CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 03.08.2017

Customs Appeal Nos. 50300, 50302, 50304 - 50305 of 2016

(Arising out of order-in-original No. 48 - 49/KJ/PR.COMMR/2015 dated 01.12.2015 passed by the Commissioner of Customs, New Delhi).

Mukesh Batham Appellant
Keshav Dev
Prashant Modi
Lucky Raikwar

Vs.

CC, New Delhi Respondent

Appearance:

Sh. G. P. Singh, Consultant for the appellant
Sh Govind Dixit & Sh. A. K. Singh, ARs for the respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 55756 – 55759 /2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeals have been filed against the order-in-original No. 48-49/KJ/PR.COMMR/2015 dated 01.12.2015 passed by the Commissioner of Customs, New Delhi where the penalties were imposed under Sections 112(a) and 112(b) of the Customs Act, 1962.

2. Brief facts of the case are that all the appellants were in their young age. They were travelling by Duranto Express / Rajdhani Express from Howrah to New Delhi on 27.02.2014. On a specific information, they were caught and on

search, it was found that they were carrying two kgs. gold each and from Sh. Lucky Raikwar 3 Kg. totalling 9 kgs. gold bars. The gold bars were seized by custom department. On enquiry, the appellants submitted that they were merely carriers and belong to the lower middle income group. They stated that gold was given by three persons namely Sh. Rahul Singh, Sh. Narayan Bhai and Sh. Priyaranjan but no inquiry was made from them. The appellants have received only Rs. 3,000/- & Rs. 5,000/- respectively. The gold was confiscated by the custom department and by the impugned order, the penalty of Rs.10,00,000/- each was imposed on first three appellants; and Rs.15,00,000/- on the fourth appellant. Being aggrieved, the present appeals have been filed by them.

3. With this background, we heard Sh. Ashish Bansal, ld. Advocate for the appellant and Sh. Govind Dixit, ld AR for the Revenue. We also perused the material available on record. Appellants submit that they belong to the poor/ lower category of the society. They were merely carriers and not the owners of gold bars. The same was handed over by the above mentioned persons to the appellants. Ld. Counsel also submits that the gold may kindly be released in favour of the appellants since the owner of the gold is not identifiable.

4. On the other hand, Sh. Govind Dixit, ld. AR for the Revenue has justified the impugned order. He submits that the appellants were not the owner of the gold so it cannot be handed over to them. He justified the levy of the penalty on each appellant.

5. After hearing both parties and on perusal of record, it is evident that the gold was smuggled since it carries foreign markings. It may be mentioned that the smuggling always weakens the economy and the backbone of the nation. Offence

is there, so the gold was rightly confiscated. The said owners who handed over the smuggled gold were not traceable inspite of the best efforts of the department.

6. In the present appeal, the main issue is regarding the question of levy of penalty. As stated above, since offence of smuggling has taken place, so, the penalty is justified but looking at the young age of the appellants and considering the fact that this is their first offence, the penalty on appellants is looking on higher side.

7. By keeping in mind the doctrine of equality, justice and good conscious, we modify the impugned order and reduce the penalty to Rs.7 lakhs (seven lakhs) on each of the first three appellants and Rs. 12 lakhs (twelve lakhs) on the fourth appellant (Sh. Lucky Raikwar). Thus, each appellants will get the relief of Rs. 3 lakhs (three lakhs) each.

8. In the result, all the appeals are partly allowed as stated above.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

Justice (Dr.) Satish Chandra)
President

Pant