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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10946 of 2021 - SM

(Arising out of OIA-AHD-CUSTM-000-APP-286-287-21-22 dated 27/07/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

BINOD KUMAR BARANWAL ....**Appellant**
1-B Vastu Pooja Apartment
Near Ashok Pan House City Light Road
Surat, Gujarat

VERSUS

COMMISSIONER OF CUSTOMS-AHMEDABAD ......**Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

With

Customs Appeal No. 10947 of 2021 - SM

(Arising out of OIA-AHD-CUSTM-000-APP-286-287-21-22 dated 27/07/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

KISHAN KUMAR BARANWAL ....**Appellant**
1-B Vastu Pooja Apartment
Near Ashok Pan House City Light Road
Surat, Gujarat

VERSUS

COMMISSIONER OF CUSTOMS-AHMEDABAD ......**Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri Vinay Kansara, Advocate for the Appellant
Shri Anand Kumar, Superintendent (AR) for the Respondent

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

Final Order No. 11747-11748/2024

DATE OF HEARING: 18.07.2024
DATE OF DECISION: 13.08.2024

RAMESH NAIR

The issue involved is about the seizure of the Gold and its absolute confiscation and imposition of personal penalties. In this case, 500 grams

Gold (5 Gold Bars-weighing 100 grams each) have been confiscated absolutely. Out of 5 Gold bars, 1 Gold bar is of Indian Origin and 4 Gold bars having foreign marking.

2. Shri Vinay Kansara, Learned Counsel appearing on behalf of the appellant submits that the 500 grams Gold was wrongly confiscated absolutely as the appellant has submitted the stock register, wherein entire transaction of the gold including the 500 grams which alleged to have been unaccounted is recorded and to this effect, he has also submitted the Chartered Accountant certificate though not before the adjudicating authority but before this Tribunal. Therefore, as per his submission no stock of gold is unaccounted therefore, there is no question of any confiscation and penalty on the Shri Kishan Kumar Baranwal and Binod Kumar Baranwal.

2.1 He further submits that since there is no proof of smuggling of gold, the gold could not have been confiscated, the appellant have purchased the gold through proper channel and the same has been recorded in their books of account. In support, he placed reliance on the following judgments:-

- CC Vs. Ashokkumar Agrawal - 2017 (348) ELT 555 (T)
- Dhanishtha Gold Vs/ CC - 2019 (369) ELT 688 (T)
- Samir Saha Vs. CC - 2020 (371) ELT 189 (Meghalaya)
- E. Eswara Reddy Vs. CC - 2006 (196) ELT 410 (T).
- Arvind P. Jain Vs. CC - 2006 (206) ELT 708 (T)
- Lalchand D. Kothari - 2001 (136) ELT 525 (T)

- Mridul Agarwal Vs. CC - 2018 (362) ELT 847 (T)
- RAM NARESH CHAURASIYA Vs. CC (PREV.) – 2019 (365) E.L.T. 940 (T)
- PR. CC Vs. AHAMED MUJJABA KHALEEFA-2019 (366) E.L.T. 337 (T)
- CC Vs. MAHESH KAREL-2018 (363) E.L.T. 436 (T)
- Roshni Mathurdas Kothadia Vs. CC 2019 (369) ELT 1784 (T)
- CC Vs. Islahuddin Khan - 2018 (364) ELT 168 (T)
- Shaik Jamal Basha Vs. GOI 1997 (91) ELT 277 (T)
- Rajaram Bohra Vs. UOI-2015 (322) E.L.T. 337 (Cal.)

  [The said judgement has been affirmed by the Hon'ble Supreme Court reported in 2017 (351) ELT A178]
- Ashraf Puliyulla Parambil Vs. CC-2007 (213) ELT 555 (1)
- Mohammed Ahmaed Manu - 2006 (205) ELT 383 (T)
- CC Vs. Ashwini Kumar alias Amanullah-2021 (376) ELT 321 (T)
- Ibrahim Abdullah Rhiman 2018 (363) ELT 534 (T)

3. Shri Anand Kumar, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of record, I find that the entire issue is based on the fact that whether the appellant have legitimately procured the gold and the same is accounted for in their records. It is the appellant's strong submission that entire transaction of the gold has been recorded in their records. On the visit of the officer, the total stock of the gold available was 12625.99 grams and the same was recorded in the books, which includes the alleged 500 grams said to have been not recorded. The Learned Counsel has submitted

a Chartered Accountant certificate, which certifies the closing stock of gold bar as on 19.03.2019 was 12625.99 grams. He also certifies that the said stock is on the basis of inventory register produced before him. As per the said Chartered Accountant certificate, it appears that there is no stock which was unaccounted. Therefore, the confiscation of gold bar and penalties on the persons are prima facie incorrect. However, the appellant have submitted the Chartered Accountant certificate first time before this Tribunal, which is on inventory register which required verification. Therefore, for this limited purpose, the matter needs to be remanded to the adjudicating authority. The appellant shall submit the chartered accountant certificate along with supporting inventory record to the adjudicating authority to establish that the 500gm gold is part of the inventory record in inventory register.

5. Accordingly, we set aside the impugned order and remand the matters to the adjudicating authority for passing a fresh order. Needless to say that the adjudicating authority shall also consider the judgments in the facts of the case while passing the de-novo order.

(Pronounced in the open court on 13.08.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Raksha