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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75525 of 2017

(Arising out of Order-in-Original No. 42/COMMR/CUS/SLG/2016-17 dated 29th December 2016 passed by Commissioner of Customs, Central Excise & Service Tax, Siliguri)

M/s. Kiran Forex Pvt. Ltd.
(1218, Katra Satyanarayan, Chandni Chowk, New Delhi-100006)

Appellant

VERSUS

Commr. of Customs, Central Excise & Service Tax, Siliguri
(C. R. Building, Haren Mukherjee Road, Hakim Para, Sigliguri-734001)

Respondent

With

(1) Customs Appeal No. 75526 of 2017 (Sanjay Mishra Vs. Commr. of Customs, Central Excise and Service Tax, Siliguri (2) Customs Appeal No. 75527 of 2017 (Shyam Sundar Mishra Vs. Commr. of Customs, Central Excise and Service Tax, Siliguri (3) Customs Appeal No. 75528 of 2017 (Luv Kush Pandey Vs. Commr. of Customs, Central Excise and Service Tax Siliguri (4) Customs Appeal No. 75529 of 2017 (Rahul Khanna Vs. Commr. of Customs, Central Excise & Service Tax, Siliguri)

SI No. (1)-(4) (Arising out of Order-in-Original No. 42/COMMR/CUS/SLG/2016-17 dated 29th December 2016 passed by Commissioner of Customs, Central Excise & Service Tax, Siliguri)

APPEARANCE :

Shri Masum Ali Sardar & Smt. Naghma Tabassum, both Advocate for the Appellant
Shri Faiz Ahmed, both Authorized Representative for the Respondent

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

FINAL ORDER NO.76371-76375/2025

Date of Hearing : 15th May 2025
Date of Pronouncement : 22.05.2025

Per Rajeev Tandon

The instant appeals have been filed against the Order-in-Original No. 42/COMM/CUS/SLG/2016-17 dated 29th December 2016. The appellants are aggrieved with the penalties as imposed upon them under Section 112 (a) and 112 (b) and 117 of the Customs Act, 1962.

2. The present case is that of a seizure of 41 gold bars weighing 27.974 kgs and 3 cut pieces of gold weighing 1.001kg. Indian currency worth Rs. 1,48,67,500/- and 17,50,000/- was also seized as sales proceeds of smuggled gold besides other items including the Mahindra Bolero car, concerned with the alleged smuggling of gold. Though the appellant in the appeal filed have indicated that they have also challenged the order of confiscation of gold and Indian currency, the Counsel for the appellant on a specific query from the Bench has confirmed that in the impugned appeals, they were now challenging only the penalties imposed and are not disputing the confiscation of gold and or Indian currency. The Learned Counsel re-confirms the said position in the open court when asked for the second time. He has therefore made no submissions on this score. In the circumstances, we will limit our consideration of the present matter to the appropriateness of the penalties imposed on the five appellants herein.

3. Acting on specific intelligence, the Revenue authorities had intercepted a red colour Mahendra Bolero on 17/12/2014 at Siliguri. Personal search of the four persons intercepted in the said vehicle resulted in recovery of 22 numbers of foreign marked gold bars from Sri Ang Karma Sherpa, Sri Bishnu Phuyal, Shri Shyam Sunder Mishra and Sri Sanjay Mishra. Of these four persons, only Sanjay Mishra and Shyam Sundar Mishra are before us in appeal. Investigations were carried out which led the authorities to conduct searches at Delhi and Jaipur. It was thereafter ascertained that Shyam Sunder Mishra worked for one Rahul Khanna who owned a shop by name Kiran Forex Pvt. Ltd., Delhi. The investigations with Sanjay Mishra brings out that Shyam Sundar Mishra introduced him to Luv Kush Pandey, brother in-law of Shyam Sundar Mishra and Shri Rahul Khanna who was also the employer of Shyam Sundar Mishra. As per records Rahul Khanna had told him to go to Siliguri for the collection of the gold. Seizure of Indian currency for Rs.1,48,67,500/- was effected from the premises of Kiran

Forex while that of 17,50,000/- was recovered from the residence of Luv Kush Pandey on 18/12/2014 & 17/12/2014 respectively.

4. Rahul Khanna is the Director of Kiran Forex Ltd. which firm is licenced for sale and purchase of currency.

5. The Learned Counsel for the appellants has argued that penalties imposed have been extremely harsh and the appellants had no role to the extent in the matter. He pleads for leniency in the penalties as imposed on the appellants.

6. As brought out in the investigations, Shyam Sundar Mishra had gone to Siliguri upon the directions of Rahul Khanna, his employer. Luv Kush is a resident of Delhi who owns a shop in Delhi in Chandni Chowk area. While Sanjay Mishra was a Rikshaw driver based out of Delhi who also worked for Rahul Khanna. The persons intercepted with gold in the initial statement (Ang Karma Sherpa, Bishnu Phuyal) had indicated to the authorities that they were to deliver the said gold to Shri Sanjay Mishra and Shyam Sundar Mishra who had arrived from Delhi for collecting the same. Shyam Sundar has submitted that he had gone to Siliguri as directed by Rahul Khanna. While Sanjay Mishra had submitted that he requested his uncle Shyam Sundar to help him to enhance his earnings who had therefore introduced him to Luv Kush Pandey. From the testimony of the accused appellants, the CDR data, the authorities gathered that both Rahul Khanna and Luv Kush Pandey were in close contact and in association with one Mohan Lal Agarwal (of Nepal), the supplier of gold, along with whom they had hatched the conspiracy of smuggling gold from Nepal to India. Records also detailed that Ang Karma Sherpa (a co-accused) was also in touch with Luv Kush Pandey, Mohal Lal Agarwal, Shyam Sundar Mishra-thereby completing and linking up the various blocks of the chain. In the process, Rahul khanna and Luv Kush engaged Shyam Sundar Mishra and Sanjay Mishra for the purpose of collection of the said seized gold (27.974 kgs). Investigations pointed out that Rahul Khanna indulged in systematic smuggling of gold along with Luv Kush Pandey from whose residence

aforesaid recovery of currency was made. The two prime accused Rahul Khanna and Luv Kush, alongwith other co-accused, could not produce any document in support of valid acquisition of foreign marked gold. They also were not able to satisfy the licit procurement of Indian currency, seized under the belief of being the sale proceeds of smuggled gold. The Adjudicating Authority, notes that upon receipt of expert legal advice, the appellants have attempted to change their original stance, that the accomplices/co-noticees had described true facts in the course of their spontaneous statements, recorded under Section 108 of the Customs Act and has therefore dismissed belated retractions filed purely as an after thought, as a mechanical and a futile attempt for escaping the clutches of law. Investigations clearly bring out that Shyam Sundar Mishra and Sanjay Mishra acted as carriers for petty gains and worked for Rahul Khanna and Luv Kush and executed their directions. As emanates from the findings, Rahul Khanna, Luv Kush Pandey and Mohan Lal Agarwal hatched a conspiracy to smuggle gold from Nepal to India. As per plan Mohan Lal Agarwal would deliver smuggled gold through his personnel to Shyam Sunder Mishra and others deputed by Rahul Khanna at Panitanki, Siliguri or other nearby area on the border. This gold was then required to be brought to Delhi by Shyam Sundar Mishra by train and delivered to Luv Kush Pandey. Rahul Khanna would then arrange sale of the smuggled gold through one Vinod Bhagat in and around Delhi. It was as per the directions of Rahul Khanna that Luv Kush Pandey would deliver the smuggled gold to Vinod Bhagat who would hand over the sale proceeds to Rahul Khanna, Luv Kush Pandey, as per the directions of Rahul Khanna. It is Rahul Khanna who through his representatives would transmit the sale proceeds of smuggled gold to Mohan Lal Agarwal or his representative. Thus a complex web of acquisition, possession and sale of smuggled gold is evident in the whole scheme of things, involving several people including the appellants herein.

7 (i) Section 112 (a) & (b) of the Customs Act whereunder the penalties have been imposed on the appellants is extracted herein read as under:-

SECTION 112. Penalty for improper importation of goods, etc. — Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) 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,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

[(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher : ***Provided*** *that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;] [(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;*

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

7 (ii) Section 117 of the Customs Act is extracted below:-

SECTION 117. Penalties for contravention, etc., not expressly mentioned. *— Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees].*

8. The Adjudicating Authority has clearly brought out the role play and involvement of the four accused and the company Kiran Forex Pvt. Ltd. and has imposed penalty on the appellants as indicated below:-

(i) Rs. 38 lakh on Rahul Khanna,

(ii) Rs.20 lakh on Luv Kush

(iii) Rs.10 lakh on Shyam Sundar Mishra

(iv) Rs.2 lakh on Sanjay Mishra

(v) Rs. 1 lakh on Kiran Forex Pvt. Ltd.

9. Looking into the role play as brought out in the Show Cause Notice and as noted in the adjudication order, the fact of challenge to confiscated gold and Indian currency having been given up, we feel that the ends of justice will be met by reducing the aforesaid penalties imposed. We therefore feel that in the fitness of things, the following amount of penalty on the appellant would meet the ends of justice.

(i) Kiran Forex (u/s 117)- Rs. 15,000/- (Rs. Fifteen Thousand only)

(ii) Rahul Khanna- (u/s 112 a & b (i & ii)-3,50,000/-(Rs. Three Lakh Fifty Thousand only)

(iii) Luv Kush Pandey (u/s 112a & b (i & iii)-Rs. 2,00,000 (Rs. Two Lakh only)

(iv) Shyam Sunder Mishra (u/s 112 b(ii))- Rs.25,000/- (Rs. Twenty Five Thousand only)

(v) Sanjay Mishra (u/s 112 b(ii))-Rs. 15,000/- (Rs. Fifteen Thousandonly)

10. The appeals stand disposed off in the aforesaid terms.

(Pronounced in the open court on 22.05.2025)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

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