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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 79040 of 2018

(Arising out of Order-in-Appeal No.KOL/CUS(CCP)/AA/1404/2018 Dated 01.08.2018 passed by Commissioner of Customs (Appeals), Kolkata.

Shri Debabrata Saha, alias Tulu Saha
(S/o- Shri Shankar Saha, Vill.-Baikunthapur,
P.O & P.S.-Hilli, Dist.-Dakshin Dinajpur, Pin-733126)

Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata

Respondent

With

Customs Appeal No. 79041 of 2018

(Arising out of Order-in-Appeal No.KOL/CUS(CCP)/AA/1474/2018 Dated 03.08.2018 passed by Commissioner of Customs (Appeals), Kolkata.

Shri Sanjay Ray,
(S/o Gopal Chandra Ray, Vill.-Baikunthapur, P.O. & P. S. Hilli,
Dist.-Dakshin dinajpur,-733126)

Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

And

Customs Appeal No. 79042 of 2018

(Arising out of Order-in-Appeal No.KOL/CUS(CCP)/AA/1473/2018 Dated 03.08.2018 passed by Commissioner of Customs (Appeals), Kolkata.

Shri Mithun Ghosh
(S/o, Shri Biswanath Ghosh, Vill-Baikunthapur, P.O. & P.S.-Hili,
Dist. Dakshin Dinajpur, Pin-733126)

Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

<u>APPEARANCE :</u>

Ms. Atika Sumran Ahmed, Advocate for the Appellant
Mr. Sourav Chakrbaorty, Authorized Representative for the Respondent

Customs Appeal Nos. 79040-79042 of 2018

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

FINAL ORDER NO.75702-75704/2023

Date of Hearing : 12 June 2023
Date of Decision : 12 June 2023

PER R. MURALIDHAR

These Appeals have been filed being agitated by the penalties of Rs. 4,00,000/- imposed against Shri Debabrata Saha and Shri Sanjay Ray and the third Appeal has been filed by Shri Mithun Ghosh being aggrieved by imposition of penalty of Rs.1,00,000/- and confiscation of his vehicle wherein option to redeem has been given to him.

2. The Learned Advocate appearing on behalf of the Appellant submits that the Department has not produced concrete evidence to effect that the gold seized were of foreign origin. Proper proceedings have not been conducted before coming to the conclusion that the gold confiscated was being smuggled. Their submissions at lower levels have not been properly looked into when the orders have been passed. Accordingly, she prays that the penalties may be set aside and the confiscation of vehicle with an option to redeem the same may be set aside.

3. The Learned AR submits that the gold in question was smuggled and was first seized by the Border Security Force by intercepting the appellant Debabrata Saha and Sanjay Ray. Subsequently, the case was handed over to the Customs Department. Proper statements have been recorded in terms of Section 108 of Customs Act, 1962. In the recorded statement, these two Appellants have admitted that they were transporting the gold of foreign origin. They were given these gold biscuits by one Bangladeshi national who has asked them to deliver the same to a person in India. They have also admitted that they were paid Rs.3,000/- for this task. Therefore, it is beyond doubt that these two appellants were smuggling the foreign origin gold biscuits into India. Therefore, the Learned AR submits that the lower Authorities were correct in absolutely confiscating the gold and imposing the penalties on

these Appellants. In respect of the 3rd Appellant, Shri Mithun Ghosh, his vehicle was used for the transportation of smuggled gold biscuits, therefore, Learned AR submits that the lower Authorities have correctly held that his vehicle is liable to be confiscated and the same can be redeemed on payment of redemption fine. The Lower Authorities were considerate while only penalty of Rs. 1,00,000/- was imposed on him. In view of these facts, the Learned AR submits that the Appeals are liable to be rejected.

4. Heard both sides and perused the documents.

5. On going through the recorded statements, it is seen that both Shri Debabrata Saha and Sanjay Ray have clearly admitted in their Recorded Statements that they were given these gold biscuits by Bangladeshi National for handing over the same to an Indian person. For this task, these two Appellants have been given Rs.3,000/-. They have stated that Shri Mithun Ghosh, is one of their friends and they had approached him to lend the car for their personal use. Both of them have stated that Shri Mithun Ghosh is not involved in this activity in any way. Further, in the statement recorded by Mithun Ghosh, he has also stated that the other two Appellants are his friends and he has lent his vehicle only on account of their friendship. He was not aware that they were taking this vehicle for such smuggling activity, if he had known that they were using his vehicle for this purpose, he would not have given his vehicle.

6. From the Order-in-Original, it is seen that all these Recorded Statements have been relied upon by the Department. The Adjudicating Authority has not given any finding as to why all three statements stating that Shri Mithun Ghosh was not involved in the smuggling activity and his car was used without his knowledge for this purpose. Without giving any finding as to why the Recorded statements are not applicable, the Adjudicating Authority has confiscated the vehicle and imposed redemption fine.

7. On appeal, it is seen from the Order-in-Appeal that the Commissioner (Appeals) has not even addressed this issue and he has mechanically confirmed the order of Adjudicating Authority in respect of

the first two Appellants without making any reference to the 3rd Appellant i.e. Shri Mithun Ghosh.

8. Taking these details into account, this Bench concludes that no case has been made out against Shri Mithun Ghosh. Accordingly, confiscation of this vehicle with an option to redeem the same in respect of Shri Mithun Ghosh along with penalty imposed on him stands set aside.

9. In respect of the other two Appellants, it is clear that they have indulged in the smuggling activity and they have given their statements in terms of Section 108 which has not been retracted at any time before Adjudicating Authority/Appellate authorities. However, considering the fact that they are only the carriers of the gold and gold valued at more than Rs. 39 Lacs has already been absolutely confiscated, the penalties of Rs.4,00,000/- imposed on them is reduced to penalty of Rs.1,00,000/- each.

10. The Appeals are disposed of thus.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja