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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 76109 of 2015

(Arising out of Order-in-Original No. CCP/NER/08/2015 dated 4th August 2015 passed by Commissioner of Customs (Prev.), Shillong)

Shri Lalkrosenga
(S/o- Rophuunliana, A-33, 2nd Floor, Zalianchhunga Building,
Lower Zarkawt, Aizawl, Mizoram)

Appellant

VERSUS

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

Respondent

With

Customs Appeal No. 76110 of 2015

(Arising out of Order-in-Original No. CCP/NER/08/2015 dated 4th August 2015 passed by Commissioner of Customs (Prev.), Shillong)

Shri Liankungpuli
W/o- Shri Lalkrosenga,
(A-33, 2nd Floor, Zalianchhunga Building,
Lower Zarkawt, Aizawl, Mizoram)

Appellant

VERSUS

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

Respondent

And

Customs Appeal No. 76111 of 2015

(Arising out of Order-in-Original No. CCP/NER/08/2015 dated 4th August 2015 passed by Commissioner of Customs (Prev.), Shillong)

Shri C Lalkhuma
(S/o- Raulkhuma (L), House No. V-34 Zalianchhunga Building
Venglui, Aizawl, Mizoram)

Appellant

VERSUS

C/76109-76111/2015

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

Respondent

APPEARANCE :
Mr. Aniruddha Bhattacharya & Mr. Arnab Roy, both 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.75118-75120/2024

Date of Hearing : 25 January 2024
Date of Decision: 25 January 2024

PER R. MURALIDHAR:

The Appellants were travelling from Imphal to Mumbai. At the Airport, they were intercepted and eight pieces of gold bars weighing 6 Kgs were seized from the Appellants. Statements were recorded and Show Cause Notice was issued seeking to know as to why the gold bars valued at Rs. 1,56,00,000/- should not be confiscated and why penalties should not be imposed on three Appellants under Section 112(b)(ii) of the Customs Act, 1962. After due process, the Adjudicating Authority passed the impugned Order wherein the gold bars were confiscated absolutely and penalties have been imposed on the three Appellants. Being aggrieved, the Appellants are before the Tribunal.

2. The Learned Counsel on a specific query from the Bench submits that no one has claimed the ownership of the gold bars. Therefore, as on date, absolute confiscation of the gold bars with a value of Rs. 1,56,00,000/- is not being challenged by any of these Appellants. The Appellants are purely litigating the penalties imposed on them. He submits that first of all, the seizure Report dated

26/06/2014 does not specify anywhere that the gold bars were of foreign origin with any specific markings to this effect. Further 5 grams of sample were drawn from gold bars for Assey Certificate. Till now, no Assey Report has been submitted by the Department to the effect that gold in question are of foreign origin. The Appellants have given different statements and different points. In one statement, the first Appellant Shri Lalkrosenga has stated that he has bought the gold bars from Myanmar and in his subsequent Statement, he has stated that he found these gold bars in garbage bin and after retrieving the same he was going for Mumbai for disposing of the gold to convert the same into cash.

3. Learned Counsel submits that the Department has used the statement favourable to them to allege that the goods were bought from Myanmar without proper documents and the present case has been fastened on the Appellants.

4. In respect of the Second Appellant, M/s Laiankungpuli, no gold was seized and no case has been made out against her except for taking her Bank Statement showing huge cash transactions. He submits that cash transaction in the Bank account own its own does not prove anything to the effect that the present seized gold had nothing to do with her.

5. In respect of the third Appellant Sri C Lalkhuma, he has stated in the recorded Statement that he has accompanied the first Appellant since he did not know English or Hindi. He has accompanied him only to assist him during travelling. He has also stated that he was not aware that the first Appellant was carrying the gold bars. Accordingly, the Learned Counsel submits that no case whatsoever has been made out against the Appellant number 3.

6. In view of these, he prays that the impugned Order may be set aside and the present Appeal may be allowed.

7. The Learned AR reiterates the findings of the Adjudicating Authority and justifies the confiscation and penalties imposed.

8. Heard both sides and perused the documents placed before us.

9. On going through the Show Cause Notice, it is seen that the Department has not stated as to what kind of foreign markings were found on the seized gold bars. Even in the list of Inventory of Goods seized dated 26/6/2014, nothing on this count is being shown. Though this document speaks of 5 Gram gold being drawn as samples, the Department has not come out with any Certificate about the purity of these gold bars. Though the Appellants in their reply to Show Cause Notice before the Adjudicating Authority have submitted that no reliable evidence has been produced to prove beyond reasonable doubt that the gold bars were imported or legally procured, the Adjudicating Authority has not addressed this issue properly. As a matter of fact, at Para 13, he gives the findings *"However, going through the case records, I find in the instant case the inscriptions as embossed on the recovered gold bars clearly demonstrates that they have been manufactured in a foreign country"*. As observed by us in the earlier Paras, the seizure Report and the SCN do not speak any such inscription. Therefore, this finding of the Adjudicating Authority is not backed by any documentary evidence whatsoever.

10. Considering these facts, we find that no proper case has been made out against any of these three Appellants so as to impose the penalty under Section 112 (b) (ii) of the Customs Act, 1962.

Therefore, we set aside the penalties imposed on the Appellants and allow the Appeals.

11. Since the absolute confiscation has not been challenged, the Order passed by the Adjudicating Authority to this effects holds good.

12. The Appeals are disposed of thus.

(Dictated and pronounced in the open court.)

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

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja