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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/75 /2007-79 /2007 - CU[DB] Date **18/05/2011**

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

To :
C.C.AMRITSAR
C.R.BUILDING, THE MALL,
AMRITSAR.- 143 001

C.C.AMRITSAR Appellant

Vs

SH HARINDER SINGH Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/190-194/ 2011 CU[DB]** dated 10.05.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
SH HARINDER SINGH
39-MALL ROAD, AMRITSAR.

2. Adv. / Consult MR. SUDHIR MALHOTRA,
13-R, HUKUM CHAND COLONY,
CPP. DAV COLLEGE, JALLANDHAR.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

P.T.O

SH JASWINDER SINGH,PROP
CHIRAG GARMENT,
NAYA BAZAR, JALANDHAR.

SH TRILOK SINGH
S/O KISHAN SINGH, KISHANGARH COLONY,
INSIDE CHATIWIND ROAD, AMRITSAR.

SH D.V.S KAPOOR,INSPECTOR
45,SST NAGAR, OPP GOYAL MOTOR,
PATIALA(PB)

SH J.S.GARCHA,SUPERINTENDENT
2301-C, RANJIT AVENUE,AMRITSAR.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Customs Appeal No. 75-79 of 2007

[Arising out of Order-in-Original No. 31-Cus /2005 dated 23.11.2005 passed by the Commissioner of Customs, Amritsar.]

For approval and signature:

Hon'ble Mr. M.V. Ravindran, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, 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?	:	Yes
2. Whether it should be released under Rule 27 of the 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

Commissioner of Customs
Amritsar
Appellants

Vs.

Shri Harinder Singh
Shri Jaswinder Singh
Shri J S. Garcha
Shri D.V.S. Kapoor
Shri Trilok Singh
Respondent

Appearance:
Shri Fateh Singh, SDR Appellants
Shri Poojan Malhotra, Shri Naveen Bindal for the Respondent

CORAM:

Hon'ble Mr. M.V. Ravindran, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 10.5.2011

Final **ORAL ORDER NO. C/190-194/11**

Per M. Veeraiyan (for the Bench):

These 5 appeals are by the department against the order of the Commissioner No. 31-Cus /2005 dated 23.11.05 in so far as the same relate to not imposing penalties on Shri D.V.S. Kapoor, Shri Harinder Singh @ Heera, Shri Tirlok Singh, Shri Taranjit Singh @ Raju, Shri J S. Garcha under section 112 of the Customs Act, 1962.

2. Heard the learned DR. None appears on behalf of Shri Jaswinder Singh and Tirlok Singh, respondents. Heard the learned advocates appearing for other respondents.

3. The facts of the case are little peculiar. One Shri Ashok Kumar, was apprehended at the air port on the night of 30/31.8.1999 with goods valued at Rs.22,98,000/-. The goods were seized. During investigation Shri Ashok Kumar revealed that some officer has been spoken to for facilitating the smuggling but he did not indentify any officer by name. The statement of Shri Kehar Singh, Sepoy was to the effect that Inspector Shri D. V.S. Kapoor has instructed Kehar Singh to inform Shri Ashok Kumar, by giving description of him, to come to counter table no. 7 where he was on duty. Shri D.V.S. Kapoor in his statement claimed that the said passenger was in the red alert category and therefore, he directed the sepoy to send him after clearance of other passengers. The report dated 28.8.2010 from Joint Commissioner, Customs, Amritsar addressed to AD, DRI is to the effect that "passenger Shri Ashok Kumar was marked for detailed examination by

Deputy Commissioner (on duty)". A show cause notice was issued on 23.2.2000 proposing confiscation of the goods and proposing penalties on Shri Ashok Kumar, Shri Satwinder Singh, Tranjit Singh, and Shri Paramjeet Singh and also on Shri DVS Kapoor, Inspector. Thereafter, it appears that investigation was undertaken during July, 2001 to 2003 and an addendum dated 15.6.2004 to show cause notice dated 23.2.2000 was issued proposing imposition of penalties on other 4 respondents under section 112 of the Customs Act.

4. Commissioner, adjudicating the show cause notice along with addendum to show cause notice, confiscated the goods absolutely and imposed penalties on Shri Ashok Kumar, Shri Satwinder Singh, and Shri Taranjeet Singh. However, no penalties were imposed on the 5 respondents. The department is, therefore, in appeal seeking setting aside the order of the Commissioner in this regard and imposition of penalties on the respondents.

5. Learned DR, reiterating the grounds of appeal, submits that the involvement of Shri D.V.S. Kapoor is evident from the statements of Shri Ashok Kumar, Shri Kehar Singh, Shri D.V.S. Kapoor himself and also statements of Shri Harinder Singh, and Shri J.S. Garcha and from the print out of call records of mobile of Shri DVS Kapoor. He submits that although, Shri Harinder Singh was not mentioned in the statement of Shri Ashok Kumar, it is clear from the call record that Shri Harinder Singh was in constant touch with Inspector Shri DVS Kapoor and Superintendent Shri Garcha and he is the master mind behind the

smuggling by Shri Ashok Kumar. It is also submitted that Shri Jaswinder Singh is the person who has sent Shri Ashok Kumar abroad for the purpose of smuggling and that Shri Trilok Singh has also abetted in the smuggling.

6. Learned Advocate for Shri D.V.S. Kapoor strongly defends the order of the Commissioner. There is no confessional statement by Shri DVS Kapoor. His instructions to send the suspected passenger later has been mistaken by Sepoy. Commissioner has correctly held that there was no evidence that Shri Kapoor has directed Shri Kehar Singh, Sepoy to send the suspect to his table.

7.1 Learned Advocate appearing for Shri J S. Garcha submits that Shri Shri J.S Garcha has expired on 30.8.2010 and they have already filed intimation to this effect to the Tribunal enclosing the death certificate issued by Government of National Capital of Delhi.

7.2 Regarding Shri Harinder Singh, he submits that as mentioned in the grounds of appeal, nobody who matters has implicated Shri Harinder Singh, and therefore, there is no evidence against him.

8.1 We have carefully considered the submissions from both sides and perused the records. We find that the first show cause notice has been issued on 23.02.2000 apparently to meet the deadline of six months for issue of show cause notice as seizure was involved. In the said show cause notice proposal was for confiscation of goods and imposition of penalties only on four persons including Shri DVS Kapoor. It is not known as to why extension of time limit as provided under section 110 of the Customs Act for issue of show cause notice was not taken if the investigation was incomplete. We also do not appreciate why investigation should continue for more than four years before issue of corrigendum dated 15.6.04. In the corrigendum, proposal has been made for imposing penalties on Shri J. S. Garcha, the Superintendent who was to supervise the work of Shri DVS Kapoor. Addendum also proposed imposition of penalties on Shri Harinder Singh, Shri Jaswinder Singh and Shri Tirlok Singh.

8.2 In the grounds of appeal, it has been clearly stated that "it is a fact that name of Shri Harinder Singh @ Heera does not find mentioned in the statement". The role of Shri Harinder Singh, the role of Superintendent Shri J.S. Garcha and the role Inspector Shri DVS Kapoor are sought to be projected in the show cause notice on the basis of call records of telephone. The main person, the passenger who was directly involved in the smuggling has not specifically named any of them as having role in the smuggling activity. The statement of Shri Harinder Singh dated 9.12.1999 was to the effect that he was in touch with Superintendent Shri JS Garcha and Inspector Shri DVS Kapoor for clearance of passengers. This statement stands retracted by Shri Harinder Singh. This statement has not been corroborated by statements of Shri D.V.S. Kapoor and Shri J.S. Garcha. In our considered opinion, the main person Shri Ashok Kumar having not identified the name of officer or any of these persons as involved in the smuggling racket, we do not find any valid reason to interfere with the order of the Commissioner in so far as the same relate to imposing penalties on these respondents.

8.3 The submission of the learned DR based on the grounds of appeal that the role of Shri DVS Kapoor is evident from the statement of Shri Ashok Kumar is factually incorrect as Shri Ashok Kumar has not mentioned any officer by name. Further, we notice from the report of the Joint Commissioner that the passenger had been marked by the Deputy Commissioner for special examination.

8.4 Apparently, such huge quantity of goods might not be attempted to be smuggled without the assured help of somebody. Shri Ashok Kumar, himself has admitted that some officer has been spoken to. However, the investigation has not brought clear evidence that the officer who was meant to help Shri Ashok Kumar was Mr. Kapoor or Mr. Garcha. No material has been disclosed in the grounds of appeal to contradict to finding of fact by the Commissioner in respect of other respondents also namely, Shri Jaswinder Singh, Trilok Singh and Harinder Singh.

9. In view of the above, we do not find any merit in the appeals of the Revenue.

10. We clarify that we have not expressed any opinion on the finding of the Commissioner in respect of confiscation of the goods or imposition of penalties on other parties.

11. Appeals are rejected.

(M.V. Ravindran)
Member (Judicial)

(M. Veeraiyan)
Member(Technical)

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