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

Appeal(s) Involved:

C/20929/2018-SM; C/CO/21276/2018

[Arising out of Order-in-Appeal No. 1019/2017 dated 15/12/2017 passed by Commissioner of CUSTOMS , BANGALORE-I(Appeal)]

Shamsheena Mohammed Shihavudheen W/o Mohammed Shihavudheen Chyekkaran Rashida Manzil Xxii/24 Ajanur Grama Panchayat North Chittari Kasargod KERALA KERALA 671316	Appellant(s)

Versus

C.C-Mangalore-cus NEW CUSTOMS HOUSE PANAMBUR MANGALORE KARNATAKA 575010	Respondent(s)

Appearance:

Shri ROHIT R / SRINATH S SUBRAMANIAN , Advocates	For the Appellant
Shri P. Gopakumar, Jt. Commissioner(AR)	For the Respondent

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

Date of Hearing: 01/08/2019
Date of Decision:26/11/2019

Final Order No. 21055 /2019

Per : S.S GARG

The present appeal is directed against the impugned order dt. 15/12/2017 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original.

2. Briefly the facts of the present case are that the appellant, an Indian citizen holding passport bearing No.K6695721, while arriving into India at Mangalore International Airport from Dubai (Air India Express flight No.IX814) on 03/02/2016 was found to be in possession of two small chains, one big chain and two bangles, all secreted in her person inside clothes worn by the appellant. All the impugned goods were yellow metal in colour and in crude form. They were confirmed as Gold of 24 carat totally weighing 583.180 grams and totally valued at Rs.15,74,586/- (at the market rate). The said Gold was undeclared and was attempted to be smuggled into India by the appellant for her unjust and illicit gain. The impugned Gold was seized under Section 110 of Customs Act, 1962 (the Act, for short) after being approved by approved Gold appraiser / valuer, under a report dated 03/02/2016 read with statement of the appellant also dt. 03/02/2016 wherein the appellant admitted the guilt and factum of concealment. The appellant has admitted that she smuggled such Gold for her elder brother's daughter as a wedding gift. The original authority culminated the proceeding vide OIO No.02/2017 – ADC dt. 08/02/2017 wherein the smuggled gold valued at Rs.15,74,586/- was absolutely confiscated under Section 111(d), 111(i), 111(l) and 111(m) of the Act and imposed a penalty of Rs.4,50,000/- under Section 112(a) and Rs.2,00,000/- under Section 114AA of the Act on the appellant for contravention of Section 2(33), Section 2(39), Section 77, Section 123 and Section 123(2) of the Act and Notification No.12/2012-Cus dt. 16/03/2012 read with Notification No.26/2012 dt. 18/04/2012 and Board Circular No.06/2014 dt. 06/02/2014, Para 3(3) of the Foreign Trade (Development of Regulations) Act, 1992 coupled with Foreign Trade (Regulation) Rules, 1993. Aggrieved by the Order-in-Original, appellant filed appeal before the Commissioner(Appeals) who rejected the same. Hence the present appeal. The Revenue has also filed Cross-objections before this Tribunal.

3. Heard both sides and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedent. He further submitted that the only objection raised by the respondent in their Cross-objections is that the appeal is not maintainable under Section 129(A) of the Act because the confiscated goods have been recovered from the baggage of passenger. It is further the contention of the respondent that the remedy available to the appellant is not under Section 129(A)(1) but under Section 129DD by way of revision. He further submitted that this objection of the Revenue is not sustainable in law in view of the fact recorded by the original authority that the appellant was not in possession of no checked-in baggage but was found to be carrying a brown coloured hand bag and one duty free polythene cover as accompanied baggage. Further on examination of said baggage, it was found to contain nothing objectionable but only personal effects. Therefore, the contention raised by the respondent that the confiscated goods are recovered as baggage is factually incorrect. In support of his submission, he relied upon the decision of Kerala High Court in the case of Vigneswaran Sethuraman Vs. UOI & another [2014(2) KHC 448] wherein the Hon'ble High Court has held that gold ornaments worn by a person is not a baggage and it does not require declaration under Section 77 of the Act. He further submitted that as per Section 77, the owner of any baggage shall for the purpose of clearing it make a declaration of its contents to the proper officer. He further submitted that it was the duty of the Customs to make aware of the public regarding the prohibitions for bringing the gold and human body cannot be considered as a baggage. He further submitted that the appellant was wearing gold ornaments inside her burka and as per their religious customs and belief, the appellant does not believe in showing of the ornaments to the public. He also submitted that appellant has already paid the amount of Rs.2,25,000/- and thereafter

the passport of the appellant was released.

