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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 76035 of 2016

(Arising out of Order-in-Original No. CCP/NER/8/2016 dated 22 March 2016 passed by the Commissioner of Customs (Preventive), Shillong)

Shri Narendra Kumar Jain
(Director of M/s Rara Brothers Pvt Ltd., Shiw Market, Fancy Bazar, Guwahati-781001)

Appellant

VERSUS

Commr. of Customs (Preventive), Shillong
(North Eastern Region, 110, M. G. Road, Shillong-793001)

Respondent

With

(i) Customs Appeal No. 76037 of 2016 (Biswajit Das Vs. Commr. of Customs (Preventive), Shillong (ii) Customs Appeal No. 76038 of 2016 (Arun Kumar Sharma Vs. Commr. of Customs (Preventive), Shillong (iii) Customs Appeal No. 76039 of 2016 (Ramjanam Ray Vs. Commr. of Customs (Preventive), Shillong (iv) Customs Appeal No. 76040 of 2016 (Biman Bhowmik Vs. Commr. of Customs (Preventive) Shillong (v) Customs Appeal No. 76041 of 2016 (Soma Bhowmik Vs. Commr. of Customs (Preventive), Shillong (Vi) Customs Appeal No. 76042 of 2016 (Ananda Sil Vs. Commr. of Customs (Preventive), Shillong

(i) (Arising out of Order-in-Original No. CCP/NER/8/2016 dated 22 March 2016 passed by the Commissioner of Customs (Preventive), Shillong)

(ii) (Arising out of Order-in-Original No. CCP/NER/8/2016 dated 22 March 2016 passed by the Commissioner of Customs (Preventive), Shillong)

(iii) (Arising out of Order-in-Original No. CCP/NER/8/2016 dated 22 March 2016 passed by the Commissioner of Customs (Preventive), Shillong)

(iv) (Arising out of Order-in-Original No. CCP/NER/8/2016 dated 22 March 2016 passed by the Commissioner of Customs (Preventive), Shillong)

(v) (Arising out of Order-in-Original No. CCP/NER/8/2016 dated 22 March 2016 passed by the Commissioner of Customs (Preventive), Shillong)

(vi) (Arising out of Order-in-Original No. CCP/NER/8/2016 dated 22 March 2016 passed by the Commissioner of Customs (Preventive), Shillong)

APPEARANCE :
Mr. Ramakant Gaur, Sneha Arya, Meenakshi Sahu, all Advocate & Mr. Rajesh Mittal, CA for the AppellantMr. Tariq Sulaiman, Authorized Representative for the Respondent

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

FINAL ORDER NO.75309-75315/2024

Date of Hearing : 22 February 2024
Date of Decision: 22 February 2024

PER R. MURALIDHAR:

In these cases, 12 gold bars weighing 11990.82 gms were seized on 11/02/2015. At the time of seizure, challans showing transfer of the gold from the premises of M/s Rara Brothers Pvt. Ltd., Guwahati to its Delhi office was available with the persons. After due process, the Adjudicating Authority ordered for absolute confiscation of the gold and imposed penalties on various noticee. Being aggrieved, the Appellants are before the Tribunal.

2. The Learned Advocate appearing on behalf of the Appellants submits that the Appellant has produced various documentary evidence in the form of invoices, ledger copies and Banking Transaction details in support of their submissions that they were carrying legitimate business of buying and selling of pure gold and gold jewellery. He submits that none of the documentary evidence produced by them before the lower authority has been given proper consideration by him before arriving at his conclusion. He further submits that they have specifically sought the Cross Examination of the persons who had recorded their statements under Section 108 of the Customs Act, 1962. In the impugned Order, the Adjudicating Authority has not made a whisper about the same and has not given any reason as to why the Cross-Examination request was not entertained by him. Therefore, he submits that principle of natural justice has not been followed in this case. He submits that the entire case has been fastened on the Appellants based on the presumptions and assumptions without proper corroborative evidence

and without going into the documentary evidence produced by them. Therefore, he prays that the Appeals may be allowed.

3. The Learned AR submits that in the recorded Statements, the main Appellant has clearly admitted that they were not carrying with the proper documentary evidence for the movement of the goods. He also points out to the anomaly in their initially ledger given by them on 11/02/2015 and subsequent ledger given on 26/02/2015. Therefore, he submits that the Appellants have not discharged the onus in terms of Section 123 of Customs Act, 1962. Therefore, he justifies the confirmed demand and prays that the present Appeal may be dismissed.

4. Heard both sides and perused the documentary evidence placed by both the sides.

5. On going through the Reply Letter submitted by the Appellant to the Adjudicating Authority, it is seen that in Paragraph 26 of their letter, they have sought the Cross-Examination of Shri Arun Kumar Sharma, Shri Biman Bhowmik, Smt. Soma Bhowmik, Shri Ananda Sil and Shri Biswajit Dey. Since their Statements were used as relied upon documents, in terms of Section 138(1)(b), it is mandated that whenever any Statement recorded under Section 108 is used by the Department as evidence, the person giving such statement before the Gazetted Officer should reiterate the same before the Adjudicating Authority. Thereafter, the same should be admitted as evidence and if the noticee seeks Cross Examination of such persons, the same should be granted and then only the adjudication proceeding should be completed. In this particular case, it is seen from the records that no such opportunity was given to the Appellant though they have made specific request to this effect. Therefore, we find that principles of natural justice has not been followed by the Adjudicating Authority.

6. The Appellant has produced voluminous records of their ledgers, invoices, copies of Banking transactions etc. to prove that they were carrying legitimate activity of buying and selling of gold and jwellery. These

documents have to be properly verified before any conclusion can be arrived at as to whether the seized Golds have the backing of proper licit documents or not.

7. Therefore, we remand the matter to the Adjudicating Authority with the following directions:-

(a) Cross Examination sought by the Appellant in respect of various persons regarding recording Statement should be allowed to them.

(b) The Appellant should produce all the documentary evidence before the Adjudicating Authority in support of their claim that the seized gold is part of their normaly procured gold in the course of their commercial transactions.

8. After following the principles of natural justice, the Adjudicating Authority will pass a considered decision within four months from the date of receipt of this Order.

(Dictated and pronounced in the open court.)

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

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja