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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76089 of 2016

(Arising out of Order-in-Original No. 01/CUS/CC(P)/WB/2016 dated 01.04.2016 passed by the Commissioner of Customs (Preventive) Custom House, 3rd Floor, 15/1, Strand Road, Kolkata-1)

Shri Chandan Das **: Appellant**
S/o. Shri Nripen Das,
Vill Boxiganj, PO & PS. Hilli, Dist Dakshin Dinajpur

VERSUS

Commissioner of Cusotms (Preventive), **: Respondent**
Customs House, 3rd Floor,
15/1, Strand Road, Kolkata-700 001.

WITH

Customs Appeal No. 76090 of 2016

(Arising out of Order-in-Original No. 01/CUS/CC(P)/WB/2016 dated 01.04.2016 passed by the Commissioner of Customs (Preventive) Custom House, 3rd Floor, 15/1, Strand Road, Kolkata-1)

Shri Biplab Hemram **: Appellant**
S/o. Anil Hemram,
Vill Purba Rainagar (Charaktala)
PO & PS. Hilli, Dist Dakshin Dinajpur

VERSUS

Commissioner of Cusotms (Preventive), **: Respondent**
Customs House, 3rd Floor,
15/1, Strand Road, Kolkata-700 001.

APPEARANCE:

Shri Nilotpal Chowdhury, Advocate for the Appellant

Shri J. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75894-75895/ 2024

DATE OF HEARING: 26.04.2024
DATE OF PRONOUNCEMENT:09.05.2024

ORDER : [PER SHRI ASHOK JINDAL]

The appellants were intercepted on 17th March, 2015 by the officers of Balurghat Customs Preventive Unit while they were moving towards Sotpur bus stand when allegedly, gold weighing 4.33 kilogrammes believed to be of foreign origin and Rs. 310 with one mobile phone, which were seized from the possession of the appellants. Consequent to search and seizure conducted by the officers, statements were recorded.

2. Thereafter, a Show Cause Notice was issued to the appellants alleging that appellants could not produce any documents regarding legal importation / acquisition / possession of the said seized gold. Therefore, the appellants were asked to show cause as to why the said seized gold weighing 4.33 kg should not be confiscated and penalty should not be imposed on the appellants under Section 112(b) of the Customs Act, 1962.

3. The matter was adjudicated and by way of impugned order, the seized gold was absolutely confiscated and penalty on both the appellants were imposed, of Rs. 25 lakhs each, under Section 112(b) of the Customs Act, 1962.

4. Against the said order, the appellants are seeking a reduction in penalty.

5. The learned counsel appearing on behalf of the appellants submits that the appellants are not contesting the merits of the case and are only seeking reduction of penalty in the light of the decision of the Hon'ble High Court of Calcutta in the case of *Gopal Saha v. Union of India [2016 (336) E.L.T. 230 (Cal.)]* thereby contending that as the gold in question is not

prohibited goods, therefore, penalty is to be imposed on the appellants in terms of the order of the Hon'ble High Court of Calcutta in the case of *Gopal Saha (supra).*

4. On the other hand, the learned Authorized Representative for the Revenue relied on the following decisions:-

> *i. Rameshbhai Lakhabhai Patel v. Commissioner of Cus., Ahmedabad & anor. [Final Order No. A/10925-10926/2022 dated 05.08.2022 in Customs Appeal No. 10070 of 2020-DB & anor. – CESTAT, Ahmedabad]*
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> *ii. Kashi Kumar Aggarwal v. Commissioner of Cus. (Preventive), New Delhi [Final Order No. 50387 of 2023 dated 23.03.2023 in Customs Appeal No. 50536 of 2022 – CESTAT, New Delhi]*
>
> *iii. Sunny Kakkar v. Principal Commissioner of Cus. (Prev.), New Delhi [Final Order No. 50108 of 2023 dated 06.02.2023 in Customs Appeal No. 52094 of 2018 – CESTAT, New Delhi]*
>
> *iv. Nidhi Kapoor v. Principal Commissioner and Addl. Secretary to the Govt. of India & ors. [W.P.(C) 8902/2021 & anor vide decided on 21st August, 2023 – Hon'ble High Court of Delhi] (followed by the Hon'ble High Court of Delhi in Comissioner of Customs (Export) v. Ashwini Kr. Alias Amanullah in CUSAA 37/2021 vide judgement dated 15.09.2023]*

5. Heard the parties and considered the submission of both the sides.

6. We find that the appellants have heavily relied on the decision of the Hon'ble High Court in the case of *Gopal Saha (supra).* From the facts of the said case, it is not coming out whether in the said case, the gold in question had been absolutely confiscated or not and whether the appellants had satisfied the provisions of Section 123 of the Customs Act or not.

6.1. However, in the case of *Sunny Kakkar (supra),* this Tribunal found that the gold in question has been confiscated and the said fact had not been denied by the appellant. In this case also, the appellants have not disputed the absolute confiscation of the goods, therefore, relying on the said decision, we hold that penalties imposed on the appellant cannot be equated with the case of Gopal Shah (Supra).

7. We find that the penalties are imposable on the appellants but the same are on higher side, therefore we reduce the penalties imposed on the appellant to Rs.10, 00,000/- (Ten Lacs only) each.

8. Accordingly, the appeals filed by the appellants are disposed of.

(Order Pronounced in Open court on **09.05.2024**)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP