CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Single Member Bench

Customs Appeal No. 30402 of 2022

(Arising out of **Order-in-Appeal** No.VJD-CUSTM-000-APP-004-22-23, dated 22.06.2022 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

Shri Vemuru Sandeep Son .. **APPELLANT**
(Legal Heir representing
Late Vemuru Sudhakara Rao)
D.No. 3-10-84, Kotha Bazar,
Kavali, Nellore,
Andhra Pradesh – 524 201.

VERSUS

Commissioner of Customs Guntur .. **RESPONDENT**
P.B.No. 331, C.R.Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

AND

Customs Appeal No. 30403 of 2022

(Arising out of **Order-in-Appeal** No.VJD-CUSTM-000-APP-007-22-23, dated 22.06.2022 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

Shri N V Subrahmanyam .. **APPELLANT**
D.No. 1-2-10/11,
Near Poleramma Banda,
Old Town,
Kavali, Nellore,
Andhra Pradesh – 524 201.

VERSUS

Commissioner of Customs Guntur .. **RESPONDENT**
P.B.No. 331, C.R.Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

APPEARANCE:

Shri M V S Prasad, Advocate for the Appellant.
Shri A Rangadham, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30007-30008/2025

Date of Hearing:04.12.2024
Date of Decision:13.01.2025

[ORDER PER: ANGAD PRASAD]

These two appeals are arising out of the same set of facts and evidence and a common show cause notice issued by the Additional Director of Directorate of Revenue Intelligence, Hyderabad vide F.No. DRI/HZU/NSRU/48-ENQ-03(INT-3)/2018 dated 22.02.2019 vide which the notices were issued to Shri Vemuri Ramaiah, Shri Sudhakar Rao and Shri N.V. Subrahmanyam. The Appeal No. C/30403/2022 has been filed by Shri N.V. Subrahmanyam and Appeal No. C/30402/2022 has been filed by Shri Vemuru Sandeep Son, Legal heir of Late Shri Sudhakar Rao. Accordingly, both these appeals are taken up together for disposal.

2. The case, in brief, is that the officers of DRI seized certain quantity of foreign mark gold from the possession of one Shri V. Ramu alias Ramaiah under the reasonable belief that they were liable for confiscation. Thereafter, DRI conducted further investigation and on conclusion thereof, the show cause notice, quoted supra, was issued to Shri V. Ramaiah, V. Sudhakar Rao and Shri N.V.Subrahmanyam, proposing interalia for confiscation of eight irregulary shaped pieces of foreign origin gold, packing material and also for imposition of penalty under Section 112(a) and 112(b)(i) of Customs Act, 1962. Shri V. Ramaiah and Shri V. Sudhakar Rao were also directed to show cause vide said show cause notice as to why 6 pieces of gold of foreign origin weighing 600 gms should not be confiscated along with packing materials used for consignment and why penalty should not be imposed on them. Shri V. Sudhakar Rao and Shri N.V. Subrahmanyam were also issued show cause notice asking why penalty should not be imposed on them under Section 117 of Customs Act.

3. Learned Counsel for the appellant raised a preliminary objection regarding the issue in the appeal relating to jurisdiction matter. Hon'ble Supreme Court in the case of Commissioner of Customs Vs M/s Canon India Pvt Ltd., [2024 (11) TMI 391 – SC (LB)] now held that DRI Officers have jurisdiction to issue show cause notice under Section 28 of the Customs Act.

4. The Learned Advocate has argued mainly on the grounds that this being a town seizure and there being no concrete evidence for confiscating the gold, the order of the Commissioner (Appeals) upholding the absolute confiscation of gold should be set aside. Additionally, he also submits that in case confiscation is not set aside as per the settled law, the gold should be allowed to be redeemed on payment of redemption fine instead of it's absolute confiscation as ordered by the Original Authority and upheld by Commissioner (Appeals). He has relied on certain judgements in respect his submissions.

5. On the other hand, Learned DR has mainly argued that there is sufficient evidence to prove that the gold seized were smuggled gold and was rightfully seized and later on absolutely confiscated. The onus to prove that it was not smuggled gold was on them in view of provisions of Section 123 of Customs Act 1962 which they have failed to discharge. He further reiterated that power to allow redemption under Section 125 is a discretionary power, which is exercised by the Adjudicating Authority based on the facts and circumstances of the case and in the present case it has been rightfully denied to the appellants. Further, the penalty has also seen correctly imposed.

6. Heard Learned Counsel for the appellant and Learned AR for the Respondent and perused the records.

7. The Officers of DRI seized the gold of foreign origin i.e. 14 pieces (including small pieces) of gold totally weighing 1627.19 grams valued at Rs. 49,15,383/- from one person namely Sri Vemuru Ramu alias Ramaiah at RTC Bus stand, Kavali, Nellore District on 31.08.2018 as he is not in possession of any documents showing the licit import of said goods and on the reasonable belief that they are liable for confiscation under the

provisions of Customs Act, 1962. Further, the DRI Officers detained 15 pieces of gold bars totally weighing 1500 grams totally valued at Rs. 46,48,320/- by issuing detention memo under the provisions of Customs Act, 1962 as the officers of DRI proposed to ascertain the authenticity of the invoices Viz., CHN3209/2018-19 dated 30.08.2018 issued by M/s DP Gold Pvt Ltd., Chennai and invoice no. G0631/18-19 dated 30.08.2018 issued by M/s Phusaram Mundhra Pvt Ltd., Chennai. Finally, after taking into consideration of the evidence gathered during the investigation of the case, the above referred detained gold of 1500.00 grams vide panchanama dated 31.08.2018 was released by the DRI officers and handed over under panchanama dated 11.02.2019 to the notices i.e Shri V. Ramaiah and Shri V. Sudhakar Rao. Later, a show cause notice dated 22.02.2019 was issued to Sri Vemuru Ramaiah, Sri Vemuru Sudhakar Rao and Sri N.V. Subrahmanyam asking them to showcause as to why 8 irregularly shaped pieces of gold of foreign weighing 1027.19 gms totally valued at Rs. 31,02,915/- seized under panchanama dated 31.08.2018 should not be confiscated under Section 111 (a), 111 (b), 111 (d) and 111 (l) of the Customs Act, 1962 along with packing material and also proposed penalty on them under Section 112(a) and 112(b) (i) of the Customs Act, 1962. In the same show cause notice, Shri Vemuru Ramaiah and Sri Vemuru Sudhakar Rao were also asked to showcause as to why 6 pieces of gold of foreign origin weighing 600 gms totally valued at Rs. 18,12,468/- seized under panchanama dated 31.08.2018 under Section 111 (a), 111 (b), 111 (d) and 111 (l) of the Customs Act, 1962 along with packing material should not be confiscated and also proposed penalty on them under Section 112(a) and 112(b) (i) of the Customs Act, 1962. And also asked the Sri Vemuru Sudhakar Rao and Sri N.V. Subrahmanyam of Kavali were asked to show cause as to why penalty should not be imposed on them under Section 117 of the Customs Act, 1962 for the contraventions mentioned above.

8. Adjudicating Authority passed the impugned order for absolute confiscation of 8 irregularly shaped pieces of gold of foreign origin weighing 1027.19 gms valued at Rs. 31,02,915/- seized under panchanama dated 31.08.2018 under Section 111 (a), 111 (b), 111 (d) and 111 (l) of the Customs Act, 1962 and also ordered for absolute confiscation of 6 pieces of gold of foreign origin weighing 600 gms valued at Rs, 18,12,468/- seized from Shri Vemuru Ramaiah under Section 111 (a), 111 (b), 111 (d) and 111 (l) of the Customs Act, 1962 and imposed a penalty of Rs. 7,75,000/- under Section 112(a) and 112(b) (i) of the Customs Act, 1962 each against Shri Vemuru Ramaiah, Shri Vemuru Sudhakar Rao and Shri N.V. Subhramanyam with respect of confiscation of gold of 1027.19 gms. Also imposed a penalty of Rs. 4,50,000/- each against Shri Vemuru Ramaiah and Shri Vemuru Sudhakar Rao in respect of confiscatin of gold of 600.00 gms.

9. After appreciation of evidence produced by the appellant, Lower Authorities concluded that the invoice bearing no. 446 dated 30.08.2018 produced by Shri V. Sudhakar Rao is apparently not relevant to the seized gold bars under seizure and apparently nothing but an afterthought with a view to cover up the lapse. It is obvious that other than said invoice, no other evidence was produced showing the receipt of importation of goods under seizure either by Shri B. Ramaiah or Shri V. Sudhakar Rao and held that Shri B. Ramaiah and Shri V. Sudhakar Rao have failed to discharge the burden of proof that the gold of foreign origin being 600 gms totally valued at Rs. 18,12,468/- is procured illicitly.

10. In appeal no. C/30402/2022 filed by Shri Vemuru Sandeep Son, legal heir of late Shri Vemuru Sudhakar Rao, Order-in-Appeal No.VJD-CUSTM-

000-APP-004-22-23 dated 22.06.2022 due to death of Shri V. Sudhakar Rao, penalty imposed on late Shri V Sudhakar Rao abated but upheld the absolute confiscation of 600 gms of gold.

11. In appeal no. C/ 30403/2022 filed by Shri N V Subrahmanyam, Order-in-Appeal No. VJD-CUSTM-000-APP-007-22-23 dated 22.06.2022, appeal is rejected and upheld the Order-in-Original.

12. Learned Counsel for the appellant relies on the Co-ordinate Bench decision in the case of Adil Majeed Banday Vs Commissioner of Customs, Amritsar [2021 (378) ELT 540 (Tri – Chan)]. In this case, Co-ordinate Bench held that reasonable belief as to gold being smuggled to be established first by Revenue to invoke Section 123 of Customs Act, 1962. Such reasonable belief is nowhere established by Revenue. But, in this case, Respondent/Revenue established prima facie that gold is smuggled since document/invoice produced by appellants is not related to confiscated gold. It is also important to mention that statement regarding such gold is contradictory and appellant has failed to establish that the gold is not smuggled.

Section 123 of Customs Act, 1962 is reproduced below for the ease of reference:

123. Burden of proof in certain cases.

(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

(a) in a case where such seizure is made from the possession of any person,-

(i)on the person from whose possession the goods were seized; and

(ii)if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.]

(2) This section shall apply to gold and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

13. Hon'ble Supreme Court in the case of State of Gujarat Vs Shri Mohan Lal Jitamalji Porwal and Another [1987 (3) TMI 111 (SC)] in which Hon'ble Supreme Court has held as follows:

"The circumstances have to be viewed from the experienced eye of the officer who is well equipped to interpret the suspicious circumstances and to from a reasonable belief in the light of the said circumstances."

14. Commissioner of Customs, Kerala Vs Om Prakash Khatri [2019 (3) TMI 457 – Kerala High Court] held as follows:

"**it is explicit that, when any goods to which the Section applies are seized under the Act under the reasonable belief that they were smuggled goods, the burden of proof as to they were not smuggled goods, shall be on the person from whose possession the goods were seized**……..A reading of Section 123 also require only a reasonable belief as far as gold is concerned, that it was smuggled. **The gold was recovered from the possession of the two individuals intercepted by the DRI, who were not able to give a satisfactory explanation to upset the reasonable belief entertained by the DRI officials who recovered huge quantity of unmarked gold from the persons intercepted**. In fact the statements made by the intercepted individuals further fortified the belief entertained by the officials. **The statement of the carriers of the gold under Section 108 of the Act, can be safely relied upon by the Department to proceed against them."**

15. Further, Learned Counsel for the appellants relies on another Co-ordinate Bench decision in the case of Mrudul Agarwal Vs Commissioner of Customs, Lucknow [2018 (362) ELT 847 (Tri-All)]. In this case, Co-ordinate Bench held that appellant genuine connection with seized gold, absence of

any corroborative evidence, imposition of penalty under Section 112 of Customs Act, 1962 is bad. This case law is also not applicable in this case, since, appellants are not denying connection with seized gold. Here, they claim that the gold is their gold, but fail to establish properly.

16. Learned Counsel for the appellants, relies on another Co-ordinate Bench in the case of Commissioner of Customs, Lucknow Vs Sanjay Soni [2022 (381) ELT 509 (Tri-All)], in which it is held that penalty is not imposable only on the basis of incriminating statement made by one of the co-accused in absence of other corroborative evidence. This is also not applicable, since in that matter appellant was given cogent explanation. But, in this case, statements are contradictory and documents/invoices which are produced are not related.

17. Union of India Vs Imtiaz Iqbal Pothiwala [2018 SCC online Bom 4220] relying upon this case law, Learned Counsel for the appellant states that confiscation not justified merely on a confessional statement under Section 108 of Customs Act, 1962. This case law is not applicable in these appeals, since confiscation is not based on confessional statement only but also based on investigation and other evidence.

18. The appellant has taken a plea that the seizure in question is admittedly a town seizure and since there were no foreign markings on the gold, hence, it has wrongly been confiscated under Section 111 of the Customs Act and penalties have wrongly been imposed under Section 112(a) and (b) of the Act. But in the light of the above discussion that the admissions by the appellant is sufficient for prima facie belief that the gold recovered from them was of foreign origin, the burden was now upon the appellant to prove it otherwise.

19. The burden under the Section 123 of Customs Act, 1962 which is only of a reasonable belief is effectively discharged by the Department who initiated the action on the basis of the seizure and the recorded statements of the concerned person. Then the onus to prove that the gold was not smuggled, so as to reasonable belief entertained by the Department shifted and is squarely rested on his shoulder. But, in this case, appellants are failed to prove that seized gold is not smuggled. Since, their submissions are not co-related, contradictory and documents which were produced to prove also un-related to seized gold.

20. Learned Counsel for the appellants stated that Lower Authorities refused to give an opportunity for cross examination and therefore Lower Authorities violated the principles of natural justice. In this regard, in Order-in-Original, it is mentioned that "The noticees gleefully accepted the outcome of investigation when it comes to the aspect of releasing of the gold under detained panchanma dated 30/31.08.2018. This clearly shows the opportunistic attitude and culpable state of mind of the noticees. Once the contents of the panchanama regarding detention is accepted and received the detained gold on its release on 11.02.2019 as a result of investigation, raising contentions that panchas are not present; that the panchanama was signed due to pressure after receiving the show cause notice are not tenable and acceptable. Such demeanor is nothing but a desperate attempt to vitiate the proceedings of the adjudication".

21. In this regard, the Department produced Hon'ble Supreme Court decision in the case of Surjeet Singh Chhabra Vs Union of India [1997 (89) ELT 646 (SC)]. In this case, Hon'ble Supreme Court held that cross examination of witnesses regarding the place at which recovery was made to be allowed but where Petitioner has confessed, non allowing of cross

examination is not violative of principles of natural justice. In this case, no any such type of retraction.

22. From the entire facts, evidences and circumstances, it is clear that the appellants in these appeals failed to prove that the seized gold is not smuggled. Impugned order based on facts and law and proper appreciation of evidence. No any interference required in the impugned order. Therefore, appeals are liable to be dismissed.

23. In view of the above discussions and findings, both the appeals are dismissed.

(Pronounced in open court on 13.01.2025)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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