

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 50493 of 2017 [SM]

[Arising out of Order-in-Appeal No. 01/Refund/2015 dated 24.11.2016 passed by the Commissioner, CE ST, Jaipur]

Shri Badri Narayan Sharma

1186, 2nd Floor,
Kucha Mahajani,
Chandani Chowk,
New Delhi – 110 006.

... Appellant

Vs.

Commissioner of Customs

Central Excise & Service Tax,
Jaipur, NCR Building
Statue Circle, C-Scheme,
Jaipur – 302 2005.

... Respondent

APPEARANCE:

Mr. Jatin Mahajan, Advocate for the Assessee
Mr. K. Poddar, Authorised Representative for the Department

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING : 26.09.2019
DATE OF DECISION : 08.01.2020

FINAL ORDER No. 50008/2020

RACHNA GUPTA

The order of Commissioner (Appeals) bearing No. 1068/2016 dated 22.12.2016 is assailed vide the present appeal. The facts relevant for the purpose in brief are as follows:

2. In furtherance of a specific information about a person with smuggled gold that on 02.06.1999 a person namely, Shayam Lal Pal, Son of Rampal was stopped outside the Railway station, Bikaner. From the pocket of his trousers 3 pieces of gold weighing 5 grams each alongwith a slip dated 01.06.1999 and a railway ticket No. 148344 from Delhi to Bikaner was recovered. Also from his cloth-belt were recovered 10 biscuits of 10 grams each. Said Shyam Lal Pal could not produce any valid document/bill showing the lawful possession of the gold as recovered.

3. The department considered the recovered gold as smuggled one. Accordingly, seized it under Section 110 of Customs Act and served a notice of confiscation thereof under Section 111 of Customs Act, 1962 . In the statement of Shyam Lal Pal as was recorded on 02.06.1999 itself, he stated that the said gold was given to him by his owner, Mr. Gopal Sita, owner of Shop No. 668 , Kucha Mahajani, Chandni Chowk on 01.06.1999 with the directions to deliver the same to Shri Shyam Sunder Soni of Thakuro Ka Mohalla, Bikaner. However, said Shri Gopal Sita on being interrogated denied any affiliation with Shyam Lal Pal . Shyam Sunder Soni statement could be recorded only on 22.06.1999 that to in furtherance of directions of Additional Session Judge, Jodhpur who stated Shyam Lal to be the servant of Shri Badri Narayan Sharma of M/s Dhancholia Sons. He also stated that he placed an order for gold with said Shri Badri Narayan Sharma. Statement of Shri Badri Narayan Sharma was also got recorded on 04.08.1999 who stated about giving the 10 gold bars with Bill No. 3 dated 01.06.1999 to Shri Shyam Lal Pal to deliver the same to Shyam Sunder Soni at Bikaner. Thus based upon said investigation the show cause notice proposing confiscation

of seized goods and for imposition of penalty was served upon all the above named persons.

4. The said show cause notice was adjudicated vide Order-in-Original No. 03/2000 dated 23.03.2000 as was passed by Additional Commissioner (Customs), Jodhpur Rajasthan ordering confiscation of 10 gold biscuits weighing 100 grams and 3 pieces of gold weighing 5 grams. Simultaneously, proposing penalty on all the noticees. The said order was assailed before Commissioner (Appeals), Jaipur who vide Order-in-Appeal No. 566-569 dated 31.08.2004 has upheld the order of confiscation, however, had reduced the penalty by 50%. Still an appeal was preferred by Shri Badri Narayan Sharma before this Tribunal which was allowed vide Order No. A/523378/2015 SM dated 04.08.2015 with the directions to the adjudicating authority to release the impugned goods to the Appellant therein i.e. Shri Badri Narayan Sharma.

5. Consequent to the said order that an application dated 18.09.2015 was filed by the Appellant seeking release of the seized goods. The said application was adjudicated by the Order bearing No.01/Refund/2015. dated 14.12.2015. It was observed that Dy. Commissioner, by the said order, had sanctioned an amount of Rs. 4,84,545/- the value of sales proceeds of 10 gold biscuits and 3 pieces of gold in favour of the Appellant. The Appellant being aggrieved filed an appeal challenging the order on the ground that the original adjudicating authority has committed the contempt for not obeying the order of CESTAT dated 04.08.2015 vide which the seized gold was ordered to be released. The sale proceeds of the seized gold as on 26.03.2001 were alleged to be illegal and improper and contrary

to the aforesaid verdict. However, the appeal thereof was also rejected. Consequent thereto the Appellant is before this Tribunal.

6. We have heard Shri Jatin Mahajan, learned Advocate for the Appellant and Mr. K. Poddar, learned AR for the Department, it is submitted that department had not followed any procedure for the disposal of the gold and the said fact has been admitted by the department vide their letter dated 16.03.2018. It is further emphasized that as per the procedure laid down in Customs Preventive Manual, department is duty bound to issue notice to the owner or to the person from whom such goods were recovered. In the present case admittedly, no such notice was issued. The disposal of the gold, therefore, is bad in law. Appellant, therefore, is entitled either for the return of the gold seized. Finally, submitting that irrespective there was the dispute regarding the ownership of the goods, the procedure laid down for disposal of the goods as per Department's manual was strictly to be followed. The failure thereof entitles the Appellant to have the present market value of the gold disposed of. Order under challenge is, accordingly, prayed to be set aside, appeal is prayed to be allowed.

7. Per contra learned DR has submitted that the initial show cause notice was adjudicated vide Order dated 23.03.2000 the confiscation of the seized gold was confirmed vide Order-in-Appeal No. 566-569/2004 dated 31.08.2004. It is further submitted that there was ambiguities about the ownership of the gold. Initially, vide Order dated 13.05.2005 Shri Narayan Sharma was held to be the owner of the gold seized. Subsequently, a miscellaneous application was filed by Shri Badri Narayan Sharma who filed an appeal before this Tribunal

in the year 2005 against the order of Commissioner Appeals dated 31.08.2004. The Tribunal observed that the appeal of Badri Narayan Sharma has already been disposed of vide Order dated 13.05.2005. This created a doubt in the mind of the Bench about as to who is real Badri Narayan Sharma. Matter was, accordingly, referred to identify the real Badri Narayan Sharma. It is thereafter that the order dated 04.08.2015 was passed. Since the goods were seized as early as on 02.06.1999 and were confiscated vide Order in original dated 23.03.2000 that the department undertook the process of disposal of seized/confiscated goods. It is due to this reason that the order dated 04.08.2015 of this Tribunal directing the release of impugned goods to the Appellant could not be complied with. However, in furtherance thereof the amount of sale proceeds as was received at the time of disposal of confiscated goods was released to the Appellant vide Cheque No. 109003 dated 11.12.2015 for an amount of Rs. 4,84,585/- which has already been encashed by the Appellant on 11.01.2016. Impressing upon that the disposal of seized gold was absolutely in furtherance of the procedure as prescribed under the statute and the department manual and that there is no infirmity in the order upholding the sanction of sale proceeds while complying the order of this Tribunal dated 04.08.2015, the appeal is, accordingly, prayed to be dismissed.

8. After hearing the rival contentions and perusing the entire record, I am of the opinion that the moot question to be adjudicated herein is as to

Whether in view of the given facts and circumstances and the order of this Tribunal dated 04.08.2015, the appellant is entitled to receive the market value of the gold as prevalent for the year

2015 despite that the said gold was disposed of in the year 2001 for value of Rs. 4,84,585/-.

To adjudicate the same the notification No. 31/1986- Customs dated 05.02.1986 as has been brought to the notice by the department is hereby perused. This notification specifies the goods which have to be dealt with in accordance of Section 110(1A) of Customs Act, 1962. The same reads as follows:

(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in which manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

From this notification it is apparent that gold in all forms, including bullions, ingot, coin, ornament, crude jewellery is one of the specified goods therein.

9. Further it is observed that the gold was seized on 02.06.1999, the order of confiscation was announced on 23.03.2000. The aforesaid provision permits the disposal of seized goods. In the present case pursuant to the said seizure the original adjudicating authority had confirmed the confiscation where after only the department proceeded for disposal of goods, it being one of the specified goods, in terms of the notification as passed under Section 110(1A) of the Customs Act.

10. I further observe that Section 1B of 110 of Customs Act provides a procedure to be undertaken by the proper officers for disposal of the goods. It is apparent from record that the said procedure was also

duly followed by the department as the inventory of the seized goods was got prepared on 02.06.1999 on the date of seizure itself. The same was also got verified by the Additional Civil Judge (Jr. Division)-Cum-Judicial-Magistrate, Bikaner that too twice i.e. on 03.06.1999 and also on 16.05.2000. Thereafter the impugned goods were deposited in the Malkhana of New Customs House, IGI Airport, New Delhi on 13.07.2000 from where the gold was handed over to State Bank of India (SBI) on 20.03.2001 for disposal which was ultimately sold by SBI on 26.03.2001 for an amount of Rs. 4,84,545/-. This particular perusal is clear enough to show that the disposal of goods was very much in compliance of the statutory procedure. Otherwise also there is always a presumption of correctness in the act of discharge of duty by a competent officer as was held by Tribunal, Chennai in the case of **Ajanta Music Palace Vs. Collector of Customs reported as 1993 (68) ELT 414**. There is no evidence produced by the Appellant to rebutt the said presumption.

11. It is further perused that the order of confiscation of year 2000 was confirmed by Commissioner Appeals vide the order dated 31.08.2004, it is mentioned by the department that at the time of the said adjudication before Commissioner Appeals, the factum of disposal was brought to the notice of the Appellant. Though the said order is not on record. However, it is simultaneously not the case of the Appellant that the disposal of gold during pendency of appeal before Commissioner (Appeals) was ever objected by the Appellant. The said order of 31.08.2004 was assailed by Appellant before this Tribunal vide his appeal No. C/254/2005. There also the present Appellant except highlighting the controversy of his mistaken identity had failed to challenge the disposal of the seized gold.

12. It is coming apparent from the order of 24.07.2015 of this Tribunal that the order of appeal dated 31.08.2004 passed by Commissioner (Appeals) confirming the confiscation was earlier appealed by Shri Badri Narayan Sharma on 31.08.2004 was already assailed by Shri Badri Narayan Sharma and the said appeal was disposed of vide order dated 13.05.2005. Appellant had put no effort to place on record the copy of the previous appeal to prove that the disposal of the seized gold either was never brought to his notice or ever was challenged by him. There is no denial of Shyam Lal Pal admittedly the servant of the present Appellant to have received the notice at the time of the disposal of the seized goods. Resultantly, I am of the opinion that the disposal of the seized goods was absolutely in accordance of the statutory provisions. The order of return of seized gold has been announced 14 years later than the said disposal. What can be returned while complying with the directions of return of seized gold is the sale proceeds of the said gold received at the time of disposal thereof. Also it is apparent that present appellant was held owner of the seized & confiscated gold vide order of this Tribunal dated 13.05.2005. Time taken till the order of Tribunal dated 24.07.2015 directing the return of the impugned gold is on account of mistaken identity of Shri Badri Narayan the appellant himself. The order of confiscation was otherwise served on Shyam Lal Pal as well as Shri Badri Narayan who was held owner of the impugned gold vide order of the year 2005. The said Badri Narayan impersonated the actual Badri Narayan whose appeal was decided in his favour in the year 2015 does not reflect any mistake or even delay on part of Department. It is already held that they followed due procedure for disposal of said gold in the year 2001.

13. The Hon'ble High Court of Bombay in the case of **Shabbir Ahmed Abdul Rehman Vs. Union of India reported as 2009 (35) ELT 402** has held that when the confiscated gold was handed over for disposal immediately after serving the order of confiscation thereof. The sale of the said gold during the pendency of appeal before Commissioner Appeals is though not justified. However, the claim of the petitioner in seeking the market value of gold cannot be accepted. The Customs Authority is liable to return the entire sale proceeds, however, without deducting there from the duty. In the present case the gold was sold after the confirmation of confiscation and prior the appeal challenging the same was filed. The said order of Bombay High court has been affirmed by Hon'ble Supreme court vide the decision reported as 2010(253)ELT A142 Tribunal Ahmedabad also in the case of **Om Merchant Exports Pvt. Ltd. Vs. CCE, Lucknow 2017(358) ELT 643** has held that the appellant therein to be entitled for immediate release of their confiscated goods. It was, simultaneously, held that in case the goods have been auction sold in meantime, the Appellant shall be entitled to sale proceeds of the same in accordance with law. The plea of Appellant of no notice being served before disposal is otherwise not acceptable in view of the admitted mistaken identity of the owner of the gold. Admittedly and apparently, two different persons representing them as Badri Narayan Sharma filed the appeal challenging the order of confiscation of the goods, as discussed above.

14. In the given circumstances and in the light of the fact that gold is a commodity the value where of has been increased enormously since the date of impugned disposal in the year 2001 till the date of

the order of return in the year 2015 and that there is no apparent fault on part of the department while disposing the same. The department rather has duly complied with the order of return of confiscated goods of the year 2015 by refunding the sale proceeds of the gold as was received in the year 2001. The said amount has duly been encashed by the Appellant that to more than a year prior filing of the impugned appeal.

15. As a result the question framed herein above is answered with the finding that in the given facts & circumstance, the order of this Tribunal dated 04.08.2015 stands duly complied with when department returned the sale proceeds of impugned gold as were received in the year 2001 when this gold was auction sold. Thus the appellant is not held entitled for the gold as such nor for its market value as prevalent in the year 2015. Seen from any angle, there is opined no infirmity in the order under challenge. The appeal in hand has no legal ground to succeed. Appeal is, accordingly, **dismissed**.

[Pronounced in the Open Court on **08.01.2020**]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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