CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/20673/2017-SM

[Arising out of Order-in-Appeal No. 210/2016-17 dt. 20/01/2017 passed by CC(Appeals), Cochin]

Shri Mohamed Sageer	Appellant(s)
Versus	
Commissioner Of Customs, Cochin	Respondent(s)

Appearance:

Shri P.A. Augustine, Advocate	For the Appellant
Dr. J. Harish, Dy. Commissioner(AR)	For the Respondent

Date of Hearing: 20/09/2017
Date of Decision: …………………

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dt. 20/01/2017 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant arrived at Cochin International Airport from Sharjah by Flight No.IX 412 on 12/02/2015. He was carrying two pieces of hand baggage after immigration clearance collected one piece of checked-in-baggage from

conveyor belt and passed through the green channel in his attempt to get out of the Arrival Hall. While the appellant reached the exit gate of the Customs arrival hall, he was intercepted by the Customs officers and asked whether he had any dutiable / contraband goods to which the passenger replied in the negative. The customs disembarkation card of the passenger had nil declaration. On reasonable belief that the passenger was carrying some dutiable / contraband goods in his person which is liable for confiscation under the provisions of Customs Act, the appellant was searched in the presence of witnesses. The zipper bag was examined and some fruit stuff was found along with cosmetics, perfumes and used cloth. In his personal search, it was found that the appellant had concealed 4 while coloured heavy packets inside the dark grey coloured socks worn by him. The officers recovered the said four white coloured packets from the passenger and examined the same and found that 6 yellow metallic bars which appeared to be made of gold was wrapped in tissue paper and covered with white adhesive tape. The officers called gold assayer for examination who after examining the same certified that 6 gold bars were of 24 carat pure gold totally weighing 699.600 gms and totally valued at Rs.18,00,028.80 and Rs.19,36,493/- (market value). The appellant was asked to produce the documents that would prove the licit purchase and import of 6 gold bars. But the appellant expressed his inability to do so. Thereafter the gold bars were sealed with Customs seal in the presence of witnesses. Thereafter the statement of the appellant under the provisions of Section 108 of the Customs Act, 1962 was recorded by the Superintendent of Customs wherein he has stated that one month ago a person by name Habeeb came to his office and offered him a proposal to visit Dubai and also made arrangement for his travel and on his return, the appellant was asked to carry the gold for Habeeb for which Habeeb has offered him Rs.25,000/- in addition to the travel arrangement expenses. He also admitted that he indulged in the smuggling activity because of his eagerness to visit Dubai and financial reward offered by Habeeb and further that he was under the impression that the gold bars will not be detected by the Customs officers. Thereafter after following the due process, a show-cause notice was issued to him and after following due process, the Additional Commissioner by detailed reasoned order has ordered for absolute confiscation of the 6 gold bars under Section 111(d), 111(i), 111(j) 111(l) and 111(m) of the Customs Act and also confiscated other materials and also imposed a penalty of Rs.1,50,000/- on the appellant under Section 112(a) and 112(b) of the Customs Act for the acts and omissions which rendered the gold bars liable for confiscation. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) who upheld the Order-in-Original and rejected the appeal of the appellant. Hence the present appeal.

23. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without considering the facts and the law in right perspective. He further submitted that the appellant did not indulge in smuggling. He also submitted that the appellant purchased some gold as an investment and was returning to India but he was not allowed to make declaration before the Customs

authorities regarding the import of the gold. He further submitted that the gold brought by the appellant is not falling under the category of prohibited goods and therefore as per Section 125 of the Customs Act, 1962, it is not liable for absolute confiscation. He further submitted that whenever any confiscation of the goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit. He further submitted that even if the gold biscuits are liable for confiscation, it is not liable for absolute confiscation. It is his further submission that at the material time gold biscuit was a canalized item and would have been imported by certain agencies and it was not a prohibited item. In support of his submission, he relied upon the decision of the Andhra Pradesh High Court in the case of Shaikh Jamal Basha Vs. GOI [1997(91) ELT 277 (AP)] wherein the High Court has held as under:-

> *3. … …. Hence gold in the form other than ornaments is entitled to be imported on payment of duty. Attempt to import gold unauthorisedly will thus come under the second part of Section 125 (1) of the Act where the adjudging officer is under mandatory duty to give option to the person found guilty to pay (fine) in lieu of confiscation. Section 125 of the Act leaves option to the officer to grant the benefit or not so far as goods whose import is prohibited but no such option is available in respect of goods which can be imported, but because of the method of importation adopted, become liable for confiscation. …. …..*

He also relied upon the following decisions:-

i. Shabir Ahmed Abdul Rehman Vs. GOI [2009(235) ELT 402 (Bom.)]
ii. CC, Preventive Vs. Uma Shankar Verma [2000(120) ELT 322 (Cal.)]
iii. Suresh Bhosle Vs. CC Preventive [2009(246) ELT 77 (Cal.)]

4. He further submitted that in the absence of any specified reason as required under Section 125(1), absolute confiscation is not proper. He has also cited the following decisions to canvass that the seized gold biscuits are required to be redeemed on payment of redemption fine considering the market value of the goods:-

i. K.V. Rajagopal [2007(220) ELT 898]
ii. Krishnakumari [2008(229) ELT 222]
iii. Shabir Ahmed [2009(235) ELT 402]

5. On the other hand, learned AR supported the impugned order and submitted that it is a case of smuggling of gold without any authorization and the gold bars are liable to be confiscated and both the authorities have ordered for absolute confiscation. He further submitted that on his arrival the appellant has filled the India customs declaration form wherein he has stated 'nil' as declaration. Further appellant was trying to exit from the green channel without making any declaration and he was intercepted by the customs officers and he was asked whether he was carrying any dutiable or contraband goods to which he replied in negative. He further submitted that on his personal search, the gold was concealed inside the dark read coloured socks worn by him. He also submitted that the appellant in his statement under Section 108 of the Customs Act has clearly admitted that he was carrying the gold for one Mr. Habeeb who has

agreed him to pay Rs.25,000/- in addition to his travel expenses. The learned AR further submitted that in view of his clear admission that he was carrying for one Mr. Habeeb and his clear admission that he indulged in smuggling of gold and the gold brought to India unlawfully. The learned AR relied upon the following decisions in support of his submissions:-

i. CC(AIR), Chennai-I Vs. P Sinnasamy [2016(344) ELT 1154 (Mad.)]
ii. Om Prakash Bhatia Vs. CC, Delhi [2003(155) ELT 423 (SC)]
iii. Malabar Diamond Gallery P. Ltd. Vs. ADG, DRI, Chennai [2016(341) ELT 65 (Mad.)]
iv. Abdul Razak Vs. UOI [2012(275) ELT 300 (Ker.)]

6. After considering the submissions of both the parties and perusal of material on record, I find that the appellant vide his statement under Section 108 of Customs Act, 1962 has conceded that he brought the gold bars for one Mr. Habeeb who has paid him Rs.25,000/- in addition to his travel expenses. Further I find that in the case set up by the appellant, he has stated that he brought the gold as an investment from his funds as well as funds given by his friends. Further I find that appellant was searched in the presence of the Gazetted officers and he was found concealed this gold bars in his socks which he was wearing and was trying to exit from the green channel without any declaration. Further I find that the statement made under Section 108 of Customs Act, 1962 by the appellant has not been retracted till now. Further I find that the appellant has failed to discharge the burden of proof that the gold is licit. Further I find that in the case of Md. Akhtar Vs. CCE,C&ST, Patna [2015(323) ELT 136 (Pat.)], the Hon'ble High Court of Patna has observed that the statement made by the persons under the provisions of Section 108 of the

Customs Act are admissible as evidence and the conclusion of culpability can be based on such statements. This has been so held in the following decisions:-

i. Naresh J. Sukhawni Vs. UOI [1996(83) ELT 258]
ii. Kanhaiyalal Vs. UOI [2008(4 SCC 668]
iii. CC Vs. D. Bhoormull [1983 (13) ELT 1546 (SC)]
iv. CC Vs. Ghanshyam Pd. Gupta [2010(3) PLJR 343]

7. Further in the customs declaration, the appellant has stated as 'nil' which means that he had nothing to declare. In view of the cogent and convincing evidences against the appellant regarding the smuggling of the gold bars, I am of the considered view that there is no infirmity in the impugned order which is upheld by dismissing the appeal of the appellant. As far as imposition of penalty of Rs.1,50,000/- on the appellant for his acts and omission, I find that the same is on the higher side and I reduce it to Rs.50,000/- (Rupees fifty thousand only) under Section 112(a) and Section 112(b) of the Customs Act, 1962.

8. Appeal is dismissed but for reduction in penalty.

(Pronounced on ....)

S.S GARG
JUDICIAL MEMBER

Raja...