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

C /41790/2015

(Arising out of Order-in-Appeal No. 19/2015 dated 15.04.2015 passed by the Commissioner (Appeals), Trichy).

Shri K. Srinivasan Appellant

CC, Trichy Respondent

Appearance

Ms.V. Pramila, Advocate
for the appellants

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

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member Technical

Date of Hearing/Decision: 29.03.2017

FINAL ORDER Nos. 40602 /2017

The issue involved in this appeal is that on interception of an Auto carrying parcels/packages by customs officials found, amidst other 37 boxes of medicines and vehicle-spare parts, one travel bag containing 30 Nos. of silver bars totally weighing 14.98 kgs. which bore the seal of JGR, Chennai. After due process of adjudication, interalia, it was concluded that the

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present appellant has rendered the subject silver bars liable for confiscation under Section 111(d) of the Customs Act 1962, since silver bars are covered under Notification issued under Section 123 ibid, burden of proof to establish that the goods are not smuggled goods rests with the appellant. The original authority interalia confiscated the silver bars and imposed redemption fine of Rs. 1,50,000/- under Section 125 of the Customs Act, 1962 and also imposed penalty of Rs. 80,000/- under Section 112 (a) of the Act. On appeal, the Commissioner (Appeals) vide impugned order dated 15.04.2015 upheld the order of the original authority. Aggrieved, appellants are before this forum.

2. Today when the matter came up for hearing, on behalf of the appellant, ld. Advocate Ms. V. Pramila, contended that even in the SCN it has been admitted that the impugned silver bars bore the mark "JGR, Chennai"; as such they are of Indian origin with Indian markings and definitely not smuggled in any manner by the appellant. She submits that the appellant has merely purchased the impugned goods from one M/s. Suresh Jewellers and this very fact has been confirmed by M/s. Suresh Jewellers in their statement dated 11.09.2013 before customs officers, which appears in page 12 of the appeal paper book and also forms part of the SCN.

3. On the other hand, ld. AR supports the adjudication. In particular he refers para-14 of the adjudication order where it is

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indicated that assay of silver bars indicated purity of 98.62% and that the assayer in his certificate concluded that the silver bars have been melted from the high purity silver bullion and converted into small bars.

4. Heard both sides and have gone through the records.

5. It is not disputed that the seized silver bars bore Indian markings viz., "JGR, Chennai". No doubt, the assay thereof did indicate that the purity of the silver bars was 98.62%. Revenue relies upon the conclusion of the assayer's certificate that "considering the above purity that the silver bars have been melted from the high purity Silver Bullion and converted into small bars". However, there is not even a whisper anywhere in the SCN or in the orders of the lower authorities that the impugned silver bars though bearing Indian markings are actually of foreign origin or that it is established with proof have been made out of re-melted foreign bullion which had been illicitly smuggled into the country. This being the case, the provisions of Section 123 of the Customs Act, 1962 will not kick in. The seller of those silver bars deposed that he has sold the silver bars on credit basis to the appellant. In the event, the impugned order against the appellant will not sustain and in consequence, impugned order in respect of upholding the order of confiscation of seized silver bars from the appellant, imposition of redemption fine of Rs. 1,50,000/- under Section125 and imposition of penalty of Rs. 80,000/- under

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Section 112 (a) will not sustain. Therefore, impugned order is set aside with consequential benefits, if any, as per law. Accordingly, the appeal is allowed.

(Order dictated and pronounced in the open court)

04/04/2017

(MADHU MOHAN DAMODHAR)
MEMBER TECHNICAL

BB

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चेन्नै / Chennai