

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10379 of 2014- SM

(Arising out of OIA-431-2013-CUS-COMMR-A—AHD dated 24/10/2013 passed by Commissioner of CUSTOMS-AHMEDABAD)

Deepali Suresh Padhiar

2a, Shree Nar Narayan Society,
B/H, T B Hospital, Gotri Road,
Vadodara, Gujarat

.....Appellant

VERSUS

C.C.-Ahmedabad

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

.....Respondent

APPEARANCE:

Shri. Mrugesh Pandya, Advocate for the Appellant

Shri Himanshu P Shrimali, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 11300 /2023

DATE OF HEARING: 31.03.2023

DATE OF DECISION: 21.06.2023

RAMESH NAIR

The brief facts of the case is that the appellant is a non resident Indian having British passport visited India on 12.05.2013 along with her husband and son. At airport the appellant opted for Green Channel for clearance but at the direction/instruction of the custom officer the appellant was diverted to Red Channel. At the time of filing declaration form, the declaration of 3 gold coins were not mentioned. Therefore, the said gold coins were seized and the Assistant Commissioner SVP International Airport, Ahmedabad ordered for confiscation of gold coins valued at Rs. 243215/- Allowing the appellant an option to pay fine of Rs. 60,804/- for redemption of the said gold coins and also imposed penalty of Rs. 24,321/-. The Appellant being aggrieved by Order-In-Original dated 12.05.2013 filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals)

reduced the fine to Rs. 50,000/- and penalty to Rs. 20,000/- and allowed the appeal partially. Being aggrieved by the Order-In- Appeal, the appellant filed the present appeal.

2. Shri Mrugesh P Pandya, Learned Counsel appearing on behalf of the Appellant submits that the appellant did not have any idea about the Indian Baggage Rules as well as taxability of dutiable goods under personal luggage, therefore, this lapse has occurred. He further submits that the appellant have made a statement since this gold coins were gifted to the appellant by her father under Hindu customs therefore, she was under impression that the same need not to be declared. He submits that the appellant's understanding was under bona fide belief; the same was explained to the proper officer on 12.05.2013. The Appellant have filed affidavit dated 29.05.2013. He submits that the Adjudicating Authority has not recorded any contention of the appellant and straight away demanded the duty, redemption fine and penalty. The Adjudicating Authority also not considered the affidavit submitted by the appellant. In the above facts the appellant deserves some leniency. He placed reliance on the following judgments:-

- Rajiv Shastri – 2009 (238) ELT 163 (Tri. Ahmd)
- V. P Hameed – 1994 (73) ELT 425 (Tri.)
- Kiran Spinning Mills – 1989 (40) ELT 385 (Tri.)

3. Shri Himanshu P. Shrimali, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. I have carefully considered the submission made by both sides and perused the records. I find from the facts that, it does not appear that the appellant has any intention to smuggle the gold. This has already been recorded by the Commissioner (Appeals) in his order while reducing the penalty and redemption fine. The appellant being a non resident

Indian of UK having UK passport was unaware about the Baggage Rules of Indian Customs as stated in their affidavit. I find that the Commissioner (Appeals) though has considered the reduction of penalty and fine but in my considered view the appellant deserves further leniency in the matter. Accordingly, considering the overall facts and circumstances of the case, I reduce the fine from 50,000 to Rs. 20,000/- and penalty from 20,000 to Rs. 10,000/- .

5. The impugned order is modified to the above extent. The appeal is partly allowed in the above terms.

(Pronounced in the open court on 21.06.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

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