CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 60042 of 2020

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-136-137-19-20 dated 08.07.2019 passed by the Commissioner (Appeals) CGST, Jammu]

Vijender Singh **......Appellant**
(House No. 87, Urban Estate Phase III
Dugri, Ludhiana, Punjab -141002)

VERSUS

Commissioner of Customs, Amritsar **......Respondent**
(Preventive Customs House, C.R. Building,
The Mall, Amritsar, Punjab)

WITH

Customs Appeal No. 60043 of 2020

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-136-137-19-20 dated 08.07.2019 passed by the Commissioner (Appeals) CGST, Jammu]

Usha Devi wife of Sh Vijender Singh **......Appellant**
(House No. 87, Urban Estate Phase III
Dugri, Ludhiana, Punjab -141002)

VERSUS

Commissioner of Customs, Amritsar **......Respondent**
(Preventive Customs House, C.R. Building,
The Mall, Amritsar, Punjab)

APPEARANCE:

Present for the Appellant: Mr. Sudhir Malhotra, Advocate

Present for the Respondent: Mr. M S Dhindsa, Authorized Representative

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 60567-60568/2021

DATE OF HEARING: 10.03.2021
DATE OF DECISION: 25.03.2021

PER ASHOK JINDAL:

The appellants are in appeal against the impugned order.

2. The facts of the case are that the appellant No.1 namely Sh. Vijender Singh was working as Superintendent in Customs Commissionerate Amritsar and was assigned the duties at counter No.1 in arrival hall of International Airport, Amritsar on 06.07.2015. On that day, there were neither any pax reported nor cleared from counter No.1, but two pieces of gold weighing 394.570 grams valued at Rs. 10,25,882/- was recovered from a Hyundai Santro car of the appellant bearing registration No. PB-02-AP-3575 parked in the arrival side staff parking area of the airport. The said gold, car and mobile phone Samsung make bearing No. 9815095357 were seized under Section 110 of the Customs Act, 1962. On search of the appellant personally and his residential premises, nothing incriminating was recovered. The gold recovered from the appellant was absolutely confiscated by the adjudicating authority under Section 111(d), (e), (j) & (l) of the Customs Act, 1962 along with packing material thereto under Section 119 of the Customs Act, 1962. The Hyundai Santro bearing registration No. PB-02-AP-3575 was also ordered absolute confiscation under Section 115(2) of the Act. A penalty of Rs. 1,00,000/- was imposed on the appellant under Section 112 of the Act, but the adjudicating authority refrained from imposing any penalty on Smt. Usha Devi (appellant No.2). The appellant challenged the order of the adjudicating authority before the ld. Commissioner (Appeals), who rejected the appeal filed by the

appellant No.1 i.e. Sh. Vijender Singh and imposed a penalty of Rs. 1,00,000/- on appellant No.2 i.e. Smt. Usha Devi. Against the said order, both the appellants are before me.

3.1 The ld. Counsel for the appellants submits that in the case of Smt. Usha Devi in Appeal No. C/60043/2020, the adjudicating authority refrained from imposing any penalty on the appellant and the said order was accepted. No appeal has been filed against the said order by the Revenue; therefore, the ld. Commissioner (Appeals) has gone beyond the scope of the appeal filed by the appellant. The appellant has challenged the adjudication only to the extent of absolute confiscation of the gold and Hyundai Santro car as both were belong to her and no show cause notice has been issued by the ld. Commissioner (Appeals) to the appellant for proposing penalty. Therefore, penalty imposed on the appellant namely Smt. Usha Devi is not sustainable.

3.2 With regard to the appeal filed by Sh. Vijender Singh, it is his submission that the impugned proceedings are bad in law and not sustainable being in defiance to the provisions of Section 155(2) of the Customs Act, 1962. In this case, the ld. appellate authority held that the provisions of Section 155(2) of the Act are not applicable as the appellant had acted in deliberate and willful defiance of the provisions of the Act. It is his submission that the appellant neither cleared any pax on 06.07.2015 nor statement of any passenger brought on records to substantiate involvement of the appellant in the alleged offence. The Department failed to appreciate that

International Airport is highly sensitize security zone and are monitored by CCTV and number of security agencies. There is neither any CCTV clip nor statement of pax nor of any security official's brought on record to substantiate involvement of the appellant in the alleged offence. Notice was issued to the appellant under Section 155 fo the Customs Act, 1962 on 06.06.2016. The said notice is not legal and hit by time bar as Section 155(2) of the Act stipulates that the officer be served a month's previous notice in writing of the intended proceedings and such proceedings shall not be commenced after expiry of three months from the accrual of cause.

3.3 In the instant case, the show cause notice was issued on 31.12.2015, whereas the notice under Section 155 was issued on 06.06.2016, which is barred by limitation, therefore, the proceedings of show cause notice under reference is bad in law.

3.4 It is further submitted that the ld. Joint Commissioner (Prev.) Customs, Amritsar vide letter dated 29.09.2016 has given clarification for issuance of notice under Section 155 of the Act vide letter dated 06.06.2016. Assumingly that the clarification given by the Department vide letter dated 29.09.2016 is correct, even than the proceedings initiated prior to issue of notice dated 06.06.2016 under Customs Act by the Department is itself barred by limitation. To support his contention, he relied on the decision of this Tribunal in the case of *CC & CE vs. Rajiv Kumar Aggarwal – 2007-TIOL-1736-CESTAT-BANG*.

3.5 He further submits that the whatsapp messages allegedly exchanged among Mobile No. 9815202128 and 9814409166 with Mobile No. 9815095357 of the appellant is a digital device. There is neither any expert opinion nor any forensic report thereto brought on record confirming whatsapp message remitted to/from Mobile No. 9815095357 nor call details from mobile company brought on record. Therefore, the appellate authority failed to appreciate that the appellant in reply to show cause notice has categorically stated that whatsapp conversation is manipulated in order-in-original. Further, in appeal before the Commissioner (Appeals), the appellant has specifically mentioned that whatsapp text message prima-facie reveals it is an cropping and it has also been mentioned that whatsapp conversation alleged in the show cause notice but no copy thereto retrieved from mobile has been brought on record. Therefore, it is submitted that entire findings are based on so called whatsapp which are said to have been retrieved from various mobile phones as mentioned in the show cause notice, but neither the said mobile phones data nor CCTV clips nor DVR were made RUD to the show cause notice by the Department nor the certificate of the person who retrieved the data brought on record. There is nothing corroborative brought on records regarding alleged whatsapp conversation. To support this, he relied on the decision of the Hon'ble Apex Court in the case of *Anvar P.V. vs. P.K. Basheer – 2017 (352) ELT 416 (SC)* to say that the method of providing the electronic evidence by referring Section 65A and 65B of the Evidence Act, 1873 and the authorities below have failed to appreciate that the electronic evidences relied upon without satisfying the requirement of Section 65A and 65B of the Evidence Act are not inadmissible evidence.

3.6 The ld. Counsel further submitted as under:

"- Modus Operandi: Concealment of gold in his person and than in his own car. <u>There is neither any statement of the appellant nor of any person regarding concealment of gold in person by the appellant and then shifting to his own car.</u>

- The airport is highly sensitive and monitored by CCTV cameras besides working of different intelligence agencies like RAW, IB, CISF, Security of Airport Authority of India etc. <u>The "staff parking outside of arrival hall" of SGRDJI Airport is also fully monitored by CCTV cameras. There are nothing brought on record that the appellant found concealing gold or moving to his Santro Car registration No. PB02-AP-3575 on 06.07.2015.</u>

- Neither pax Sh. Sushil Chauhan nor pax Sh. Davinder Kumar in their statements deposed any involvement of the appellant in their clearance from baggage hall on 06.07.2015.

- The perusal of panchnama dt. 06.07.2015 reveals that one piece of gold was having marking "EMIRATES", and an engraving of eagle (only head and wings of the eagle) and the other gold piece was having marking "GOLD" written on it. The perusal of RUD-2 further reveals that there is no mention of foreign or other marking on seized gold. Further, the inventory of goods certified by judicial magistrate 1st Class, Amritsar on 19.05.2017 also does not confirm 2 gold pieces weighing 394.57 gram were bearing any foreign market.

- The appellant was admittedly present at the place of incidence and perusal of panchnama reveals panchnama proceedings dt. 06.07.2015 was not carried out in the presence of the appellant. The appellant made specific remarks on the body of panchnama on 06.07.2015 and it reads as "I have just read no proceedings done in my presence and before me ".

- There is nothing brought on record to prove that 394.57 grams of gold recovered was of foreign origin and was brought by Pax arrived by Air India flight No IX-192 on 06.07.2015 at SGRDJI Airport. The appellant submitted that said gold belongs to his wife and was given by his father-in-law to his daughter (appellant's wife) who has expired on 04.11.2012. The statements dt. 15.07.2015, 17.07.2015 and 17.08.2015 of Usha Devi W/o appellant refers.

- The ld. Appellate Authority incorrectly ordered confiscation of impugned goods under section 111 (b) & 111 (d) of Customs Act without appreciating the facts on records.

- The penalty has been incorrectly and arbitrarily imposed without appreciating the submissions of the appellants."

4.1 On the other hand, the ld. A.R. for the Revenue submits that the possession of smuggled gold and facilitation of smuggling of gold as alleged in the show cause notice cannot be claimed as anything done or purported to be done in good faith of pursuance of the Customs Act. The period of limitation and issuance of prior notice under Section 155(2) of the Act is for initiating proceedings in respect of an officer who has acted in good faith in pursuance of the Customs Act, whereas in this case the appellant has acted in defiance and violation of the Act. To support this, he relied on the case laws *P.N. Ramaswami, J.S. Sakuntla Bai vs. Customs Inspector, Reddichavadi – 2000 (126) ELT 166 (Mad.)* and *Mukesh Gupta vs. CCE, Meerut – 2010 (261) ELT 251 (Tri. Delhi*).

4.2 He further submits that the appellant has adopted this plea that the electronic evidences relied upon without satisfying the requirement of Section 65B of Indian Evidence Act are inadmissible evidence and accordingly incorrectly relied upon. It is his submission that the modus operandi of smuggling of gold in connivance of appellant No.1 has been confirmed vide admitted statements recorded under Section 108 of the Customs Act, 1962 of Sh. Sanjeev Kumar @ Billu, Sh. Sanjeev Kumar @ Sonu, Sh. Sushil Chauhan, Sh. Davinder Kumar, Sh. Virendra Verma and others and none of the statements have been retracted. It is settled law that what is admitted need not be proved as held by the Hon'ble Supreme Court in the case of *CCE, Madras vs. Systems & Components Pvt Ltd – 2004 (165) ELT 139 (SC).* He also relied upon the following case laws:

(a) Copier Force India Ltd vs. CCE, Chennai – 2008 (231) ELT 224 (Tri. Chennai)

(b) Shri Ulaganayagi Amman Steels vs. CCE, Trichy – 2008 (231) ELT 434 (Tri. Chennai)

(c) CCE, Trichy vs. Shri Ulaganayagi Amman Steels – 2009 (241) ELT 537 (Tri. Chennai)

4.3 He further submits that the statements recorded under Section 108 of the Customs Act having evidential value as per the decision of the Hon'ble Apex Court in the case of *K.I. Pavanny vs. Asst. Coll., Cochin – 1997 (90) ELT 241 (SC).* In this regard, he relied on the following case laws:

(i) Asst. Coll. of C.E., Rajamudry vs. Duncan Agro Ind. Ltd. – 2000 (120) ELT 280 (SC)

(ii) Naresh J Sukhwani vs. UOI – 1996 (83) ELT 258 (SC)

(iii) Ramesh Chandra Mehta vs. State of West Bengal – AIR-1970-SC

(iv) Satnam Singh vs. Asst. Commr. of Customs – 2012 (275) ELT 0535 (P&H)

4.4 He further submits that as smuggled gold is notified goods in terms of Section 123 of the Customs Act, 1962, therefore, burden of proof lays on the appellant. In this regard, he relied on the following case laws:

(i) Indru Ramchand Bharvani vs. UOI – 1992 (59) ELT 201 (SC)

(ii) CC, Cochin vs. Om Prakash Khatri – 2019 (366) ELT 402 (Kerala)

(iii) CC, Kolkata vs. Sudhir Saha – 2004 (172) ELT 26 (Calcutta)

(iv) Girindra Bijoy Sahu vs. CC, West Bengal – 2001 (137) ELT 619 (Tri. Kolkata)

(v) A.S.A. Kabir vs. CC, Madras – 1997 (89) ELT 595 (Tribunal)

5. Heard the parties and considered the submissions.

6. Appeal No. C/60043/2020 – This appeal is against the imposition of penalty of Rs. 1,00,000/- on the appellant namely Smt. Usha Devi. It is a fact on record that the adjudicating authority refrained from imposing any penalty on Smt. Usha Devi and no appeal has been filed against the said order before the ld. Commissioner (Appeals) by the Revenue. In these circumstances, the ld. Commissioner (Appeals) has gone beyond his jurisdiction by imposing penalty of Rs. 1,00,000/- on the appellant, therefore, I hold that penalty on the appellant namely Smt. Usha Devi is not sustainable. Accordingly, the same is set aside and the appeal is allowed.

7. In Appeal No. C/60042/2020 – The ld. Counsel for the appellant submits that in terms of Section 155(2) of the Customs Act, 1962, a notice within three months was required to be given to the appellant of the alleged offence. Admittedly, the notice has been given to the appellant on 06.06.2016, which is beyond the time limit prescribed under Section 155 (2) of the Customs Act, 1962. Moreover, the ld. A.R. relied on the judgments in the cases of *P.N. Ramaswami, J.S.*

Sakuntla Bai (supra) and *Mukesh Gupta (supra).* In both the cases relied upon by the ld. A.R., it has been held that when there is a malafide intention of the officers, there is no requirement to issue the notice under Section 155 of the Act. If the notice under Section 155 of the Act was not required then why the notice was issued. Admittedly, no notice under Section 155 of the Act has been issued in the said cases; but in the case in hand; admittedly, a notice under Section 155 of the Act has been issued on 06.06.2016 which is highly time barred.

8. The case is based on the various statements and whatsapp messages recorded during the course of investigation. For better appreciation, the statement of the appellant is required to be taken on record and the same is extracted herein below:

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RUD-7

STATEMENT OF SH. VIJENDER SINGH, SUPERINTENDENT OF CUSTOMS, SGRDJI AIRPORT, AMRITSAR TENDERED UNDER SECTION108 OF CUSTOMS ACT,1962 ON 06.07.2015

Today on 06.07.2015, in response to your summons dated 06.07.2015 I am appearing before you to tender my statement. The provisions of Section-108 of Customs Act, 1962 have been explained to me and I know that I have to make a true and correct statement and that this statement of mine can be used against me or any other person /firm / company as an evidence in any court of law or departmental proceedings. My true and correct statement as follows:-

Q.1 Today, on 06.07.2015, Customs have recovered Gold from your vehicle No. PB02 AP-3575 (Grey Hyundai Santro), parked on the arrival side staff parking of SGRDJI Airport, Amritsar. What you have to say about it ?

Ans: In this context, I am to state that we had about 400 Gms of pure gold at home. Today I had to come at Airport on duty (day shift) and my wife had to go to attend a Kitty Party and my both sons were to go for their regular tuitions. Therefore, my wife instead of keeping at home, kept the gold in car as it was not safe to keep the same at home in the absence of all the family members. Secondly, I alongwith my wife had to go to our native place Village Mataanhail, Distt. Jhajjar, Haryana tomorrow i.e on 07.07.2015 to see my father who is seriously ill. It was also our plan to convert this gold into jewellery at our village for my niece who is of marriageable age.

Q.2 Please explain size, shape, marking and weight of the gold ?

Ans Weight of the gold is approximately 400 gms, in four pieces. I have no idea about the markings on the gold. It may be in rectangular shape. This gold was purchased by my wife and she may be aware of the actual specifications of this gold.

Typed by me
06.07.2015

Before me
6/7/15.
(J.P. Singh)
Supdt

06/07/15

12 –

Q.3 You are being shown Panchnama Dated 06.07.2015 regarding search of your vehicle bearing number PB-02-AP-3575, belonging to you. Please read it and sign it.

Ans. I have read it and signed it. I am to state that these,proceedings were not done in my presence or before me.

Q.4 Do you admit that the vehicle bearing number PB-02-AP-3575 belongs to you?

Ans. It is in my wife's name. I am submitting original Certificate of Registration and Insurance Cover dated 30.05.2015 evidencing ownership of the car in my wife Smt Usha Devi's name.

Q.5 Please explain why had you conceal the gold (which has been seized under the aforesaid Panchnama dated 06.07.2015)?

Ans. I have already explained in my answer to Q. No. 1 above.

Q.6 Do you have any papers / documents showing that the gold has been purchased / acquired by you?

Ans. Regarding this my wife may be able to explain this.

Q.7 Please explain the source of income out of which the aforesaid seized gold was purchased / acquired by you?

Ans Regarding this my wife may be able to explain this.

Q.8 Please state the name and other details of the supplier / seller of the aforesaid seized gold. The date of purchase / acquisition of gold may also be stated ?

Ans. Regarding this my wife may be able to explain this.

Q.9 Why the gold seized from your vehicle was wrapped with black masking tape and carbon paper?

Typed by me
06.07.2015

Before me
6/7/15
(J.P. Singh)
Supdt

06/07/15

11-

Ans I have no idea about this and my wife would be able to explain this.

Q.10 As per Panchnama dated 06.07.2015, the seized gold is having foreign marking and indicate that the same was smuggled into India. Please explain how did the gold has these markings, if the same was purchased by your wife from local market ?

Ans I have no idea about this and my wife would be able to explain this.

Q.11 You are hereby being shown the statement dated 06.07.2015 of Sh Ravi son of Sh Bhattu, houseboy, employee code ASR-212 of Aroon Aviation Services Pvt Ltd., New Delhi – 37 who is deployed at SGRDJI Airport wherein he has stated that you have handed him over one Samsung DUOS grey black mobile today forcibly at 1530 hrs for keeping with him with assurance that you would take back this phone from him later on. On checking, it has been found that this mobile is having SIM number 98144-93966 and Build number KTU84P.G360HDDU0AOD1. What do you have to say about this?

Ans I have seen the statement and signed on it. I have not given any mobile to this man named Ravi.

I have given the above statement voluntarily and it is my true and correct statement and nothing has been concealed therein. The above statement has been typed by Kuldip Rai, Supdt (AS) on official computer installed in Assistant Commissioner of Customs's cabin at SGRDJI Airport, Amritsar.

Typed by me
06.07.2015

Before me
6/7/15
J.P. Singh
Supdt

06/07/15

Further, the statement of Smt. Usha Devi is also relevant to the facts of this case as she claims to be the owner of the impugned gold and the same is extracted herein below:

RUD - 11

सीमा शुल्क एक्ट, 1962 की धारा 108 के तहत श्रीमति उषा देवी पत्नि श्री विजेन्द्र सिंह, निवासी मकान नं.. 53, रंजीत एन्क्लेव, पुरानी जेल रोड, नजदीक OBC Bank, अमृतसर का दिनांक 15.07.2015 को दिया गया ब्यान।

आपके द्वारा जारी किए सम्मन के तहत मैं आज दिनांक 15-07-2015 को अपना ब्यान दर्ज करवाने के लिए आपके समक्ष प्रस्तुत हुई हूँ। मुझे कस्टम एक्ट 1962 की धारा - 108 के सभी प्रावधान समझा दिये गये हैं। मुझे ज्ञात है कि मुझे बिल्कुल सही और सच्चा ब्यान देना और मेरा यह ब्यान एक सबूत के तौर पर मेरे तथा किसी अन्य व्यक्ति / फर्म / कम्पनी के खिलाफ किसी भी अदालतीय तथा विभागीय कारवाई में इस्तेमाल किया जा सकता है। मुझे यह भी मालूम है कि गलत ब्यान देना एक अपराध है जिसके लिए मुझे सजा भी हो सकती है। मेरा सही व सच्चा ब्यान निम्न प्रकार से है।

मेरी जन्म तिथि 04-10-1970 है।

2.

(12)

मेरा जन्म स्थान जोबोवा खुर्द तह बहादुरगढ़ जिला झज्जर है। B.A Fihle college से किया वैश्य कालेज बहादुरगढ़। 1992 में मेरी शादी हुई 1993 में मैं अपने पति के साथ अमृतसर में आ गई थी और तब से उनके साथ ही रह रही हूँ। मैं एक गृहणी हूँ और हमारे दो बेटे है जो पढ़ रहे है। मेरे पिता जी हेड मास्टर रिटायर हुए थे और 2012 में उनका देहान्त हो गया था मेरे दो भाई है। उनका अपना कारोबार है। एक भाई दिल्ली में एक गाँव में रहता है। मेरे पति कस्टम विभाग में अधीक्षक पद पर कार्यरत है और अमृतसर हवाई अड्डे पर पोस्टेड है।

मैं बयान करती हूँ कि दिनांक 06-07-2015 को मेरे पति ने जो बयान दिया वह बिल्कुल सत्य है। यह सोना मेरे पिता जी ने मुझे लगभग साढ़े-तीन साल पहले गिफ्ट दिया था जो कि काली टेप से लिपटा हुआ था और बताया कि चालीस तोले से लगभग आधा तोला कम

[signature] [illegible] पेज नं. 2

3.

(140)

और साथ में यह भी बताया कि यह बात
तुम परिवार के किसी भी सदस्य को नहीं
बताना है। मेरे पिता जी दमे के मरीज
थे पौने तीन साल पहले उनकी मौत हो
गई लगभग पिछले 7-8 महीनों से मेरी
माता जी कैंसर की बिमारी से पीड़ित हैं।
मेरा भाई इलाज पर बहुत पैसा लगा रहा
है। कुछ दिन पहले भाई ने मुंबई से बात
कि और पैसों की कुछ मदद के लिए
बोला मेरी आत्मा ने कहा इस तरह से
भाई की मदद भी हो जायेगी और मेरे
मन का बोझ भी हल्का हो जायेगा। क्यों
नहीं मैं पिता जी का दिया हुआ सोना
उसे दे दूं और सब सच-सच बता दूं।
लगभग पिछले 25-26 दिनों से मेरे
ससुर जी गम्भीर रूप से बीमार चल रहे
है हम उनका हाल-चाल जानने के लिए
गांव जाने की सोच रहे थे हम कभी
भी जा सकते थे. [illegible] दिनांक 25 जून-

5.

(109)

25 जून 2015 को सोना लॉकर से निकाल लिया प्रोग्राम finish नहीं बन पा रहा था इसलिए सोना घर पर ही रखा था दिनांक 06/07/2015 को मैंने बाजार से कुछ खरीदारी करनी थी और किटी पार्टी में जाना था रोजाना की तरह बच्चों ने ट्यूशन तथा कोचिंग क्लासेस में जाना था और मेरे पति कार्यालय जाना था इसलिए सुरक्षा को ध्यान में रखते हुए मैंने सोना गाड़ी में ड्राइवर सीट के दाहिने खिड़की के नीचे की पॉकेट में पुराने सफेद लिफाफे में लपेट कर रख दिया मेरे पति ड्यूटी पर उस दिन लेट हो रहे थे जल्दी में गाड़ी लेकर दफ्तर जाने लगे तब मैंने उनको बताया कि सोना गाड़ी में ही रखा है। तब उन्होंने कहा खतरे की कोई बात नहीं वहाँ गाड़ी सिक्योरिटी में खड़ी होती है। किटी पार्टी से आने बाद मैंने अपने पति से फोन पर बताया कि 07 जुलाई 2015 सुबह शताब्दी गाड़ी की टिकट पक्की हो गई है

5.

आप अपनी छुट्टी मन्जूर करवा लेना। मैं फिर
कुछ समय बाद विभाग के कुछ अधिकारी
घर पर आये उन्होंने बताया कि गाड़ी नं.
PB02AP3575 से 400 ग्राम सोना मिला
है। तब भी मैंने उनको बता दिया था
कि गाड़ी में सोना मैंने ही रखा था।

लगभग आठ-नौ साल पहले गाड़ी मेरे
पिता जी ने मेरे नाम से मुझे खरीद कर दी।
ज्यादातर गाड़ी मैं ही चलाती हूं। कभी-2
मेरे पति भी ज्यादातर लेकर चले जाते थे।

मेरा यह बयान बिल्कुल सत्य है।

बिना किसी डर, भय, दबाव व लालच के दे रही हूं
पेज नं. 2 पर मैंने लिखा कि मैं एक गृहणी हूं
गृहणी के साथ-2 मैं अपना कुछ प्राईवेट काम भी कर
रही हूं ब्लाक प्रिंटिंग व सिलाई वगैरह का काम करती
~~कि मैं उससे आयकर~~ 15/7/15 लगभग 10-12 सालों से ~~आयकर~~ 15/7/15
~~रिटर्न~~ 15/7/15 भर रही हूं।
आमदन होती है उसकी वार्षिक आयकर
रिटर्न 15/07/2015

6.

मैं आगे विनती करती हूँ कि मैं अभी आपके सवालों के जवाब देने की स्थिति में नहीं हूँ। मुझे कृपया घर जाने दिया जाये। मैं आगे के बयान के लिए दिनांक 17/07/2015 को सुबह 11 बजे आपके समक्ष प्रस्तुत हो जाऊँगी।

मैं बयान करती हूँ कि आज मेरे बयान देने के दौरान सहायक आयुक्त महोदय प्रथम दो महिला अधिकारी, श्रीमति इन्द्रजीत कौर जी व श्रीमति वीना राव, अधीक्षक मौजूद रहीं।

Before me:
(KULDIP RAI) 15/7/15
Supdt.

Devi
15/07/15

USHA DEVI
W/o SH. VIJENDER SINGH.

In my presence
15/7/15
Veena Rao
Supdt (Tech.)

In my presence.
D/Kaur 15/7/15
Inderjit Kaur
Supdt/CPC, ASR.

Further, the Revenue has relied upon the various statements of Sh. Sanjeev Kumar @ Billu, Sh. Sanjeev Kumar @ Sonu, Sh. Sushil Chauhan, Sh. Davinder Kumar and Sh. Virendra Verma. All of them in their statements have stated that the appellant was helping them for clearance of the gold, but for the gold in question which is recovered from the car parked in Airport parking, it has been categorically stated that the 400 grams of gold seized on 06.07.2015 from Sh. Vijender Singh's vehicle did not belong to them. The same has been recorded in para 8.2 of the show cause notice which is reproduced here as under:

> (viii) Further on being asked about the 400 gms of gold seized on 06.07.2015 from Vijender Singh's vehicle, he stated that this seized gold did not belong to them.

9. On going through the statement of Sh. Vijender Singh, the appellant, the statement given on the date of incident at the time of recovery of the impugned gold, the statement was recorded under Section 108 of the Customs Act, 1962 which is exculpatory. Further, the statement of Smt. Usha Devi, wife of the appellant was also recorded under Section 108 of the Customs Act, 1962 who claims to be the owner of the gold in question. In support of her statement, she has produced various corroborative evidences, but all these were discarded by the Revenue without giving in credence to them which is not correct. Further, the statements of the persons recorded under Section 108 of the Customs Act, 1962 heavily relied upon by the Revenue have stated that the 400 grams of the gold seized on 06.07.2015 from the vehicle of the appellant does not belong to them, which clearly shows that the impugned gold is otherwise belongs to the appellant. The Revenue has partly picked the statements of the third party namely Sh. Sanjeev Kumar @ Billu, Sh. Sanjeev Kumar @ Sonu, Sh. Sushil Chauhan, Sh. Davinder Kumar

and Sh. Virendra Verma to implicate the appellant in this case but as they have clearly stated that the gold in question does not belong to them and this appeal is restricted to absolute confiscation of the gold in question. Therefore, the statements given by the persons relied upon by the Revenue are also support the case of the appellant.

10. The case before me is of seizure of 394.570 grams of gold seized on 06.07.2015 from the appellant's car bearing registration No. PB-02-AP-3575 and the appellant said that the said gold does not belong to him. Further, the wife of the appellant claims the ownership of the same and the statements stated herein above, have corroborated with evidence by way of certificate issued by the bank that on 26.05.2015, she has operated the locker to take out the gold. Further, railway tickets booked on 06.07.2015 at 11:08 AM for 07.07.2015 for the departure from Amritsar to New Delhi but no credence has been given to these evidences produced by Smt. Usha Devi in her statement and the Revenue has not tried to investigate the matter for verification of the above documents. In these circumstances, benefit of doubt goes in favour of the appellant as the appellant has given the evidence that the impugned gold belongs to Smt. Usha Devi, which has been given to her by her father who has died on 04.11.2012 and the same was kept in bank locker. To give the same to her mother on 06.07.2015, she put the gold in the dash-board of the car in question with knowledge of her husband, the appellant. The said statement was also given by Smt. Usha Devi under Section 108 of the Customs Act, 1962 and the statements of the persons relied upon by the Revenue have also stated that the

impugned gold (which has been seized on 06.07.2015 from the appellant's car) does not belong to them.

11. In these circumstances, the appellant has able passed their onus of ownership acquisition of the gold in question. As the appellant has able to prove the source of acquisition of the gold in question, the same cannot be confiscated. Furthermore, the car is also not liable to confiscation; therefore, I set aside the impugned order qua absolute confiscation of the gold and the car in question and imposing penalty on the appellant.

12. In these terms, the appeal is allowed with consequential relief.

(Order pronounced in the court on 25.03.2021)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

RA_Saifi