IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40254 of 2020

(Arising out of Order-in-Appeal Seaport C.Cus.II No. 233-236/2020 dated 06.02.2020 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

Shri S. Nagoor Gani **: Appellant**
No. 520, Ward No. 33, M.K.B. Nagar,
4th Cross Street, Vyasarpadi,
Chennai – 600 039

VERSUS

The Commissioner of Customs **: Respondent**
No. 60, Rajaji Salai, Custom House,
Chennai – 600 001

WITH

Customs Appeal No. 40255 of 2020

(Arising out of Order-in-Appeal Seaport C.Cus.II No. 233-236/2020 dated 06.02.2020 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

Shri G. Umapathy **: Appellant**
9A, Pandiyar Veedhi,
Sengunthar Nagar,
Thiruthani, Thiruvallur – 631 209

VERSUS

The Commissioner of Customs **: Respondent**
No. 60, Rajaji Salai, Custom House,
Chennai – 600 001

<u>APPEARANCE</u>:

Shri A.K. Jayaraj, Advocate for the Appellant

Shri S. Balakumar, Authorized Representative (A.R.) for the Respondent

<u>CORAM</u>:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOs. 41453-41454 / 2021

DATE OF HEARING: 23.03.2021

DATE OF DECISION: **<u>30.03.2021</u>**

Order :

The above appeals are filed challenging the reduction of penalty from Rs. 2,00,000/- to Rs. 20,000/- in respect of Appellant No. 1 and from Rs. 1,00,000/- to Rs. 10,000/- in respect of Appellant No. 2, under Section 112 of the Customs Act, 1962.

2.1 The case of the Revenue is that these appellants were involved in aiding one Shri M.S. Alaudeen, their employer, in melting smuggled foreign marked gold bars in order to make them appear as crude gold. A search based on specific intelligence was conducted at the premises of the appellants' employer viz. Shri Alaudeen on 12.12.2018; upon entering the premises, they appeared to have found a room wherein both the appellants herein as well as Shri Alaudeen were found; during the course of search, the Officers found several small bags containing dismantled power tools such as Ryobi brand 6" Orbittal Buffer car cleaning machine, steel measuring tapes, some engineering equipments and lathe items inside the room, one car cleaning buffer machine lying on the floor with the upper portion of the machine in loose condition and on removal of the upper portion, they found a piece of yellow coloured metal appearing to be gold, stuck inside the motor; on removal, the yellow metal was found to be half cut piece of 100 gms foreign marked gold bar with the marking "Cambi, Suisse 100 gm Gold 999.9" with last five digits of Sl. No. "09053" visible; that three small square type, yellow coloured metal appearing to be gold, amidst pieces of steel measuring tape strips strewn in one corner of the floor was also found and recovered; that on enquiry, it was admitted by Shri Alaudeen that the said piece of gold was the gold strips, stuck in the measuring tape and rolled inside the shell before being smuggled into India.

2.2 It is also the case of the Revenue that at that point of time, they found a granite slab with two strings attached to the centre of the slab, upon lifting of which they found a sump/secret chamber with a hot furnace installed inside; one person was also found immersing some hot ring like metal in a bucket of water inside the sump, who introduced himself as the Appellant No. 1.

3. It is the further case of the Revenue that statements of both these appellants were recorded under Section 108 of the Customs Act, 1962 on 12.12.2018, i.e., the date of the search, wherein both the appellants appear to have admitted as to their respective roles in aiding their employer for Rs. 2,000/- to Rs. 3,000/-; Appellant No. 1 appears to have also stated that every time after retrieving the smuggled gold and after melting the same, he would hand over the smuggled gold to brokers in N.S.C. Bose Road upon instructions of his employer Shri Alaudeen and the money received from the brokers would in turn be handed over to Shri Alaudeen. Appellant No. 2 also has admitted to his role, as instructed by his employer Shri Alaudeen. Both these appellants have clearly explained the job of their employer Shri Alaudeen and the *modus operandi* adopted by each of them right from the procurement of smuggled gold bars through Chennai Airport, taking them to the premises of Shri Alaudeen, aiding in melting the gold and selling them to brokers in N.S.C. Bose Road, etc.

4. After putting these appellants on Show Cause, Order-in-Original No. 71620/2019 dated 30.09.2019 came to be passed whereby the Joint Commissioner of Customs imposed a penalty of Rs. 2,00,000/- on the first appellant and a penalty of Rs. 1,00,000/- on the second appellant under Section 112 of the Customs Act, 1962. On appeal, the First Appellate Authority has reduced the above penalty to Rs. 20,000/- and Rs. 10,000/- on the first and second appellants respectively. Being not satisfied, the present appeals have been filed before this forum.

5.1 When the matter was taken up for hearing, Shri A.K. Jayaraj, Learned Advocate, appeared for the appellants and vehemently contended *inter alia* that the appellants were only the employees of Shri Alaudeen and they only carried out the instructions of their employer; that in any case, their voluntary statements recorded under Section 108 ibid. are of no value since the same were retracted on the very next day i.e., 13.12.2018, etc. He referred to various case-law (mentioned in the Appeal Memorandum) in support of his case to highlight that there was no *mens rea* on the part of these appellants since, in the first place, they were not aware but had simply acted as per the instructions of their employer, etc.

5.2 He also pointed out that no incriminating documents were recovered from the premises to attribute the role of these appellants and that these appellants were nowhere concerned with the alleged import itself.

6. *Per contra*, Shri S. Balakumar, Learned Authorized Representative appearing for the Revenue, relied on the findings of the lower authorities.

7. I have considered the rival contentions and gone through the documents placed on record.

8.1 Apparently, the penalty is levied as the role of the appellants was nothing short of abetment, by which the goods namely, gold, had become liable for confiscation under Section 111(d) of the Customs Act, 1962. One of the defence pleaded by the Learned Advocate for the appellants is the retraction statement of these appellants wherein they have *inter alia* mentioned that the 'Officers searched their Workshop in Ayanavaram when they were doing their job with regard to melting of the Gold Pieces converting to Gold Rings which was given by the customers…'. Nowhere do they mention about any registration/licence for carrying out their job having been obtained by their employer nor would any of them even offer to furnish the details of their customers, including such customer who had given a foreign marked gold bar with the marking "Cambi, Suisse 100 gm Gold 999.9" with last five digits of Sl. No. "09053". There is also no rebuttal as to the Officers' noticing one of them operating the furnace and thereby melting the gold. The retraction statement itself hints that they were aware/conscious of what job they were carrying on; the very fact that they were involved in melting gold of the alleged huge quantity cumulatively points to the *modus operandi* in converting smuggled gold bar into crude gold.

8.2 In the case of their employer also, Shri Alaudeen has nowhere furnished or even offered to furnish any registration for having engaged in the job of the nature they were involved in, nor has he come forward to furnish the details of their so-called customers, including such customer who wanted the melting of foreign marked gold bars. If they were aware of the identity of their customers, then there was no need for the first appellant herein to go to the brokers in N.S.C. Bose Road to sell off the melted gold, which fact has neither been denied nor rebutted in their retraction.

9. There is no other legal/technical objection urged on behalf of the appellants as well and hence, for the above reasons, I am of the opinion that the melting activity was carried on by all three of them jointly to hide the identity of the foreign marked gold bars, make them appear as crude gold and sell them locally, which clearly attracts the penal provision of Section 112 of the Customs Act, 1962.

10. In view of the above, I do not see any merit in the case of the appellants and consequently, the appeals stand dismissed.

(Order pronounced in the open court on **30.03.2021**)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd