the Customs Officers and the same were ultimately ordered to be released to him by the jurisdictional Additional Commissioner of Customs.

The order of the Additional Commissioner was reviewed and, in pursuance thereof, an appeal was preferred by the Department to the Commissioner (Appeals). The Commissioner (Appeals) set aside the Additional Commissioner's order and remanded the matter to the adjudicating authority. The present appeal filed by the party is against the remand order of the Commissioner (Appeals). Pursuant to the remand order, the Additional Commissioner took proceedings in a hurried manner and posted the matter for personal hearing from time to time. The present application before the Bench is virtually for a stay of such proceedings of the Additional Commissioner till final disposal of the present appeal.

2. On a careful examination of the records and on hearing both sides, I find that this matter requires to be finally disposed of at this stage.

3. Ld. Advocate Sh. S.C.Puri for the appellant submits that the lower appellate authority, by the impugned order, remanded the matter to the adjudicating authority without any specific directions to the latter and that the remand was ordered improperly after recording a finding to the effect that the order of the Additional Commissioner was illegal, improper and incorrect and further that the goods were liable for confiscation and, again,

that penalty was imposable on the party. Ld. Counsel submits that such findings recorded by the lower appellate authority are sure to prevail upon the adjudicating authority and, in that event, the remanded proceedings are most likely to culminate in injustice of a grave nature.

4. The submissions of ld. Advocate appear to be correct. The lower appellate authority, in its order, recorded a clear-cut finding that the retraction by Sh. Satya Narain Soni of his earlier confessional statement was an afterthought. It was, again, found that the original confessional statement was clear-cut and free from any vagueness and the same could not have been concocted or fabricated especially when no enmity was established. It was, further, found by the Commissioner (Appeals) that the Additional Commissioner's order was not legal, proper and correct, though he did not state any specific reason for such a finding. The lower appellate authority also held that the goods were liable for confiscation and that penalty was imposable on the party. Nevertheless, the Commissioner (Appeals) remanded the matter. This cannot be sustained in law. Nowhere in the order of the Commissioner (Appeals) is there any disclosure of the circumstances which warranted a remand. I have

perused the order of the Additional Commissioner as well. That order is a very detailed order and a reasoned one too. If any finding of the Additional Commissioner was unsustainable for any reason whatsoever, it was open to the lower appellate authority to correct the same. No attempt in this behalf appears to have been made by the lower appellate authority.

5. I, therefore, set aside the impugned order and allow the present appeal by way of remand, directing ld. Commissioner (Appeals) to pass a speaking order on the merits of the dispute in accordance with law as well as the principles of natural justice. It goes without saying that any proceedings taken by the Additional Commissioner pursuant to the remand order of the Commissioner (Appeals) will be of no consequence.

(P.G. CHACKO)
MEMBER (JUDICIAL)

RM