

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Appeal No. C/75931/2018

(Arising out of Order-in-Appeal No. 20/CUS(A)/GHY/17 dated 08/12/2017, passed by the Commissioner (Appeals), CGST, Central Excise and Customs, Guwahati.)

Commissioner of Customs (Prev.), Shilong Applicant (s)/Appellant (s)
Vs.

Smt. Manisha Devi Jain Respondent (s)

Appearance:

Shri S. N. Mitra, A. C. (A.R.) for the Revenue

Shri Ritesh Agarwala, C. A. & Shri Anand Jajodia, C. A. for the Respondent(s)

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)

Date of Hearing: -06.08.2018

Date of Pronouncement:-04/12/2018

Order No. FO/77118/2018

PER CORAM

The facts of the case in brief are that the respondent "Smt. Manisha Devi Jain" wife of Shri Suresh Kumar Jain, Thangal Bazar, Dharamsala Road, Imphal (Manipur) was travelling to Kolkata from Imphal Airport on 25/08/2016 via Indigo Flight No. 6E 202 at about 10:30 AM and was carrying 3 yellow metals (moulded in rod form) suspected to be Gold of foreign origin which was recovered from her registered baggage and was handed over to the Superintendent, Air Intelligence Unit, Imphal Airport and was subsequently handed over to the Superintendent, DPF, Imphal for further seizure formalities.

2 The Ld. Counsel Shri Ritesh Agarwal as well as Shri Anand Jajodia, appearing on behalf of the respondent submitted that she was travelling from Imphal Airport (Domestic Airport) to Kolkata Airport (Domestic Airport), on 25-08-2016 via Indigo flight No. 6E 202 at about 10:30 AM,

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both are domestic airports and no International Boarders were involved, hence, the question of Foreign Origin of Gold does not arise. The said gold did not have any Foreign Marking on them and very much belongs to the respondent and were not smuggled into India as no International boarder was involved. The Gold in the form of the rods was not of foreign origin and was actually gold ornaments received by her on her wedding.

The Ld. Counsel submitted that the Show Cause Notice dated 10-02-2017 issued by the Office of the Commissioner of Customs (Preventive) refers to the gold as "suspected to be of foreign origin" and in Paras 2 & 5 refers to her as "the owner." "The Gold Smith in the presence of the panchas, the owner and the Customs Officers physically checked, verified and confirmed that the yellow metal was gold of inferior quality."

It is his submission that the department based on suspicion alone had confiscated the gold. The said gold did not have any foreign markings on them. She further pleads that she never in her statement said that the gold was of foreign origin. The said gold rods were found in the respondent's registered luggage and was not concealed and no foreign markings found. This is also agreed by the Adjudicating Authority and the Appellate Authority. Besides, she has also been addressed as "the owner". Both the Authorities, the Adjudicating as well as the Appellate has also agreed that the gold is of the respondent and there is no dispute with the ownership. There was no ambiguity on the respondent being the owner of the Gold Rods seized.

The Respondent pleads that the order of absolute confiscation of the Gold and imposition of penalty by the Adjudicating Authority was unjustified and has created hardship on her. Respondent had submitted

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requisite documents in support of her being the right full owner of the said gold.

The respondent also pleads that nowhere in the Adjudication Order, or in the Show Cause Notice and in the investigation of the case, it has been documentarily evident that the gold is of foreign origin. Also no evidence of foreign marking on the gold rods was observed either by the goldsmith or the Senior Quality Officer, Government of Assam, Guwahati. The Department on presumptions and assumptions basis, absolutely confiscated the gold without any documentary and concrete evidence and held that the gold is of foreign origin and it has been illegally imported into India.

The Department at the time of seizure, valued the gold as 22 Karat gold and later it was evident to be of inferior quality and the Department had to reduce the value of gold. Hence, there is no dispute that the gold is not primary gold and is of much inferior quality compared to foreign origin gold.

Details of Gold

SI No.	Total Gold Weight	Sample Weight	Fineness of Gold in p.p.t on XRF	Karat (average)
1.	150.3 grams	2.2 g	438.90	10.50
2.	156.2 grams	5.7 g	640.20	15.20
3.	163.5 grams	5.6 g	915.80	21.90

The respondent pleads that the said gold in the form of rods were not of foreign origin and was actually gold ornaments received by her on her wedding. The ones received from her parents are reflected in her IT Return and the ones received from her-in-Laws are reflected in the IT

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Return of her husband Shri Suresh Kumar Jain. These ornaments being old enough, had reshaped and were out of fashion to be worn in today's fashion centric time.

As a custom in India, it is customary that the ancestral jewellery is presented by the Mother-in-law to her son's wife. A similar situation was on cards as the only son of the Respondent was slated to get married on November 10, 2016. However, since these ornaments and jewellery were out fashioned, the old ancestral jewellery and ornaments were moulded for ease of carrying, so that new in fashion jewellery could be procured from Kolkata. The respondent, being a typical Indian housewife was keen on to save as much as she could, so she got the old jewellery moulded in Imphal before taking them to Kolkata for exchange. This was done to avoid impurity charges being deducted by the Gold Smith in Kolkata which is as high as 15% and even higher in some cases. Also, there are instances wherein variation in the actual weight of the gold is seen and the actual credit of gold weight is not given. In order to avoid this kind of losses, she thought best is to get them moulded here in Imphal through people known to her rather than relying on people in Kolkata. Being not too well versed with Kolkata, she could save lot of time if these old ancestral ornaments and jewellery were moulded in Imphal.

3. Ld. DR reiterates the grounds of appeal and submitted that the Lower Appellate Authority has erred by not only allowing redemption of the seized gold rods of foreign origin on payment of fine but also in reducing the quantum of penalty imposed upon Smt. Manisha Devi Jain as demanded in the Show Cause Notice.

4. Heard both sides and perused the appeal records.

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5. On perusal of records, I find that the Indian Origin remolten gold/gold ornaments could not be legally confiscated as the possession of the same is not prohibited under any provision of law. In the present case, the seized gold do not bear foreign markings and do not have uniform weight/purity. It is observed that the respondent belongs to a respectable and a well to do family. She is also a regular Income Tax assessee. The seized gold rods were made from the gold ornaments belonging to her.

6. In view of the above observations and settled legal propositions, every piece of gold possessed by a person in India cannot be considered to be of smuggled nature and that the possessor of such gold cannot be made to discharge the onus u/s 123 of the Customs Act, 1962.

7. I do not find any reason to interfere with the impugned order and the same is hereby sustained. The appeal filed by the Revenue is dismissed.

(Pronounced in the court on.....)

Sd/-
(P.K. Choudhary)
Member (Judicial)

Pooja