IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

C/Stay/70518 & 70517/2018 In
APPEAL Nos.C/71388 & 71389/2018 With
APPEAL Nos.C/71403-71405/2018-CU[SM]

(Arising out of Order-in-Appeal No. 440, 441 & 442-Cus/APPL/LKO/2018 dated 27/08/2018 passed by Commissioner of Customs, GST & Central Excise (Appeals), Lucknow)

[IN APPEAL Nos.C/71388 & 71389/2018]

Commissioner of Customs, Lucknow Preventive, **Appellants**

Vs.

Rajesh Jhamatmal Bhat &

Rajesh Chetandas Vaswani, **Respondents**

[IN APPEAL Nos.C/71403-71405/2018]

Shri Rajesh Vaswani,

Rajesh Jhamatmal Bhat &

Murli Asandas Chandiramani, **Appellants**

Vs.

Commissioner of Customs, Lucknow Preventive **Respondents**

Appearance:

Shri Shiv Pratap Singh, Deputy Commissioner (AR) &
Shri Gyanendra Kr. Tripathi, Deputy Commissioner (AR) for Revenue
Shri Kartikeya Narain, Advocate for Assessee

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 25/01/2019
Date of Pronouncement : 03/02/2019

FINAL ORDER NOs- **70261-70265 / 2019**

Per: Anil G. Shakkarwar

The above stated 5 appeals are arising out of common impugned Order-in-Appeal No. 440, 441 & 442-

Cus/APPL/LKO/2018 dated 27/08/2018 passed by Commissioner of Customs, GST & Central Excise (Appeals), Lucknow. Appeal Nos.C/71388 & 71389/2018 were filed by revenue with stay applications. The remaining three appeals have been filed by individuals on whom personal penalties were imposed. Further, impugned gold was allowed to be redeemed on payment of fine.

2. Brief facts of the case as recorded by learned Commissioner (Appeals) are that the officers of Directorate of Revenue Intelligence, Varanasi recovered 2050gm foreign origin gold and foreign origin currency of 17620 Thai Baht from appellant Shri Rajesh Jhamatmal Bhat. Similarly, 2000gm foreign origin gold was recovered from appellant Shri Rajesh Chetandas Vaswani. On the basis of information given by above two appellants DRI Officers intercepted Shri Murli Asandas Chandiramani. The investigations revealed that impugned gold was brought by Shri Shri Rajesh Chetandas Vaswani and Shri Rajesh Jhamatmal Bhat from Bangkok at Gaya International Airport without declaring the same to the Customs under Section 77 of the Customs Act, 1962. From Gaya, the above stated two appellants traveled to Mughalsarai Railway junction and board Sanghmitra Express for Nagpur. The appellant Shri Murli Asandas Chandiramani was alleged to

help the other two appellants in alleged smuggling of the impugned gold. Therefore, impugned gold was confiscated and above stated three appellants were imposed with penalties through Order-in-Original dated 30.12.2015. On appeal before learned Commissioner (Appeals), the learned Commissioner (Appeals) took into consideration the provisions of Section 125 of Customs, Act, 1962, ruling by Hon'ble Bombay High Court in the case of Commissioner of Customs Airport, Mumbai Vs Alfred Menezes reported at 2009 (242) ELT 334 (Bom.), decision of this Tribunal in the case of Yakub Ibrahim Yusuf Vs Commissioner of Customs, Mumbai reported at 2011 (263) ELT 685 (Tri.-Mumbai), Union of India Vs Dhanak M. Ramji reported at 2009 (248) ELT 127 (Bom.) ruled by Hon'ble Bombay High Court and this Tribunal's Order in the case of Commissioner of Customs (Preventive), Lucknow Vs Mazaharul Haq reported at 2016 (341) ELT 450 (Tri.-All.) and held that there was no sufficient ground for absolute confiscation of gold. Therefore, learned Commissioner (Appeals) through the impugned order gave option to redeem the confiscated gold on payment of redemption fine of Rs.25 lakhs to appellant Shri Rajesh Chetandas Vaswani and Shri Rajesh Jhamatmal Bhat. He further ordered payment of applicable duty on the said gold. However, he did not interfere with the penalties imposed on Shri Rajesh Jhamatmal Bhat, Shri Rajesh Chetandas Vaswani and Shri Murli Asandas Chandiramani to the tune of Rs.10 lakhs each under Section 112 of the Customs Act, 1962. Aggrieved by the said order, above stated appellants are before this Tribunal.

3. Revenue is also in appeal before this Tribunal, challenging the order of learned Commissioner (Appeals) which allowed redemption of confiscated gold on payment of redemption fine. The contention of revenue is that the impugned gold should be confiscated absolutely.

4. The remaining three appellants are before this Tribunal contending that the redemption fine is too high and personal penalties are also too high on the appellants. Further, in case of Shri Murli Asandas Chandiramani the contention in the appeal is that the penalty on him was not at all called for.

5. Heard both the sides. Revenue has also filed stay applications, requesting for stay of operation of order of learned Commissioner (Appeals) order. They were also taken up together with the main appeals. Both the sides were allowed to submit written submissions.

6. Written submissions were submitted on behalf of Shri Rajesh Jhamatmal Bhat, Shri Rajesh Chetandas Vaswani

and Shri Murli Asandas Chandiramani by learned Counsel Shri Kartikeya Narain. It was stated in the said submission that Shri Rajesh Chetandas Vaswani and Shri Rajesh Jhamatmal Bhat had come out from Gaya International Airport the day before arrest but it did not confirm that they came through Thai Airways with gold bars and it was contended that there was a very tight security and there were so many check points existed at International Airport that it was not possible for the passengers to come out of such tight security with gold bars. He further contended that margin of profit in trade of gold is very less and therefore, for gold valued ot around Rs.1 crore redemption fine of around Rs.25 lakhs was too high. Further, he has contended that there was no finding for imposition of penalty on the above stated three appellants. He has further relied on Final Order No.72932-72934/2018 dated 27.12.2018 passed by this Tribunal in respect of Shri Sanjeeb Kumar @ Pappu Kumar, Shri Ajay Kumar & Shri Umesh Kumar Vs Joint Commissioner, Customs, Lucknow wherein it was held that margin of profit in the trade of gold is very less. He has prayed to wave the penalty on Shri Murli Asandas Chandiramani and prayed to reduce redemption fine and penalty on Shri Rajesh Chetandas Vaswani & Shri Rajesh Jhamatmal Bhat.

7. In their written submissions Revenue has submitted that Shri Rajesh Chetandas Vaswani & Shri Rajesh Jhamatmal Bhat did not declare gold to Customs and with full knowledge brought gold into India. Therefore, the same is liable for absolute confiscation. They further stated that the gold as such is not prohibited under the act but import of the same may be allowed subject to certain restrictions and conditions as envisaged under Notification No.12/2012-Cus dated 17.03.2012 as amended. Revenue further placed reliance on the decision of this Tribunal reported at 2006 (204) ELT 300 (Tri.-Mumbai) and ruling by Hon'ble High Court of Kerala in the case of Abdul Razak Vs Union of India reported at 2012 (275) ELT 300 (Ker.).

8. I have carefully gone through the records of the case and submissions made by both the sides, I understand from the fact of the case as recorded by learned Commissioner (Appeals) through impugned order that two of the appellants in the present matter brought impugned gold from Bangkok to Gaya International Airport without declaring the same to Customs authorities. I cannot find from the whole proceedings as to how the Customs authorities posted at Gaya International Airport could not detect such huge quantity of gold being removed from Gaya International Airport by passengers on their arrival. I am

not able to find any submission from the individual appellants explaining as to how they removed gold on arrival from Bangkok or how they procured gold before they were intercepted at Mugalsarai Railway Station. Therefore, I find that none of the case laws relied upon by revenue are applicable in the present case. I, therefore, dismiss both the appeals filed by revenue. Both the stay applications filed by revenue are also dismissed as infructuous.

9. In so far as the appeals filed by the individual appellants are concern, I find that the individual appellants are not in a position to explain how they procured such quantity of gold. Further, they do not have any document to establish licit acquisition of the same. I, therefore, do not interfere with the order of confiscation of impugned gold and imposition of penalty. However, I find that this Tribunal in the above stated case of Shri Sanjeeb Kumar @ Pappu Kumar and others have held that margin of profit in trade of gold is very less. Taking the same into consideration, I reduce redemption fine from Rs.25 lakhs to Rs.15 lakhs. I, further, reduce penalty on Shri Murli Asandas Chandiramani, Shri Rajesh Chetandas Vaswani & Shri Rajesh Jhamatmal Bhat from Rs.10 lakhs each to Rs.5 lakhs each. The impugned order is modified accordingly. Applicable Customs duty on impugned gold shall be paid.

10. In above terms, appeals filed by Shri Murli Asandas Chandiramani, Shri Rajesh Chetandas Vaswani & Shri Rajesh Jhamatmal Bhat are partially allowed.

(Pronounced in Court on-03/02/2019)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

akp