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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75736 of 2023

(Arising out of Order-in-Appeal No. 60-62/PAT/CUS/APPEAL/2023-24 dated 09.06.2023 passed by Commissioner (Appeals) of Customs, CGST & C. Excise, Patna).

Umesh Baban Hasbe
(Proprietor of M/s J. M. Bullions,
H. B. Road, Masjid Galli, Fancy Bazar, Guwahati-781001)

Appellant

VERSUS

Commr. of Customs (Preventive), Patna
(5th Floor, Kendriya Rajaswa Bhawan, Bir Chand Patel Path,
Patna (Bihar)-800001)

Respondent

With

Customs Appeal No. 75737 of 2023

(Arising out of Order-in-Appeal No. 60-62/PAT/CUS/APPEAL/2023-24 dated 09.06.2023 passed by Commissioner (Appeals) of Customs, CGST & C. Excise, Patna).

Shri Vikram Arjun Misal
(S/o Arrjun Baburav Misal, Somewadi Road, Stand Javal,
Post-Pachegaon (Khurd), P. S. Sangola, Dist. Solapur, Mahrashtra-413307)

Appellant

VERSUS

Commr. of Customs (Preventive), Patna
(5th Floor, Kendriya Rajaswa Bhawan, Bir Chand Patel Path,
Patna (Bihar)-800001)

R**espondent**

And

Customs Appeal No. 75738 of 2023

(Arising out of Order-in-Appeal No. 60-62/PAT/CUS/APPEAL/2023-24 dated 09.06.2023 passed by Commissioner (Appeals) of Customs, CGST & C. Excise, Patna).

Navnath Shivaji Suryavanshi,
S/o Late Shivaji Pandurang Suryavanshi,

Customs Appeal Nos. 75736-75738/2023

(AT-Chavadi Parisar, Karanje, PS+Taluka-Khanapur, Dist. Sangli Maharashtra-416312)

Appellant

VERSUS

Commr. of Customs (Preventive), Patna
(5^{th} Floor, Kendriya Rajaswa Bhawan, Bir Chand Patel Path, Patna (Bihar)-800001)

Respondent

APPEARANCE :
Mr. Ashwini Kumar & Amit Pandey, both Advocate for the Appellant
Mr. Sourabh Chakraborty, Authorized Representative for the Respondent

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

FINAL ORDER NO.75215-75217/2024

Date of Hearing : 08 February 2024
Date of Decision: 08 February 2024

PER R. MURALIDHAR:

In this case, the Appellant Nos. 2 & 3 were intercepted at Patliputra Railway Station and approximately 6 kgs of gold were found to be in their possession and the same was seized. Subsequently, investigation was also carried at the premises of the Appellant No. 1 at Guwahati and 1096.030 gms of gold was seized. After this, DRI issued Show Cause Notice to the three Appellants seeking to know as to why the seized gold (6 kgs and 1096.030 kgs) should not be confiscated and penalty should not be imposed on them. After due process, the lower authorities have held that the Appellant No. 1 has not been able to discharge the burden of proof under Section 123 and has ordered for absolute confiscation of the gold seized at Patliputra and Guwahati. They have also imposed penalties. Being aggrieved, the Appellants are before the Tribunal.

2. The Learned Counsel appearing on behalf of the Appellant submits that in respect of 1096.030 gms seized at their factory premises, the search list prepared by the official on 09/02/2021 itself gives the description of the seized goods as under:-

> *"Serial No. 1 Yellow Metal Bar admitted to be gold of about 20-21 carat weighing 1096.03 gms."*

3. Subsequently, after the quality was verified, <u>the purity was found to be 80.66%. This is also verified from relied upon the documents as RUD 45.</u> Therefore, he submits that no case has been made out in respect of 1096.03 gms and hence the Appellant is not required to specifically prove that the goods are not smuggled in nature.

4. After going through the documentary evidence, we find force in the submission made by the Learned Advocate. The Seizure Report itself states that the goods is of about 20-21 Carat and subsequent quality test has revealed that its purity is only 80.66%. Therefore, this could not be classified as gold of foreign origin. Therefore, we hold that the confiscation and relevant penalty towards the same are required to be set aside.

5. In respect of the proceedings conducted about 6 Kgs of gold seized at Patliputra Railway Station, the Learned Advocate submits that the initial statements given by the Appellant No. 2 & 3 were subsequently retracted. The Appellants have sought cross-examination of the Panchas and other persons who have recorded the statement. He submits that their request was not accepted by the Adjudicating Authority. Thus principles of natural justice has not been followed in this case.

6. The Learned AR submits that the retraction of the two Appellant was after more than one year one month of their earlier Recorded Statement. Even the Cross Examination sought for by the Appellant was on account of their own employees recording their Statement. Apart from this, the Appellants were non-cooperative as recorded in detail in the OIO. Therefore, he justifies the Adjudicating Authority's decision for not granting the facility of Cross Examination to the Appellants. In respect of the seized gold at their factory premises at Guwahati, he prays that the Final Report is yet to be received and the same was also may be part of the closing stocks as on that day.

7. We find that in normal course, the Adjudicating Authority should have followed the Provisions of Section 138B(b) of the Customs Act, 1962 and should have made the persons reiterate the recordings made before the DRI Officials which was not done. In this case, the Appellants have also sought the Cross Examination of Panchas and other persons recording the statements. Therefore, the Adjudicating Authority was dutybound to grant them their request. Hence, we find that principle of natural justice has not been followed in this case.

8. We remand the matter in respect of the seized 6 kgs of gold to the Adjudicating Authority. He should grant the facility of Cross Examination of Panchas and all other persons who have recorded their Statements. After the Cross-Examination proceedings are completed, the same should be taken on record and the Appellant should be given opportunity to make all their submissions and Order should be passed after following the principles of natural justice. Since the value of seized/confiscated gold is very high and the matters pertain to the year 2021, the Adjudicating Authority is directed to complete the proceedings within 4 months from the date of receipt of communication of this Order.

9. In respect of the seized gold of 1096.03 gms, the Appeals stand allowed as discussed above. The confiscated goods should be released immediately on receipt of communication of this Order.

10. The Appeal is disposed of thus.

(Dictated and pronounced in the open court.)

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

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja