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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75264 of 2016

(Arising out of Order-in-Original No.49/CUS/CC(P)/WB/2015 dated 24.11.2015 passed by the Commissioner of Customs (Prev.). W.B, Kolkata.)

Shri Liton Seikh
(S/o Aminur Seikh, Village+PO- Petrapole,
P. S.- Bongaon, Dist.-24 Parganas (North),
Pin-743704)

Appellant

VERSUS

Commr. of Customs (Preventive), Kolkata
(Customs House, 3rd Floor, 15/1, Strand Road, Kolkata-700001)

Respondent

With

(1) Customs Appeal No. 75265 of 2016 (Jahangir Mondal Vs. Commr. of Customs (Preventive), Kolkata) (2) Customs Appeal No. 75266 of 2016 (Shri Nirupam Dey Vs. Commr. of Customs (Preventive), Kolkata) (3) Customs Appeal No. 75267 of 2016 (Shri Basudeb Adhikary Vs. Commr. of Customs (Preventive), Kolkata) (4) Customs Appeal No. 75268 of 2016 (Shri Akbar Ali Mondal Vs. Commr. of Customs (Preventive), Kolkata) (5) Customs Appeal No. 75269 of 2016 (Shri Sajjak Seikh Vs. Commr. of Customs (Preventive), Kolkata) (6) Customs Appeal No. 75270 of 2016 (Shri Anupam Dey Vs. Commr. of Customs (Preventive), Kolkata)

(1) (Arising out of Order-in-Original No.49/CUS/CC(P)/WB/2015 dated 24.11.2015 passed by the Commissioner of Customs (Prev.). W.B, Kolkata.)

(2) (Arising out of Order-in-Original No.49/CUS/CC(P)/WB/2015 dated 24.11.2015 passed by the Commissioner of Customs (Prev.). W.B, Kolkata.)

(3) (Arising out of Order-in-Original No.49/CUS/CC(P)/WB/2015 dated 24.11.2015 passed by the Commissioner of Customs (Prev.). W.B, Kolkata.)

(4) (Arising out of Order-in-Original No.49/CUS/CC(P)/WB/2015 dated 24.11.2015 passed by the Commissioner of Customs (Prev.). W.B, Kolkata.)

(5) (Arising out of Order-in-Original No.49/CUS/CC(P)/WB/2015 dated 24.11.2015 passed by the Commissioner of Customs (Prev.). W.B, Kolkata.)

(6) (Arising out of Order-in-Original No.49/CUS/CC(P)/WB/2015 dated 24.11.2015 passed by the Commissioner of Customs (Prev.). W.B, Kolkata.)

APPEARANCE :
Ms. Atika Sumran Ahmed, Advocate for the Appellant
Mr. Faiz Ahmed, Authorized Representative for the Respondent

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

FINAL ORDER NO.75148-75154/2024

Date of Hearing : 30 January 2024
Date of Decision: 30 January 2024

PER R. MURALIDHAR:

Though the Appellants have raised the issue that the Show Cause Notice has been issued by DRI in their synopsis today, the Learned Counsel has given an oral undertaking that they are not insisting on this issue and they are ready to argue the case on merits. Based on this oral undertaking before the Bench today, the Appeals have been taken up for disposal with the consent of both the sides.

2. In the present case, gold bars with a value of Rs. 10,07,00,000/- were seized while they were being carried and being transported by the present seven Appellants. Various quantities of gold bars were seized from their possession without proper documents. After due process, the Adjudicating Authority absolutely confiscated the gold bars with a value of Rs. 10,07,00,000/- and imposed the following penalties on the present seven Appellants:-

SI No.	Appellant	Penalty (Rs.)
1.	Shri Liton Seikh	8,00,000/-
2.	Jahangir Mondal	10,00,000/-
3.	Shri Nirupam Dey	12,50,000/-
4.	Shri Basudeb Adhikary	20,00,000/-
5.	Shri Akbar Ali Mondal	10,00,000/-
6.	Shri Sajjak Seikh	8,00,000/-
7.	Shri Anupam Dey	12,50,000/-

3. Being aggrieved, the Appellants are before the Tribunal.

4. The Learned Counsel submits that the main Noticee Mr. Gopal Saha was imposed with a penalty of Rs. 10,07,00,000/-. Being aggrieved, he had filed a Writ petition before the Hon'ble High Court of Calcutta. The Hon'ble High Court vide their Order dated 28/04/2016 has set aside the penalty and remanded the matter back to the Tribunal for re-quantifying the quantum of penalty.

5. The Learned AR submits that against this Order of the Hon'ble High Court of Calcutta, the Revenue has filed an Appeal before Supreme Court wherein it is pending as on date.

6. The Learned Counsel relying on the observations of the Hon'ble Calcutta High Court submits that in case of these seven Appellants, the quantum of penalty imposed is too high. As per her, they are all small time workers and may have indulged in acting as carriers for small amount of money promised by the seller/buyer of the seized gold. She submits that these Appellants are not involved in the alleged smuggling and are not financially strong and the penalties imposed on them should be waived. She also relies on the case law of M/s. Mukherjee & Alliances (India) Pvt. Ltd. Vs. Commr. of Customs (Port), Kolkata decided by this Bench vide Final Order No. 76911-76916/2016 dated 17/12/2019. She submits that the Tribunal has held that when the duty evaded is not quantified, the penalty cannot be imposed. The Learned Counsel submits that the penalty can be imposed to the maximum extent of 10% of the duty evaded or Rs. 5,000/- whichever is higher. In the present case, the duty was not quantified, the maximum penalty which can be imposed against these Appellants can at best be to the extent of Rs. 5,000/- only. Therefore, she submits that the penalty may be reduced to 5,000/- each in respect of all the seven Appellants.

7. The Learned AR submits that since the goods were moving without any proper documents and gold with a value of

Rs.10,07,00,000/- was seized and confiscated, the same would be treated as movement of prohibited goods only. Therefore, in case of prohibited goods, the question of quantifying the duty or allowing the same to be redeemed on payment of Redemption Fine would not arise. Only because of this, the Adjudicating Authority has absolutely confiscated the seized gold. He submits that compared to the value of the gold seized, the penalties imposed on the seven Appellants are quite justified and hence no interference is required from the Tribunal to re-quantify the penalties.

8. Heard both sides and perused the relevant documents and cited case law.

9. After going through the facts of the case, it is seen that in many cases, the Appellants were seen to be repeated offenders. Each of them has carried more than 30 pieces of gold bars with them without proper documents knowing fully well that these gold bars are liable to be confiscated. Further we see force in the arguments of the Learned AR that since no proper documents were available for these gold bars, they are to be categorized as prohibited goods. Hence, we reject the submission of the Learned Counsel that penalty should be either equivalent to 10% of the quantified duty amount or Rs. 5,000/- whichever is higher.

10. Now coming to the quantum of penalties imposed, we also see that two other Noticees have approached the Hon'ble Calcutta High Court, which after going through the factual details has remanded the matter back the Tribunal to re-quantify the penalties imposed on them.

11. Further we also take note that the present Appellants are not the main noticees, since they were neither the buyers nor sellers of these gold bars but were mere carriers probably getting a few thousand rupees for carrying these gold bars from one place to

another. We are also taking into account that they may not be financially strong and hence take a more humane approach in quantifying the penalties on them. After holding that they are liable for penalties under Section 112(b)(2) of the Customs Act, 1962, we re-quantify their penalties as under:-

SI No.	Appellant	Penalty (Rs.)	Re-quantified penalty
1.	Shri Liton Seikh	8,00,000/-	80,000/-
2.	Jahangir Mondal	10,00,000/-	1,00,000/-
3.	Shri Nirupam Dey	12,50,000/-	1,25,000/-
4.	Shri Basudeb Adhikary	20,00,000/-	2,00,000/-
5.	Shri Akbar Ali Mondal	10,00,000/-	1,00,000/-
6.	Shri Sajjak Seikh	8,00,000/-	80,000/-
7.	Shri Anupam Dey	12,50,000/-	1,25,000/-

12. The seven appeals are disposed off thus.

(Dictated and pronounced in the open court.)

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

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja1