CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70513 of 2016

(Arising out of Order-In-Original No. 04-COMMR-2015-16, dated-04/03/2016 passed by Commissioner, Customs (Preventive), Lucknow)

M/s Mohammed Saleem **.....Appellant**
(Son Of Shri Mohammad Mustafa
R/o 648, Chhata Chuia Mem, Chitli Qabar,
Jama Masjid, Old Delhi
Delhi 110006)

VERSUS

Commissioner, Customs (P), Lucknow **....Respondent**
(5^{th} & 11^{th} Floor, Kendriya Bhawan, Sector H
Aliganj, Lucknow)

APPEARANCE:

Shri Akshay Anand, Advocate & Ms. Afsha Moin, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70584/2024

DATE OF HEARING : 21.08.2024
DATE OF DECISION : 21.08.2024

SANJIV SRIVASTAVA:

This appeal is against the Order-In-Original No.04-COMMR-2015-16, dated-04/03/2016 passed by Commissioner, Customs (Preventive), Lucknow. By the impugned order following has been held:-

ORDER

"37.1 I order absolute confiscation of the seized 18 Nos. of gold biscuits totally weighing 2099.520 grams of Rs. 55,97,320/- recovered from Noticee Mohd. Saleem under Section 111 (d), (l) & (m) of the Customs Act, 1962;

37.2 I order confiscation of the seized shoes, having nil commercial value, used for concealment of the impugned gold under section 119 of the Customs Act, 1962:

37.3 I impose penalty of Rs. 12,00,000/- Rs. Twelve Lakh Only) upon Noticee Mohd. Saleem S/o Shri Mohammad Mustufa. R/o. 648. Chatta Chuia Mem, Chitli Qabar, Jama

Masjid. Delhi-110006 under Section 112(b) of the Customs Act, 1962;

37.4 I do not impose any penalty upon Noticee Mohd. Saleem s/o Shri Mohammad Mustufa, R/o. 648. Chatta ChulaMem, Chitti Qabar, Jama Masjid, Delhi-110006 under Section 112(a) of the Customs Act, 1962;

37.5 I impose penalty of Rs. 6,00,000/- (Rs. Six Lakh Only) upon Noticee Mohd. Saleem S/o Shri Mohammad Mustufa,R/o. 648, Chatta Chuia Mem, Chitli Qabar, Jama Masjid, Delhi- 110006 under Section 114AA of the Customs Act, 1962."

2.1 The Appellant is an Indian resident having passport No.L7639542. He has returned back from Dubai on 06th July, 2015 and was later on intercepted by the Customs officers at Lucknow Railway station on 6th July, 2015 along with 18 pieces of gold bar with 99.99% purity total weighing 2099.520 grams of gold total valued at Rs.55,97,320/-.

2.2 Further investigations were undertaken and the Appellant admitted that the said gold was purchased by him in Dubai from M/s AB Jeweller & Gold smith LLC against the Invoice No.638 dated 05.07.2015. He claimed the ownership of the gold and in his statement recorded on 06th July, 2015 & 08th December, 2015 after completion of the investigation a Show Cause Notice dated 21.12.2015 was issued to the Appellant asking him to show cause as to why:-

"(i) the seized 18 Nos. of gold biscuits totally weighing to 2099.520 grams valued at Rs. 55,97,320/- should not be confiscated under Section 111 (d), (1) & (m) of the Customs Act, 1962;

(ii) the seized shoes used for concealment of the impugned gold, should not be confiscated under. section 119 of the said Act

(iii) Penalty should not be imposed upon him under Section 112(a) and (b) & 114AA of the Customs Act, 1962."

2.3 The SCN has been adjudicated as per the impugned order.

2.4 Aggrieved Appellant have filed this appeal.

3.1 We have heard Shri Akshay Anand, Advocate & Ms. Afsha Moin, Advocate for the Appellant and Shri Santosh Kumar learned Authorized Representative for the Revenue.

3.2 Arguing for the Appellant learned counsel submits that:-

- ➢ It is not in dispute that gold was owned by the Appellant and he has purchased the same against proper cash memo from AB jewellers Dubai. The SCN & adjudicating order does not dispute the fact of the ownership of the gold.
- ➢ It is admitted that at the time of clearance from customs while arriving from Dubai the said gold was not declared and customs duty was not declared and customs duty was not paid and he is ready to pay the customs duty due against the same.
- ➢ However, ignoring the fact that Appellant is ready to pay the customs duty on the gold legally purchased by him in Dubai the order for absolute confiscation is passed against him which is too harsh.
- ➢ In a similar case in Order-In-Original No.RLM/ACE/4/2015 dated 28.03.202 passed by the Joint Commissioner, IGI Airport dated 25.03.2015 in the case of seizure/ confiscation of 09 gold bars have allowed the gold to be redeemed on payment of redemption fine and duty due. A personal penalty under Section 112 & 114(a) of Rs.2 lakhs have been imposed.

3.3 Learned Departmental Representative reiterates the finding recorded in the impugned order.

4.1 We have considered the impugned order along with the statements made in the appeal and during the course of argument.

4.2 In the present case there is no dispute about the fact that gold was brought into the country without making a proper declaration to the Customs at the time of returning back from Dubai. It is also not in dispute that the gold could have been cleared by the Appellant by making proper declaration and payment of the due customs duty. As such, the gold would not fall under the category of prohibited goods for which absolute confiscation should have been warranted. For the irregularities committed by the Appellant by clearing the gold without making proper declaration and without payment of due customs duty, the gold should have been confiscated by the concerned authority. However as gold do not fall under the category of prohibited or restricted goods but could have been imported on payment of due Customs duty, an option to redeem the same should have been extended to the Appellant against the redemption fine that should have been determined.

4.3 We find that in the similar case of IGI Airport gold has been allowed to be redeemed against the redemption fine (about 18.7% of the seizure value of the gold) and on payment of the duty on the said gold. Penalty imposed is about 7.4% of the seizure value.

4.4 Taking note of the above order we while upholding the order for confiscation allow the gold to be redeemed on payment of redemption fine of Rs.7.5 lakhs and due customs duty on the said gold which should be determined by the concerned authority.

4.5 We also note that penalties of Rs.12 lakhs under Section 112 and Rs.6 lakhs under Section 114AA has been imposed upon the Appellant. In the order of IGI Airport total penalty imposed on the person involved in the similar offence is Rs.2 lakhs. Taking note of the above order we reduce the penalties imposed under Section 112 to Rs. 4 lakhs. In our view this case does not call for a penalty under Section 114AA as no declaration was filed or was caused to be filed.

4.6 With the above modification we uphold the impugned order.

5.1 Appeal is partly allowed as indicated in para 4.4 and 4.5 above.

(Dictated and pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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