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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 27/12/2017

To
Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/71936/2017-SM[BR] dated 08/12/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the **Customs Act, 1962.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/53996/2014	**Sangeeeta Maheshwari** W/o Sh. Prabhat Maheshwari, A-49y Ashok Nagar, GHAZIBAD UP 201-00
		Name and Address of Respondent
2		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Copy To
3Advocate(s) / Consultant(s):

**Ms. Stuti Saggi ADVOCATES(ALLD)
102, MAHALAXMI ENCLAVE (ADJ. INCOME TAX OFFICE), STANLEY ROAD, CIVIL LINES, ALLAHABAD (U.P.)-211001**

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

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

APPEAL No. C/53996/2014-CU[SM]

(Arising out of Order-in-Appeal No. GZB-EXCUS-000-APP-263-13-14 dated 28/03/2014 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Ghaziabad)

Smt. Sangeeta Maheshwari — **Appellant**

Vs.

Commissioner of Customs & Central Excise, Ghaziabad — **Respondent**

Appearance:

Ms. Stuti Saggi (Advocate) — for Appellant
Shri Pawan Kumar Singh (Supdt.) AR — for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 08/12/2017
Date of Decision : 08/12/2017

FINAL ORDER NO- 71936/2017

Per: Anil Choudhary

This appeal is against Order-in-Appeal passed by the Commissioner (Appeals) Customs & Central Excise, Ghaziabad, being order dated 28th March, 2014, whereby he has been pleased to confirm the Order-in-Original, confiscating the two gold bars seized from the locker of the appellant on 22nd February, 2005, absolutely, along with penalty of Rs.25,000/- under Section 112 of the Customs Act for illegal possession of gold.

2. The brief facts as per the show cause notice issued in December, 2005 are that there was a search proceeding conducted by Central Excise Officers, Ghaziabad on 3rd February, 2005 at the residential premises of Shri B.K. Lakhotia (Director of M/s Rathi Industries Ltd., Ghaziabad) located at A-49Y, Ashok Nagar, Ghaziabad. A Bank passbook having an Account No.7135 of Oriental Bank of Commerce, Nasirpur, Branch Ghaziabad, in the name of Smt. Sangeeta Maheshwari (appellant) was found. In the said passbook there was a reference of one Locker No.620. The said locker was identified by the officers and sealed. Thereafter the said locker was opened under Panchnama proceedings on 22nd February, 2005 in presence of the appellant and witnesses. In the said locker some cash was found and gold jewellery and two gold bars – biscuits having foreign marking respectively. Statement of appellant - Smt. Sangeeta Maheshwari was recorded under Section 14 of the Central Excise Act on the same day, wherein, she deposed that jewellery was received by her during marriage and that two gold biscuits/bars were gifted to her by her late mother before her death in the year 1997. Subsequently the appellant vide her letter dated 25/02/2005 addressed to the Assistant Commissioner (A.E.) enclosed a copy of bill No.114 dated 26th December, 1996 of M/s R.D. Jewelers, Mumbai, as the documentary evidence of purchase of the said two gold biscuits by her late mother. The said bill of R.D. Jewellers, was referred to Commissioner of Customs &

Central Excise Commissionerate Mumbai for verification. The verification report was received to the effect that the BST No. and CST No. with effect from 27th July, 1993 printed on the bill was allotted by Bombay Sales Tax Department to the said M/s R.D. Jewelers, 95, Dr. Atmaram Merchant Road, Labh Niwas, 1st Floor, opposite Anantwadi, Mumbai-02. However, BST No.1S/6278 with effect from 1st April, 1996, which was endorsed on the subject bill with rubber stamp was allotted by Sales Tax Department to a firm namely – M/s Raj Enterprises, Bhuleshwar, Bombay-02. That RC of CST No.400002/C/5772 is not in existence. Enquiry was also made with the landlord of 'Labh Niwas', Shri Kirti J. Ambani, who in his statement dated 5th May, 2005, inter-Alia stated that they did not have any tenant by the name of R.D. Jewelers on the 1st Floor of 'Labh Niwas Building' at any point of time. The said to gold biscuits each weighing 116.75gms embossed with foreign markings "Johnson Mathew London, 9990" and "Rand Refinery 9990" and valued at Rs.71,801/- were seized by the Central Excise officers under Section 110 of the Customs Act, under the reasonable belief that the said gold bars – biscuits were illegally imported into the country in violation of the Customs Act, 1962 and hence liable for confiscation. The said two gold bars were seized under the Panchnama dated 09/08/2005 (detained on 22/02/2005) and were taken into possession by the Central Excise Officers. Thereafter, show cause notice No.22/2005 dated

29/12/2005 was issued to Smt. Sangeeta Maheshwari by the Assistant Commissioner (A.E.), Customs & Central Excise, Ghaziabad. Requiring to show cause as to why – the two seized gold bars embossed with foreign markings should not be confiscated under Section 111 of the Customs Act, 1962 and why not penalty be imposed upon her under Section 112 of the Customs Act.

3. The appellant appeared and contested the SCN by filing reply dated 11/07/2013, *inter alia* stating that the adjudication process initiated vide SCN are time barred patently in view of the Board Circular No.3/2007-CUS dated 10th January, 2007, inasmuch as the adjudication was not done within the time stipulated by the said Circular, (6 months of detention). As such the proceedings are without jurisdiction as the said Circular is binding on the Revenue Authorities. It is further stated that the whole proceedings are vitiated as no search warrant was issued by the competent authority authorising the search of the Locker No.620 with Oriental Bank of Commerce Nasirpur Branch Ghaziabad held by the appellant – Smt. Sangeeta Maheshwari, as is evident from the facts recorded in the Panchnama dated 3rd February, 2005, drawn at the time of search at the residential premises of Shri B.K. Lakhotia Director of M/s Rathi Industries Ltd., who happens to be father-in-law of the appellant. It was further stated that from the Bank passbook recovered belonging to the appellant, who was staying in the house

premises belonging to her father-in-law, which indicated that she was holding the Locker No.620, there was no material before the Authority to seize her locker in absence of any search warrant - Panchnama proceedings under the provisions of the Central Excise law or the Customs Act. Hence, the Assistant Commissioner (A.E.) neither had any material before him to form reason to believe, nor recorded any reason to believe before authorizing the search in respect of Locker No.620, directions were given on telephone itself to his subordinate officers who were conducting search at the residence of Shri B.K. Lakhotia. It was also stated that the appellant by her letter dated 07/02/2005 had immediately lodged her objection with the Department to withdraw the sealing/prohibition from operating of saving bank account and the locker. Reliance was also placed on the ruling of Hon'ble Supreme Court in S.N. Mukherji versus Union of India 4 SSC (594) 614 where it is held that the object under the Rules of natural Justice is to prevent miscarriage of Justice and secure fair play in administrative action. The requirement as regards recording of reason for the decision by an administrative authority in exercising quasi judicial function is to achieve the objects of fair play.

4. It was further pointed out that at the time of Panchnama proceedings of the locker, the appellant had explained the source of acquisition of the two gold biscuits/bars as having been received from her late mother.

Further, she also produced the purchase invoice issued by R.D. Jewelers, Bombay (now Mumbai) which certified that her late mother – Smt. Meena Devi Kabra had purchased two gold bars/biscuits on 26/12/1996. Further, the existence of the said R.D. Jewelers have been certified by the Bombay Sales Tax Department as it evident from the report of Smt. A.D. Deo, Joint Director, Computer Section, Sales Tax Department Mazgaon, Mumbai-10, dated 21/04/2005. Accordingly, appellant have discharged onus under Section 123 of the Customs Act and as such no adverse inference was called for.

5. The SCN was adjudicated vide Order-in-Original dated 31/07/2013 confiscating the two gold bars in question without giving any option to redeem and further penalty was imposed of Rs.25,000/- under Section 112 of the Customs Act. Being aggrieved the appellant preferred appeal before Learned Commissioner (Appeals) who vide the impugned order was pleased to reject the appeal.

6. The Learned Counsel for the Appellant have taken me through the copy of the RUDs and also reiterated her submissions and grounds of appeal. She further emphasizes that the appellant have discharged her onus as required under law under Section 123 of the Customs Act and as such the order of confiscation and penalty is bad. She further said that the whole proceedings are on abuse of law, there being no warrant of search against the appellant and neither any gold biscuits/bars in question, were found during the course

of search in the residential premises of Shri B.K. Lakhotia. Accordingly, she prays for allowing the appeal with consequential benefits.

7. The Learned A.R. for Revenue have relied on the findings in the impugned order.

8. Having considered the rival contentions and perusal of the records, I find that the seizure of the gold biscuits and the subsequent proceedings are prima facie vitiated, there being no warrant of search in the name of the appellant. Further, it is apparent from the record that no reason was recorded against the appellant for any alleged evasion of Central Excise duty or evasion of any Customs duty. Further, I find that the appellant at the time of Panchnama proceedings on locker, in the statement recorded on the spot, have stated categorically that the two gold bars/biscuits had been gifted or received by her from her late mother. Further, within a few days thereafter (less than a week), she has produced the copy of purchase/sale Bill No.114 dated 26/12/1996 issued by R.D. Jewellers, Bombay, evidencing sale of the two gold bars to her late mother Smt. Meena Devi Kabra, resident at "NPO Bawariya, district Howrah, West Bengal". Further, I find that in the course of enquiry the said R.D. Jewelers was found to be in existence and also registered with the Sales Tax Department. Further, I hold that the statement of the landlord of 'Labh Nivas' Shri Kirti J. Ambani is not reliable and have got no evidentiary value as the same is apparently

not based on any records, as regards tenancy about 20 years back and further the said Shri Kirti J. Ambani was never produced for examination and cross-examination in the adjudication proceedings. In this view of the matter, I hold that the appellant have discharged the onus as required under Section 123 of the Customs Act, 1962. Accordingly, I set aside the order of confiscation and penalty against the appellant.

9. The appellant shall be entitled by way of consequential relief, the return of her two gold bars from the Department forthwith or within a period of 60 days from the date of receipt of a copy of this order.

(Dictated & Pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

Lks

प्रमाणित प्रति/Certified True Copy
29/01/18

38, M. G. MARG,ALLAHABAD-211001