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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.76445 of 2017

(Arising out of Order-in-Original No.CCP/NER/09/2017 dated 20.06.2017 passed by Commissioner of Customs (Preventive), North Eastern Region, Shillong.)

Shri T. Jaffar Sathik
(S/o, (L) Thameem Ansari, Door No.9A, Swamy Lane Ranipet, Walajah Taluk, Pin-632401, District Vellore, Tamilnadu.)

...Appellant

VERSUS

Commissioner of Customs (Preventive), NER, Shillong
.....Respondent
(Customs House, No.110, M.G. Road, Shillong, Meghalaya-7950011.)

WITH

Customs Appeal No.76446 of 2017

(Arising out of Order-in-Original No.CCP/NER/09/2017 dated 20.06.2017 passed by Commissioner of Customs (Preventive), North Eastern Region, Shillong.)

Shri A. Mohammad Dhariq
(S/o, Aliyar, Old No.21/1, New No.4, 1st Floor, Vaikunda Street, Royapuram, Chennai-600013, Tamilnadu.)

...Appellant

VERSUS

Commissioner of Customs (Preventive), NER, Shillong
.....Respondent
(Customs House, No.110, M.G. Road, Shillong, Meghalaya-7950011.)

APPEARANCE

NONE for the Appellant (s)
Shri Tariq Suleman, Authorized Representative for the Revenue

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

FINAL ORDER NO. 76108-76109/2024

DATE OF HEARING : 10.06.2024
DATE OF DECISION : 10.06.2024

Per : R. MURALIDHAR :

None has appeared on behalf of the Appellant. On going through the case records, it is found that they have been granted hearings on the following dates:-

03.11.2023
30.11.2023
04.01.2024
21.04.2024
03.04.2024
14.05.2024

and today i.e. 10.06.2024. Since the matter pertains to 2017, we have taken up the Appeals themselves with the help of the Ld.AR for the Department.

2. We find that the issue pertains to seizure and confiscation of gold bars weighing 2405 gms. valued at Rs.73,11,200/-. It is seen from the Show Cause Notice that the officials of DRI have searched two persons while they were boarding Delhi bound Brahmaputra Mail on 20.06.2016. The DRI maintained a vigil at Kamakhya Railway Station and two persons were intercepted by the DRI officials. Trolley bags carried by them were searched and it was found that cavities were made inside the trolley bags to conceal the gold bars. The officers found 4 yellow metal bars likely to be primary gold of foreign origin. The intercepted persons could not produce any documents in respect of the goods in question. After this, the seized gold was tested by M/s. A.K. Jewellars and it was certified that the gold were of 24 Kt. Purity. After due process, the Adjudicating authority has confiscated the gold bars absolutely and imposed penalty of Rs.3.00 Lakhs on Appellant Shri A. Mohammad Dhariq (Appeal No.76446 of 2017). He has also imposed penalty of Rs.2.00 Lakhs on Shri T. Jaffar Sathik (Appeal No.76445 of 2017). Being aggrieved, the Appellants filed Appeals before the Tribunal. From the grounds of appeal filed by the Appellant, we do not see that the Appellants have brought in any specific evidence to the effect that this gold bars were licitly procured by them within India. On

the other hand, the Adjudicating authority has given a detailed finding while passing the order. Relevant findings of the Adjudicating Authority is being extracted below:-

"DISCUSSION AND FINDINGS

28. I have carefully gone through the case records. Briefly, the fact of the case is that the officers of the Directorate of Revenue Intelligence Guwahati, acting on a specific intelligence, intercepted two persons identified as A. Mohammad Dhariq and T Jaffar Sathik at Kamakhya Railway Station while they were about to board in a coach of Delhi bound 14055 Brahmaputra Mail and in the course of search of their two trolley bags which they were carrying as accompanied luggages, recovered four pieces of yellow metal bars (two bars from each of the trolley bags) believed to be primary gold of foreign origin which were kept concealed inside the hollow metal pulling handles of the said trolley bags, on 20-6-2016. On being enquired. A. Mohammad Dhariq and T. Jaffar Sathik both contended that the recovered metal bars are of foreign origin However. on demand by the DRI officers, neither A. Mohammad Dharig nor 1 Jaffar Sathik could produce any document in support of licit possession or transportation or in dealing with in any other manner of the recovered yellow metal bars. The DRI officers therefore, got the recovered metal bars <u>examined by a registered goldsmith who certified that the recovered yellow metal bars weighing 2405 grams are primary gold having 99.5-99.8% purity</u>. The DRI officers therefore, seized the recovered yellow metal bars believed to be gold bars alleging that the said goods have been illegally brought into India from Myanmar in contravention of the provisions of the Customs Act and other statutory orders in force including the two trolley bags used to carry/conceal the recovered gold bars and other recovered goods as detailed in the inventory of the goods.

