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

REGIONAL BENCH – COURT NO.1

Customs Appeal No.75676 of 2021
(On behalf of Appellant)

(Arising out of Order-in-Appeal No.Kol/Cus(Prev.)/WB/AKR/309-310/2021 dated 18.03.2021 passed by Commissioner (Appeals) of Customs, Kolkata)

Shri Ratan Karmakar
(APC Roy Road, Vill.-Khagrabari, PO-Coochbihar, West Bengal-736101)

Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

APPERANCE :

Shri R.N.Bandapadhyay, Authorised Representative for the Appellant
Shri Tariq Sulaiman, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO.75343/2024

DATE OF HEARING : 23.02.2024
DATE OF DECISION : 23.02.2024

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein a penalty of Rs.10.00 lakhs has been imposed under Section 114 of the Customs Act, 1962.

2. The facts of the case are that the case of smuggling of foreign currency (U.S.Dollars) was booked by the Department against one Shri Sumon Gope. During the course of investigation, Shri Sumon Gope made a statement that he has taken delivery of dollars from Shri Mohit Sonkar to export it to the Bangladesh. On the basis of the statement of Shri Sumon Gope, who also made a statement that these foreign currency has been carried on behalf of the appellant. On the basis of

the statement of Shri Sumon Gope, the case has been made out against the appellant for exportation of foreign currency outside India. The currency recovered during the course of investigation was absolutely confiscated and penalty of Rs.10.00 lakhs has been imposed on the appellant on the basis of the statement of Shri Sumon Gope. Against the said order, the appellant is before me.

3. The ld.Counsel for the appellant submits that the case has been made out against the appellant on the basis of the statement of Shri Sumon Gope and one Shri Mohit Sonkar, but the appellant has never admitted that he was involved in any manner in relation to exportation of foreign currency outside India. In that circumstances, the penalty cannot be imposed on the appellant on the basis of the statement of third party. Therefore, it is prayed that the penalty imposed on the appellant be set aside.

4. On the other hand, the ld.A.R. for the Revenue supported the impugned order and submitted that as from the chain of evidences and act of the appellant, it has come out when the appellant as a co-noticee was involved in smuggling of foreign currency outside India, in that circumstances, penalty has rightly imposed on the appellant.

5. Heard both sides and considered the submissions.

6. I find that the penalty has been proposed to be imposed on the basis of statement Shri Sumon Gope, who stated that he has taken the currency from Shri Mohit Sonkar from Kolkata to deliver the same to the appellant. In the adjudication order, penalties on Shri Sumon Gope and Shri Mohit Sonkar were also imposed along with the appellant and in the case of Shri Mohit Sonkar, the penalty is dropped and the appeal

is allowed by this Tribunal vide Final Order No.75107/2024 dated 31.01.2024. I find that no corroborative statement of the appellant has been recorded by the Revenue. In that circumstances, the penalty on the appellant cannot be imposed on the basis of third party's statement, therefore, I set aside the impugned order quo imposing penalty on the appellant. Accordingly, the penalty imposed on the appellant is set aside.

7. In the result, the appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

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