CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 50351 of 2017

(Arising out of Order-in-Appeal No. 82(AK)Cus/JPR/2016 dated 27.09.2016 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur**)**

DATE OF HEARING : 07.09.2017
DATE OF DECISION : 07.09.2017

Shri Mohsin Khan ….. **Appellant**
(Rep by Sh. Jatin Mahajan, Adv.)

VERSUS

CC, Jaipur-I …. **Respondent**
(Rep. by Sh. Govind Dixit, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 56527 /2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellant against the Order-in-Appeal No. 82(AK)Cus/JPR/2016 dated 27.09.2016 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur.

2. The brief facts of the case are that, on 21.12.2013 at 1225 hrs at Jaipur International Airport Oman Flight No. WY-273 had landed. The Customs officers recovered a packet underneath Seat No. 19-A wrapped with brown adhesive tape wherein "Roties"

(Breads) was written. On opening, it was found that it contained 'Gold Bars' which were smuggled from Dubai to India. The mastermind person and other persons were detailed and penalties imposed and gold was confiscated. During the course of investigation, it was found that the assessee-Appellant, Shri Mohsin Khan, was the friend of the smugglers. The mastermind was Shri Praveen Saini who accepted that 8 kg. Gold was supposed to be smuggled from Dubai in a lot of 2 kg. each. In his statement, he accepted that the assessee-Appellant, Shri Mohsin Khan, is known to him along with other associates. On the basis of his statement, the house of the assessee-Appellant was searched, but nothing incriminating was found. Finally, the Department imposed a penalty of Rs. 2 lacs on him. Being aggrieved, the assessee-Appellant has filed the present appeal.

3. With this background, we have heard Shri Jatin Mahajan, learned counsel for the assessee-Appellant and Shri Govind Dixit, learned DR for the Department.

4. Shri Jatin Mahajan, learned counsel, submits that the assessee-Appellant was a student who had gone to Dubai with the support of his father-in-law in search of job. He accepts that he was in Dubai and is a friend of other associates who were involved in the smuggling of the gold. He relied upon the ratio laid down in the case of **Air Customs vs Tomar Asulin,** 2016 (343) ELT 127 (Del.), wherein statement of a co-accused recorded under the Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) before an Officer other than a Police Officer is accepted. He further submits that

the confession of the co-accused cannot be elevated to status of substantive evidence, but the fact remains that the case law is pertaining to Section 67 of the NDPS Act and not with the smuggling of the gold.

5. On the other hand, learned DR for the Revenue justifies the impugned order. He submits that Shri Amjad Khan and Shri Praveen Saini in their statements have accepted that the assessee-Appellant is also their friend and involved in the smuggling.

6. By considering the totality of the facts and circumstances of the case, we are of the view that the assessee-Appellant was having the knowledge of the smuggling racket, though may not be involved in the case directly. He was also in Dubai. As per the call records, his association with the main accused cannot be denied. When it is so, then we find that the penalty was rightly imposed. But the fact remains that, he was a student and youth, we, by taking a lenient view, find that the penalty is at a higher side and, therefore, modify the impugned order and reduce the penalty to Rs. 1,00,000/- (rupees one lac only).

7. In the result, the appeal filed by the assessee-Appellant is partly allowed.

(Dictated & pronounced in the open court)

\

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

Golay