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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75198 of 2020

(Arising out of Order-in-Original No.CCP/NER/06/2020 dated 29.04.2020 passed by Commissioner of Customs (Preventive), North Eastern Region, Shillong.)

Shri Pramod Kumar Dudi
(S/o Prabhu Dayal Dudi, R/o Ward No.11, Ranjeepura (Nandrapura), Mandrella, Jhunjhunun, Rajasthan-333025.)

...Appellant

VERSUS

Commissioner of Customs (Preventive), North Eastern Region, Shillong

.....Respondent

(110, M.G. Road, Shillong-793001.)

APPEARANCE

Shri Nihar Dasgupta, Advocate for the Appellant (s)
Shri M.P.Toppo, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 75106/2022

DATE OF HEARING : 15 November 2021
DATE OF DECISION : 22 February 2022

P.K. CHOUDHARY :

Briefly stated the facts of the case are that on 13.03.2019, the CISF staff posted at Imphal International Airport, Imphal near the departure entry gate detected 21(twenty one) gold biscuits from one Delhi bound passenger namely Shri Pramod Kumar Dudi, aged 40 years, son of Prabhu Dayal Dudi, resident of Ward No.11, Ranjeetpura (Nandrampura), Mandrella, Jhunjhunun, Rajasthan-333025, the Appellant herein. The 21 gold biscuits were found packed in 8 packets wrapped with black adhesive tape on top and yellow adhesive tape inside and all the packets were found concealed in three spectacle cases. The three spectacle cases were recovered from his trouser pockets. The Appellant produced 5 tax invoices in support of his legal possession and transportation of the 21 gold biscuits. The CISF staffs handed over the Appellant along with the detected gold pieces to the Superintendent (AIU), Customs, for necessary verification. At the Customs Divisional Office, Sangakpham, Imphal, the Customs officers called two independent witnesses. The Customs officers, in presence of the two independent witnesses and the accused, thoroughly checked and verified the tax invoices and found that the goods mentioned in the invoices did not match with the actual quantity of the detected goods. Also, on close examination of the gold biscuits it was found that 20 of the gold biscuits bore KTS marking and one gold biscuit bore diamond and MNOF0F0. Then the Customs officers called a certified local goldsmith, who verified the said goods as gold of high purity and found to be weighing 3486.0 gms in total. He also gave a certificate of genuineness of the gold biscuits. The required samples were drawn. A Show Cause Notice dated 12.09.2019 was issued proposing confiscation of the seized gold and imposing penalty on the Appellant. The same was confirmed by Order-in-Original No CCP/NER/06/2020 dated 29.04.2020 after considering the three replies dated 10.10.2019, 12.10.2019 and 05.12.2019 filed by the Appellant. By way of the said order, the Ld.Commissioner has ordered for absolute confiscation of the seized gold under Section 111(b) and Section 111(d) of the Customs Act, 1962. Further, penalty of Rs.23.00 Lakhs has been imposed on the Appellant under Section 112(b)(i) of the Customs Act, 1962. Hence the present Appeal before the Tribunal.

2. Shri Nihar Dasgupta, Ld.Advocate appearing on behalf of the Appellant submits that the gold found in the possession of the Appellant was on account of *bona fide* purchase made by the Appellant and other connected persons and that applicable duty had been discharged on such gold. In support of his contention, he invited the attention of the Bench to the purchase invoices and the corresponding entries in the Bank statement since the payments were made by A/c.

Payee Cheques for most of the transactions and are annexed to the Appeal Paper Book.

He further submitted that the Appellant had claimed ownership of 2158 gms gold while one Mr. Vishal had visited the Customs office at Imphal and had claimed ownership of 1328 gms of gold. Mr. Vishal had not been made a Noticee in the Show Cause Notice since the Customs Department had failed to find the relevant information at the time of issuance of Show Cause Notice. It was further submitted that the Department had summarily concluded that the seized gold had been smuggled from Myanmar without there being any evidence on record in support of such conclusion. It was further submitted that the reason that the Appellant could not produce any document in respect of the legal import of the seized goods because the Appellant had procured such goods domestically on payment of applicable taxes as evident from the invoices and payment proof produced by the Appellant. It was also submitted that the gold biscuits seized from the Appellant were 166 gms. of 21.39 K, while the usual practice outside India is to make 24K gold biscuits weighing 100/116 gms. Therefore, the actions of the Appellant do not merit invocation of Section 111 of the Customs Act and hence, the goods ought not be confiscated. He further prayed that the penalty imposed on the Appellant be dropped.

3. Shri M.P. Toppo, Ld.Authorized Representative on behalf of the Revenue reiterated the findings of the impugned order in support of his submissions.

4. Heard both sides through video conferencing and perused the Appeal records.

5. We find that the issues that require consideration in the instant case are –

i) Whether the seized goods can be said to have been smuggled from Myanmar, as held by the Revenue.

ii) Whether the Appellant has produced sufficient evidence to support his contention that the seized goods are not liable for confiscation.

iii) Whether the penalty under Section 112(b)(i) of the Customs Act, 1962 is liable to be imposed upon the Appellant.

6. On perusal of the Appeal records and after considering the submissions made by the parties, we find that the Appellant was intercepted at the Imphal International Airport while he was carrying 21 gold biscuits with 'KTS' marking on 20 biscuits and 'MNOF0F0' marking on one biscuit, totally weighing 3486 gms. Out of the seized goods, the Appellant has claimed ownership of 2158 gms of gold in respect of which the Appellant has produced purchase invoices. Further, the Appellant has produced Vasihatnama dated 04.08.1998, which is a Will executed by the grandmother of the Appellant bequeathing 564.25 gms of gold to the Appellant. The details of the invoices produced by the Appellant are as under:-

Purchase Invoice No.	Date	Issued by	QTY	Amount In INR
156	04.05.2002	Jewellery House Ram Gopal Chiranjilal	97.7	47873
333	26.02.2018	G.M. Jewellers	100	291263
257	23.01.2017	New Shekhawati Jewelers	62.4	200304
259	30.01.2017	New Shekhawati Jewelers	62.32	200047
434	21.08.2018	Champa Lal Kaisah Chand Soni	178.73	530825
534	29.09.2018	Champa Lal Kailsah Chand Soni	702	2130582
149	27.07.2018	Bajaj & Co., Sikar	160.80	495582
151	30.07.2018	Bajaj & Co., Sikar	160.85	495582
152	31.07.2018	Bajaj & Co., Sikar	160.85	
Ancestral Gold *(Page 96 of Appeal)*			564.25	
Total in respect of Shri Pramod Kumar Dudi			**2249.9**	

7. Further, we find that the said details had also been produced before the Adjudicating authority and the same has also been recorded in the adjudication order. The details produced by the Appellant include the details furnished by the Appellant at the time of seizure of goods by way of 5 tax invoices. The Adjudicating authority after having considered the documents produced by the Appellant has summarily

held that the said documents were fabricated. However, we find no evidence available on record to support the finding in the adjudication order that the documents produced by the Appellant were fabricated. Had the Adjudicating authority suspected of such foul play, they could have easily examined the jewellers who had issued the invoices to the Appellant to establish the correct factual position. Therefore, we find that the Appellant has produced sufficient evidence in support of its claim for ownership of 2158 gms of seized goods.

8. Further, we find that the Revenue has failed to establish beyond reasonable doubt that the seized goods had indeed been smuggled from Myanmar. In order to hold that the seized goods are smuggled goods, the Revenue has sought to rely upon Order-in-Original No.CCP/NER/15/2019 dated 24.09.2019 to state that certain goods, being gold biscuits with ‘KTS’ marking had been seized by the Customs authorities in another matter and the seized goods in the instant case having ‘KTS’ marking ought to be from the same batch. However, we find it difficult to accept the contention of the Revenue in the absence of any expert report and/or pictorial evidence establishing any similarity between the goods seized and adjudicated vide Order-in-Original dated 24.09.2019 and the goods seized from the Appellant. Further, it may not be out of place to note that merely because two separate goods have similar markings, it is not sufficient to conclude that both such goods originated from the same place. In the instant case, the Appellant has produced receipts from Kanaram Tarachand & Sons, jewelers in respect of 13 biscuits melted and converted by the Appellant. In view of the fact that the Adjudicating authority had the details of the jewelers in both cases, adjudicated vide Order-in-Original dated 24.09.2019 and the instant case, they could have easily examined the jewelers to establish whether the goods belonged to the same batch. However, unfortunately this exercise has not been carried out by the Adjudicating authoritiy. We are of the considered view that in the facts and circumstances of the present case, the Appellant cannot be made to suffer for lapses on the part of the Adjudicating

authority. It is also pertinent to note that the Revenue has submitted no information as to whether the Order-in-Original dated 24.09.2019 has attained finality. Therefore, the Adjudicating authority could not have proceeded to hold the Appellant liable on the basis of mere conjectures.

9. In respect of the submissions made by the Ld. Advocate for the Appellant with respect to the claim of ownership of 1328 gms. of the seized goods by one Mr. Vishal, we find that although vide letter dated 06.12.2019, the office of the Commissioner of Customs (Preventive), Meghalaya acknowledges the letter dated 14.10.2019 addressed by Mr. Vishal to the Customs authorities, the office of the Commissioner denies that Mr. Vishal had ever visited their office. Further, at the time of issuance of the Show Cause Notice, the Revenue did not possess the required details in respect of Mr. Vishal and had also not received any report from the authorities in Jaipur, as had been sought. Therefore, since Mr. Vishal is not a party to the proceedings before us, we refrain from making any observations on the submissions made in respect of his claim.

10. In view of the above discussion, we find that although there have been certain inconsistencies in the submissions made on behalf of the Appellant, the Adjudicating authority has failed to satisfy that the seized goods were goods brought from a place outside India, and therefore, the provisions under Section 111 of the Customs Act cannot be invoked. Further, we find that the Appellant has duly discharged the burden of proof under Section 123 of the Customs Act, 1962. Accordingly, we set aside the impugned order on the following terms:

i) 2158 gms. of gold, being 13 gold biscuits of “KTS” marking, be released in favour of the Appellant after verifying the originals of the receipts and Vasihatnama produced by the Appellant before this Tribunal;

ii) Matter is remanded to the Adjudicating authority to issue a fresh Show Cause Notice to Mr. Vishal in respect of the remaining 1328 gms. of seized goods of which he has claimed ownership.

The Appeal filed by the Appellant is allowed on the above terms. The Appellant is entitled to consequential reliefs, if any.

(Order pronounced in the open court on 22 February 2022.)

Sd/

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(RAJU)
MEMBER (TECHNICAL)

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