

**Surendra Pal Singh Vs. Commissioner of Customs**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** May-26-2005

**Reported in :** (2005)(187)ELT344TriDel

**Judge :** P Bajaj

**Appellant :** Surendra Pal Singh

**Respondent :** Commissioner of Customs

**Judgement :**

1. In these appeals which have been preferred against the common impugned Order-in-Appeal, the appellants have contested the imposition of penalty of Rs. 8,000/- each on them under Section 112 of the Customs Act.

2. Ld. Counsel has contended that the seized goods (camera, lenses of foreign origin) being non-notified goods, no presumption about their smuggled nature could be drawn, rather it was for the Revenue to prove that these goods had been smuggled by the appellants from Nepal to India. He has also contended that confessional statements initially recorded of the appellants, were later on retracted by them and as such without collaborative evidence, the same could not be relied upon.

Therefore, the impugned order deserves to be set aside. The Id. JDR has reiterated the correctness of the impugned order.

3. From the record, it is evident on 17-9-2001 one bus bearing No. UP 25/9541 was intercepted by the Customs Officers of Gorakhpur on the basis of information. On thorough checking of the bus, the seized goods (camera, lenses of foreign origin) were recovered from the cavity in the body of the bus. The appellant No. 1 Surendra Pal, was driver of the bus and Bharat Pal appellant No. 2, was the conductor. These goods were allegedly delivered to them at Sunauli by some representative of Satya Narain Sharma, for transportation to Delhi. But name of that person remains undisclosed. No statement of Satya Narain Sharma was also recorded who allegedly smuggled the goods from Nepal. The passengers were also present in the bus at that time, but no statement of any one was recorded. These goods were to be delivered to one Kailash in Delhi but his statement was also not recorded. The seized goods at that time were not 'notified goods' under Section 123 of the Customs Act. Therefore, no presumption regarding the smuggled nature of the same could be legally drawn. It was for the Revenue to prove that these were smuggled to India from Nepal and delivered to the appellant for transportation. Under the circumstances, the mere statement of both these appellants, which were later on retracted by them regarding the smuggled nature of the goods and delivery to them for transportation to Delhi, could not be made the basis for imposition of penalties on them under Section 112 of the Act without seeking collaboration from any other reliable evidence.

4. Consequently, the impugned order imposing penalty on the appellant is set aside and their appeals are allowed with consequential relief as per law.

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