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

Date of hearing/decision: 15.05.2018

C/CoD No. 50372/2018 and
Custom Appeal No. 50942 of 2018-SM
(Arising out of Order-in-Appeal No. CC(A) CUS/239/2015 dated 09.03.2015 passed by the Commissioner of Customs (Appeals), New Delhi).

Pr. Commissioner of Customs (Prev.) Delhi — Appellant- Revenue

Vs.

Sh. Ahamed Mujjaba Khaleefa — Respondent-assessee

Appearance:

Sh. H. C. Saini, AR for the appellant -Revenue
Sh. A. S. Hasija, Advocate for the Respondent - assessee

Coram:

Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 51912/2018

Per: **V. Padmanabhan**:

The present appeal has been filed by Revenue against the Order-in-Appeal No. 239/2015 dated 11.03.2015.

2. The Revenue has also filed CoD application for condonation of delay of 1043 days. The reason cited by the Revenue is that in the facts of the case, the jurisdictional authority was initially of the view that the case pertains to baggage and hence the impugned order was challenged before

the Revisionary Authority, Government of India. However, the Revision Authority vide his order No. 40/2018-Cus. dated 13.03.2018 held that the issue does not pertain to baggage and hence outside the purview of Revisionary Authority. Consequently, the Revenue has filed present appeal alongwith the application for condonation of delay.

3. For the reasons cited therein, delay is condoned since such delay has occurred on account of pursuing the appeal before the wrong authority. Appeal is admitted.

4. With the concurrence of both sides the appeal itself is taken up for disposal.

5. With this background, we heard Sh. H. C. Saini, ld. AR for the Revenue and Sh. A.S. Hasija, ld. Advocate for the respondent- assessee.

6. Ld. AR submitted that in the impugned order, the confiscation of the gold jewellery seized by DRI from the passenger at Nizamuddin Railway Station has been set aside. He submitted that, it is admitted by the passenger in his statement before the DRI Officer, that the gold jewellery which was recovered from him was purchased by him from Dubai and the same was brought into India through Indigo Flight No. 6E-24 dated 01.02.2013 from Dubai to Delhi. He submitted that the passenger has directly proceeded from Airport to the Railway Station by taking pre-paid taxi when he was intercepted by the DRI Officer. He also

submitted that the circumstances clearly indicate that the gold in the possession of the passenger was smuggled by him from Dubai and hence the same is liable for confiscation. He also reiterated the grounds of the appeal at point No. 6, 7 and 9. Ld. AR accordingly submitted that the impugned order may be set aside and confiscation of gold jewellery may be ordered.

7. Ld. Advocate appearing for the respondent justified the impugned order. He drew my attention to the findings of the Commissioner (Appeals) in para 11 and 12 in which he has observed that the goods seized from the passenger did not bear any foreign marking and that the jewellery was only of 18 carat purity. He also drew my attention to para 16 in which the Commissioner (Appeals) has recorded that other than the statement of the appellant, there is no other evidence to establish that the seized goods were smuggled and that the appellant has brought the goods from Dubai. Accordingly, he submitted that the goods are not liable for confiscation. He also reiterated the stand of the respondent that the said goods were handed over to the passenger at the Delhi Railway Station for handing over to a friend at Mumbai. The purchase bills for the jewellery within India was also submitted to substantiate his case.

8. After hearing both sides and on perusal of record, it appears that Shri A. M. Khaleefa was intercepted by DRI Officer at Nizamuddin Railway Station, New Delhi. From his possession four packets of gold

jewellery was recovered in the DRI Office, totally weighing about 2015 grams whose value was estimated to be about Rs. 47 lakhs. The seized goods are in the form of gold jewellery of 18 carat purity, some of which studded. The jewellery does not bear foreign marking but the passenger in his statement has admitted that the said jewellery were brought by him from Dubai in the Indigo Flight and after arrival in the Delhi Airport, he has proceeded by taxi to Nizamuddin Railway Station from where he was intercepted. The case of Revenue is that in terms of Section 123 of the Customs Act, 1962, the passenger has failed to explain the possession of the smuggled goods and as such are liable for confiscation. But the respondent rebutted the allegation. It is his submission that other than the statement of the passenger there is no evidence to show that the seized goods were smuggled.

9. Gold is an item which is notified under Section 123 of the Customs Act, 1962. The Commissioner (Appeals) in the impugned order has held the goods to be not liable for confiscation for the following reason.

> "*16. Similarly in the instant case there is nothing on record except the statement of the appellant to show that the seized goods were smuggled. The said statement is not corroborated by any other evidence to establish that the appellant has brought the seized goods from Dubai. I am of the view that the ratio of the above said case law is available to the appellant.*
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> *17. The only circumstantial evidences existing in the instant case are that the pax arrived at IGI Airport, New Delhi on 01.02.2013 and took a taxi to the railway station on the same day itself in the close proximity. The evidences in the form of railway ticket, flight ticket, etc. certainly indicate that the said pad did travel from Dubai to New Delhi on the said flight on 01.02.2013 and to Railway*

Station on the same date. However, the said fact per se does not categorically indicate that the pax had actually carried the seized goods from Dubai as allegedly averred by the pax. There is no other evidence to prove the averments made by the pax in any other form. On the contrary, I find that the pax had contested the same by submitting that the said gold jewellery was handed over to him at outside IGI Airport, New Delhi to be carried to Mumbai. The appellant has also submitted the copies of the invoices/ bills against which the above jewellery was purchased from within India to substantiate his case. Hence, a plausible contention has been made out by the Appellant. However, the issue is whether the seized gold jewellery could be proved that they were actually brought by the pax as disclosed, which I am of the considered view that the same is not proved".

10. It is seen that there is no foreign marking on the jewellery. Revenue has not placed any proof to substantiate that the jewellery was smuggled into India other than the statement of the passenger. In the facts and circumstances of the case, I find no reason to interfere with the findings of the impugned order which is sustained for the reason mentioned therein. In the result, Revenue appeal is rejected.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

Pant