IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 77075 of 2018

(Arising out of Order-in-Original No. CCP/NER/01/2018 dated 16th January 2018 passed by Commissioner of Customs (Preventive), Shillong.)

Shri Abdul Rahman.
(S/o Anamuddin, Vill-Moreh, Ward No. 05,
PO+PS- Moreh, Dist.-Tengnoupal, Manipur)

Appellant (s)

VERSUS

Commr. of Customs (Preventive), North Eastern Region Shillong
(110, Mahatma Gandhi Road, NER, Shillong-793001, Meghalaya)

Respondent (s)

WITH

Customs Appeal No. 77076 of 2018

Arising out of Order-in-Original No. CCP/NER/01/2018 dated 16th January 2018 passed by Commissioner of Customs (Preventive), Shillong.)

Md. Ataz Khan
(S/o Abdul Salam, Vill-Sora,
PO+PS-Kakching, Dist.-Kakching, Manipur)

Appellant (s)

VERSUS

Commr. of Customs (Preventive), North Eastern Region Shillong
(110, Mahatma Gandhi Road, NER, Shillong-793001, Meghalaya)

Respondent (s)

APPERANCE :
Ms Atika Sumran Ahmed, Advocate for the Appellant
Mr. M. P. Toppo, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO…75137-75138/2023

Date of Hearing : 15th March 2023
Date of Decision:

PER R. MURALIDHAR

In this case 12th Assam Rifles (AR) personnel stationed at Motor Vehicle Check Post (MVCP), Tengnoupal intercepted the seized vehicle bearing Registration No. MN-01W-5956 of Green Colour which was moving from Moreh to Imphal. On search, 55 pieces of gold biscuits believed to be of foreign origin were found from the seized vehicle, whereof, 45 pieces of gold biscuits were found concealed inside the two secret hollow chambers underneath the vehicle and the remaining 10 pieces of gold biscuits were concealed under the cushion of the driver's seat. The first appellant Md. Abdul Rahaman was the helper described as "Handyman" was in the vehicle when it was intercepted. Md. Ataj Khan is the driver of the vehicle and is the second Appellant.

2. Show Cause Notice was issued seeking to know as to why the seized Gold biscuits should not be confiscated and the vehicle TATA 207DI should not be confiscated and as to why penalty should not be imposed on the Handyman and on the Driver. After due process, the Adjudicating Authority issued the OIO confiscating absolutely the 55 gold biscuits valued at Rs.2,70,79,580/-. He also ordered confiscation of TATA 207DI bearing registration No. MN-01W 5956 valued at Rs. 1,50,000/-. He imposed a penalty of Rs.5,00,000/- on Md. Ataz Khan (Driver). He imposed a penalty of Rs. 1,00,000/- on Md. Abdul Rahaman (Handyman). Md. Ataz Khan is a Driver of the vehicle Tata 207DI. Md. Ataz Khan is a Handyman of the Vehicle Tata 207DI. Aggrieved by the impugned OIO, the Driver and the Handyman have come up before the Tribunal, contesting the penalties imposed on them.

3. The Ld. Advocate appearing on behalf of the Appellants made submissions that in the course of investigation, it is not averred that the Appellant has prior knowledge with regard to dealing of smuggling of gold biscuits nor any proof was adduced towards the same.

4. She relies on the case law of Dinesh Iswarlal Patel Vs. Collector of Customs Bombay 1988 (34) E. L. T. 382 wherein it has been held that "*mere custody of wrist watches of foreign made without knowledge or reason to believe that they are smuggled goods and liable to confiscation under section 111 is not sufficient to impose penalty*." She also submits that both these persons being driver and handyman are coming from the very poor background and financially they are stressed. Therefore, a very lenient view should have been taken by the Commissioner while imposing the penalties on them.

5. The Ld. Authorized Representative submits that this is a clear case of smuggling. Admittedly, the gold biscuits were recovered from the cushions concealed under the Driver seat and another two different secret hollow chambers under the vehicle near the footstep of the

handyman sitde. Therefore it is not a case where foreign origin goods were simply carried by these people. They were very much aware that these are liable to be confiscated and they had prior knowledge that these were being brought to India illegally. Therefore, he reiterates the findings of the Adjudicating Authority and justifies the penalties imposed on them and prays that the Appeal may be dismissed.

6. Heard both sides.

7. The Show Cause Notice refers to the voluntary statements given by the Md. Ataz Khan on 01/03/2017, wherein he has admitted that he has taken delivery of 55 gold biscuits given to him by a Burmese man on 27/02/2017 and he has been paid Rs.27,500/- for this work. Paragraph 4 of the Show Cause Notice mentions that Md. Abdul Rahaman, the Handyman has given a voluntary statement on 01/03/2017 on the events of the Assam Rifles personnel stopping the vehicle and recovering 55 pieces of gold biscuits from the van. These recorded statements are being mentioned in the Show Cause Notice but the same are not shown as relied upon documents. The Ld. Advocate of the Appellant submits that the recorded statements have not been furnished to them along with the show cause notice by the Department. From the Show Cause Notice, it is not clear if these statements were recorded in terms of Section 108. If any statement has been given by the person in presence of a gazetted officer in terms of Section 108 of the Customs Act, 1962, the same is required to be reiterated by him before the Adjudicating Authority then only it can be admitted as a evidence as specified under Section 138b(i) of the Customs Act 1962.

8. Coming to a factual matrix, it is very clear that gold biscuits were concealed at two different places and the driver as well as the handyman were very much involved in transporting these goods which are liable for confiscation. Therefore, the case cited by the Ld. Advocate will not be applicable to the facts of the present case.

9. In the impugned OIO, 55 gold biscuits with a value of Rs.2,70,79,580/- have been confiscated absolutely. Similarly, TATA 207DI vehicle has also been confiscated absolutely. Coming to the present penalties, it is seen that while the 2 persons have definitely played a role in smuggling gold biscuits it is also seen that they are more or less only carriers and not the ultimate beneficiary of the gold

being smuggled. The seized gold worth of Rs. 2.07 crores and the vehicle with a value of Rs. over 1.50 Lakhs have been confiscated absolutely and neither of these confiscations are under challenge in the present Appeal.

10. Taking into consideration that they come from poor family background with very low income and they have taken up this risky task for a mere Rs. 27,500/-, the penalty of Rs. 5 Lakhs imposed on the Driver and Rs. 1 Lakh imposed on the Handyman would be harsh on them.

11. Considering all these facts and legal provisions, I deem it fit to reduce the penalties imposed on them. The revised penalty would be as under:-

Penalty on Md. Ataz Khan Rs. 2,50,000/-.

penalty on Md. Abdul Rahaman 50,000/-.

9. The Appeals are allowed partially on the above terms.

(Pronounced in open Court on………………...)

Sd/-
(R. Muralidhar)
Member (Judicial)

Pooja