CUSTOMS, EXCISE AND SERVICE TAXAPPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. III

Customs Appeal No.40582 of 2019

(Arising out of Order-in-Appeal C.Cus. II No.28, 29 & 30/2019-SEA dt.31.01.2019 passed by the Commissioner of Customs (Appeals-II), Chennai)

Shri S. Ramki : **Appellant**
Son of Late A. Sakthivel
57/2, 3rd Crlss Pillamma Block,
Sriramapuram
Bangalore 560 021.

VERSUS

The Principal Commissioner of Customs (Chennai-III) : **Respondent**
Chennai V Commissionerate, Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

WITH

(i) Customs Appeal No.40583 of 2019 (V. Ramachandran)

(ii) Customs Appeal No. 40584 of 2019 (P. Dilli Raja)

(Arising out of Order-in-Appeal C.Cus. II No.28, 29 & 30/2019-SEA dt.31.01.2019 passed by the Commissioner of Customs (Appeals-II), Chennai)

APPEARANCE:

Shri P. Kulasekaran, Advocate for the Appellant

Shri B. Balasmurugan, AC (AR) for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI, C.S., MEMBER (JUDICIAL)

FINAL ORDER NOs. 41277-41279 / 2019

DATE OF HEARING: 09.10.2019

DATE OF DECISION: 15.11.2019

The issue involved in these appeals being same and being connected, they are heard together and disposed by this common order.

2. Brief facts of the case are that Shri S. Ramki and Shri P. Dilli Raja (appellants in Appeal No.C/40582/2019 and Appeal No.C/40584/2019 respectively were intercepted by Central Crime Branch on 27.02.2014 at Korrukupet Railway station. The personal search of Shri Ramki resulted in recovery of one crude gold bangle with white powder and 2 nos. of Gold bars with foreign markings kept in the specially made cavity of the jeans pant. The personal search of Shri Dilli Raja resulted in recovery of one crude bangle coated with white powder and 2 gold bars with foreign markings. Thus gold totally weighing 998 gms. valued at Rs.29,23,142/- was recovered and crime under 41 read with 102 Cr.P.C was registered. They were arrested and produced before the Metropolitan Magistrate Court, George Town, Chennai. The accused were enlarged on bail. Later, the case was transferred to the Metropolitan Magistrate of Economic Offences Court at Egmore on the belief that the case involved smuggling of gold. The Additional Chief Metropolitan Magistrate directed the Customs department to receive the seized goods and for further action. During such investigation by Customs, Mr.S.Ramki (Appellant-1) stated that he received gold bars from one Shri V. Ramachandran (Appellant-2) on the instructions of his maternal uncle Mr. P.Dilli Raja (Appellant-3). Shri Ramki also produced cash memos / bills for purchase of these bars and jewellery. On verification of these documents, department entertained a view that they are not

genuine. Show cause notice was issued proposing to confiscate the gold and also for imposing penalty. After due process of law, the original authority confirmed the confiscation and also imposed penalties. The appellant filed appeal before the Commissioner (Appeals) and vide order dt. 28.9.2017, the Commissioner (Appeals) observed that the gold biscuits found in the possession of the appellants cannot be said to be of smuggled nature. However, he was of the opinion that to reach to a definite conclusion an enquiry has to be made with regard to the nature of the bills produced. He directed the original authority to compare the bills with the certified copy of the bail application. It was also held that if the bills are referred in the bail application the confiscation and penalties would not stand. The appeal was disposed in such manner. In such remand, the original authority conducted a *de novo* adjudication and thereafter vide Order-in-Original dt. 18.07.2018 ordered absolute confiscation of the gold and also imposed penalties. The said order was appealed before the Commissioner (Appeals) who vide order impugned herein upheld the order passed by the original authority. Hence these appeals.

3.1 On behalf of the appellants, Ld. Counsel Shri P. Kulasekaran appeared and argued the matter. He explained the facts of the case. It is submitted by him that Shri V. Ramachandran is permanently residing in Imphal and the appellant Shri P. Dilli Raja is the son-in-law of V. Ramachandran. The other appellant Shri S. Ramki is the nephew of P. Dilli Raja (Maternal uncle of S.Ramki). All the appellants are of same family and the gold was purchased as gift to son-in-law Mr.Dilli Raja by V. Ramachandran. He submitted that Mr.Ramki was travelling from Imphal to Chennai carrying gold to be given to Dilli Raja who is his maternal uncle. Police had actually intercepted only Mr. Ramki. The allegations that Mr. Ramki and Mr. Dilli Raja were intercepted at the railway station is incorrect. After being produced before the Magistrate, Ramki and Dilli Raja filed bail application before the Metropolitan Magistrate Court, George Town. Along with application, documents (bills) evidencing purchase of gold from Imphal were also produced. The Magistrate had granted bail to the appellants (Ramki and Dilli Raja) on 03.03.2014. Later, when the investigation was taken up by the customs authorities, appellant had produced bills before the customs authorities also. Ld.Advocate adverted to para-20 of Order in Original dt. 17.12.2015 and submitted that the original authority has observed that the appellant had produced bills to show the purchase of the gold. Department later contended the appellants had produced only xerox copies which is incorrect. The original bills were produced before the department and later taken back after substituting with xerox copies. Thus appellants have established that the gold was purchased from Imphal. Department also conducted investigation with the sellers as shown in the bills namely, Rashid Jewellery and Radhika Jewellery, Imphal who admitted that they have sold the gold described in the bills to the appellants. The department had also verified accounts kept by the sellers and found the carbon copy of the bills issued to the appellant. These documents would establish that the appellants purchased the gold from the sellers at Imphal. The allegation that the appellant has smuggled gold into India is therefore false and without any factual basis.

3.2 The department has denied to accept the bills stating that they are produced as an afterthought. He stressed that apart from a small discrepancy that place of residence has not been mentioned in the carbon copy kept with the seller, the original bills as well as carbon copy correlate and match fully. When the seller has admitted sale of the gold to the appellant and when the accounts maintained by sellers support that gold was sold to the appellants, the department ought not to have rejected these evidences. He also adverted to the findings made by the Commissioner (Appeals) in the first round of litigation. In paras 11 and 12, the Commissioner (Appeals) in the Order-in-Appeal dt. 28.09.2017 has held that there is no ground for brushing aside the bills as not genuine. Commissioner (Appeals) remanded the matter only to verify the bills with the certified copy of the bail application. Instead, the original authority conducted fresh adjudication which is beyond the scope of remand.

3.3 The Ld. Counsel referred to Section 128A of the Customs Act, 1962 and argued that during the relevant period, Commissioner (Appeals) had no powers to remand. The said section was amended w.e.f. 29.07.2018 whereupon the powers to remand also was included in the section. However, the appellant did not appeal against the said order of remand directing to verify the genuineness of bill. The original authority instead of merely verifying the bills produced by the appellants with that of the certified copy of bail application, conducted re-adjudication / de novo adjudication which is against the directions of the Commissioner (Appeals). Thus *de novo* order passed by the original authority dt. 18.07.2018 itself is erroneous. The original authority ought to have restricted to merely comparing the bills produced by the appellants with the certified copy of the bail application so as to confirm whether the bills were produced at the stage of bail application itself, as directed by the Commissioner (Appeals). Instead, the entire matter has been re-adjudicated by the original authority and order passed against the findings made by the Commissioner (Appeals). The Ld. counsel submitted that the original bills are with the appellant and is always willing and ready to furnish the same.

3.3 He therefore prayed that the order passed by the Commissioner (Appeals) may be set aside.

4.1 Ld. A.R Shri B.Balamurugan appeared and argued on behalf of the department.

4.2 With regard to the facts, he submitted that the contentions raised by the Ld. Counsel for the appellant that, only Mr. S. Ramki was intercepted at the railway station and Mr. P.Dilli Raja was not present at the time of arrest is incorrect and that it is made only to suit the case of the appellant. He adverted to the findings made by the original authority in the denovo order dt. 18.07.2018 and submitted that the original authority has confined himself to the directions made by the Commissioner (Appeals) and has not acted beyond the scope of remand. After enquiry, the original authority held that the original bills were not produced by the appellants before him or before the Magistrate Court while filing the bail application. To support this argument, Ld. A.R adverted to the copy of the bail application attached to the written submissions filed by the counsel for appellant. It is submitted by Ld. A.R that though the bail application is filed before the Magistrate Court George Town, Chennai on 20.03.2014, impression of the seal affixed on the bail application is that of Economic Offences Court at Egmore, Chennai-600 008. This itself would show that the bail application produced by them is a false one. Apart from this bail application, there is no other evidence to show that the appellants had furnished the bills at the time of applying for bail.

