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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.76085 of 2023

(Arising out of Order-in-Appeal No.KOL/CUS/CCP/383/2023 dated 12.05.2023 passed by Commissioner of Customs (Appeals), Kolkata.)

Shri Tapas Dutta
(S/o. Late Shri Ananda Dutta,
Vill.:- Gopalpur, Boesul, Shaktigarh, Burdwan-713124.)

...Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

APPEARANCE

Ms. Atika Sumran Ahmed, Advocate for the Appellant (s)
Shri S.Debnath, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 75013/2024

DATE OF HEARING : 3 January 2024
DATE OF DECISION : 3 January 2024

K. ANPAZHAKAN :

The present appeal has been filed against the impugned order-in-appeal dated 12.05.2023, where the Ld. Commissioner(Appeals) has upheld the demands confirmed in the Order-in-Original dated 11.03.2022. Vide the impugned order, the appellant has been imposed a penalty of Rs.5.00 Lakhs for his involvement in the smuggling activities of gold of foreign origin.

2. The Ld.Counsel for the appellant submits that the appellant is working as a gold-smith for making ornaments. He has taken 5 pieces of gold bar weighing 582.89 gms. valued at Rs.23,26,314/- from the shop of Mr.Santosh Patil. He was not aware of the purity of the gold. He

was also not aware whether the gold given to him by Mr. Santosh Patil was of imported origin or procured indigenously. The counsel submits that there is no evidence on record to establish that he was involved in the smuggling of this gold. As he is only a gold-smith taking the gold for making ornament from Mr.Santosh Patil, he was not involved in any offence relating to smuggling of the gold. Accordingly, the Ld. Counsel submits that the penalty imposed under section 112 (a) and 112(b) of the Customs Act, 1962 is liable to be set aside.

3. The Ld.AR submits that the appellant in his voluntary statement had stated that Mr.Santosh Patil had sold him the 5 gold biscuits in semi-melted elongated shape and he has paid Rs.22,50,500/- through a cheque dated 04.01.2020 drawn on Punjab National Bank. He submits that the appellant has not produced any licit documents for possession of the seized gold. Accordingly, he justified the imposition of penalty.

4. Heard both sides and perused the appeal documents.

5. I find that the appellant was in possession of 5 gold bars weighing 582.89 gms. valued at Rs.23,26,314/-. It is on record that the appellant has taken gold from Mr.Santosh Patil. The appellant claimed that he has taken the gold from Mr. Santosh Patil for making ornaments. The Ld.Counsel submits that the appellant has not purchased the gold from Mr. Santosh Patil. The appellant has not made any statement to the effect that the gold seized from his possession was purchased by him. He was only taking the gold for making ornaments in his capacity as a gold-smith. I find that there is no evidence available on record to establish that the appellant has paid Rs.22,50,500/- through a cheque dated 04.01.2020 drawn on Punjab National Bank. Further, the appellant is not claiming the ownership of the gold. The appellant has filed this appeal only against imposition of penalty on him for the alleged offence.

6. I find that the department has not brought in any evidence on record to show involvement of the appellant in the alleging smuggling. The impugned order admits that the appellant has procured the gold from Mr. Santosh Patil. Even if it is imported gold, the appellant cannot

be held responsible for the offence, if any, committed by Mr.Santosh Patil. The appellant cannot be penalized just because he was in possession of the gold which is taken from Mr. Santosh Patil, as there is no evidence available on record to establish that the involvement of the appellant in the alleged smuggling of the gold. Accordingly, I hold that the penalty imposed on the appellant under section 112(a) and 112(b) is not sustainable.

7. In view of the above discussion, I set aside the penalty imposed on the appellant and allow the appeal filed by the appellant.

(Dictated and pronounced in the open Court.)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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