IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Customs Appeal No. 75449 of 2023

(Arising out of Order-in-Appeal No.177/GHY(A)/COM/ST/DIB/2023 dated 28.03.2023 passed by Commissioner of CGST, Central Excise and Customs, Guwahati)

Shri Prahlad Kuamr Das, **: Appellant**
Kumargoli, Chinsurah, P.O.- & P.S. –Chinsurah, Dist: - Hooghly, West Bengal-712 101.

VERSUS

The Commissioner of Customs (Prev), **: Respondent**
North Eastern Region, 110 MG Road, Shillong, Meghalaya -793001.

APPEARANCE:

Shri Amit Kumar, Advocate for the Appellant

Shri Faiz Ahmed, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 75054/ 2025

DATE OF HEARING :14.01.2025

DATE OF DECISION: 15.01.2025

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order wherein gold seized from the possession of the appellant was absolutely confiscating and a penalty of Rs. 2,80,000/- has been imposed on the appellant.

2. The facts of the case are that on 24.01.2020 the personnel of GRPS, Guwahati detected and seized 11 pieces of gold from the possession of the appellant while he was on board DN 14019 Tripura Sundari Express Train which was standing at Platform of Guwahati station. Subsequently, the said 11 nos. of gold pieces believed to be foreign, totally weighing

699.310 gms, were handed over to the anti smuggling Unit, Custom Division, Guwahati for effecting formal seizure at the Customs Office, Guwahati. The GRPS, Guwahati also handed over the test report of SB Assaying & Hallmarking Centre, Guwahati certifying the said gold to have fineness ranging from 99.30 to 99.39% (23.84 carat).

3. The appellant failed to produce any licit documents in support of purchase, transportation, possession, importation and in any manner dealing with the said seized gold. However, the appellant produced one blank Tax Invoice. Therefore, gold seized was effected by the Customs officers believing that gold to be of foreign origin on reasonable blame that it has been illegally imported in contravention of Section 7(1)(C) and 11 of the Customs Act, 1962. The value of the seized Gold is estimated at Rs. 27,90,247/- . Thereafter, statement of the appellant was recorded and a Show Cause Notice was issued to the appellant for absolute confiscation of the said gold. On 29.06.2020, the matter was adjudicated the gold in question was absolutely confiscated and penalty of Rs. 2,80,000/- was imposed on the appellant.

4. On appeal, the order of the Adjudicating Authority was affirmed. Against the said order, the appellant is before me.

5. The Ld. Counsel for the appellant submits that the appellant is having a jewellery business in the name and style of Rahul Jewellers, Natun Bazar, Chinsura, Hooghly, West Bengal from

last 12 years . It is his submission that the appellant had travelled from Sealdah railway station by Kanchanjanga express carrying the gold pieces with the exchanging the same with ornaments in Agartala with goldsmith namely Shri Rohit. When the appellant reached Agartala on 23.01.2020 he called Mr. Rohit but he could not get him therefore, he decided to return to Kolkata. Accordingly, he boarded to the train Sundari express and on 24.10.2020 he was sitting in his berth in Guwahati railway station, the GRPS came inside and started checking his luggage and body and during search, the gold wrapped with handkerchief inside the pocket of his pant which he was wearing recovered the gold with 11 pieces having 699.310 Gms and the gold has been seized by the RPF and thereafter it was handed over to Custom officials for further proceedings.

6. It is his submissions that in this case, no seizure was done by the Custom officials and seizure has been done by the GRPS therefore, the proceedings under Custom officials are not sustainable against the appellant. It is his further submission there is no marking on the gold bar/pieces indicating foreign origin further, it is evident from the report of the valuer that the bar are of being irregular shape and size being weigh i.e 60.440 Gms, 71.370 gms, 67.200 gms, 69.610 gms, 97.300 gms, 4.100 gms, 70.500 gms, 81.720 gms, 88.990 gms, 72.030 gms, 16.050 gms. As shape and weight of the bars itself does not indicate that the gold is of foreign origin and it is known in

the trade circle that the gold of foreign origin is of standard weight and shape of 100 gm/1kg and also having marking of the refiner with the unique serial number. There is no such evidence available on record. Therefore, the gold cannot be seized. Moreover, the purity of the gold is also 99.30% to 99.390%. Therefore, the gold cannot be seized. To support his contention he relied on the decision of this Tribunal in the case of Tunuguntla Pavan Kumar vs. Commissioner of Customs (Preventive), Vijaywada reported in (2024) 19 Centax 116 (Tri-Hyd), in the case of Commissioner of Customs (Preventive) vs. Bajrang Ingole reported in (2023) 13 Centax 178 (Tri-cal), R.K.Swami Singh Vs. Commissioner of Customs (Preventive)Shillong reported in (2024) 18 Centax 459 (Tri-Cal).

7. On the other hand Ld Authorized Representative submitted that as the appellant could not produce ilicit document for procurement of the gold, in that circumstances, it is a reasonable believe that gold is of foreign origin, therefore, the same was seized.

8. Heard both sides. Considered the submissions.

9. I find that it is a case of town seizure wherein the purity of gold was found 99.30% to 99.39 % and having no foreign marking thereon and are of irregular shape, size and weight. In that circumstances, can there be a reasonable believe to confiscate that the gold in question or not.

10. The said issue has been dealt by this Tribunal in the case of Bajrang Ingole wherein this Tribunal has observed as under:

"*17. On going through the facts of the case, as it is a case of town seizure, where no marking is embossed on the gold which is coming out from the seizure memo itself that there is e Swastika symbol and purity is only 99.5%, in that circumstances, the question arises how the reasonable belief has been found to form the opinion that the gold in question is smuggled one.*

18. To decide the issue this Tribunal in the case of Shri Balwant Raj Soni & Others v. Commissioner of Customs (Preventive), Patna vide Final Order No. 75455-75457/2023 dated 18-5-2023 has examined the issue and observed as under:-

"19. The Appellants also relied upon the decision of the Hon'ble Delhi High Court in the case of Shanti Lal Mehta v. UOI and Others reported in 1983(14) ELT1715 (DEL), which elaborately dealt with Town seizures. The relevant portion of the Order are reproduced below:

19.1 The Appellants stated that Reasonable belief must be at the time when the goods are seized and not subsequent to seizure.

"54. The other question which was argued before me was that the customs officer did not act on any reasonable belief when he searched

the petitioner's premises on 15-12-1967 and seized the goods. Section 110 opens with the words "if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods". What is the meaning of "reasonable belief"? Did the officer entertain reasonable belief in the facts and the circumstances of this case? This is the other question to be decided. The Supreme Court has said that reasonable belief is a pre-requisite condition of the power of seizure that the statute confers on the officer. (See Collector of Customs v. Sampathu Chetty, AIR 1962 S.C. 316). The preliminary requirement of Section 110 is that the officer seizing should entertain a reasonable belief that the goods seized were smuggled.

55. Reasonable belief as required by Section 110 refers to the point of time when the goods in question are seized and not to a stage subsequent to the act of seizure. (M.G. Abrol v. Amichand, AIR 1961 Bom. 227). The condition precedent that there was such a reasonable belief anterior to the seizure must exist before the presumption under section 123 can be Invoked."

19.2 Smuggled goods Reasonable belief cannot be based on presumption.

"58. The second reason for entertaining a reasonable belief is that the seized goods were not accounted for by the petitioner on 15-2-1967 when the officer seized the goods from

his possession. The seized goods consisted of 20 items of ornaments and diamonds. Out of these six items were released before the show cause notice was issued. One item was released at the adjudication stage. Six items were released by the Board on appeal. Only 7 items have been confiscated. These consist of 2 packets of diamonds and 5 ornaments. The petitioner claimed that they belonged to the queen mother of Nepal. A letter was written to queen mother. On her behalf a reply was received that she had given certain ornaments to the petitioner for polishing, remaking etc., though not for sale. But this was done later on. The letter was written on 3-7-1967. The reply was received on 24-7-1967. But at the time of seizure all that the officer had before him were 2 packets of diamonds and 5 ornaments. Neither the diamonds nor the ornaments had any foreign markings or label to suggest to the customs that these were smuggled goods. In the search list these two packets of diamonds are described as "appearing to be diamonds". This shows that the customs officer did not believe them to be diamonds on any reasonable ground. The ornaments had no foreign label or making. They were ordinary ornaments as are worn in this country. There was nothing peculiar about them. Nothing extraordinary. On this material could any reasonable man entertain a belief that these were smuggled goods

59. The belief must be such as any reasonable man in the circumstances of the case would *entertain about the existence or non-existence of a thing. Simply because the goods were not accounted for at that time does not necessarily mean that the goods were smuggled goods. Unaccounted goods may be stolen goods. Reasonable belief could be entertained either on the basis of some external indicia or on the basis of some internal information that the goods had been illegally imported into India from Nepal or some other foreign country either without payment of duty or in contravention of any restriction or prohibition imposed by statute. There was nothing to suggest the foreign origin of the goods. There was nothing to suggest the illegal importation of the goods into the country*

60. The goods must be smuggled goods. The word 'smuggled' means that the goods were of foreign origin and they had beeled gooded from abroad. Only then does the presumption unded section 123 arise. The goods themselves did not suggest that the petitioner was an old smuggler or a dealer in smuggled goods if there was such information with the customs, they ought to have disclosed it Inted goods if theres did not suggest any illicit importation. Nor was there any inscription on the goods which could be the basis of the reasonable belief that the goods were of foreign origin. There was nothing in the appearance of the goods to suggest that they had been newly manufactured and brought into this country very recently from another country. In a word there was nothing absolutely from which inferences about their origin or recent import *could arise. It was not a case where large quantity of gold with foreign markings was found hidden in the trousers of the accused as happened in Hukma v. State of Rajasthan, AIR 1965 S.C. 476.*

61. In fact there is a finding by the Board in favour of the petitioner supporting his contention that there could be no reasonable belief in the mind of the officer when he seized the goods. On the penalty of Rs. 25,000/- imposed on the petitioner the Board observed: "there is no definite evidence to show that the appellant knew or had reason to believe that those items were smuggled. In the absence of this evidence the penalty imposed is not justified. The Board accordingly remits the personal penalty in full". If the petitioner did not know that the goods were smuggled, how could the customs officer reasonably believe that the goods were smuggled. The petitioner knew better.

62. The customs officer merely thought that as the goods had not been accounted for these are smuggled goods. At the time of seizure what happened was this. The petitioner was present at the shop. He told the customs officer that they were duly entered in his account books but his accountant had gone to the income tax officer. The officer did not wait for the man to arrive to explain the entries to him. He seized the goods and took them away. This was not a case of reasonable belief. It was *a case of suspicion. A case of speculation. A case of guess work.*

63. As a result Section 123 did not apply to the case. There was no reasonable belief. No presumption could be raised under section 123. There was no obligation on the petitioner to prove that the goods were not smuggled. The burden of proof was wrongly cast on him. The entire inquiry was vitiated."

20. From the above discussion, we observe that the 'reasonable belief on which the DRI officers presumed that the gold bars/pieces were of smuggled nature is not supported by any corroborative evidence. There is no document available on record to establish that gold bars/pieces were smuggled into India from Bangladesh. The impugned order has concluded that the said gold bars/pieces were smuggled into India only on the basis of assumptions and presumptions without any concrete evidence to substantiate this claim. Hence, we hold that material evidence available on record does not establish that the gold bars/pieces were smuggled into India without any valid documents. Accordingly, answer to question (1) above in

para 13 above is negative."

19. It is apparent from the records itself that it is a case of town seizure. The purity of gold is 99.5% and having no embossing of foreign mark, in that circumstances, Revenue has *failed to prove reasonable belief that being the gold in question is smuggled one. In the absence of that the impugned gold cannot be seized under section 110 of the Customs Act, 1962 and therefore the gold in question is not liable for confiscation and no penalty is imposable on the appellant.*

In view of this I do not find any infirmity in the impugned order. The same is upheld and the appeals filed by the Revenue are dismissed."

11. Further in the case of R.K.Swami Singh (Supra) this Tribunal has examined the said issue and observed as under:

"12.1 We observe that the gold was seized from the appellant while he was travelling in a van in Imphal. The gold seized was not having any foreign marking on it. Upon testing the samples, the gold was found to be having purity of 995.2 mille, 995.1 mille and 995.0 mille. Thus, we observe that the gold is not Standard foreign origin gold, which is normally having a purity of 999.9mille.

12.2 We observe that the gold pieces/bars were seized from the appellant on the 'reasonable belief that they were smuggled into India. The Hon'ble Supreme Court in the case of Tata Chemicals Ltd. v. Commissioner of Customs (Preventive), Jamnagar reported in (2015) 11 SCC 628 = 2015 (320) E.L.T. 45 (S.C.), explained the meaning of the phrase 'reason to believe' as under:-

"reason to believe" by opining it to be not the subjective satisfaction of the officer concerned, for "such power given to the officer concerned is not an arbitrary power and has to be exercised in accordance with their strains imposed by law" and that such belief must be that of an honest and reasonable person based upon reasonable grounds. Further, if the authority would be acting without jurisdiction or there is no existence of any material or conditions leading to the belief, it would be open for the Court to examine the same, though sufficiency of the reasons for the belief cannot be investigated.

12.3 In view of the above, we observe that to form a 'reasonable belief that the goods are smuggled into India, there must be irrefutable evidence to prove that allegation. In the present case there is no such evidence available to prove that the goods were of foreign origin and smuggled into India. In this case we find that the gold was seized at the outskirts of Imphal which is far away from Indo-Myanmar border. Thus, there must be some other corroborative evidence available to have the reasonable belief that the gold is of smuggled in nature."

12. Admittedly the facts of the case are similar to the case of R.K.Swami Singh (Supra) and Bajrang Ingole (Supra).

13. As it is a case of town seizure having no foreign marking on the gold and gold is of

different shape, size and weight and purity of 99.30% to 99.39%, in that circumstances, the gold in question cannot be absolutely confiscated. Therefore, the conditions of Section 110 for seizure of gold are not complied with as there is no reasonable believe that the gold in question is of foreign origin.

14. In view of this, the impugned gold is not liable for confiscation and is to be released to the appellant and no penalty is imposable on the appellant.

15. In these terms, the impugned order is to be set aside and the appeal is allowed with consequential relief, if any.

(Pronounced in the open court on _15.01.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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