CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, ALLAHABAD

REGIONAL BENCH : COURT NO.I

Customs Appeal No.70291 of 2019

(Arising out of Order-in-Appeal No.08-10-CUS/APPL/LKO/2019 dated 11.01.2019 passed by Commissioner(Appeals), Customs, GST & Central Excise, Lucknow.)

Smt.Disha Tulsiani
(13/3, 13/4, Punjabi Colony, Alopi Bagh,
Allahabad)

...Appellant

VERSUS

Commr. of Customs(Prev.), Lucknow

.....Respondent

(5th Floor, Kendriya Bhawan, Sector-H,
Aliganj, Lucknow)

WITH

(i) Customs Appeal No.70292 of 2019 (Shri Ashok Kumar Tahlani); (ii) Customs Appeal No.70293 of 2019 (Sri Nirmal Tulsiani); (iii) Customs Appeal No.70294 of 2019 (CC(Prev.), Lucknow); (iv) Customs Appeal No.70295 of 2019 (CC(Prev.), Lucknow); (v) Customs Appeal No.70296 of 2019 (CC(Prev.), Lucknow)

(Arising out of Order-in-Appeal No.08-10-CUS/APPL/LKO/2019 dated 11.01.2019 passed by Commissioner(Appeals), Customs, GST & Central Excise, Lucknow.)

APPEARANCE

Shri Aneesh Mittal (Advocate), Shri Ashish Bansal (Advocate) & Shri Akarsh Garg (Advocate) for the Appellant (s)

Shri Sandeep Kumar Singh (Dy.Commr.) (A.R.) for the Revenue

CORAM: HON'BLE MRS. ARCHANA WADHWA, MEMBER(JUDICIAL)
HON'BLE SHRI ANIL G. SHAKKARWAR, MEMBER(TECHNICAL)

FINAL ORDER NO. 71355-71360/2019

DATE OF HEARING : 18 June 2019
DATE OF DECISION : 12 July 2019

MRS. ARCHANA WADHWA :

All the six appeals – three filed by the appellants and three by the Revenue, are being disposed of by a common order as they arise out of the same set of facts and circumstances and from the same impugned orders.

2. As per facts on record, Income Tax department operated one bank locker which was in the common name of Smt. Disha Tulsiani and Sri Nirmal Tulsiani. Search of the same resulted in recovery of three gold bars of foreign origin along with a piece of gold totally weighing around 3.5 Kgs.. The said recovered gold of foreign origin was handed over by Income Tax authorities to DRI for further action under the Customs Act, 1962. Along with handing over the seized gold, the copies of the statements dated 17 November 2016 and 20 December 2016 of Sri Nirmal Tulsiani and dated 20 December 2016 of Smt.Disha Tulsiani were also forwarded along with photocopy of the Will dated 3 April 2005 of Smt. Dadan Devi, which was produced by Smt.Disha Tulsiani.

3. As a result, the DRI officers undertook further investigations and got the gold bars evaluated from the authorized valuer in the presence of DRI officers as also independent witnesses. During the course of investigations, Smt.Disha Tulsiani and Sri Nirmal Tulsiani informed the officers that the said gold bars have been received by them by way of a Will of Smt.Dadan Devi, grand-mother of Smt.Disha Tulsiani vide which the same were willed to Smt. Disha Tulsiani, Sri Nirmal Tulsiani and to their son Sri Neel Tulsiani, who was about three years old at that time and the said gold bar in question was to be given to him at the time of his marriage. The further statements of Sri Nirmal Tulsiani as also Smt.Disha Tulsiani reiterated the same position that the gold bars in question were received by them from Late Smt. Dadan Devi, grand-mother and they produced the photocopy of the Will in question. It was also brought to the notice of the officers that the Will was to be executed through Smt.Disha Tulsiani's father Shri Ashok Tulsiani, as he was the executor of the referred Will. It was further submitted that the

said Will was made on 3 April 2005 and the recovered gold bars owned by the grand-mother Late Smt. Dadan Devi were left with her by grand-father Late Parmanand Tehlani. It was admitted by Smt. Disha Tulsiani that the Will in question has not given any details of the gold bars like Sl.No., make, purity etc.. The said Will was executed in the year 2010 after death of her grand-mother through her father Sri Ashok Kr. Tahlani, who was the executor of the Will. The officers further sought information from the office of the Additional Registrar of Assurance, Kolkata seeking details of registration of the Will and it was found that the same was not registered. The officers entertained certain doubts about the said Will and were of the view that the gold bars in question were not covered by the said Will. Accordingly proceedings were initiated against the appellants for confiscation of the gold bar in question as also for imposition of penalties. The notice was adjudicated by the Additional Commissioner of Customs, Lucknow, ordering absolute confiscation of the gold bars weighing 3.5 Kgs. and valued at Rs.1,03,25,000/- in terms of the provisions of section 111(d) and section 111 (1) of the Customs Act 1962. He further imposed penalty of Rs.7,00,000/- each on Smt.Disha Tulsiani and Sri Nirmal Tulsiani and of Rs.5,00,000/- on Sri Ashok Kumar Tahlani under section 112 of the Customs Act, 1962.

4. The said order of the Additional Commissioner was appealed against by the appellants before Commissioner(Appeals). The appellate authority held that inasmuch as the appellants could not produce the legal documents for import of the gold in question, the same has to be held as a smuggled gold. However, by referring to various decisions of the higher courts, he observed that since gold is not a prohibited item and is importable on payment of duty of customs, the absolute confiscation of the same cannot be upheld. Accordingly he held that the appellants have to be given an option to redeem the same on payment of redemption fine in terms of the provisions of section 125(2) of the Customs Act. Accordingly he converted the absolute confiscation with an option to the appellant to redeem the same on payment of

redemption fine of Rs.20.00 lakhs and on payment of the applicable duty. As regards penalties imposed upon all the three appellants, he maintained the order of the original adjudicating authority.

5. The said order of Commissioner(Appeals) stand appealed against by the appellants. Revenue is also in appeal against that part of the order vide which the absolute confiscation stand converted into option to redeem the same.

6. After hearing both sides duly represented by Shri Aneesh Mittal, learned Advocate along with Shri Ashish Bansal, learned Advocate and Shri Akash Garg, learned Advocate for the appellants and Shri Sandeep Kumar Singh, learned Dy.Commissioner (A.R.) for the Revenue, we find that the gold bars in question were originally recovered by the Income Tax authorities during the operation of the bank locker belonging to Smt.Disha Tulsiani and Sri Nirmal Tulsiani. It is also on record that the said two appellants, even before the operation of the said locker by Assistant Director, Income Tax, produced the photocopy of the front page of the Will dated 3 April 2005 of her grand-mother Smt.Dadan Devi. The Appellants' case right from the beginning of the proceedings before the Income Tax authorities as also before the DRI and the adjudication proceedings has been that the gold bars in question represented the legacy of Smt.Disha Tulsiani's grandmother and were given to Smt.Disha Tulsiani by her grandmother vide Will dated 3 April 2005 wherein Smt.Disha Tulsiani's father Sri Ashok Kumar Tahlani was appointed as the executor of the Will. It is after the death of her grandmother on 29 July 2910 that the Will was executed by her father and the bars in question were handed over to them.

7. As such the entire dispute in the present appeal revolves around the said Will produced by the appellants at the very first instance of operation of lockers by the Income Tax authorities. We have seen the said Will, which bears the signatures of Smt.Dadan Devi as also of the appellants. On going through the same we find tha the same stands executed by Smt.Dadan Devi, wife of Late Shri Parmanand Tahlani. After giving details of her family, it stands stated in the said Will that

Smt.Dadan Devi is in ownership and possession of immovable and immovable property of her husband and holds in trust three bars of bullion of 1 kg. each as has been left by her husband with the direction that the same be handed over to their grandchildren. As such, it stands mentioned that the gold bullion weighing 3 kgs. is being given to her grand-daughter Smt.Disha Tulsiani in view of the last wishes of her husband. One gold bar of 1 kg. shall belong to her grand-daughter Chetna, who is now known as Smt.Disha Tulsiani; anther gold bar weighing 1 kg. is meant for being given as gift to Smt.Disha Tulsiani's son at the time of his marriage and the third gold bar should be given to Sri Nirmal Tulsiani, husband of Smt.Disha Tulsiani. The said Will is Notarized by the Notary and stand probated n the court of District Delegate Civil/Senior Division, Alipore.

8. Though the said Will was produced by the appellant before the Income Tax authorities at the time of operation of their bank locker as also before the DRI authorities and it has been the appellants' case throughout the adjudication that the gold bars in question stand given to them by her grandmother by way of Will which stand executed by their father Sri Ashok Kumar Tahlani subsequent to the death of her grand-mother. Revenue has not accepted the said Will as genuine on some technical and procedural grounds. As the appellant could not produce the original copy of the Will dated 3 April 2005 their claim of receipt of goods have not been held to be covered by the said Will. The appellants have submitted that the original copy of the Will is required at the time of execution as also needed time and again by the executor for effectuating the Will and discharge of the obligation that had been fastened by the attester. Even for the purpose of seeking probate the original is required. They have contested that mere non-production of the original copy of the Will, will not turn the same into futile document.

Further the authorities have objected to the fact that Sl.No. etc. on the same have not been mentioned. The appellants' submission is that the Will was drafted on 3 April 2005 and at that time there was no system evolved by the Security Press of the Govt. of India to put serial numbers on the stamps. Thus non-mention of serial number on the same on which the Will had been executed, has no bearing on the issue of genuineness and authenticity of the Will.

The Revenue has also objected that at the time of production of front page of the Will before the Income Tax authorities, there was no endorsement on the back side of the stamp paper showing various details. Subsequently the appellants have produced a photocopy of the full Will along with back sides wherein all the details i.e. date of purchase, name of the purchaser etc. stand given.

Similarly the Revenue's objection is that the Will is not registered. The appellants contention is that Will does not require any registration under the Registration Act and the same was Notarized as is clear from the stamp of the Notary Public, who is an officer of the court.

Revenue has further sought to dislodge the appellant's claim of having received the gold bars under the said Will by submitting that she has not filed any Wealth Tax returns. Smt.Disha Tulsiani contended that as she was not lone beneficiary of the Will, she was under no obligation to file the Wealth Tax returns.

Revenue has further observed that the make of the gold bars in question is in respect of those manufacturers who were not in existence during the time of execution of the Will as they were launched in India subsequently. The appellant's stand is that there is no mention of any make or other details about the gold bars in the Will which was executed in the year 2005 and it was only subsequently on the death of the grandmother in the year 2010 that the said bars were handed over to them. It is quite common nature of any human being to exchange the goods with the new arrivals in the market and may be that Smt.Dadan Devi had exchanged the old bars with the new bars.

9. No doubt that gold is specified item in terms of the provisions of section 123 of the Customs Act and the onus to prove that the foreign origin gold, found in possession of any person, was legally imported by them is on the possessor. In the present case, the appellants have

contended that the gold bars in question were possessed by them as a result of execution of the Will by her grandmother, after her death in the year 2010. Revenue has tried to find some holes in the said Will to discard the same and to cast the onus on the appellants to prove the licit receipt of the gold bars. We note that the Will executed by the grandmother carries her signatures along with signatures of the beneficiaries and the executor Shri Ashok Kumar Tahlani. The said Will which was executed in the year 2005 was duly Notarized and stand probated also. Revenue has not established that the Will produced before them was a fraud or a fake document. Except referring to the fact that original copy of the Will was not produced and there was no stamp number on the stamp paper etc., they have not, by concrete evidence, proved that the Will produced before the authorities was a fabricated one. No investigations, no enquiries stand made from the Notary, who Notarized the Will or from the office of the District Magistrate, where the same was probated. As such we are of the view that Revenue's endeavor to discard the said Will without the production of any evidence to establish the same as a fraudulent document, cannot be appreciated.

Similarly we find ourselves in favour of the appellants that the gold bars in question, which were originally mentioned in the Will, without giving any details, might have been exchanged by her grandmother. There was no requirement to amend the specifications of the gold bar in the old Will inasmuch as no specifications, in any case, were mentioned in the original Will. We also note that apart from the said gold bars, Revenue has not found any other gold bars from the possession of the appellant. If the gold bars mentioned in the Will of Smt.Dadan Devi were not the one which stand seized and confiscated by the officers, then the authorities would have found another set of three gold bars from the appellants' possession.

10. In view of the foregoing, having held that the gold in question were possessed by the appellants as a result of the legacy transferred to the appellants by Smt.Disha Tulsiani's grandmother through her Will,

it cannot be held that the goods in question were smuggled items. In such a scenario, the confiscation of the same or imposition of penalties upon the appellants cannot be held to be sustainable. Accordingly the same are set aside and all the three appeals are allowed.

11. Inasmuch as the appellants' appeals have been allowed, the Revenue's appeals which are only against conversion of absolute confiscation into option of redemption, no longer survives. Accordingly the same are rejected.

(Order pronounced in the open court on 12.07.2019.)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

SD/

(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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