5. On the other hand, the learned AR defended the impugned order and submitted that the appellant was wearing the gold and the same was not declared and on her personal search, it was found that she was wearing (a) two numbers of small chain shaped gold objects in crude unfinished form – 117.530 grams; (b) two numbers of bangle shaped gold objects in crude unfinished form – 115.730 grams; and (c) one number of big chain shaped gold object in crude unfinished form – 349.920 grams. He further submitted that she tried to pass through the Green Channel and on her personal search, it was detected and the same was valued at Rs.15,74,586/-. He further submitted that the appellant did not produce any documents evidencing the purchase of the aforesaid gold ornaments of the shape of crude chains and bangle in unfinished form recovered from her possession. He further submitted that in her statement made under Section 108 of the Act, she admitted that the gold objects purchased by her did not have any sign or mark. She also admitted that she did not possess any document justifying the purchasing of the said ornaments which is of 24 carat purity. She also admitted that she had concealed the said gold ornaments on her person underneath the burka worn by her with intention to evade duty. The learned AR further submitted that the case of the appellant is not covered by the Notification No.12/2012-Cus. dt. 17/03/2012. He further submitted that the gold objects were smuggled into India by the appellant by way of concealment on her person which clearly proves the non-bona fide nature of her baggage. He further submitted that the goods are smuggled as per Section 2(39) of the Act and it is prohibited in terms of Section 2(33) of the Act and the original authority had discussed in detail the entire evidence and the circumstances leading to the detention of the gold ornaments. He also relied upon the following decisions:-

i. Om Prakash Bhatia Vs. CC, Delhi [2003(155) ELT 423 (SC)
ii. Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta & others [1983(13) ELT 1439 (SC)]
iii. Samayanathan Murugesan Vs. Commissioner [2010(254) ELT A15 (SC)]
iv. CC(AIR), Chennai Vs. Samayanathan Murugesan [2009(247) ELT 21 (Mad.)

6.1. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant was wearing two numbers of small chain and 2 bangles of gold and one big chain totally weighing 583.18o grams valued at Rs.15,74,586/- of 24 carat purity gold which she did not declare on arrival at Mangalore Airport. On suspicion, she was searched and then it was found that she was wearing these gold chains and bangles concealed under the burka which she was wearing. In her statement, she has confessed that she was not aware that she was supposed to declare the gold and the ornaments. Further I find that the original authority has discussed in detail the facts of the case and has arrived at a finding that the appellant has indulged in smuggling and has confiscated the unfinished gold, totally weighing 583.18 grams seized from the possession of the appellant under 111(d), 111(i), 111(l) and 111(m) of the Act and also imposed penalty of Rs.4,50,000/- on the appellant under Section 112(a) of the Act for her omission and acts rendering the goods liable for confiscation under Section 111 of the Act and also imposed penalty of Rs.2 lakhs in terms of Section 114AA for having made false declaration under Section 77 of the Act. Further I find that the Commissioner(Appeals) has also discussed the defence of the appellant and upheld the Order-in-Original. It is pertinent to reproduce para 9 and 12 of the impugned order, which are as under:-

> *9. Further, it is seen that the appellant has not retracted her statement. By looking into the overall facts and proceedings deliberate upon, it is fully established without an iota of doubt that the appellant attempted to smuggle the impugned gold without declaring it to the Customs authorities, which is of 24*

carat and in form of small and big chains and bangles transacted for illicit gain by way of ingenious concealment. The appellant's intention to defraud the exchequer and evade payment of duty for her illegitimate gain is explicit and the same could not have surfaced but for Departmental intervention. The defense of ignorance of law or quantum has no bearing in mitigating the offence committed by the appellant. Further, the impugned goods attempted to be smuggled into India is liable for confiscation under Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962 read with Section 3(3) of Foreign Trade (Development and Regulation) Act, 1992 and rules made there under. The appellant has also rendered herself to penal action under Section 112 and Section 114AA of the Act for his illicit act of omission and commission. The defense made by the appellant is an afterthought and untrue.

12. I find that in view of overall circumstances of the case and considering the nature of concealment, purity of gold, status/antecedent of appellant, mode of carriage etc., her culpable statement admitting the guilt. The intent to smuggle gold to defraud the exchequer from its legitimate claim is clearly established and appellant is liable for the penal consequences along with absolute confiscation of gold for alleged contravention of Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992. The defense put forth by appellant now is an afterthought without any basis.

6.2. As far as imposition of penalty under Section 112 and Section 114AA of the Act, I find that imposition of penalty under Section 77 is not sustainable in law because Section 77 is applicable only when passenger fails to declare in his baggage any goods which is liable to confiscation whereas in the present case, it is on record that nothing objectionable was found in her baggage and it is only on a person gold ornaments were secreted. Therefore I set aside the penalty imposed under Section 114AA. As far as penalty under Section 112(a) of the Act is concerned, I uphold the penalty but reduce the same to Rs.2,25,000/-.

7. In view of my discussion above, I find no infirmity in the impugned order regarding the absolute confiscation of the smuggled goods but reduce the penalty to Rs.2,25,000/- (Rupees two lakhs and twenty five thousand only) under Section 112(a) of the Customs Act 1962 and drop the penalty of Rs.2,00,000/- under Section 77 of the Act. Appeal is accordingly disposed of. Cross-objections also get disposed of.

(Order was pronounced
in Open Court on **26/11/2019**)

S.S GARG
JUDICIAL MEMBER

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