

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

REGIONAL BENCH – COURT NO.1

Customs Appeal No. 75201 of 2021

(Arising out of Order-in-Appeal No.29/CUS(A)/GHY/2020 dated 17.11.2020 passed by
Commissioner of CGST , Central Excise & Customs, Guwahati.)

Shri Jochan Michael

(S/o, Michael, Parayil, Bethel, Melechinnar, Idukki, Kerala-685514)

Appellant

VERSUS

Commissioner of Customs (Preventive), Shillong

(110, Mahatma Gandhi Road, NER, Shillong-793001, Meghalaya)

Respondent

With

Customs Appeal No. 75202 of 2021

(Arising out of Order-in-Appeal No.29/CUS(A)/GHY/2020 dated 17.11.2020 passed by
Commissioner of CGST, Central Excise & Customs, Guwahati.)

Shri Antony Philip

(Manamel House, Parampuzha, P.O. South Nattassery, Kottayam, Kerala-686004)

Appellant

VERSUS

Commissioner of Customs (Preventive), Shillong

(110, Mahatma Gandhi Road, NER, Shillong-793001, Meghalaya)

Respondent

APPEARANCE :

Mr. Santosh Kumar G, Advocate for the Appellant

Mr. S. Debnath, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.75809-75810/2023

Date of Hearing : 23 June 2023

Date of Decision : 23 June 2023

PER R. MURALIDHAR

During the course of screening at Imphal Air Port, two gold biscuits in the person of Shri Antony Philip (Appeal No. C/75202/2021) and one gold biscuits in the person of Shri Jochan Michael (Appeal No. C/75201/2021) were found by the CISF Officials. After this, the Appellants were detained and the case was handed over to the Customs Officials. The Customs Officials have drawn the Panchnama on

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05/01/2019 for the seized biscuits in the presence of witnesses. They have also recorded voluntary statements of both the Appellants. Shri Antony Philip has stated that he is the owner of all three biscuits and two biscuits were recovered from this person. He submitted that he had travelled to Myanmar and bought these biscuits by cash payment. These gold biscuits were bought by him for making necessary jewelry daughter's wedding in Kerala. Shri Jochan Michael has corroborated this statement and has said that he is not the owner of biscuits, he was only carrying this biscuit which was given by Shri Antony Philip. He also submitted that the gold biscuits were bought at Myanmar. Thereafter, the Customs Department has sent the gold biscuits for testing to Assam Hallmarking Centre. Vide their Test Report dated 25th March 2019, Assam Hallmarking Centre has stated that these gold biscuits have fineness of 998.4 to 998.7 purity and they are of 24 Carat. Thereafter, proceedings were initiated and the lower Authorities have absolutely confiscated the gold valued at Rs.15,78,162/-. They have also absolutely confiscated two old used wallets and penalty of Rs.1,50,000/- was imposed on Jochan Michael and penalty of Rs.1,50,000/- was imposed on Shri Antony Philip. Being aggrieved, the Appellants are before the Tribunal.

2. The Learned Advocate appearing on behalf of the Appellant submits that no proper procedures were followed towards seizure and confiscation of the gold biscuits. The statements said to have been given voluntarily, whereas their statements were given under pressure and not out of free will. The statements were not recorded in terms of Section 108 of Customs Act, 1962. Therefore, he submits that the entire proceedings are vitiated by faulty approach adopted by the Department. Therefore, he prays that the Appeals may be allowed.

3. The Learned AR submits that it is an admitted fact that the Appellants were apprehended at Imphal Airport. They are natives of Kerala and they have not brought in any evidence that they were doing any business at Imphal. When these Appellants were caught with gold biscuits, they could not produce any licit documents for having

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purchased the same within India. On the other hand, in their voluntary statements, they have stated that they have travelled to Myanmar and bought the gold by cash payment. Therefore, this proves that the gold is of foreign origin. Further, the Test Report issued by Assam Hallmarking Centre clearly establishes that the gold biscuits are of foreign origin. The Appellant has never taken the pleading before the lower Authorities that the Statements were obtained by coercive methods and they have not retracted the recorded Statements at any point of time. The mere fact that under Section 108 of the Customs Act, 1962 was not mentioned in the recorded statement, will not vitiate the proceedings since it was recorded in the presence of Inspector and the Superintendent of Customs. It is a common practice that the Inspector records the Statement in the presence of Superintendent and both of them sign the Statement at the end. He reiterates the findings of the lower Authorities and justifies the confiscation of gold biscuits, wallets and penalty imposed on the Appellants.

4 Heard both sides and perused the documents.

5. There is no dispute that the gold biscuits were seized from the Appellants when they were being screened at Imphal Airport. If the Appellants have bought the gold through licit channel, they would have carried the Invoice copy towards the same, particularly taking into account that the value of gold was for Rs.15.7 Lakhs. While they were not in a position to show any document for purchasing these gold biscuits in India, in the Recorded statement, the Appellants have stated that they have travelled to Myanmar and bought the biscuits by way of cash payment. The recorded statements have not been retracted by them at any stage. The Test Report issue by Assam Hallmarking Centre dated 15 March 2019 also states that the golds were of 24 Carat with fineness of 998.4 to 998.5 purity. If all these facts are viewed together, it is clear that the gold biscuits are of foreign origin only. In the absence of any plausible evidence brought in by the Appellant to the contrary, it gets established that the gold biscuits were of foreign origin and the Department was correct in absolutely confiscating the gold. Admittedly

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the Recorded statements did not specify that the same were being recorded in terms of Section 108 of Customs Act, 1962. However, the Appellants are required to support their claim by way of proper Invoices in the first place. They were not in a position to prove the same. Therefore, even the error pointed out about the Recorded Statement cannot come to the rescue of the Appellants. Accordingly, I hold as under:-

- (i) The Confiscation of gold biscuits and wallets are upheld.
- (ii) Considering the value of gold biscuits, penalty imposed on Shri Antony Philip is reduced to 1,00,000/-
- (iii) Considering the fact that both the Appellants have admitted that the owner of the gold biscuits is Shri Antony Philip and taking the view that Shri Jochan Michael has acted as a carrier, the Penalty on him stands reduced to 25,000/-

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja