

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

REGIONAL BENCH – COURT NO.2

**Customs Appeal No. 75588 of 2022**

(Arising out of Order-in-Appeal No.02/CUS(A)/GHY/2022 dated 09.05.2022, passed by Commissioner (Appeals), CGST, Central Excise & Customs, Guwahati)

**Shri Ram Karan Kulhari**

(S/o Shri Mota Ram Kulhari, R/o Udansari, Sikar, Rajasthan-332301)

**Appellant**

*VERSUS*

**Commissioner of Customs (Preventive), Shillong**

(N.E.R., Customs House, 110 M. G. Road, Shillong, Meghalaya-793001)

**Respondent**

**APPEARANCE :**

Mr. Pranab Sikdar, Consultant for the Appellant

Mr. Sourav Chakraborty, Authorized Representative for the Respondent

**CORAM:**

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

**FINAL ORDER NO.76021/2023**

Date of Hearing : 04 July 2023

Date of Decision : 04 July 2023

**PER R. MURALIDHAR**

The Appellant was caught carrying three pieces of gold weighing 498 grams when he was travelling from Imphal to Jaipur by Indigo flight on 30.06.2019. After due process, Show Cause Notice was issued and the Adjudicating Authority vide OIO No. COM/CUS/ADDL./COMMR/45/2021 dated 30/04/2021 absolutely confiscated the gold biscuits weighing 498 grams valued at Rs.17,03,160/- along with used Ceilling fan motor of Pooja Brand which has no commercial value. He also imposed penalty of Rs.1,70,000/- on the Appellant. He dropped the penalty proceedings against another noticee, Shri Chhotelal Choudhury. Being aggrieved, the Appellant is before the Tribunal.

2. The Learned Consultant appearing on behalf of the Appellant submits that no proper procedure was followed by the Department in the entire proceedings. The Show Cause Notice was issued solely based

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on one purported recorded Statement of the Appellant with no other further corroborative evidence. When the Show Cause Notice was issued, copies of Panchnama, Report of Indigo Staff towards handing over of the gold to Customs, recorded Statement of the Appellant, verification report of Chhotelal Choudhury etc. were never supplied to the Appellant. Even the relied upon Test Report issued by Assam Hallmarking Centre, Guwahati for testing purity of the gold, was not made available to the Appellant. The Appellant vide their letter dated 30/12/2019 sought copies for all these documents so as to make effective submissions in defence of their case. The Department did not provide these copies ignoring their request. In their reply to their Show Cause Notice on 20/04/2020, the Appellant once again raised the issue of non-supply of these important documents. During the Adjudication proceedings, the Appellant retracted the purported confession statement made him at the time of seizure of the goods. He has categorically denied that the goods were of foreign origin and produced copies of the three Invoices showing details of purchase of 446.182 grams of gold and also produced copy of the Invoices of the party who has taken up melting of the same and adding other gold to make the total quantity of 498 grams. The Consultant submits that the Adjudicating Authority did not give any findings as to why the Invoices submitted in support of the Appellant's claim that the gold was procured in a legitimate and legal manner was not considered. He also did not get any verification done to counter the Appellants claim that the gold was bought in legitimate way under these Invoices. Apart from this, without any basis, the Adjudicating Authority has held that the gold is of foreign origin on the ground that marking "KTS" is of foreign origin. For coming to this conclusion, no evidence has been provided by the Adjudicating Authority as to how "KTS" marking itself can prove that the gold is of foreign origin. While the Adjudicating Authority has cited Test Report of Assam Hallmarking Centre, Guwahati, neither this Report was

made available to check the veracity of the Department nor any details have been given as to how the sample were drawn, when they were sent to the Hallmarking Centre, when the Report was received etc. All these make it a doubtful claim by the Department. He also pointed out that no follow up investigation was completed against the Appellant as well as Shri Chhotelal Choudhury (the other Noticee). Therefore, the entire case is built up only on the lone purported confessional statement given by the Appellant on 30/06/2019. Even this confession statement has been retracted by the Appellant at the adjudication stage. The Learned Consultant relies on the case law of Division Bench of CESTAT, Kolkata in the case **of Daleep Kumar Verma Vs. Commissioner of Customs (Preventive), Shillong**, wherein on similar issue, vide Final Order No. 75300-75302/2023 dated 04 May 2023, Tribunal has held that the allegation are legally not sustainable and penalty imposed also is not sustainable. He submits that in the present facts of the case, the Appellant is on much a better footing and prays that the Appeal may be allowed.

3. The Learned AR submits that the Appellant was caught with three pieces of gold biscuits weighing 498 grams when they were boarding flight from Imphal to Jaipur by Indigo Airlines. Only on account of proper checking of the baggage, this could be detected and further action was initiated against the Appellant. The Appellant in his recorded statement has stated that he had gone to Delhi and remitted cash to one Mr Raju who has given him one 10 Rupee Note. The Appellant was asked to produce this 10 Rupee Note to get the consignment of the gold at Imphal. Accordingly, the Appellant has gone and taken the delivery of foreign origin gold from Imphal. The very fact that the Appellant did not carry the gold in the normal course and was not in a position to show any documents at the airport shows that the intention of the Appellant was to transport the smuggled foreign origin gold to Jaipur. Further the Invoices produced by him are to the extent of 446.182

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grams. As to how this has become 498 grams has not been explained properly. The veracity of the Appellant's claims that they were procured legally is highly doubtful since the purchase invoices are dated 3/01/2018, 20/3/2019 & 10/07/2018 much before the seizure of the gold biscuits at the Airport on 30/06/2019. The AR reiterates the findings of the lower Authorities and justifies absolute confiscation and penalty imposed. Therefore, he submits that the Appeal is liable to be dismissed.

4. Heard both sides and perused the documents.

5. There is no dispute that the Appellant was intercepted at Imphal Airport and three gold biscuits were recovered from him. The proceedings initiated by the Department resulted in the Show Cause Notice being issued to the Appellant as well as to Chhotelal Choudhury. The Department has heavily relied on the so called confessional statement of the Appellant. The only corroborative evidence cited is the Test Report by Assam Hallmarking Centre, Guwhati. The copy of such Test Report, is not made available anywhere in the entire proceedings to the Appellant. The relied upon documents like Panchnama, recorded Statement of the Appellant, Indigo Staff statement towards handing over the gold to the Customs, verification report of Chhotelal Choudhury etc., though being sought regularly by the Appellant, were never issued to the Appellant. This is gross violation of principles of natural justice. Without doubt, initially the proof of being legitimate transaction lies with the Appellant but once some evidence is brought by the Appellant, the responsibility shifts to the Department to prove otherwise. In this case, first of all the Department has not brought in any evidence as to how they have come to a conclusion that the mere marking of "KTS" by itself would make these goods of foreign origin. Further when the Appellant has produced documentary evidence by way of Invoices towards purchase and towards melting of the gold, it was upto the Adjudicating Authority to conduct verification about the veracity of

these documentary evidence produced before him. He failed to do so. Further it is seen from the OIO that admittedly a letter of follow up investigation was sent to Jurisdictional Commissioner, Jaipur requesting them to conduct follow up investigation on the Appellant as well as on Chhotelal Choudhury. The OIO records at Para 17 that no reply was received from the Jaipur Commissionerate. Thus, it is clear that no follow-up investigation was taken up either against the Appellant or against the other noticee, Chhotelal Choudhury. Therefore, it is seen that the Department has proceeded solely relying on the purported confession statement of the Appellant without carrying out any further investigation to corroborate the Department's allegations. The Adjudicating Authority at Para 24 has held that there is no evidence available on record that Chhotelal Choudhury is any way involved in the instant case. This is surprising since the confessional statement cited by the Department states that the Appellant has spoken about the role played by Chhotelal Choudhury but no Statement was recorded from Chhotelal Choudhury. As observed earlier, no follow-up investigation was taken up both against the Appellant as well as Chhotelal Choudhury.

6. In the cited case law of Daleep Kumar Verma Vs. Commissioner of Customs (Preventive), Shillong, vide Final Order No. 75300-75302/2023 dated 04 May 2023 has held as under:-

*21.2 We find that the Impugned Order mainly relied upon the statements of Rohit Kumar Suri and the Harshit Gatkhar to establish the foreign origin nature of the gold. Other than the statements, there is no other evidence available on record to show that the gold were smuggled into the country from Myanmar. The silver bar is of Indian origin. It is incorrect to rely only on the statements of the co-accused without any corroboration, to prove the smuggled nature of the gold. It is a settled law that the statement of the co-accused cannot be relied without any independent corroboration.[Emphasis Supplied]*

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7. Even in the present case as can be observed from the factual matrix cited above, the Department has not brought in any proper corroborative evidence and the proceedings initiated had many flaws resulting in non-following of principles of natural justices.
8. Accordingly, the impugned OIA is set aside and Appeal is allowed.  
(Operative part of the order was pronounced in the open court.)

Sd/-

**(R. Muralidhar)**  
**Member (Judicial)**

Pooja