CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Single Member Bench - Court – I

CUSTOMS APPEAL No. 30420/2019

(Arising out of Order-in-Appeal No. HYD-CUS-000-APP-089-18-19, dated 28.02.2019 passed by Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

Roshni Mathurdas Kothadia .. **APPELLANT**
Rep. by Nipur Ratanlal Shah, GPA Holder,
Apurva Shanti Bunglow,
195, Nehru Park, Vastrapur,
AHMEDABAD – 380 015.
Gujarat

VERSUS

Commissioner of Customs .. **RESPONDENT**
Hyderabad Customs,
Kendriya Shulk Bhavan,
L.B.Stadium Road,
Basheerbagh,
HYDERABAD – 500 004.
Telangana

APPEARANCE:
Shri Shivaji Rao, Advocate for the appellant
Shri P.S. Reddy, Deputy Commissioner/AR for the Respondent.

Coram:
Hon'ble MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No.A/30659/2019

DATE OF HEARING: 17.10.2019
DATE OF DECISION: 17.10.2019

[ORDER PER: MR. P. VENKATA SUBBA RAO)

1. This appeal is filed against Order-in-Appeal No. HYD-CUS-000-APP-089-18-19, dated 28.02.2019. Facts of the case in brief are that the appellant, a USA Citizen, was departing for Mumbai from Hyderabad by

domestic flight No. 6E-247 when the security staff found yellow gold biscuits in her possession. The biscuits had a marking on them SUISSEE 100G 999.9. The security officers handed over the matter to the Customs who enquired whether she was in possession of any documents pertaining to the yellow metal biscuits of gold, proving that the same were not smuggled. She produced purchase invoices pertaining to the gold purchased by her in USA and said that she brought them into India through Mumbai on 15.11.2018, but had not declared them to the Customs and the Customs officers had noticed at the time of her arrival. Subsequently, on 18.11.2018 when she was moving from Hyderabad to Mumbai, the gold biscuits were detected. It is not in dispute that she had brought gold biscuits with various foreign markings into India and that she had not declared them with the Customs nor has paid any duty thereon.

2. Section 123 of the Customs Act applies to gold, watches and other goods notified by the Central Government. If any such goods are seized under the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled rests on the person from whom they are seized. The appellant could not discharge the burden under section 123 of Customs Act, 1962 of proving that the goods were not smuggled. Accordingly, after following due process, the Additional Commissioner ordered absolute confiscation of the five gold bars weighing 500 grams, valued at Rs. 15,56,500/- from the appellant under section 111(d) of the Customs Act, 1962. He also imposed penalty of Rs. 1,50,000/- under section 112(b)(i) of Customs Act, 1962 upon the appellant.

3. On appeal, the first appellate authority upheld the order of the lower authority. The present appeal is filed against this order of the first appellate authority praying for redemption in lieu of confiscation of the said gold biscuits and waiver of penalty imposed under section 112 (a)(i). It is prayed that the appellant is an eligible passenger of Indian origin who could have imported gold legitimately and paid duty under notification No. 50/2017-Cus, dated 30.06.2017. As she was returning to the country after a period of 16 years, she was unaware of the necessary customs requirements and hence has violated the conditions. It is further submitted on behalf of the appellant that the gold is not prohibited goods and therefore they may be allowed redemption of the gold.

4. Ld. Counsel appearing for the appellant relied upon the decision of CESTAT, Allahabad in the case of Islahuddin Khan [2018(364)ELT 168 (Tri.-All.)] and Shaik Jamal Basha at {1997(91)ELT 277 (A.P.)].

5. Per contra, Ld. DR supports the order of the first appellate authority and supports absolute confiscation of goods as well as imposition of redemption fine.

6. I have considered the arguments on both sides and perused the records. The present case has not arisen as a baggage dispute otherwise this Tribunal would have no jurisdiction in deciding the matter. The seizure was made within the country on suspicion of the gold being smuggled. The gold was not seized as a baggage but it was seized as foreign marked gold with respect to which the possessor of the gold was responsible to prove

under Section 123 that it is not smuggled. The appellant could not discharge the responsibility. In fact the gold was smuggled as it was not declared by the appellant while bringing into India. However, I find there is sufficient reason in the appeal showing that the appellant was returning to India after a period of 16 years and was ignorant of legal provisions. From the facts recorded in the Order-in-Original, it appears that during investigation, the appellant has fully disclosed the nature of the gold and has produced whatever documents were available with her showing its purchase in USA. There is nothing on record to show that she was trying to mislead the investigating authorities. She has also fairly conceded that she had brought the gold from USA and has not declared to the Customs authorities nor paid any duty thereon. She has also confessed that she has not declared the same in her baggage declaration column. The quantity of gold is 500 grams and is not a commercial quantity. In this factual scenario, I find there is sufficient grounds for allowing redemption to the appellant under section 125 of the Customs Act 1962, which reads as follows:

"***SECTION 125**. **Option to pay fine in lieu of confiscation.*** –

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

***Provided** that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]"

7. Section 125 allows redemption in lieu of confiscation in all cases on payment of fine. If the goods are prohibited, the redemption may be allowed but if the goods are not prohibited, such redemption shall be allowed. There is no case where the redemption cannot be allowed at all under this Section. The facts and circumstances of each case need to be taken into account while allowing redemption of prohibited goods. Considering the factual matrix of this case, I allow the redemption of the seized gold biscuits on payment of redemption fine of Rs. 2,50,000/-. I also uphold the imposition of fine of Rs. 1,50,000/- under section 112 upon the appellant.

8. The appeal is disposed of as herein above.

(Dictated and pronounced in open court)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

vrg