IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Customs Appeal Nos. 77252-77253/2018

Arising out of Order-in-Original No. CCP/NER/05/2018 dated 15.03.2018 passed by the Commissioner of Customs (Prev.) Shillong.

1.M/s Shri Mayeen Uddin
2.Md. Saleh Ahmed.
S/O (Late) Haji Abdul Monaf,
Village:-Vitorgool, P. O. Jagannathi,
P. S. Girisganj, Dist. Karmimganj- 788709.

….Appellant (s)

Vs.

Commissioner of Customs (Prev.), Shillong.
(Preventive) North Eastern Region,
Custom House
110, M. G. Road Shillong.

….Respondent (s)

Appearance:
Shri Nihar Das, Gupta, Advocate for the Appellant (s)
Shri S. Guha, Suptd. (AR) for the Respondent(s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)

Date of Hearing: - 17.07.2019

Date of Decision:-14.08.2019

Order No…FO/A/76001-76002/2019

PER SHRI P.K.CHOUDHARY:

Both the appellants filed these appeals against imposition of penalty of Rs.3,00,000/- and Rs.2,00,000/- on Shri Mayeenuddin and Shri Md. Saleh Ahmed respectively under Section 112(b)(i) of the Customs Act, 1962.

The relevant facts of the case, in brief, are that on 02.03.2017, the Officers of the Customs, Headquarter Preventive, Shillong and Anti-Smuggling Unit of Customs Division, Karimganj, went to the Shop of M/s Zaman Traders at Old Station Road, Karimganj Bazar, Karimganj, Assam at about 13 Hrs and found an orange colour

Polythene Packet on the table of the billing counter of the said shop. Shri Mayeenuddin, sitting at the Billing Counter of the shop informed the Officers that one person named Mr. Rouf, who is resident of Charakpuri, Karimganj had kept the packet. It is also stated that Mr. Rouf had left the shop as the officers entered the shop. It was found that Md. Saleh Ahmed, Proprietor of M/s Zaman Traders was not present at the time of visit of the officers. It was found that the said packet contained 20 nos. of Gold Bars bearing foreign inscription. The officers recorded the statement of both the appellants.

A Show Cause Notice dated 18.08.2017 was issued proposing confiscation of the seized gold and to impose penalty on the appellants. By the Adjudication order, the Commissioner confiscated the seized 20 nos. Gold bars absolutely and imposed penalties on the appellants. Hence, both the appellants have filed these appeals in respect of imposition of penalty.

2. The Ld. Counsel for the appellants submitted that the appellants have no concern with the seized gold. It is submitted that Shri Mayeenuddin in his statement categorically stated that one Mr. Rouf kept the packet in the table of the shop and left immediately when the Officers entered in the Shop. It is also submitted that the appellant had no knowledge of the goods contained in the packet.

3. The Ld. D. R. appearing on behalf of the Revenue justifies the findings of the Adjudicating authority. It is submitted that the seized gold were found at the shop of the appellant and therefore imposition under Section 112 of the Act is warranted.

4. Heard both sides and perused the appeal records.

5. I find that the appellants are not claiming the seized gold. There is no need to determine as to whether the goods were smuggled or not. The question is as to whether penalty would be imposable on the appellants under Section 112 (b) (i) of the Customs Act, 1962. Section 112 deals with penalty of improper importation of goods etc. Section 112(b)(i) provides any person who acquires possession of or is in any way concerned in carrying removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 of the Customs Act, 1962, shall be liable to penalty. The expressions "which he knows or has reason to believe are liable to confiscation" in Section 112(b) are very crucial. It has to be ascertained as to whether such person knows or has reason to believe that the goods are liable for confiscation for imposition of penalty under Section 112(b) of the Act.

6. In the instant case, it is seen that the Customs Officers on 02.03.2017 found one Orange colour Polythene Bag Lying on the table of the Billing Counter of the shop. Shri Mayeenuddin informed the Officers that the said packet was kept by Mr. Rouf who left the place before entering the Officers. It is stated by Shri Mayeenuddin that since there was no other customer in the shop at that time, he was going through the Accounts of the Shop. The Customs Officers immediately took possession of the orange colour polythene packet. Md. Saleh Ahmed who is the owner of M/s Zaman Traders stated that he deals with hardware items like sanitary goods, pipes, pipe fittings

etc. Both the appellants in their statements stated that they have no knowledge of the material contained in the said packet.

The Adjudicating Authority observed that it is not at all believable that any person would keep gold bar without his knowledge and consent. On the other hand, it is contended by the Ld. Advocate that if they had any knowledge of the seized gold, they would not keep the goods on the table of the shop in such a manner. In any event, I find that there is no material available on record that the appellants had any knowledge of the seized gold. It appears that the Adjudicating Authority imposed penalties on the basis of assumption and presumption, which is not permissible under the law.

Hence, I do not find any justification to impose penalty on the appellants. Accordingly, the penalties imposed on the appellants are set aside. Both the appeals are allowed.

(Pronounced in the open court on.14.08.2019.)

Sd/-
(P.K.Choudhary)
Member (Judicial)

T.K.