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

REGIONAL BENCH- COURT NO. 02

CUSTOMS Appeal No. 10403 of 2022

[Arising Out Of OIA-AHD-CUSTM-000-APP-001-22-23 Dated- 08/04/2022 passed by the Commissioner of CUSTOMS-AHMEDABAD)

VASU HASMUKHBHAI VASOYA **.....Appellant**
Kiran 1 Vidhyutnagar Society Block No 3b
Opp Astron Society
Rajkot, Gujarat

VERSUS

C.C.-AHMEDABAD **.....Respondent**
Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri. Vikas Mehta, Consultant for the Appellant
Shri. P Ganesan, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

Final Order No. 11347/2025

DATE OF HEARING:18.11.2025
DATE OF DECISION:21.11.2025

SOMESH ARORA

On 03.12.2018, Customs officers at airport intercepted one Mohd. Sadin arriving from Dubai and recovered 2279.800 gms of gold having market value of Rs. 71,58,571/-(tariff value of Rs. 65,69,301/-) that was concealed in 03 metal prototype piston heads and hence, not declared before the Customs officers. Shri Mohd. Sadin, in his statement dated 03.12.2018, inter alia, stated that he was handed over the piston heads concealed with gold by Shri Alam Gohar, who was working as supervisor in Riyadh with instructions to call the appellant upon reaching Ahmedabad airport. In his statement dated 13.12.2018, the appellant, inter alia, stated that he was engaged in manufacture of brake discs for passenger vehicles, etc. and had business relations with M/s. Kian Belladi Institutional Trading, Riyadh, where Shri Alam was working as a representative; that last business transaction with the said M/s. Kian took place on 15.10.2018. He informed the officers that he received phone call from Shri Alam Gohar on 03.12.2018 at around 06.30 AM (after interception of Shri Mohd. Sadin given that ETA of flight in which he arrived at Ahmedabad was 02.57 AM) seeking legal assistance for Mohd. Sadin. Ld. Adjudicating Authority rejected the request made by appellant for cross-examination of Shri Mohd. Sadin. He imposed penalty of Rs. 3.0 lakh on appellant under section 112 (a) of Customs Act, 1962 by citing phone calls received by appellant from Shri Alam Gohar and those made by appellant to Shri Mohd. Sadik on 03.11.2018.

2. The appellant submits that all the phone calls made by appellant to Shri Mohd. Sadin were between 06:44:55 and 12:18:20 of 03.12.2018 when Shri Mohd. Sadik was in custody of Custom Officers. Hence, Custom officers could have easily made out involvement, if any, of appellant from the said conversations. The officers also did not record statement of appellant in the presence of Shri Mohd. Sadin and vice versa to bring out the truth. The authorities below have also failed to appreciate that no incriminating evidence was found from search of appellant's premises. The statement of appellant is exculpatory. Statement of Shri Alam Gohar is not on record. The request was made by appellant to the Ld. Adjudicating Authority, who also rejected the request made by appellant for cross-examination of Shri Mohd. Sadin. Inasmuch as there is no cogent evidence to pinpoint any act or omission on the part of appellant qua goods or to establish abetment on his part, penalty imposed on appellant under section 112 (a)(i) of Customs Act, 1962 is not tenable in the eyes of law

3. The Department on the other side has relied upon circumstantial evidence and justified the denial of cross-examination of Mohd. Sadin’s

statement, which, as per the appellant was the sole basis for the imposition of a penalty under Section 112 (a) of the Customs Act, 1962. The basis for imposition of penalty has been stated as circumstantial evidence and statement of others, though not subjected to cross-examination and though gold was never physically possessed.

4. Arguments of both sides have been considered. It is found that there is no culpatory statement of the accused who was stated to be the recipient of metal prototype piston heads having gold concealed inside. No incriminating material was found at the premises of the appellants nor was any knowledge of involvement exhibited in the statement of the appellant. Some calls made between the passengers and the appellant cannot be taken to be the basis for holding him as the recipient with knowledge of the offending goods. It is by now also settled law that a statement cannot be relied upon without affording cross-examination. In this case, same has been clearly denied of Mohd. Sadin to the appellant.

5. In view of the foregoing, the department has not been able to make out a convincing case against the appellant and the same is only based on assumptions and presumptions and in doubt and therefore cannot be sustained as far as penalty on the appellant is concerned. Penalty of Rs. 3.0 Lakh is set aside.

6. Appeal allowed.

(Pronounced in the open court on 21.11.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi