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

Appeal No. C/77109/2017

(Arising out of Order-in-Original No. 94/Import/2016-17 dated 11.11.2015 passed by the Assistant Commissioner, Customs (Preventive) Divn. Forbesganj)

Shri Rajesh Kr. Soni
....Appellant (s)

Vs.

Commissioner of Customs, Patna
....Respondent (s)

Appearance:
Shri Shri K.K. Pandey, Adv. for the Appellant (s)
Shri S. Guha AC (A.R.) for the Revenue

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

Date of Hearing/Decision :- 01/08/2018

ORDER NO: ....

PER CORAM

The facts of the case in brief are that a search was conducted at the appellants' shop as well as residential premises whereby some silver ornaments and jewellery were recovered weighing 18341 Gms. Valued approximately Rs. 3,11,797 Lakhs. The appellant Shri Rajesh Kr. Soni is running a Jewellery Shop as a Proprietor in the name 'GAHANA GHAR' at Jogbani, Araria, Bihar. A statement was recorded wherein he submitted that some of the ornaments were purchased from the persons who came to his shop for sale of the same, some were received from customers for cleaning and/or repairs and few are also kept as Security against some borrowings i.e. 'BANDHAKI'. Show Cause Notice dated 28.01.2016 was issued on the premises that why the seized goods valued at Rs. 3,11,797/- should not be confiscated in terms of Section 111(b) of the Act and penalty should not be imposed upon him in terms of Section 112(a)/112(b) of the Customs Act, 1962. The Adjudicating Authority confiscated seized silver jewellery in terms of Section 111(b). He however gave an option to redeem the silver jewellery on payment of redemption fine of Rs. 1,90,000/- and imposed penalty Rs. 30,000/- under Section 112(a)/ 112(b) of the Customs Act, 1962.

On appeal, the Ld. Commissioner (Appeals) rejected the appeal filed before him. Hence, the present appeal before the Tribunal.

2. The Learned Advocate appearing on behalf of the appellant reiterates the grounds of appeals and submits that the appellant is running a jewellery shop and sells and purchases silver jewellary to any customer who comes to his shop without verifying his citizenship (India or Nepal) as there is no restrictions on movement from either side. The Learned Advocate vehemently argued that if the goods are notified under Section 123 of the Customs Act, then it was an obligation on the Department to prove beyond doubt that all the intercepted goods sold by Nepalese Citizen were of Nepal origin.

The Ld. Advocate further argued that Nepali Currency is freely available in Indian Market of Jogbani and thus if any ornament was purchased after payment in Nepali Currency, the price was mentioned in Nepali Currency on a wrapping paper so that when it is sold after cleaning, repair, modification or remake, as the case may be, net profit compared with the purchase price is derived. Similarly, on some of the wrappings, mention of amount in N.C. as well as in I.C. denoted the amount to be taken from the customers for cleaning, repairing or remodeling as the case may be. The seizing party ignored those wrappings which manifested the amount in I.C. and made the case as if all the 180 packets had wrapping papers on which the amount is mentioned only in Nepali Currency. If it was so, there was no reason to suppress such papers from becoming an essential relied upon document instead of making a vague mention "related to Nepal Description".

3. The Learned D.R. reiterates the orders of the Lower Authorities.

4. Heard both sides and perused the appeal records.

5. I find that the allegations made in the SCN have been adjudicated in a mechanical way and the Commissioner (A) has upheld it in a more perfunctory and mechanical manner. In the SCN it was alleged that the appellant is liable to penalty as well as his goods are liable to confiscation for violation of Ss 7, 11, 46 and 47 of the Customs Act read with Section 3(2) of the FT(DR) Act, 1992 and notifications issued u/s 11 of the Customs Act. However, the Adjudicating Authority has failed to justify the allegation as to how a person alleged to have purchased silver jewellery in his shop/house located in India from Nepali Citizens could have contravened the provisions of Section 7 which envisages that the goods, in course of import or export, as the case may be, should transit through notified routes, section 46 which enjoins that a Bill of Entry should be mandatorily submitted to the port, Section 47 which envisages that such goods should not be cleared unless permitted by proper officer of Customs and over and above, Section 11 which empowers the Central

Government to notify the goods, the export or import of which is prohibited for any of the reasons mentioned in sub-section (2). As regards section 3(2) of the FT(DR) Act' 92, the Central Government may make provision for prohibiting or restricting export or import of any particular type of goods to be notified in the official gazette. Similarly, the Adjudicating Officer has failed to identify which notification u/s 11 has been violated by the appellant. Thus, the SCN was completely based on erroneous allegation but the Adjudicating Officer, despite of that confiscated the goods and imposed penalty either u/s 112(a) or 112(b) of the Customs Act. If an adjudicating officer is not certain as to which of the provision of penalty is applicable, he cannot be presumed to have examined the allegation and its gravity candidly in a quasi judicial manner as expected of. On the other hand, the first appellate authority not only confirmed the views of the Adjudicating Officer rather transgressed the limitation of the SCN by saying that he has even found the names and addresses on the paper wrappings which were disclosed neither in the SCN nor the adjudicating officer could be able to detect it.

The appellant has stated the truth that he had purchased some old ornaments from Nepali citizens unaware of their citizenship then it could be only due to unawareness and only a meagre portion of the seized lot could be so, because in majority of the cases the customers are the local ladies of Jogbani. The confiscation of entire lot and imposition of Rs. 1,90,000/- with penalty of Rs. 30,000/- is not justified.

In view of the above discussions, it is my considered view that there was no material to hold that the seized silver jewellary and ornaments were of foreign origin and there is nothing to show that they are smuggled into India. On all these grounds the Impugned Order is liable to be set aside.

Onus is on the Department to prove illegal import. Mentioning the amount in a particular currency is not sufficient to establish illegal import from that country.

The redemption fine and Penalty imposed under Section 112(a) /112(b) of the Customs Act, 1962 is set aside. The appeal filed by the appellant is allowed with consequential benefit to the appellant.

(Dictated and pronounced in the open court.)

(P.K.Choudhary)
Member(Judicial)

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