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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75469 of 2020

(Arising out of Order-in-Appeal No. KOL/CUS(CCP)/KA/164-166/D/2020 dated 17.08.2020 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Prakash Hiroo **: Appellant**
Middleton Apartments, Flat No. 3, Middleton Row,
Kolkata – 700 071

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
3rd Floor, 15/1, Strand Road,
Kolkata – 700 001

WITH

Customs Appeal No. 75470 of 2020

(Arising out of Order-in-Appeal No. KOL/CUS(CCP)/KA/164-166/D/2020 dated 17.08.2020 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Mukesh Hiroo **: Appellant**
S/o. Shri Minoo Kumar Hiroo,
Flat No. 5C, 3 Middleton Row,
Kolkata – 700 071

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
3rd Floor, 15/1, Strand Road,
Kolkata – 700 001

AND

Customs Appeal No. 75187 of 2023

(Arising out of Order-in-Appeal No. KOL/CUS(CCP)/KA/164-166/D/2020 dated 17.08.2020 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Minoo Kumar Hiroo **: Appellant**
Proprietor of M/s. Dilpasand,
Middleton Apartments, Flat No. 5C, 3 Middleton Row,
Kolkata – 700 071

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
3rd Floor, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Smt. Ankita Mitra, Advocate, for the Appellant(s)

Shri Subrata Debnath, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75823-75825 / 2025

DATE OF HEARING / DECISION: 01.04.2025

ORDER:

The appellants have filed these three appeals against the imposition of penalties on them in the Order-in-Appeal No. KOL/CUS(CCP)/KA/164-166/D/2020 dated 17.08.2020 passed by the Ld. Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001.

2. The facts of the case are as that on 07.01.2010 the officers of D.R.I (Directorate of Revenue Intelligence) Kolkata searched the following premises, amongst others:-

a) M/s Dilpasand Shop, proprietor Shri Minoo Kumar Hiroo in the AC market, 1 Shakespeare Srani, Kolkata -700071 and residence of Shri Minoo Kumar Hiroo, Flat No. 5C and 10 B Middleton Apartment, 3 Middleton Road, Kolkata 700071.
b) Residence of Shri Prakash Kumar Hiroo, brother of Shri Minoo Kumar Hiroo, Flat No. 1F Middleton Apartment, 3 Middleton Road, Kolkata 700071.

2.1. The officers seized certain foreign Whiskey Bottles, crystal Show pieces, Glass wares, Pens, Sunglasses, etc., on the allegation that they were smuggled goods, brought into the country without payment of applicable customs duties. The statements of all the appellants were recorded on various dates.

3. On completion of the investigation, a Show Cause Notice bearing DRIF No. 01/KOL/2010 (P) dated 06.07.2010 was issued to the appellants, amongst others.

3.1. The ld. adjudicating authority passed the Order-In-Original No. 72/ADC(P)/CUS/WB/16-17 dated 25.10.2016 against the appellants, inter alia, as under: -

a) Ordered release of foreign liquors and miscellaneous items partly to Shri Minoo Kumar Hiroo covered under the baggage receipts.
b) Ordered confiscation of goods recovered from Shri Minoo Kumar Hiroo and imposition of Redemption Fine of Rs.3,07,200.00/- in respect of: -
   I. 291 pieces of Foreign Goods , RF Rs.1,66,500.00/-
   II. 45 bottles of alleged foreign liquor, RF Rs.45,700/-
   III. 52 bottles of foreign liquor and 115 pieces of foreign goods, RF Rs. 95,000.

c) Confiscation of 78 pcs of alleged foreign goods recovered from Shri Rajiv Kumar Hiroo and imposition of Redemption Fine Rs.1,12,000.00 against Shri Rajiv Kumar Hiroo.

d) Ordered confiscation of 246 bottles of alleged foreign liquor recovered from Shri Prakash Kumar Hiroo and imposition of Redemption Fine of Rs.65,600.00/-

e) Imposition of penalty of Rs.1,44,000/- on Shri Minoo Kumar Hiroo under Section 112(a) and 112(b) of the Customs Act, 1962.

f) Imposition of penalty of Rs.56,200/- on Shri Rajiv Kumar Hiroo under Section 112(a) and 112(b) of the Customs Act, 1962.

g) Imposition of penalty of Rs.26,200/- on Shri Prakash Kumar Hiroo under Section 112(a) and 112(b) of the Customs Act, 1962.

h) Imposition of penalty of Rs.20,000/- on Shri Mukesh Kumar Hiroo under Section 112(a) and 112(b) of the Customs Act, 1962.

3.2. All the three appellants herein, along with Shri Rajiv Kumar Hiroo, filed appeals before the Ld. Commissioner (Appeals).

3.2.1. Vide the impugned Order-in-Appeal No. KOL/CUS(CCP)/KA/164-166/D/2020 dated 17.08.2020, the Ld. Commissioner of Customs (Appeals), rejected all the appeals of the appellants herein.

3.2.2. However, by Order-In-Appeal No. KOL/CUS(CCP)/Ks/72/2025 dated 18.02.2025, in the appeal of Shri Rajiv Kumar Hiroo, the Ld. Commissioner (Appeals) was pleased to allow the appeal with consequential relief and set aside the Order-In-Original No. 72/ADC(P)/CUS/WB/16-17 dated 25/10/2016 against Shri Rajiv Kumar Hiroo.

4. Aggrieved against the impugned order dated 17.08.2020, the appellants have filed the present appeals.

5. The Ld. Counsel appearing on behalf of the appellants at the outset submits that the Ld. Commissioner (Appeals) has allowed the appeal filed by Shri Rajiv Kumar Hiroo vide the Order-in-Appeal dated 18.02.2025. She submits that although penalties had been imposed on the appellants herein as well as Shri Rajiv Kumar Hiroo vide the same Order-in-Original dated 25.10.2016, Shri Rajiv Kumar Hiroo was exonerated for the same offence and the penalty imposed on him was set aside and order of confiscation of the impugned goods in the said appeal has also been set aside, while the penalties imposed on the appellants on the same set of facts have been upheld. Since vide the Order-in-Appeal dated 18.02.2025 it has been held that the goods are not liable for confiscation and Shri Rajiv Kumar Hiroo, who is one of the persons implicated in the said offence, has been exonerated, the appellants submit that no penalty is imposable on them as well. The appellants submits that they have also filed appeal against the confiscation of the same goods. Since, the confiscation of the said goods has already been set aside vide Order-in-Appeal dated 18.02.205, no penalty imposable on them as well as the setting aside the confiscation of the goods is applicable for their appeals also. Accordingly, the appellants have prayed for setting aside the penalties imposed on them, on the same grounds.

6. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

7. Heard both sides and perused the appeal records.

8. I find that a common Show Cause Notice was issued *inter alia* against the following persons/noticees: -

(i) Shri Minoo Kumar Hiroo
(ii) Shir Rajiv Kumar Hiroo
(iii) Shri Prakash Hiroo
(iv) Shri Mukesh Hiroo

wherein the goods seized were proposed for confiscation and penalties were also proposed on all the above persons under the Customs Act, 1962, for the same offence. Thereafter, the ld. adjudicating authority has confiscated the goods seized and imposed penalties against all these persons mentioned above.

8.1. However, I find that in the Order-in-Appeal dated 18.02.2025, passed in respect of the appeal filed by Shri Rajiv Kumar Hiroo, the goods have been held as not liable for confiscation and the confiscation ordered by the ld. adjudicating authority has been set aside. The penalty imposed on Shri Rajiv Kumar Hiroo, on the same allegations, has also been set aside. The relevant portion of the said Order-in-Appeal dated 18.02.2025 is reproduced below for ready reference:-

> *"16. In the above facts and circumstances and in view of judicial pronouncements cited supra, I am of the considered view that the impugned SCN does not bring out any evidence towards smuggling of the seized goods into India by the appellant themselves nor any evidence has been put forth by the Department to indicate that the impugned goods are actually smuggled*

> *and the appellant had means-rea or having any antecedents of smuggling, whereas, contrarily the statements of different persons were corroborative clearly vindicating the version of the appellant which ought to have been considered by the learned Adjudicating Authority as discharge of burden under Section 123 of the said Act, which doesn't necessarily have to be by production of documents only, corroboration of version is having the same relevance in view of the fact that the department itself had taken resort under assumptive presumptions while seizing the impugned gold. The allegation that the impugned goods is smuggled one is imaginative speculations only having no independent corroboration by way of tangible evidence or independent witness which is unacceptable in law.*
>
> *17. In view of above, I am of the considered view that the impugned goods are not smuggled ones and thus have wrongly been seized. Therefore, I hold that the proceedings against the appellant are bad in law. Consequently, the confiscation of the impugned goods and imposition of penalty on the appellant is not sustainable, hence are set aside. The appeal is allowed with consequential relief."*

8.2. From the above, it is seen that for the appeal filed by Shri Rajiv Kumar Hiroo, the order of confiscation of the goods has been set aside. The penalty imposed on the co-accused viz. Shri Rajiv Kumar Hiroo for the same offence has also been set aside.

9. Further, I observe that the goods which have been ordered for confiscation (ref. page 1 of the Order-in-Original dated 25.10.2016) in the present case are as under:-

I. Foreign liquors of assorted brands
II. Foreign goods comprising of crystals, perfumes, leather wallets and belts, pens, cufflinks, etc.

9.1. I observe from the findings of the Ld. Commissioner (Appeals) in the Order-in-Appeal dated 18.02.2025 reproduced in paragraph 8.1 supra that the above items are not notified items falling under Section 123 of the Customs Act, 1962 and hence the same are not liable for confiscation, which is equally applicable for these three appellants as well. Accordingly, I hold that the order setting aside the confiscation of the goods is applicable for these three appellants as well.

9.2. As the order of confiscation in respect of the same goods seized from Shri Rajiv Kumar Hiroo has already been set aside vide the Order-in-Appeal dated 18.02.2025 (supra), I find that the above findings of the Ld. Commissioner (Appeals) in the said order in respect of setting aside confiscation of the goods involved and setting aside the penalty on Shri Rajiv Kumar Hiroo is applicable for all the three appellants herein as well, as they have been penalized for the same offence. Thus, I hold that the penalties imposed on the appellants herein vide the impugned order dated 17.08.2020 for the same offence are also liable to be set aside, in view of the above findings of the Ld. Commissioner (Appeals) in the Order-in-Appeal dated 18.02.2025 passed on the same set of facts. Hence, I set aside the penalties imposed on the three appellants herein.

10. Accordingly, the impugned order, qua imposition of penalties and confiscation of the goods in respect of the appellants herein, is set aside.

11. In the result, the appeals filed by the appellants are allowed, with consequential relief, if any, as per law.

(Operative part of the order was pronounced in open court)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd