

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI**

Appeal No. C/249/2009

(Arising out of Order-in-Appeal C. Cus. No. 240/2009 dated 29.4.2009 passed by the Commissioner of Customs (Appeals), Chennai)

Rajaram Johra

Appellant

Vs.

Commissioner of Customs, Chennai

Respondent

Appearance

Shri S. Ramesh Kumar, Advocate for the Appellant
Shri L. Nandakumar, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing :13.03.2019

Date of Pronouncement :18.03.2019

Final Order No. **40499 / 2019**

Brief facts are that on 22.4.1992, the officers of Enforcement Directorate, Madras searched Hotel Room No. 58 occupied by one Rajaram Johra at Hotel Dasaprakash, Chennai and effected seizure of 22 Nos. of gold biscuits each weighing 10 tolas with foreign markings which were kept concealed in sofa and in bathroom. The gold totally weighing 2565 grams valued at the time of seizure as Rs.7,35,247.81. The case was adjudicated by the Additional Commissioner of customs and vide

Order-in-Original dated 11.1.1994 directed absolute confiscation of the goods and imposed personal penalty of Rs.10,000/- on Sri Rajaram Johra and Rs.2,000/- each on Shri Rajendra Kumar Varma and Gopichand under section 112 of Customs Act, 1962. They filed appeal before Commissioner (Appeals) who vide order dated 20.4.2000 rejected the appeal as time-barred. The appellant then filed appeal before the Tribunal. The Tribunal vide Final Order No. 1507/2000 dated 31.10.2000 dismissed the stay application and appeal as not maintainable confirming the order of the Commissioner (Appeals). The appellant then filed writ petition before the Hon'ble High Court of Madras and vide order dated 26.8.2008, the Hon'ble High Court set aside the orders of the Commissioner (Appeals) and the Tribunal and remanded the matter back to the Commissioner (Appeals) with a direction to pass orders on merits taking into consideration the relevant documents filed before it.

2. The Commissioner (Appeals) vide order dated 29.4.2009, disposed the appeal on merits as per the direction of the Hon'ble High Court dated 26.8.2008. In the said order, the Commissioner (Appeals) held that the confiscation of the goods absolutely was incorrect and allowed the appellant to redeem the goods on payment of redemption fine. However, while imposing the redemption fine, the market value of 2565 grams of gold was calculated on the basis of market value prevailing on the date of passing the order. The market value was worked

out to be Rs.37,76,962.50 and the appellant was ordered to pay redemption fine of Rs.15 lakhs. Against this order, the appellant approached the Tribunal and vide Final Order No. 40678/2016 dated 29.4.2016, the Tribunal dismissed the appeal of the appellant observing that the Commissioner (Appeals) has committed grave error in granting option to redeem the gold and imposing penalty of Rs.15 lakhs. The Tribunal therefore held that the gold is liable for absolute confiscation and upheld the order passed by the adjudicating authority.

3. Against this, the appellant approached the Hon'ble High Court and vide judgment in CMA No. 2683 of 2016 dated 19.9.2018, the Hon'ble High Court remanded the matter to the Tribunal for fresh decision on the appellant's appeal to test as to whether the Commissioner (Appeals) was right in fixing the market value of the gold on the date when he passed the order or whether the market value prevailing on the date of seizure should be taken into consideration. The remand is restricted to this aspect and the same shall be decided by the Tribunal in accordance with law.

4. On behalf of the appellant, Id. counsel Shri S. Ramesh Kumar appeared and argued the matter. He submitted that at the time of seizure, the value of the gold was noted by the department to be Rs.7,35,247.81 only. The Commissioner (Appeals) in his order has fixed the market value of 22 gold biscuits weighing 2565 grams to be Rs.37,76,962.50 after

taking into account the market value prevailing at the time of passing the order. He adverted to proviso to sub-section (1) of section 125 of Customs Act, 1962 and submitted that the fine imposed cannot exceed the market price of the goods confiscated. In the present case, the goods having been seized on 22.4.1992, the market value prevailing at the date of seizure ought to have been the basis for determination of redemption fine. The Commissioner (Appeals) has taken the market value prevailing in 2009 to fix the redemption fine which is against the provisions of law. He also relied upon the definition of 'value' given in Section 2(41) of Customs Act, 1962. He submitted that the said section refers to value of goods determined as per proviso to sub-section (1) and (2) of Section 14. Section 14 deals with valuation of goods. The said provision says that the value has to be determined at the time of import / export. Therefore, the value of the goods at the time of seizure has to be the basis for determining the redemption fine. He relied upon the decision of the Hon'ble Supreme Court in the case of *Rajkumar Knitting Mills (P) Ltd. Vs. Collector of Customs* – AIR 1998 SC 2602.

5. The Id. AR Shri L. Nandakumar supported the findings in the impugned order. He argued that the appellant has been given the right to redeem the goods on the date of passing the order by the Commissioner (Appeals). The goods are in the custody or ownership of the Government of India after

confiscation. Therefore, while giving the option to redeem the market value prevailing at the time of giving such option should be taken into consideration. The Commissioner (Appeals) has rightly fixed the redemption fine by arriving at the market value of the goods at the time of passing the order. The impugned order does not call for any interference.

6. Heard both sides.

7. The Hon'ble High Court has remanded the matter for the limited purpose of considering what would be the relevant date for arriving at the market value of goods so as to determine the redemption fine that has to be paid by the appellant. The relevant portion of the order of the Hon'ble High Court is reproduced as under:-

"12. As pointed out earlier, the power of the appellate Tribunal is exercisable under Section 129B(1) only against the decision or order appealed against and in doing so, it may pass such orders as it thinks fit affirming, modifying and annulling the decision or order appealed against. Admittedly, the Department did not file an appeal against the order of the Commissioner (Appeals) permitting the redemption of the seized gold. In such circumstances, the Revenue should not be said to be aggrieved by such a direction granting redemption and the Tribunal clearly erred in dismissing the appellant's appeal and restoring the order passed by the original authority.

13. For the above reasons, the appeal is allowed and the order passed by the Tribunal is set aside and the matter is remanded to the Tribunal for a fresh decision on the appellant's appeal to test as to whether the Commissioner (Appeals) was right in fixing the market value of the gold on the date when he passed the order, when according to the appellant, the market rate prevailing on the date of seizure should be taken into consideration. The remand is restricted to that aspect and the same shall be decided by the Tribunal in accordance with law. There will be no order as to costs."

8. Undisputedly the goods were seized on 22.4.1992. The market value of the gold at the time of seizure was Rs.7,35,247.81. In appeal filed against this order, the Commissioner (Appeals) has interfered with the market value of the goods so as to enhance the same taking into consideration the prevailing rate of gold as on 29.4.2009 i.e. the date of passing the impugned order. The matter has been in litigation of a long period. As per proviso to sub-section (1) of Section 125, the redemption fine is to be fixed on the basis of the market value. The said provision does not speak about the relevant period / date for arriving the market value. Be that as it may, time consumed in litigation cannot be a factor for deciding the redemption fine that has to be paid by the assessee. Thus, in my view the date of seizure would be the basis for arriving the market value of the goods and for fixing the quantum of fine.

9. The provision contained in Section 14 says that the value of the goods has to be arrived on the date of import / export. The delay in adjudication cannot be a factor for deciding the market value of the goods by the department. In the case of enhancement alleging non-declaration of correct value of goods, the basis of the similar imports during the relevant period is to be taken into consideration and not the value of the goods at the time of passing the order by the authority. In this line, when the redemption fine is imposed, the relevant date for fixing the redemption fine should be the market value of the goods

prevailing at the time of seizure and not at the time of passing the order.

10. The Five Member Larger Bench of the Tribunal had addressed the very same issue in the case of Omex India Vs. Commissioner of Customs – 1993 (67) ELT 832 (Tri.). It was held that the market price at the time of importation has to be taken into consideration for calculating the fine that has to be paid for redeeming the goods. I hold that the appellant is liable to pay redemption fine on the market value of the goods as it stood at the time of seizure which is Rs.7,35,247.81. The Id. counsel for appellant has not disputed the value of the goods arrived by department at the time of seizure of the goods. The Commissioner (Appeals) has held that the margin of profit would range from 30% to 50%. Therefore, the redemption fine is reduced to Rs.3,70,000/- (Rupees three lakhs seven thousand only).

11. The appeal is disposed of in the above terms.

(Pronounced in court on 18.03.2019)

(Sulekha Beevi C.S.)
Member (Judicial)

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