**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**

**Date of Hearing/Decision: 21.7.2017**

## Appeal No. C/4005 to 4007/2012-SM

(Arising out of Order-in-Original No. 05/2012-Commr. dated 30.8.2012 passed by the Commissioner, Customs, Jaipur)

Shri Mahendra Kumar — Appellant
Shri Mukesh Soni
Shri Pawan Kumar Jhalani

Vs.

CC, Jaipur — Respondent

**Appearance**

Shri Ranjeet K. Ranjan, Advocate - for the appellant

Shri K. Poddar, D.R. - for the respondent

CORAM: **Hon'ble Mr. Ashok K. Arya, Member (Technical)**

## Final Order No.55543-55545/2017

**Per Ashok K. Arya :**

These three appeals have been directed against the common Order-in-Original No. 05/12 dated 30.8.2012.

2. The brief facts of the case are that a penalty of Rs. 50,000/- each has respectively been imposed on these three appellants viz. Shri Mahendra Kumar, Shri Mukesh Soni and Shri Pawan Kumar Jhalani, who have been found involved in certain stages of smuggling/purchase/concealing/disposal of illicit gold. These

appellants are before the Tribunal pleading against imposition of penalties on them.

2.1 The appellants have been represented by ld. Advocate, Shri Ranjeet K. Ranjan and Revenue has been represented by ld. DR, Shri K. Poddar, who have been heard.

3 The facts of the case and submissions of all the parties have been carefully considered.

**Shri Mahendra Kumar (Appeal No. C/4005/2012)**

4. In case of Shri Mahendra Kumar, the impugned order held that he was engaged in the activity of sale, purchase etc. of smuggled goods which he knew or had reason to believe was liable for confiscation under Section 111 of the Customs Act, 1962. However, the appellant, Shri Kumar pleads that he was not in the knowledge that the gold he engaged in selling/purchasing was smuggled one. Form the facts, it is clear that for the sale and purchase of the subject gold the transaction was done in cash and without any transaction details in the form of any voucher/bills indicating that a prudent person would have the knowledge that if the subject gold is foreign mark and there are no proper documents evidencing its sale or purchase that said goods must have been procured illegally/and has got a taint of smuggling attached to them. Further, there are no attenuating and ameliorating factors to give any kind of relief on the

penalty imposed on the appellant, Shri Mahendra Kumar. Consequently, the impugned order in case of Shri Mahendra Kumar is sustained and the appeal filed by him is dismissed as without merits.

**Shri Mukesh Soni (Appeal No. 4006/2012)**

5. In case of Shri Mukesh Soni, the impugned order has held that he was engaged in sale, purchase etc. of smuggling gold. From the facts, however, it appears that he has not earned large amount of profit from the subject activities warranting the penalty of Rs.50,000/- imposed by the impugned order. From the facts and the submissions of both the sides, it appears that the penalty of Rs.50,000/- imposed on the appellant, Shri Mukesh Soni is excessive in nature and it warrants reduction of the same to Rs.20,000/- (Rs. Twenty Thousand only). Consequently, the penalty imposed by the impugned order of Rs.50,000/- on Shri Mukesh Soni is reduced to Rs.20,000/- (Rs. Twenty Thousand only). The impugned order in case of Shri Mukesh Soni is modified to said effect and this appeal partly allowed accordingly.

**Shri Pawan Kumar Jhalani (Appeal No. C/4007/2012)**

6. The impugned order gives the finding that Shri Pawan Kumar Jhalani used to help the other offender Shri Ram Kumar Saini, in finding customer for sale of smuggled goods, and thus will charge brokerage of Rs.2000 per Kg. for such sale. There is statement on record of Shri Jhalani that he earned Rs.6000/- only as brokerage for

sale of such gold. Considering full facts available on record and the fact that he earned totally Rs. 6000/- the, penalty imposed by the impugned order of Rs. 50,000/- on Shri Jhalani appears to be excessive and the same, therefore, is reduced to Rs.20,000/- (Rs. Twenty Thousand only). Consequently, the impugned order in case of Shri Pawan Kumar Jhalani is modified to said effect and the appeal filed by him is partly allowed accordingly.

7. In the result, the impugned order in case of Shri Mahendra Kumar is sustained and the appeal filed by him is dismissed as without merits; the impugned order in case of Shri Mukesh Soni and Shri Pawan Kumar Jhalani is modified to above effect and the appeals filed by them are partly allowed accordingly.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

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