4.3 With regard to the discrepancies noted in the original bill and the carbon copy maintained in the books of account of the seller, Ld. A.R stressed that the name mentioned in the original bill is Mr. V. Ramachandran, Moreh, Manipur whereas in the carbon copy maintained by the seller, it is written as V. Ramachandran only. If the bill is issued by the seller, then the carbon copy of it ought to have been exactly same. The difference between the original and the carbon copy would establish that the bill is a fabricated one and the appellant has not purchased gold from the said sellers.

4.4 Further, the statement of one of the seller, Proprietor of Rashid Jewellery, Imphal is that the gold sold to appellant was purchased by him from the local market. On testing the purity of the gold, it is seen that the gold is of 24 carats with foreign markings. Such gold of 24 carats with foreign markings would not be available in any local market. Thus the statement of the seller M/s.Rashid Jewellery, Imphal that he has purchased it from the local market is unbelievable. Appellants were also found in possession of two numbers of crude gold bangles. On testing the purity of these bangles it was 24 carats whereas the seller M/s.Radhika Jewellery, Imphal has stated that they sell only gold of 22 carats. All these discrepancies would establish that the bills cannot be relied and that appellant has not purchased gold from the alleged sellers. Appellants have not been able to explain the possession of gold in their hands. The entire facts as brought out would show that appellants have not been able to prove that the gold was not smuggled goods.

5. Heard both sides.

6. The appellants are aggrieved by the confiscation of gold which was initiated on the interception of Shri S. Ramki and Shri P. Dilli Raja at the Korrukupet railway station. The Ld.counsel for the appellant has submitted that only Mr. Ramki was travelling in train and that the allegation that both Mr.Dilli Raja and Mr. Ramki were intercepted by the police together is a case made up by the department and is incorrect. The records right from the seizure upto the investigation allege that both Ramki and Dilli Raja were intercepted at the railway station. The case was first detected by police and then handed over to Customs department. The properties seized were also handed over by police to customs authorities. As

per records four bars of gold biscuits, two white powder coated gold bangles and one blue color jeans were received by Customs from the Inspector of Police. After investigations SCN was issued by Customs authorities in which it is however alleged that two gold bars and one of crude bangle was concealed in the jeans pant of Shri Ramki and 2 gold bars and one crude gold bangle was concealed in the pants of Dilli Raja. Thus though in the SCN it is alleged that both Shri Dilli Raja and Shri Ramki were each carrying gold in the pants worn by them only one pant was seized along the gold by police and handed over to Customs. The Commissioner (Appeals) in the first round of litigation has observed that the seizure of one pant only does not fit into the narration of recovery and seizure given in the SCN issued by Customs department.

7. This apart it is the consistent case of appellants that they purchased the gold from Imphal. The bills also show that gold was purchased from Imphal. Shri V. Ramachandran is a permanent resident of Imphal and possess Voters ID issued from Imphal. All the three appellants are of the same family. Shri S.Ramki is sister’s son of Shri Dilli Raja, and Shri Dilli Raja is the son-in-law of Shri V. Ramachandran. It is their case that the gold was meant to be given as stridhan for daughter of Shri V. Ramachandran.

8. The main dispute is with regard to the bills produced by the appellants. In the first round of litigation, the Commissioner (Appeals) in his order dt. 28.09.2017 has considered in detail the acceptability of these bills as evidence. In paras 11-13,

Commissioner (Appeals) has discussed the said aspect, which is noted below for better appreciation :

> “11. The reproduction of the originals and the book copy in para 39 of the impugned order gives the impression that the bill is same except the name of the buyer in the original bill is mentioned as “Mr. Ramachandran Moreh – Manipur”, whereas in the book copy is mentioned as V. Ramachandran Moreh. Had these bills been created subsequently, the person would have taken care to see that the carbon copy of the Bill remained identical to the original bill. For minor discrepancy in the name in the bill, the gold/jewellery shop owner has explained that at the time of sale of gold the customer requested not to fill the name of the customer in the bill, further, after a week of selling the gold, the customer came back to his shop and requested to fill up the name and address in the said bills. This explains the slight difference in the name mentioned in the original copy and the book copy of these bills. In case of purchase of gold bangles from Shri Radhika Jewellers also no serious discrepancy has been pointed out except stating that the proprietor of M/s.Radhika Jewellers stated that the gold bangles sold from her shop were of 22 carat approximately, whereas on assaying the gold bangles, the gold was found to be of 24 carat purity. However, this is not enough to brush aside the bill towards the purchase. Although gold is notified under section 123 of Customs Act and accordingly burden of proof gets shifted to the owner of such gold to prove that the same is not of smuggled nature, but in this case, the appellants have produced the bills under which they purchased the gold. On enquiry from the person issuing these bills, it is found that these have indeed been issued by them except for a minor variation in the name mentioned, for which the adequate explanation is given. In the case laws relied upon in the impugned order, the bills produced for showing licit purchase of the gold were found to be fictitious or the person shown as the one who issued the bill, has disowned issuing the bill. Therefore, the ratio of such case laws would not apply in the facts of the present case.

12. In the instant case, no investigation has been carried out on how the gold biscuits were acquired by M/s.Rashid Jewellers and whether these were of a smuggled nature. The proprietor of M/s.Rashid Jewellers, in his statement, has stated that he acquired the gold from mortgage or from buying in the market. In the absence of the further investigation to show that M/s.Rashid Jewellers purchased the smuggled gold biscuits, it cannot be said that the gold biscuits found in the possession of the appellants were of smuggled nature.

13. However, to bring the case to a definite conclusion, it would be necessary to cause enquiry by obtaining the certified copy of the bail application to ascertain whether the impugned bills were available at the time of remand of the appellants after they were arrested by the police to rule out that the same were created on a later date. Accordingly, I set aside the impugned order and direct the LAA to ask the appellant to submit the certified copy of the bail application and also verify from the records of the case as to whether the impugned bills submitted along with the statements to the Customs Authorities were certified copies obtained from the Court records. If the same are certified copies and referred to in the bail application, then the case for confiscation of gold and imposition of penalty on the appellants would not stand.

The appeals are disposed of in the above manner."

9. The Commissioner (Appeals) thus concluded that there is no ground to reject the bills as evidence. The doubt entertained by Commissioner (Appeals) and his decision to remand is reflected from the discussions made by him in para 10 of this order. The appellants had not produced certified copy of the bail application. The appellants contended that they had produced the bills as early as at the time of filing bail application. On perusal of the bail application produced before him, the Commissioner (Appeals) found that the bail application was not a certified copy obtained from Magistrate Court

and so in order to verify whether they had submitted the bills immediately after the arrest and applying for bail, the Commissioner (Appeals) remanded the matter to LAA to look into the certified copy of the bail application and to ascertain whether the bills have been mentioned therein. Only for reaching a definite conclusion so as to eliminate any doubt, the Commissioner (Appeals) directed the original authority to look into certified copy of the bail application and to ascertain whether the bills were available at the time of applying for bail itself. The original authority instead of confining to this limited direction to verify has indeed travelled beyond the scope of remand and given the following findings which is extracted herein below for better appreciation :

> "48. In compliance of the Appellate Authority's direction, a reference was made to the Investigating Section (R&I) to verify whether the impugned bills submitted by the noticees during the recording of their statements before the Custom Authorities were certified copies obtained from Court records.
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> 49. The Investigating Section (Rummaging & Intelligence) informed vide their note in F.No.OS.No.02/2014 RSI-SEA dated 28.05.2018:
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> "From the records available in R&I Section it is observed that the bills mentioned were not available during seizure and were submitted to the court later. Also record does not show that bills certified by court were submitted while recording Statements at this office on 12.05.2014."

10. On going through the discussions made by the original authority, I find that instead of confining himself to comparing or ascertaining

the fact after obtaining certified copy of the bail application, has conducted re-adjudication as to whether bills are genuine or not. It is however recorded by him that bills were not available during seizure and that these were submitted to court later. Needless to say that the bail application was filed before court only after arrest and seizure. He does not state that the bills were not mentioned in the bail application.

11. Ld. Counsel has furnished certified copy of bail application submitted before the George Town Court, Chennai. Ld. A.R has countered the said application submitting that the impression of the seal seen on the application is dated 20.03.2014 and that too of Economic Offences Court at Egmore and therefore the certified copy cannot be relied. On perusal of the bail application furnished before me which is seen in page 12 of the compilation, the docket sheet of the bail application shows that it was filed on 01.03.2014. The Court has given the number as M.P.No.420/2014. The notice of the application is seen received by the Prosecutor on 01.03.2014. The order granting bail was passed by the Metropolitan Magistrate, George Town on 03.03.2014. It is noted on the said order that they are released on bail on 01.03.2014 on a condition to report before the Inspector of Police until further orders. In the bail application, it is pleaded that gold was purchased vide bills dt. 18.02.2014, 19.02.2014 and 22.02.2014. Thus the doubt raised by the Commissioner (Appeals) whether the appellants were in possession of the bills at the time of filing bail application itself, stands eliminated.

12. The bail application has been countered by the Ld. A.R on the basis of the impression of seal seen on the main application. This document before me is photocopy of a certified copy obtained by the appellants from the Magistrate Court, Egmore. The application for certified copy was made on 2.11.2017 and certified copy was delivered on 9.11.2017 from the impression of seal made by copyist Superintendent for issue of certified copy. After stage of bail, the entire case files have immediately been transferred to the Economic Offences Court at Egmore. Thus it can be reasonably inferred that the seal seen on the main bail application is the impression of the seal by the Egmore Court when the case file was received by the said court. Since the seal of issuing certified copy is present on this document I do not find any reason to disbelieve the same. Therefore, it can be concluded that the appellants were in possession of the bills dt.18.2.2014, 19.2.2014 and 22.2.2014 at the time of filing the bail application itself.

13. Now, let us examine the controversy with regard to minor discrepancy alleged by department to the bills. At the foremost, it has to be stated that on the basis of bills produced by the appellants, the department had conducted investigation with the sellers namely, M/s.Rashid Jewellery and M/s.Radhika Jewellery at Imphal. Both the sellers admitted that they have sold the gold to the appellants herein. They have also furnished the account book kept with them in which it is mentioned that the gold described in the bills was sold to the appellant. The department alleges there is some discrepancy between the bills and the carbon copy kept with the seller. In page 51 of the order passed by the original authority dt. 18.07.2018, the scanned

copy of said original and the carbon copy of bills of the seller have been extracted for making comparison. On bare perusal of both, it can be seen that both are of the same hand writing. The only discrepancy noted by the department, is that in the bill No.366, the purchaser is shown as **Mr. Ramachandran, Moreh, Manipur** whereas in the carbon copy kept by the seller, the name is written as **V.Ramachandran, Moreh**. There is no discrepancy or difference with regard to the description of gold. In para 11 of the earlier order by Commissioner (Appeals) he has discussed this aspect. The sellers have given statements admitting sale of gold vide such bills to the appellants. The books of account kept by the sellers in their ordinary course of business also reflects the transaction. Except for slight difference in the name mentioned in one bill there is no serious discrepancy.

14. From the discussions made above, I do not find anything to suspect that the bills were created at a later stage. The findings made by Commissioner (Appeals) vide order dt. 28.9.2017 ought not to have been interfered by the LAA. The original authority ought to have confined to the direction given by Commissioner (Appeals) to verify whether the certified copy of the bail application contained the details of bills. There is mention of the bills with their dates. Hence the doubt of Commissioner (Appeals) regarding the possibility of the bills being created later is eliminated. I agree with the discussions made by Commissioner (Appeals) in his order dt.28.9.2017 with regard to the acceptance of the bills as evidence for purchase of gold by appellants. The appellants have sufficiently discharged the onus to

establish the possession of gold. The department cannot proceed to confiscate on assumptions and presumptions. The impugned order is set aside. Appeals are allowed with consequential reliefs, if any.

(Order pronounced in open court on 15.11.2019)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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