

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

REGIONAL BENCH – COURT NO.2

**Customs Appeal No. 76923 of 2018**

(Arising out of Order-in-Appeal No.157/Pat/Cus/Appeal/2018 dated 30/1/2018 passed by Commissioner (Appeals) of Central GST & CX, Patna)

**Shri Manoj Sah**

(S/o Shri Bishwanath Sah, Vill.+ P. O.-Sursaud Ward No.13, Dist. Sitamarhi, Bihar)

**Appellant**

*VERSUS*

**Commissioner of Customs (Preventive), Patna**

(3<sup>rd</sup> Floor, C. R. Building (Annexe), Bir Chand Patel Path, Patna)

**Respondent**

**With**

**Customs Appeal No. 76924 of 2018**

(Arising out of Order-in-Appeal No.157/Pat/Cus/Appeal/2018 dated 30/1/2018 passed by Commissioner (Appeals) of Central GST & CX, Patna)

**Shri Bishwanath Sah**

( Vill.+ P. O.-Sursaud Ward No.13, Dist. Sitamarhi, Bihar)

**Appellant**

*VERSUS*

**Commissioner of Customs (Preventive), Patna**

(3<sup>rd</sup> Floor, C. R. Building (Annexe), Bir Chand Patel Path, Patna)

**Respondent**

**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)**

**FINAL ORDER NO.75797-75798/2023**

Date of Hearing : 22 June 2023

Date of Decision : 22 June 2023

**PER R. MURALIDHAR**

The Appellant, Shri Manoj Sah, is a trader carrying trading activities of scrap and is located near Nepal Border at Bhithamore. The Preventive Wing of Customs had visited the shop and found Zinc Ingots weighing 4632 Kgs and 42 Bags of Zinc Ash weighing 1408 Kgs. The goods were seized on the belief that they were of foreign origin and proceedings were initiated against the Appellant Manoj Sah and his father Shri Bishwanath Sah.

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2. The Adjudicating Authority after going through the submissions made by the Appellant dropped the proceedings. On appeal by the Department, the Commissioner (Appeals) has held that 4632 kgs of Zinc Ingots valued at Rs.3,24,240/- and Zinc Ash weighing 1408 Kgs valued at Rs.98,560/- with total value of Rs.4,22,800/- are to be confiscated and he has given the option under Section 125 to redeem the same on payment of Rs.1,01,500/- The Appellant had paid this amount at the time of provisional release of the goods. Accordingly, the Commissioner (Appeals) appropriated this amount towards Redemption Fine. Apart from this, he has imposed penalty of Rs.25,000/- on Shri Manoj Sah and Rs.15,000/- on Shri Bishwanath Sah. Being aggrieved by the impugned OIA, the Appellants are before the Tribunal.

3. The Learned Advocate appearing on behalf of the Appellant submits that no proper investigation was conducted and the entire case had been made on the basis that the goods were of foreign origin without proper supportive evidence. The Invoice No.219 dated 063/2/94 relied upon by the Department to take the stand that Bishwanath Sah was running a business at Birgunj, Nepal, is purely based on presumption as the seizure took place after more than 12 years from the date of Invoice. She submits that in the Recorded Statement of Shri Manoj Sah, he has never admitted that the goods were of foreign origin or the same has been obtained by him from Nepal. He has stated that these goods were procured in piecemeal basis from Pheriwala in the course of two to three months time. In respect of the Appellant Shri Bishwanath Sah, the Department has not made out any case as to how he was responsible for the quantities found in the premises of his son (Shri Manoj Sah). No statement was recorded from Shri Bishwanath Sah. Therefore, she submits that the Commissioner (Appeals) has erred in confiscating the goods and imposing the redemption fine and penalties on the Appellants.

4. The Learned AR submits that as per the detailed findings given by the Commissioner (Appeals), the Appellant had failed to discharge his responsibility to show the details of purchase of these goods from the local source. Since the Invoice bearing the name of Biswanath Sah was found in the premises of the Manoj Sah and the PP bags were bearing the "Made in Nepal" marks clearly show that the goods were manufactured at Nepal.

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Hence, he submits that the Commissioner (Appeals) has correctly decided the case by confiscating the goods as given them to option to redeem the same on payment of Redemption Fine of Rs.1,01,500/-. He submits that in view of the roles played by Shri Manoj Sah and Shri Bishwanath Sah, the Commissioner (Appeals) has correctly imposed penalty of Rs.25,000/- and 15,000/- respectively. Therefore, he submits that the Appeals are liable to be dismissed.

5. From the documentary evidence produced by the Department, it is seen that they have not made out any case that the Zinc Ingots were being brought from Nepal nor any evidence has been adduced to show that these goods were of foreign origin. The Test Report conducted by the Customs Department has simply stated that the Zinc Ingots have very high purity of 94%. Based on this Report itself, it cannot be concluded that the Zinc Ingots were of foreign origin. Therefore, it is held that the Department has not made out any case in respect of 4632 Kgs of Zinc Ingots. Hence, the confiscation of the same is unwarranted and the same is being set aside along with the Redemption Fine imposed thereon.

6. In respect of the Zinc Ash, the very fact that they were packed in 42 bags, wherein the marking "Made in Nepal" was clearly visible, the Appellant cannot take the stand that the goods were not of foreign origin. In this case, the Department has been able to show that Zinc Ash was manufactured in Nepal. Accordingly, I uphold the confiscation of 1408 Kgs of Zinc Ash valued at Rs.98560/-.

7. Since the value of confiscated Zinc Ash is for Rs.98,560/-, the redemption fine payable thereon would be to the tune of Rs.25,000/-

8. In respect of Manoj Sah, the penalty stands modified to 10,000/-.

8. Since no specific case has been made out against Shri Biswanath Sah, the penalty imposed on him is set aside.

9. Appeal is disposed off thus.

(Dictated and pronounced in the open court.)

Sd/-

**(R. Muralidhar)**  
**Member (Judicial)**

Pooja