CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. II

Custom Appeal No. 51680 of 2021 (SM)

(Arising out of Order-in-Appeal No. 82(SM)/CUS/JPR/2021 dated 23.06.2021 passed by the Commissioner of Customs (Preventive), Jodhpur.)

M/s Yogesh Kumar Vishnani **Appellant**
Resident of 182/58,
Pratap nagar,
Sanganer, Jaipur
Rajasthan-302033

VERSUS

Commissioner, Customs (Preventive) **Respondent**
Jaipur I
NCR Building,
Statue Circle,
C-Scheme, Jaipur
Rajasthan- 302005

APPEARANCE:

Mr. Arun Goyal, Advocate for the Appellant
Mr. Mahesh Bhardwaj, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50464 / 2022

Date of Hearing: 12/05/2022
Date of Decision: 12/05/2022

ANIL CHOUDHARY:

The brief facts are as follows:

2. On the basis of information that the appellant Shri Yogesh Kumar Vishnani was carrying smuggled goods, the officers of the ATS, Ajmer and officers of Customs & CGST, Ajmer, intercepted him

at Ajmer Railway Station, who was travelling by Yoga Express from Ahemdabad. The appellant was de-boarded at Ajmer Railway Station with his baggage. On preliminary examination by the ATS officers, it was found that appellant was carrying goods (foreign origin) in commercial quantity. On enquiry from the appellant as well as on examination of his passport R-8126399, it was observed that the appellant arrived in India on 23-10-2018 at SVPI Airport, Ahemdabad from abroad-Dubai by Spice Jet SG-16 Ticket No. A8100306889 dated 03-10-2018, boarding pass no. G3KG9L. The appellant stated that he arrived at Ahemdabad airport from Dubai and then he was going to Jaipur by Yoga Express. He also stated that the Goods in his three bags and one hand bag were brought by him from Dubai and he did not have any bills for the the same. Therefore the officers of the ATS, Ajmer and officers of Customs & CGST, Ajmer handed over the appellant with his baggage to the Customs officer of Jaipur, on the reasonable belief the appellant was carrying goods without having any invoice-bill and without payment of Customs duty.

3. Thereafter, the Customs officers decided to conduct personal and baggage search of the appellant but the appellant requested the officers to take search at a safer place, as he was having valuable luggage. Considering the request of the appellant, the Customs officer brought him along with his luggage at Customs Office, NCRB Building, C-Scheme, Jaipur. At Customs office, Jaipur, two Panch witnesses were called on the spot and were requested to reamin present during the search proceedings. The appellant was served upon a Notice under Section 102 of the Customs Act, 1962 for seeking his consent for the search. He gave consent for his personal

search before a Gazetted officer of Customs. The personal search was conducted before Shri M.K. Gothwal, Superintendent, Customs, Jaipur. During the personal search, nothing incriminating was recovered.

4. Thereafter, baggage of appellant comprising one brown bag marked “pigeon”, one blue bag marked “lucky bag house”, one red trolley bag marked “VIP” and one black laptop bag were opened by the officers. During the examination of these bags, 5 Apple I-phone mobiles, Two Gold coins each marked on one side with “shree” and another side with image of “hindu lord Ganesh ji”, 4 packet Gudang Garam international 240 filter kretek Cigarette, 4 Packet Drum Bright Blue premium quality Tobacco, 54 Packets of Food Supplements, 87 Packets of Cosmetic including lotions, deodorants, perfumes, Gels, Conditioner, etc. were recovered.

5. To ascertain the purity and value of Gold coins recovered from the appellant, a Govt. Approved Valuer-Shri Shrivallabh Mayach was called upon on the spot. Shri Mayach after thorough examination confirmed that the recovered coins were made of Gold. Shri Mayach also submitted certificate No. 646 dated 25-10-2018 according to which total quantity of Gold recovered from the appellant was 45 gms of 98% purity valued at Rs. 1,43,325/-. The value of the Commercial goods was ascertained at Rs. 8,74,550/- by the officers.

6. The appellant in his statement dated 25-10-2018 tendered under Section 108 of the Customs Act, 1962 in compliance of the summon dated 25-10-2018 issued by the Superintendent Customs (Preventive) Hqrs, Jaipur, categorically admitted the recovery of Gold coins and commercial goods total valued at Rs. 10,17,875/- from his

baggage which he brought from Dubai and he did not pay Customs duty. He also stated that he has been working as part time Sales man at ‘Hot deals Tourism Company’ at Dubai and frequently comes to India. He used to come at various Airports (Jaipur, Delhi, Mumbai, Kolkata) from Dubai; that he started working as carrier (bringing goods of other people from Dubai to India and carrying goods of others from India to Dubai) since 2017 to increase his income; that sometimes he also brought own goods from Dubai to sell in India and take away goods from India to Dubai; that he went Dubai on 09-10-2018 and returned to India on 23-10-2018 at SVP International Airport, Ahmadabad; that he brought five Apple I-Phone Mobiles, two gold items (Locket) weighing 45 grams, some perfumes, Deo, Protine powder, Lotion, Shampoo, four cigarette cartons (total 960 Cigarette sticks), four Tobacco packets (total 1 kg Tobacco); that he came out of Ahemdabad airport without paying Customs duty and went to Ahemdabad Railway Station and boarded the Yoga Express for Jaipur; that the ATS officers inquired from him at Railway Station and de-boarded him at Ajmer at 9.00 PM and checked his baggage; that the officers of ATS handed over him to the Customs officers of Jaipur, that on his request, the Customs officers took him to Customs office situated at Jaipur, that his personal search was conducted after serving him a notice under Section 102 of the Customs Act, 1962; that five Apple I-Phone Mobiles, two gold items(Coins) weighing 45 grams, some perfumes, Deo, Protien powder, Lotion, Shampoo, four cigarette box (total 960 Cigarette sticks), four Tobacco packets (total 1 kg Tobacco) were recovered during search of his baggage; that five I-Phone belonged to Shri Bharat Thadani, resident of Near Shree

Talkies, Ajmer, and these phones were to be handed over to him for which Shri Bharat Thadani was supposed to give Rs. 4,000/- per phone; that earlier also he had smuggled mobile Phones for Shri Bharat Thadani; that said Mobile Phones were used to be given by Shri Jony Thadani, brother of Shri Bharat Thadani at Dubai; that all other commercial Goods and Gold coins were smuggled by him intentionally to sell them in India.

7. It appeared that the appellant has attempted to smuggle the said Gold coins and commercial goods concealed inside his Baggages with intent to evade payment of Customs duty and contravened the provision of Section 77 of the Customs Act, 1962 read with Rule 3 of the Baggage Rules, 2016. The appellant admitted that he neither declared these goods in the Customs declaration form, nor paid any Customs duty. As such, the Customs officers seized the Gold coins weighing 45.00 gms. Valued at Rs. 1,43,325/- and other Goods viz. Five Apple I-Phone Mobiles, some perfumes, Deo, Protein powder, Lotion, Shampoo, four cigarette bars (tota 960 Cigarete sticks) four Tobacco packets (total 1 kg Tobacco) valued at Rs. 8,74,550/- under Section 110(1) of the Customs Act, 1962 on the reasonable belief that the same were smuggled with intent to evade Customs duty, as such liable for confiscation under Section 111 of the Act ibid. The officers also seized the Four bags including one brown bag marked “pigeon”, one blue bag marked “lucky bag house”, one red trolley bag marked “VIP” and one black laptop bag (having no commercial value) under Section 110(1) of the Customs Act, 1962 being liable for confiscation under Section 119 of the Customs Act, 1962. The officers also seized ticket booking invoice no. A8100306889 and three

baggage tag SG 0775865157, SG 0775864447 under Section 110(3) of the Customs Act, 1962 as evidence. The entire proceeding of search and seizure of the goods was conducted before two independent witnesses and the appellant. A Panchnama dated 25-10-2018 along with Seizure Memo dated 25-10-2018 to this effect were drawn on the spot.

8. Follow up searches were conducted at the residence of appellant i.e. 182/58, Pratapnagar, Sanganer, Jaipur, Rajasthan and residence of Shri Bharat Thadani i.e. Near Shree Talkies, Ajmer, where no incriminating documents or things were recovered.

9. This appeal is against order of confiscation of the foreign goods recovered from the appellant by way of town seizure:-

i) Gold coins total weighing 45gms. valued at Rs. 1,43,325/-.

ii) Goods valued at Rs. 8,74,550/- (5 Apple I-phones valued at Rs. 4,80,000/-, 240 filter Cigarettes valued at Rs. 7200/-, Drum Bright Blue premium quality tobacco valued at Rs. 3600/-, Cosmetic items valued at Rs. 1,89,600/- and Food Supplements valued at Rs. 1,94,150/-).

10. Thereafter, the Additional Commissioner, office of the Commissioner of Customs (Preventive) at Jaipur, issued the Show Cause Notice dated 23/04/2019 requiring the appellant to show cause as to why the seized two gold coins weighing 45 gms and valued at Rs. 1,43,325/- be not confiscated as well as the other goods recovered and seized from him valued at Rs. 8,74,550/- be not confiscated under Section 111 (d) (i) (j) (l) & (m) of the Act. Further, penalty was proposed under Section 112 (a) (ii) & 114 AA of the Act,

penalty was also proposed on co-accused Mr. Bharat Thadani under the same Sections.

11. The SCN was adjudicated on contest by the Additional Commissioner, in office of the Commissioner of Customs (Preventive) Jodhpur, at Jaipur by order-in-original dated 04/01/2020, absolutely confiscating the gold coins, the cigarettes and the drum BB premium quality tobacco.

12. The Apple I-phones were confiscated with option to redeem on payment of fine rupees 1lakh, the food supplement were confiscated with option to redeem on payment of fine Rs. 50,000/-. The Cosmetic goods were also confiscated with option to redeem on payment of fine Rs. 50,000/-. Further, absolute confiscation were also ordered for 4 bags which were recovered and seized from the appellant which contained the goods in question. Penalty Rs. 50,000/- was imposed under Section 112(a)(1) of the Customs Act and further penalty 30,000/- was imposed under Section 114 AA of the Customs Act. The proposed penalty on Mr. Bharat Thadani was dropped.

13. Being aggrieved this appellant preferred appeal before the Commissioner (Appeals) who *vide* impugned order-in-appeal was pleased to dismiss the appeal upholding the order-in-original.

14. Being aggrieved the appellant is appeared before this Tribunal. The learned Counsel for the appellant Mr. Arun Goyal inter alia urges as follows:-

14.1 The Show Cause Notice and the adjudication is done beyond or without jurisdiction. Admittedly Baggage Rules have been invoked and alleged that the appellant deboarded or arrived at A'bad International Airport. It is an admitted fact that the goods were assessed at Nil rate of duty at Ahemdabad port. The declaration submitted by the appellant before the Customs at Ahemdabad and thereby allowance at Nil rate of duty has been deliberately obscured and it is not in the means of the appellant to produce it. Noteable case law in the matter being Canon India Pvt Ltd-2021-TIOL-123-SC-CUS-LB and Ramnarain Bishwanath Versus Collector of Customs, Calcutta, reported at 1988 (34) E.L.T. 202 (Tribunal) upheld both by High Court and Apex Court.

14.2 That there is not a single letter from A'bad Customs that the appellant did not deboard with his friend Kamlesh, Prakash & Babloo or that the seized goods were not declared in their Customs Declaration Form Even there is no statement of the appellant that he did not declare the goods in the Customs Declaration Form.

14.3 That admittedly the appellant was apprehended by Police and then handed over to Customs. The provisions of Section 123 shall not apply on the appellant as held in 2021-TIOL-576-CESTAT-ALL.

14.4 That the appellant had given cogent explanation with evidences and name of his friends. He cannot be expected to produce each of them before the investigation and be at mercy of them, whether they record the statement or not- 2017-3558-ELT-643-Tri-All, Om merchants Export P Ltd Vs Comm of Customs Lucknow.

14.5 That the valuation has been arrived at Internet prices and are not in accordance with any valuation rules or law laid down by superior courts. 2021-375-ELT-577-Tri Kol- Roz Mohammed Vs Comm Customs Kolkata.

14.6 That the electronic goods viz mobile have also undergone depreciation and got outdated, leading to reduction in valuation only due to high handedness of the prejudice respondent. RF imposed is now more than the value of the goods.

14.7 That due to apathy, the cosmetic and food supplement have expired and are not be fit for human consumption. The application for provisional release on undertaking that the goods are not for sale, was never considered, leading to ir-repairable loss to the appellant and the Govt also.

14.8 That the appellant pray for release of Gold Coin, 5 Apple Phones and Cosmetic Items only. All other goods have expired and not fit for human consumption.

14.9 That the condition for NOC under “Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order 2012”; “Food safety and Standard Act, 2006”; and Drugs and Cosmetics Rules, 1945” imposed, needs to be set aside as no such requirement in law is mandated when the goods are imported for personal use and are clearly NOT FOR SALE.

14.10 That the affidavit duly submitted that the goods were and shall be used for personal use and not for sale, may be accepted.

14.11 That the appellant was coerced to record statement that goods were brought for sale through Shri Bharat Thadani, but charges on Bharat Thadani were finally dropped.

14.12 That admittedly no duty has been demanded or confirmed in the Adjudication order making all the allegation for confiscation otiose and redundant. 2018-TIOL-1762-HC-DEL-CUS. Commissioner of Customs Vs R K International.

14.13 The appellant was on NRI returning after more than six months of stay and the Gold coin so brought by him had purity of

98% and hence none of the provisions of law prohibit him to import or bring it in baggage. Only duty could have been demanded which has not been done in the matter. Manoj Kumar Sharma Vs UOI-Rajasthan High Court in DB CWP No. 12001/2020 dated 17/2/2022.

14.14 That in the absence of DECLARATION at the Customs Airport, Ahemdabad, it cannot be alleged that they were mis-declared and were liable for confiscation. None of the provisions so invoked are applicable in absence of any Customs declaration so submitted by the appellant at the Airport.

14.15 In the light of above facts and position of law and the averments the appellant prays to allow the appeal, impugned orders may be set aside and goods lying with the department may be ordered to be released unconditionally.

15. Learned AR for Revenue relies on the impugned order.

16. Having considered rival contentions, I find that the whole case of the revenue is made out on the allegation that the appellant had arrived from Dubai at the Ahmadabad Airport, which is the Customs Station. Thus, for the allegations contained in the show cause notice, particularly, there being violation of the baggage Rules, the jurisdiction in the matter was with the Customs Commissionerate at Ahmadabad. In the circumstances, I find that whole proceedings by the Customs (Preventive) at Jaipur is wholly without jurisdiction. I further find that the appellant was intercepted by the Police at Ajmer who are not the customs officers. Hon'ble Supreme Court in the case of Gianchand & others reported at 2002-TIOL-2745-SC-CUS-C.B., wherein also the initial interception and seizure was by police and thereafter the possession was shifted to the Customs officers, it was

held that the pre-requisite of seizure is not satisfied. Accordingly, it was held that in such circumstances, the whole burden or onus to establish the smuggled nature of goods/gold is on the revenue which have not been discharged. Admittedly, in the facts of the present case, it is a case of town seizure.

17. Further, I find that under similar facts and circumstances, Hon'ble Supreme Court in the case of Union of India vs. Paradip Phosphates Ltd. 1997-96-ELT-224 (SC) have held that the admittedly the goods have been imported and cleared at Paradeep Port (Orissa State) which were seized and adjudicated by Customs Authorities in West Bengal. It was alleged that the goods were imported on the strength of fictitious licence. It was held that the jurisdiction under such facts lay with the Custom Authorities at Paradeep, and not with the Customs Authorities in West Bengal.

18. Accordingly, the following ruling of the Supreme Court in the case of Ram Narayan Bishwanath (Supra), I hold that the proceedings are *ab initio void,* wholly holding without jurisdiction. Accordingly, the impugned order is set aside and the appeal is allowed. The respondents Customs Authority is directed to return the seized/confiscated goods to the appellant forthwith, within a period of 30 days from the date of receipt of a copy of this order to the appellant or his authorised representative. Appeal is allowed.

(Order dictated in the open court)

(ANIL CHOUDHARY)
Member (Judicial)

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