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
CUSTOMS APPEAL BRANCH

Appeal No. C/32 -33, 96 /2007 - CU[DB] Date **01/06/2011**

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

To :

SH. NEERAJ CHHAJER,
20, NEW CLOTH MARKET, RAIPUR
GATE,AHMEDABAD.

SH. PADAM KUMAR AGARWAL
S/O LATE CHAMPALAL AGARWAL,
R/O 16.3 KMS, JLN BINJAI, MEDAN (INDONESIA)

SH. NEERAJ CHHAJER & OTHERS Appellant

Vs

C.C. LUCKNOW Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/205-207/ 2011 CU[DB]** dated 27.05.2011 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
C.C. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

2. Adv. / Consult
MR.NAVEEN MULLICK,ADV
B-388, MEERA BAGH, NEW DELHI – 88.

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 (Harvana)
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
COURT NO.III

Appeal No.C/32 – 33 & 96/07

Arising out of OIO No.03/Commissioner/Lucknow/06 dated 28.06.06

Passed by: Commissioner of Customs (Preventive), Lucknow

For approval and signature:
Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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?	No
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

Appellant/s	...	Shri Padam Kumar Agarwal Shri Nagraj Chhajer CC Lucknow
Represented by	...	Shri Naveen Mullick, Advocate
		Vs.
Respondent/s	...	CC Lucknow Shri Padam Kumar Agarwal Shri Nagraj Chhajer
Represented by	...	Shri K.K. Jaiswal, SDR

CORAM:
MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
MR. MATHEW JOHN, MEMBER (TECHNICAL)

Date of Hearing:24.05.11
Date of Decision:24.05.11

Final ORDER No. C/205 – 207/2011

Per: Archana Wadhwa:

Two appeals of the appellant and one appeal of the Revenue are being disposed off by a common order as they arise out of the same impugned order of Commissioner vide which he has confiscated the seized gold and diamond jewellery worth Rs.25.71 lakhs (approximately) with an option to the appellant to redeem the same on payment of redemption fine of Rs.18 lakhs. In addition he has ordered for recovery of duty amounting to Rs.64,121/- as customs duty in respect of two diamond rings. He has imposed penalty of Rs.10 lakhs on Shri Padam Kumar Agarwal and of Rs.8 lakhs on Shri Nagraj Chhajer under Section 112 of the Customs Act, 1962.

2. As per facts on record Shri Nagraj Chhajer was intercepted at the Mumbai Airport on 06.07.2000 by the Income Tax Officers and it was found that they were carrying 17 items of gold and diamond jewellery totally valued at Rs.44.13 lakhs approximately. Out of the said 17 items, 5 items worth Rs.3.11 lakhs were worn by his wife Smt. Manek Devi Chhajer. As the said Shri Nagraj Chhajer could not explain the ~~position~~ possession of the said jewellery, the same was seized by the Income Tax Officers.

3. During the course of assessment proceedings, it was brought on record that the jewellery belonged to Shri Nagraj Chhajer's friend Shri Padam Kumar Agarwal, who was a permanent resident of Nepal. As son of Shri Padam Kumar Agarwal was getting married on 08.07.2000 and Shri Nagraj Chhajer was flying from Mumbai to Delhi to attend the wedding, he was requested by Shri Padam Kumar Agarwal to collect the jewellery from Mahendra bhai Jhaveri, to whom the same was given for

renovation and repairs. Subsequently Income Tax Authorities passed an assessment order dated 31.07.2000 exonerated Shri Nagraj Chhajer in as much as he was not the owner of the jewellery. As Shri Padam Kumar Agarwal has claimed himself to be the owner of the jewellery, which was brought by him into India from Nepal, the Income Tax Authorities referred the matter to the Customs.

4. During the course of investigations, statement of Shri Padam Kumar Agarwal was recorded on 22.07.04 wherein he admitted that the seized jewellery belonged to him and was being carried by Shri Nagraj Chhajer on his behalf from Mumbai to Delhi. He stated that the jewellery had been purchased by him in Nepal over a period of 25 years. Though he left Nepal in 1991, he regularly visits Nepal to see his brothers and mother, who still live there. In April 2000 he along with his wife went to Nepalganj, Nepal to see his mother and collected the said jewellery of his wife from his mother as the jewellery were to be worn by his wife and part of it were to be given to his daughter-in-law at the scheduled marriage in Delhi on 08.07.2000. He brought these jewellery to India through Land Customs Station Rupaidiha some time in April 2000, where he was told by the officers on duty that there was no need of declaring the personal jewellery or of making any endorsement on the passport, to the effect. He was also under impression that there was no need to declare the items of personal use for a person coming from Nepal to India. Shri Padam Kumar Agarwal admitted that Shri Nagraj Chhajer actually returned him two diamond rings belonging to him (Shri Padam Kumar Agarwal) on 11.07.2000, these rings were part of the jewellery brought by him from Nepal.(two diamond rings found on person of Smt. Manek Devi but not seized by Income Tax Authorities).

5. In as much as the jewellery was reported to have been brought from Nepal and in terms of the provisions of Baggage Rules, importation of jewellery by Nepal's tourists is not permitted, proceedings were initiated against the appellant by way of issuance of a show cause notice dated 13.09.04 for confiscation of the jewellery as also for imposition of penalty. The said proceedings resulted in passing of the present impugned order confiscating the jewellery with an option to Shri Padam Kumar Agarwal to redeem the same on payment of redemption fine of Rs.18 lakhs. Further two rings also stand confiscated to be redeemed on payment of duty of Rs.64,121/-. In as much as the Commissioner has not demanded duty in respect of the main gold and diamond jewellery, while giving option to the appellant to redeem the same, Revenue is in appeal in respect of the above issue.

6. After hearing both the sides duly represented by learned advocate, Shri Naveen Mullick appearing for the appellant and learned DR, Shri K.K. Jaiswal appearing for the Revenue, we find that the undisputed legal position, which emerges, after studying the Baggage Rules, is that Nepal's tourists are not entitled to import any gold and diamond jewelleries from Nepal to India. However, we find favour in the learned advocate's contention that the jewellery is not in commercial quantity and is in numbers usually worn on special occasion like marriage ~~wornable numbers~~. The Revenue is also proceeding on the statement Shri Padam Kumar Agarwal for contending that the same has been brought from Nepal. As such, submits the learned advocate that the entire statement has to be believed. As such, in view of the above statements, an undisputed position emerges that the jewellery was brought from Nepal ~~on various trips~~ and mainly because for ~~of~~ wearing the same during the wedding of Shri Padam Kumar Agarwal's son. A part of

the jewellery was brought to give the same as gift to the daughter-in-law of the family. As such, submits the learned advocate that even if there was some contravention, the jewellery may be permitted to be re-exported on payment of nominal redemption fine.

7. After hearing the learned DR and after going through the list of the jewellery, we find that the same is not in commercial quantity and the numbers of various items are indicative of the fact that the same were brought for the purposes of marriage. If that be so, we find no justification for confiscation of the same with an option to the appellant to redeem it on payment of duty and high redemption fine of Rs.18 lakhs. As such, keeping in view the facts and circumstances of the case, we accept the appellants' request for re-export the jewellery of Nepal. However, in as much as there has been contravention of the Baggage Rules, such re-export is permitted on payment of redemption fine of Rs.2 lakhs. Similarly penalty of Shri Padam Kumar Agarwal is reduced to Rs.2 lakhs.

8. As regards penalty on Shri Nagraj Chhajer, we find that the Commissioner in his impugned order has not discussed his role in illegal bringing of the jewellery from Nepal. No alleged ~~provision~~ contravention stands attributed to him. He was merely carrying the jewellery from Mumbai to Delhi as per the instructions of Shri Padam Kumar Agarwal. As such, we find no justification for imposition of penalty upon him. The same is accordingly set aside.

9. As regards the Revenue's appeal, though we agree with the learned DR that in case the jewellery is redeemed in India, the duty leviable

thereon is required to be paid. However as we have already allowed re-export of the jewellery, the question of payment of duty does not arise. Their appeal is accordingly rejected.

10. All the three appeals are disposed off in above manner.

(Pronounced in Court)

(Mathew John)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

*Jk**