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

Date of hearing: 27.09.2017
Date of decision: 06.10.2017

**Customs Appeal No. 50128 of 2017**
(Arising out of order-in-appeal No. 88-89(AK)CUS/JPR/2016 dated 12.10.2016 passed by the Commissioner (Appeals) Customs & Central Excise, Jaipur-I).

Mohammed Iliyas Appellant

Vs.

CC, Jaipur-I Respondent

Appearance:

Sh. Jatin Mahajan, Advocate for the appellant
Sh. P. Juneja, AR for the respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 56985/ 2017

Per: **B. Ravichandran:**

The appeal is against order dated 12.10.2016 of Commissioner (Appeals), Jaipur. The appellant arrived as a passenger in Jaipur Airport by Air Arabia flight. The Officers intercepted him while passing through green channel and conducted detailed verification of goods carried by him. After such verification, the officers recovered 1937.9 carats of precious / semi precious stones, Indian currency Rs. 1945/- and foreign currency 1775 dhms, alongwith some misc. goods. The precious/ semi precious stones were valued by the approved valuer at Rs. 7,95,450/-. Further, follow up investigation was conducted by the officers. Valuation expert committee was formed for valuing the product again. The committee valued the products at Rs.13,86,600/-. In the follow up investigation it was revealed that the appellant had earlier purchased similar goods in India and on the basis of statement and passport entries it was held that there were undeclared movements of precious / semi-precious stones out of and into India in the past also and the same are also to be considered for duty liability and penal action. Proceedings were initiated against the appellant which resulted in the original order dated 02.04.2014. The original authority confirmed a custom duty of Rs. 4,99,869/- on the undeclared cut and polished stones valued at Rs.13,86,600/- seized from the appellant. The goods were ordered to be confiscated with an option to redeem the same on payment of a fine of Rs.25,000/-. Further, duty of Rs. 11,78,977/- was also confirmed on precious/ semi precious stones valued at Rs. 32,70,393/- which were held to be taken out of India and brought back in the past by the appellant. The foreign / Indian currency seized from the appellant were ordered to be confiscated. Penalty of Rs.4,99,869/- and Rs. 11,78,977/- were imposed on the appellant under Section 114A of the Customs Act, 1962. A further penalty of Rs. 5 lakhs was imposed under Section 114AA of the Act. On appeal, vide the impugned order the Commissioner (Appeals), confirmed the action of the lower authority on the seized goods. However, the Commissioner (Appeals) dropped a demand of customs duty to the extent of Rs. 2,53,515/- on the past activity due to lack of evidence. Accordingly, he reduced the penalty from Rs. 11,78,977/- to Rs.9,25,462/-. The penalty imposed under Section 114AA was also reduced to Rs. 5 lakh to Rs. 2 lakh.

2. Ld. Counsel for the appellant submitted that the appellant is not contesting the confiscation of the goods seized from him. The main grievance is with reference to confirmation of duty demand and imposition of penalty on the purported past activities of the appellant. There is no evidence of the appellant carrying precious or semi-precious stones in the past out of country and again bringing it into India in violation of provisions of Customs Act. The impugned order is purely based on presumption and evidence of statement of purchase of these goods in India. Accordingly, ld. Counsel pleaded that the duty demand and penal action with reference to past consignment cannot be justified. He also pleaded for setting aside the penalty under Section 114AA.

3. Ld. AR for the Revenue supported the finding of the lower authorities. He submitted that the appellant has been actually intercepted undeclared goods of high value. The valuation of the product has been done by expert in the presence of the appellant. The appellant did not bring in any contrary evidence to contest the valuation of the impugned goods. The past activities of the appellant were evidenced as per the statement as well as passport entries.

4. We have heard both the sides and perused appeal record.

5. The goods were actually seized during the course of interception of the appellant while moving out through green channel in the airport. We find no merit in the plea of the appellant either against valuation of the goods or against confiscation / penal action on the same. Admittedly, there is no standards of valuation for the impugned goods. These are to be examined for various parameters to arrive at a reasonable value. We have no reason to question the

opinion recorded by the expert committee appointed by the Revenue. The appellant also did not bring in any substantial contrary evidence to contest the findings of the expert committee. We find the appellant attempted to clear undeclared goods of high value through customs in the airport and the same cannot be disputed. As such, the confiscation and redemption fine imposed by lower authorities are found to be in conformity with the legal position. We are not inclined to interfere with the same.

6. Regarding the duty demand on the past activities of undeclared imports by the appellant we have closely examined the impugned order. The impugned order records that the local seller (Mr. Ansari, Jaipur) had admitted sales of precious / semi precious stones to the appellant in the past. Based on such diary entries the lower authorities proceeded to conclude that the appellant carried out precious / semi precious stones to foreign countries in the past and brought back the same during arrival in Jaipur. We find that there is no corroborative evidence on these transportation of impugned goods from India and back to India. The evidences which will categorically establish such movement are not available. It would appear that the lower authorities mostly based their finding on the general statement of the appellant about past activities and also on that he travelled many times abroad. To demand and recover customs duty it is necessary to establish the importation of dutiable goods into India. The Revenue apparently made certain presumptions based on certain collected evidence regarding purchase of cut or polished stones in Jaipur by the appellant. Beyond this, there is no evidence of its movement out of country and reimportation into India. Confirmation of duty cannot be made based on presumptions and assumptions.

Accordingly, we set aside the duty and penal action relatable to purported past activities of the appellant.

7. Regarding penalty under Section 114AA, we find that apart from penalty equivalent to the duty imposed under Section 114A the lower authorities imposed penalty also under 114AA. A perusal of Section 114AA shows that penalty is imposable under the said Section on a person who knowingly or intentionally makes signs or uses in declaration statement or document which is false or incorrect in any material particulars in the transaction of any business for the purpose of this Act. The said person shall be liable to penalty not exceeding five times the value of goods. The lower authorities did not justify with the reason for imposition of penalty separately under Section 114AA when equal amount of penalty has already been imposed under Section 114A. In fact, what type of false or incorrect materials were submitted by the appellant was not discussed. Accordingly, we set aside the penalty imposed under Section 114AA.

8. In view of the above discussions and analyses, but for setting aside the duty demand and penal action with reference to purported past activity of the appellant and setting aside penalty under Section 114AA, the appeal is dismissed.

(Pronounced on 06.10.2017).

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| (Justice (Dr.) Satish Chandra) | (B. Ravichandran) |
| President | Member (Technical) |

Pant