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

REGIONAL BENCH – COURT NO.2

Customs Appeal No.75406 of 2016

(Arising out of Order-In-Appeal No.1003-04/Pat/Cus/Appeal/2015 dated 22/12/2015 passed by Commissioner (Appeals) Customs, Central Excise, Service Tax, Patna)

Shri Raj Kumar
(S/o-Late Hirdaya Nand Prasad,
At-Gobari, P. O.-Moklishpur,
P. S. Banjaria, Dist. East Champaran)

Appellant

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Patna
(C. R. Building, 2nd Floor, Birchand Patel Path
Patna-800001)

Respondent

With
Customs Appeal No.75407 of 2016

(Arising out of Order-In-Appeal No.1003-04/Pat/Cus/Appeal/2015 dated 22/12/2015 passed by Commissioner (Appeals) Customs, Central Excise, Service Tax, Patna)

Sh Dipender Ji @ Deependra Sharaf
(S/o- Sh. Chuman Sah, R/o, Birjan Sub Metropolitan City,
Ward No. 15, Dist. Parsa, Nepal)

Appellant

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Patna
(C. R. Building, 2nd Floor, Birchand Patel Path
Patna-800001)

Respondent

APPEARANCE :

Mr. Nilotpal Chowdhury, Advocate for the Appellant
Mr. S. Debnath, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNI CAL)

FINAL ORDER NO.77160-77161/2023

Date of Hearing : 21st September 2023
Date of Pronouncement : 27/09/2023

PER R. MURALIDHAR:

The Customs officers seized 1000 grams of gold worth of Rs. 29 Lakhs from the Appellant. No documents were produced to show the licit purchase of the same by the Appellant. The Department ascertained that the gold were of foreign origin with clear marking "The Perth Mint Australia". The Appellant submitted that he was not involved directly but one Mr. Dipender Ji who was running a cloth shop at Ghanta Ghar, Birganj, Nepal had given the packet and asked him to deliver the goods to one Singham Ji at Motihari. After due process, the gold with value of Rs.29 Lakhs was confiscated absolutely and the seized Hero Honda vehicle valued at Rs.60,000/- was also confiscated with an option to redeem the same on payment of Redemption fine of Rs.30,000/-. Penalty of Rs. 2 Lakhs was imposed on the Appellant Shri Raj Kumar. Being aggrieved, the Appellant is before the Tribunal. In case of the Appellant Shri Dipender, penalty of Rs.10,00,000/- was imposed. Being aggrieved, he is before the Tribunal.

2. The appellant Shri Raj Kumar submits that he is a small time trader with very less income. He has taken the packet from Mr. Dipender Ji of Nepal for delivery at Motihari as he was promised some amount in return for this work. He was not aware about the contents of the packet.

3. The Learned AR reiterates the findings of the Adjudicating Authority and submits that there is no dispute that the gold in question was of foreign origin and was seized. The gold was being carried by the Appellant Shri Raj Kumar in his shoes in a concealed manner. In case of Shri Dipenderji, he was the mastermind of the whole operation. Therefore, he justifies the penalty imposed on the Appellants.

4. Heard both sides and perused the documents.

5. Admittedly, without doubt, the gold is of foreign origin and the Appellant Shri Raj Kumar has carried the same in a concealed way which shows that he was very much involved in the movement of the

gold. Therefore, he would be liable to be penalized under Section 112(b) of the Customs Act, 1962.

6. However, considering the factual details, and the value of the absolutely confiscated good, we modify the penalty to Rs. 20,000/- Shri Raj Kumar, which has already been paid by him as pre-deposit while filing the present Appeal [Appeal No. C/75406/2016].

7. In case of the Appellant Sh. Dipender Ji, it is clear from the above discussions that he was the mastermind in the entire transaction. He has given the gold to Raj Kumar to be carried to India from Nepal. Therefore, he is liable to pay the penalty under Section 112(b) of the Customs Act, 1962. Considering the value of the confiscated goods, we modify the penalty imposed on him which would stand at Rs. 5 Lakhs [Appeal No. C/75407/2016].

8. The Appeals are disposed of thus.

(Pronounced in the open court on 27/09/2023)

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

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja