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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75237 of 2021

Arising out of Order-in-Appeal No.KOL/CUS(PREV)/WB/AKR/928-929/2020 Dated 23.12.2020 passed by Commissioner of Customs (Appeals), Kolkata.

Shri Sripada Barik
(Vill-Ramnagar, P.S. Singur, Hooghly-712306)

Appellant (s)

VERSUS

Commr. of Customs (Preventive), Kolkata
(3rd Floor, 15/1, Strand Road, Customs House, Kolkata-700001)

Respondent (s)

With

Customs Appeal No. 75238 of 2021

Arising out of Order-in-Appeal No.KOL/CUS(PREV)/WB/AKR/928-929/2020 Dated 23.12.2020 passed by Commissioner of Customs (Appeals), Kolkata.

Rahul Rampuria, Prop of M/s. Rahul & Co.,
(3A, Shakespeare Sarani (Gr. Floor)
Kolkata-700071)

Appellant (s)

VERSUS

Commr. of Customs (Preventive), Kolkata
(3rd Floor, 15/1, Strand Road, Customs House, Kolkata-700001)

Respondent (s)

APPERANCE :
Mr. Rahul Tangri, Advocate for the Appellant
Mr. M. P. Toppo, Authorized Representative for the Respondent

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

FINAL ORDER NOs.75432-75433/2023

Date of Hearing : 8 May 2023
Date of Decision : 8 May 2023

PER R. MURALIDHAR

The Appellant No. 2 is engaged in the purchase, manufacturing and sale of the jewellery including gold, diamonds and other precious and semi-precious metals and stones. The Appellant No. 2 procures gold with a purity of 995 fineness from different buyers in India for manufacturing jewellery and selling them in India. The Appellant No. 2 placed an order for the gold bar weighing 1 kg with M/s J. J. House Pvt. Ltd dated 15.11.2017. The subject goods were delivered to the Appellant No. 1 on 17.11.2017 (as per Appellant) along with the purchase invoice. M/s JJ House Pvt. Ltd. raised invoice on the Appellant No. 1 having HSN code 7108, for quantity 1000 grams amounting to Rs. 29,74,270/-.

2. On receiving the subject goods, the Appellant No. 2 instructed his staff i.e. Mr. Sripad Barik (viz. Appellant No. 1) to carry the subject goods to M/s Maa Ambey Jewellers for the purpose of weighing and checking the purity of the gold bar. On reaching the shop of M/s Maa Ambey Jewellers, the officers of Divisional Preventive Unit, Kolkata who were already there for another investigation, enquired about the documents regarding the gold bar from Mr. Sripada Barik and he produced the delivery challan carried by him to substantiate the possession of the said gold bar. After the subject goods were seized from Mr. Sripada Barik his statements were recorded.

3. The Appellant No. 2, furnished the invoice along with other documents substantiating his submissions of the licit procurement of the subject gold bar.

4. Show Cause Notice dated 11.05.2018 was issued asking why the gold bar weighing 1 kg valued at Rs 29,90,312/- should not be confiscated under Section 111(b) & (d) of the Act and penalty should not be imposed on both the Appellants under Section 112(b) of the Act. The Appellants submitted the detailed replies rebutting the allegations made in the show cause notice dated 11.05.2018. The Ld. Additional Commissioner of Customs (Prev), C.C.(P). vide OIO dated 28.02.2019 rejected all the contentions made by the Appellants and confirmed the confiscation and penalty proposed in the Show Cause Notice. On appeal, the Ld. Commissioner of Customs (Appeals), Kolkata, rejected the appeal and upheld the order passed by the lower Authority vide the impugned order dated 23.12.2020.

5. Being aggrieved with impugned order, the Appellant has filed present appeal.

6. The Learned Advocate appearing for the Appellants submits that the lower Authorities have not considered the submissions made by them and the documentary evidence placed by them. The Department has not adduced proper evidence towards Delivery of the Gold on 18/11/2017 to the Appellant No. 2 as alleged by the Department. The Department has relied on the statements given by Mr. Siddhartha Mehta, Authorized Signatory & Accountant of M.s J. J. House Pvt. Ltd. wherein he has stated that the goods were received by J. J. House Pvt. Ltd. which was purchased from M/s. Zaveri & Company Private Limited under invoice dated 16/11/2017.

7. The Learned Advocate submits that inspite of their vehement request for cross examination the officials of J.J. House Pvt. Ltd., the same was not granted by the Adjudicating Authority. He further submits that the Department has not come out with any documentary evidences from Brinks India stating that the gold has been delivered to M/s. Rahul & Co. (Appellant No.2) on 18/11/2017. On the other hand he submits that invoice dated 17/11/2017 is duly signed by Mr. Rahul Rampuria on 17/11/2017 with his own stamp. Hence, he submits that the delivery was received on 17/11/2017 itself. As the entire case is based upon this assumption that the gold was not received by Mr. Rahul Rampuria & Company on 17/11/2017, non-allowing of cross-examination of Sri Siddhart Mehta, Authorized Signatory and Accountant of JJ House vitiates the proceedings. Therefore, he prays that the Appeal is required to be allowed.

8. The Learned AR submits that the documentary evidence show that the goods were purchased by J.J. House Pvt. Ltd. vide invoice dated 16/11/2017 and the goods have been moved from Ahmedabad through Brinks India and record shows that they have delivered the goods to J.J. only on 8 PM on 17/11/2017. The Batch Numbers given in the Invoice of Brinks India is C 179746-C 179780 (35 bars) out of which J.J. has sold 1 Bar with Batch Number C 179778 to the Appellant No. 2.

The Department has also produced a copy of the said register of J. J. House Pvt. Ltd. on the point that the goods under J. J. invoice Number JJ3056 have been delivered to Brinks India on 18/11/2017 between 1220 to 1300 hrs to the Appellant No.2. Therefore, the question of the same gold being available to the Appellant on the morning of 17/11/2017 cannot arise. He relies on the recorded statement of Sri Siddharth Mehta of J. J. House and on the recorded statements of Mr. Sripada Barik, employee of the Company who has also confirmed that Mr. Rahul Rampuria was dealing with the imported goods. Therefore, he submits that the Appeal is required to be rejected.

9. After going through the case records, it is seen that the Appellant has not been given proper opportunity to defend his case. They were not allowed to cross-examine the crucial witness i. e. Mr. Siddharth Mehta, Accountant and Signatory of M/s J. J. House Pvt. Ltd. whose recorded statement is relied upon to place emphasis that the gold was delivered to the Appellant only on 18/11/2017. It is seen that even the statement of Mr. Sripada Barik was retracted by him. In such circumstances, it is felt that the matter is required to be re-visited at the Adjudication level. The matter is being remanded to the Adjudicating Authority for the limited purpose to consider the following:-

(i) The Appellant's should be given an opportunity to cross-examine Shri Siddhartha Mehta, Manager of J. J. House Pvt. Ltd.

(ii) The Appellant should be given the details of delivery of goods by Brinks India to the Appellant No.2 after the invoice was prepared by J. J. House Pvt. Ltd. on 17/11/2017 from Brink India's Records.

10. The Adjudicating Authority will follow the principle of natural justice and after fulfilling the above conditions, he may pass a suitable order. Appeal is disposed of thus.

11. As the matter is being remanded, the Department is directed to not dispose off the confiscated goods till the issue is finalized.

12. Since the matter pertains to year 2017, the Adjudicating Authority is directed to complete the proceedings within 4 months from the date of this communication.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja