

GRAM : CEGCANAL

REGISTERED/A.D

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

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

BENCH - NB(SM)

Appeal No. C/216/99/NB(SM)

Dated : 15/2/2001

CEGAT
NEW DELHI
To,

Shri Amarjeet Singh
S/o Sh Joginder Singh
R/O 122/H 8, Grogini Nagar
KANPUR (UP)

In the matter of :

Shri Amarjeet Singh

Appellant

vs.

CC Lucknow

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/245/01/NB(SM)
Dated : 1/2/2001 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 :

^{B²}
Asstt. Registrar
NB(SM)

1. CC Lucknow
2. CCE / CC / (Appeal)
3. Chief Commissioner of Central Excise / Customs.
4. Adv. / Consult. Sh. A C Jain, Adv
103, Pushpanjali, Delhi-92
5. S.D.R - NB(SM)
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
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Asstt. Registrar NB(SM)

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

C/216/99-NB(SM)

APPEAL NO.....OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

49/CCP/LKO/98 dt. 30-11-98

.....DATED.....

PASSED BY..... COMMISSIONER CUSTOM(P).....

LUCKNOW

Date of decision...22-1-2001.....

SHRI AMERJEET SINGH.....APPELANT (S)

Represented by Sh./Smt. A.C.JAIN, ADVOCATE.....

VERSUS

CC LUCKNOW.....RESPONDENT (S)

Represented by Sh./Smt. A.K.JAIN, SDR.....

CORAM : SHRI V.K.AGRAWAL, MEMBER (TECHNICAL)

To be referred to the Reporter or not ?

FINAL ORDER NO. A/245/01/NB CS/m)

Per..... V.K.AGRAWAL:.....

In this appeal, filed by Shri Amarjeet Singh, the issue involved is whether his truck is liable for confiscation and whether penalty is imposable on him under the Customs Act.

2. Shri A.C.Jain, ld. Advocate, mentioned at the outset that he is not challenging the smuggled nature of the goods carried in his truck NO. UP 78B/0266. He, further, mentioned that his truck went to deliver pulse at Motihari; that his driver Shrikant loaded the goods on return journey which were contravened and seized by the Customs Officer on 27-10-97 alongwith another Truck No. UP-78/N 8642, that the Commissioner, in the impugned Order No. 49/CCP/LKD/98 dt. 30-11-98, confiscated, interalia his truck with an option to redeem the same on payment of fine of Rs. 1.5 lakh and imposed a penalty of Rs. 50,000/- on him, holding that Shrikant, Driver, had in his statements dt. 27-10-97 and 28-10-97 deposed that Appellant had directed him to load the impugned goods and to hand over the freight to him on return to Kanpur. The Ld. Advocate submitted that whenever truck goes to deliver goods, driver is instructed to load goods on return so that truck does not have an empty run; that it does not mean that he had directed the driver to load the smggled goods; that in any case Shri Kant had not deposed that he (the Appellant) had directed him to load the impugned goods. The Ld. Advocate read out the statements of Shrikant in support of

his contention. The ld. Advocate also mentioned that the Appellant did not have any knowledge of contraband goods loaded in his truck; that nothing incriminating was found in his residential premises; that even in findings at internal pages 11-12 of the impugned Order, there is no mention about the role of the Appellant; that accordingly no penalty can be imposed upon him under section 112 of the Customs Act. The Ld. Advocate finally submitted that the Appellant earns his livelihood only from Truck and requested for release of truck on payment of nominal redemption fine.

3. Countering the arguments, Shri A.K.Jain, Ld. DR, submitted that the contraband goods were loaded in the truck in concealed manner; that the driver, person incharge, had loaded the impugned goods with knowledge that the goods were smuggled from Nepal and secreted in the specially designed cavity in the dala of the truck; that driver Shri Kant had stated in his statement dt. 28-10-97 that the Appellant told him to load the smuggled goods at Motihari. The ld. DR emphasised that there are sufficient circumstantial evidence against the Appellant and as such penalty is imposable upon him under the Customs Act.

4. I have considered the submissions of both the sides. The driver Shrikant was the person in charge of the vehicle at the time it was intercepted and contraband goods were found loaded in the truck. He had admitted in his statement that he knew that the goods were smuggled one as those were brought from Nepal. Further when the officers directed him to stop the vehicle, he did not stop and drove speedily. The truck, is therefore, liable for confiscation under Section 115 (2) of the Customs Act as it was used as a means of transport in the smuggling of goods with the knowledge of the person in charge. The redemption fine, however, is on the higher side, I, therefore, uphold the confiscation of the truck No. UP 78 B/0266 but reduced the redemption fine to Rs. 75,000/-. Except the statement of driver, there is nothing to prove that the smuggled goods were loaded by the driver under the direction of the Appellant. The driver himself in his first statement dt. 27-10-97, recorded on the day of seizure, had deposed that he had indulged in the said work due to greed of money and did not make any mention of the Appellant at all. Thus I extend the benefit of doubt to the Appellant. The penalty imposed on him is set aside. The appeal is thus allowed partly.

(V.K.AGRAWAL)
MEMBER (TECHNICAL)

Sunita
1-2-2001