29. Going by the case records, I find in the present case, A. Mohammad Dhariq, one of the person from whose possession the gold bars in question were recovered, while giving his statement under Section 108 of the Customs Act, 1962 on 20-06-2016, subscribed that he and T.Jaffar Sathik, his accomplice had reached Guwahati on 19-06-2016 by Egmore – Dibrugarh Express carrying their belongings on one

air bag each and that, they met their contact persons at Paltan Bazar, Guwahati who had handed over them the said gold bars which were kept concealed in the two trolley bags and that, they took over the trolley bags and transferred their belongings from their respective air bags to the said trolley bags and further that, their contact persons took away their empty air bags. He also stated that it was their modus operandi of carrying gold from Guwahati to Chennai and that, they were carrying the recovered gold secretly as these gold bars were brought from Mayanmar through Moreh without any licit document and also without paying any tax. He further stated that he received these gold bars from one Mangal at Guwahati and that he did not know the address of Mangal and also that Mangal had contacted him over phone from unspecified/different numbers. He also stated that the recovered gold were given the shape of cylinder and the markings were removed and also that the same were put inside the hollow space of the pulling rod of the trolley bags at Moreh and further that these gold were brought to Guwahati for handing over the same to them. He also stated that he paid rupees sixty-seven lakh in cash for these gold to Mangal and also that he went to Imphal via Dimapur in the month of February 2016 and stayed there at a Dharamshala, where he met Mangal who primised him to deliver gold and also that Mangal used to deliver him gold after bringing the same from Moreh. He further stated that he used to pay Mangal n cash after delivery of the gold and also that he along with T.Jaffar Sathik had carried gold of similar quantities on 22-04-2016 and 20-05-2016 from Guwahati by Chennai Express adopting the same modus operandi and further that, he chose to go to Kamakhya Railway Station on 20-06-2016 and that he understood and realized that he had committed an offence out of greed while accepting the foreign origin gold. I also find that it was the submission of A.Mohammad Dhariq in his subsequent statement given under Section 108 of the Customs Act, 1962 on 29-06-2016 that he stood by his statement given on 20-06-2016 and that he had nothing to add. Similarly, I find that T.Jaffar Sathik, the other person from whose possession the gold bars in question were recovered, in his statement given under Section 108 of the Customs Act, 1962 on 20-06-2016, subscribed that he was a carrier of gold engaged by A Mohammed

Dhariq and that two pieces of the recovered gold were given to him by two persons, known to A Mohammed Dhariq, at Paltan Bazar Guwahati on 19th June, 2016 and that, the said two persons, after talking to Dhariq on his mobile phone, came with two trolley bags at Paltan Bazar, Guwahati and handed over the said trolley bags to them informing that the recovered gold were concealed in the trolley bags and further that, they transferred their belongings into the trolley bags from their bags which they brought from Chennai and that those empty bags were taken over by the said two persons. He stated that he did not know anything about the source of gold, but he was told that the gold came from Myanmar through Manipur border and also that he carried gold twice earlier and was paid Rs.20,000/- by A Mohammed Dhariq other than the journey expenses. He further stated that his job as a carrier was up to Egmore, Chennai and that, thereafter, A Mohammed Dhariq himself would have carried the said two trolley bags containing the recovered gold and that, he did not know where these gold bars were to be delivered and also to whom. I also find that it was the submission of T. Jaffar Sathik in his subsequent statement given under Section 108 of the Customs Act. 1962 on 29-6-2016 that he had nothing to add to his submission given on 20-6-2016. Thus, I find from the facts and circumstances of the present case that A. Mohammad Dhariq and T Jaffar Sathik had given a vivid description as to how the recovered gold were brought from Myanmar to Guwahati, India through Moreh, a town adjacent to Indo- Myanmar border without any document and also as to how the said goods were kept concealed in the said trolley bags in order to evade detection by the law enforcing agencies while these were being transported from Moreh to Guwahati and further that how the said goods were detected/recovered by the DRI officers at Guwahati on 20-6-2016 apart from their disclosure of the facts that they were also engaged in carrying similar goods on two earlier occasions.

A. Mohammad Dhariq and T Jaffar Sathik, both however disputed their aforesaid submission while filing reply to the show cause notice and also in the course of personal hearing. It was their common submission that statements subscribed by them as aforesaid were involuntary and false. I am, therefore, of the opinion that it would be relevant to examine the facts and circumstances of the case under which the said persons had subscribed the aforesaid statements. I find in the present case, the gold in question were recovered from A Mohammad Dhariq and T. Jaffar Sathik on the basis of a specific intelligence and the said two persons, immediately after recovery of the said goods had subscribed that the recovered goods were given to them by one Mangal, whose address, parentage etc., they did not disclose on the pretext that these facts were not known to them. It was their submission that Mangal had contacted A. Mohammad Dhariq over phone from unspecified/different numbers and also that the recovered gold, which were brought from Myanmar through Moreh, were given the shape of cylinders and the markings available on the said gold were removed and also that the said gold were kept concealed inside the hollow space of the pulling rod of the trolley bags at Moreh and further that, thereafter these gold wore brought to Guwahati and handed over to them. It was also the submission of A. Mohammad Dhariq that it was their modus operandi of carrying smuggled gold from Guwahati to Chennai and that they carried gold of similar quantities twice earlier and further that they were carrying the recovered gold secretly as these were brought from Myanmar through Moreh without any licit document and also without paying any tax. It thus emerges from the facts and circumstances of the case that the said two persons had narrated the entire sequence of events as to how the recovered gold were brought from Myanmar to India through Moreh without any document and how the markings available on the recovered gold were removed and also how the shape of the said gold were reshaped in order to conceal the same inside the hollow space of the pulling rod of the said trolley bags at Moreh. I therefore, find the statements of the said two persons which were corroborated by one another, not only give the details of the activities undertaken by them but also how the recovered gold were smuggled from Myanmar to India through Moreh and why there was no marking available on the seized gold. Further. I find that the said two persons in their respective statements had not only given the details of the activities undertaken while the recovered gold were being carried by them in the present case but also admitted that they carried gold which were brought from Myanmar to India on two earlier occasions following the same modus operandi and thus it is evident that they were regularly carrying smuggled gold and also a part of a syndicate which was actively involved in smuggling of gold from Myanmar to India. Available records also indicate that the said two persons had never retracted from their respective statements subscribed on 20-06-2016 and 29-06-2016 in spite of the fact that they got sufficient time as well as opportunity to retract their aforesaid statements and also, it was never their contention at any point of time that the respective statements, subscribed by them under Section 108 of the Customs Act, 1962 on 20-06-2016 and 29-06-2016, were under duress or coercion or false other than the submissions made in response to the show cause notice and in the course of personal hearing. I also find from the panchnama [which describes the sequence of events recorded from the time of detection of recovered gold to the recording of statements on 29-06-2016] that the statements of the said persons were recorded correctly and factually and also that the DRI officers had not put any force either mental or physical on A. Mohammad Dhariq and T. Jaffar Sathik on 20-06-2016. It is therefore, my considered view that the submissions made in response to the show cause notice and in the course of personal hearing by the said two persons that the statements subscribed by them as aforesaid were involuntary and false are nothing but an afterthought and in no way affect the evidentiary value of the respective statements subscribed on 20-06-2016 and 29-06-2016 by A. Mohammad Dhariq and T. Jaffar Sathik under Section 108 of the Customs Act, 1962. Hence, under the facts and circumstances of the present case, I uphold the charge of the investigation that the recovered gold were smuggled into India from Myanmar through Moreh, a town adjacent to Indo-Myanmar border through a route not specified under Section 7(1)(c) of the Customs Act, 1962 in contravention of the provisions of Section 11 of the Act ibid read with other statutory orders in force and accordingly, I hold the recovered/seized gold including the trolley bags used to conceal the said gold liable to confiscation under Section 111(b), (d) and 119 of the Customs Act, 1962 and also A. Mohammad Dhariq and T. Jaffar Sathik liable to penal action under Section 112(b)(i) of the Customs Act, 1962 for their active/direct involvement in acquisition, possession, transportation of the said contraband as discussed hereinbefore.

30. Further. I find that A. Mohammed Dhariq and T. Jaffar Sathik both, consciously and deliberately involved themselves in smuggling of Gold into India through a route not specified under Section 7(c) of the Customs Act, 1962 not only in the instant case but also they admittedly, involved themselves in smuggling of gold in the past which made it evident that they are habitual offenders and therefore, it is my considered view that this case is fit for launching prosecution against the said two persons under Section 135 of the Customs Act. 1962.

31. Based on the discussion and findings aforesaid, I pass the following orders

ORDER

32. I order absolute confiscation of four pieces of gold bars, weighing 2405 grams and valued at Rs 73,11,200/- (rupees seventy three lakh eleven thousand two hundred only) seized vide case No 01/CL/IMP/Gold/DRI/GAU/2016-17 dated 20-06-2016 under Section 111(b) and (d) of the Customs Act, 1962

33. I order absolute confiscation of trolley bags seized vide case No. 01/CL/IMP/Gold/DRI/GAU/2016-17 dated 20-06-2016 under Section 119 of the Customs Act, 1962.

34. I impose a penalty of Rs. 300000/- (rupees three lakhs only) on A. Mohammad Dhariq under Section 112(b) (i) of the Customs Act, 1962.

35. I impose a penalty of Rs. 200000/- (rupees two lakhs only) on T Jaffar Sathik under Section 112(b) (1) of the Customs Act, 1962."

(Dictated and pronounced in the open Court.)

3. We do not see any reason to interfere with the detailed order passed by the Adjudicating authority. We note that no

specific evidence has been brought to the contrary by the Appellant in their grounds of Appeal.

4. Accordingly, we dismiss the Appeals.

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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