IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. I

Appeal No. C/1080/09

(Arising out of Order-in-Original CAO No. 85/2008/CAC/CC/KS dated 07.08.2009 passed by the Commissioner of Customs (Adjudication), Mumbai-I).

Shakil Patel	Appellant

Vs.

CC (General), Mumbai	Respondent

Appearance:

Mohd. Wasim Qureshi, Advocate	for Appellant
Shri Chatru Singh, Asst. Commr. (A.R.)	for Respondent

CORAM:

HON'BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 26.02.2018

Date of Decision: .2018

ORDER NO.

Per: Archana Wadhwa

The challenge in the present appeal is to penalty of Rs.5 lakhs imposed upon the appellant by the Commissioner under Section 112 of the Customs Act, 1962.

2. After hearing both sides, we note that one Mr. Abdul Satar was carrying Gold Bars (200 pieces) totally valued at Rs.1.02 crores into India from Dubai without declaring the same to the Customs

authorities. The incriminating statements given by Mr. Abdul Satar referred to one person called Shakil as the owner of the goods and deposed that he was working for Shakil for consideration of Rs.25,000/-. He further stated that gold was handed over by him to one lady, who was also travelling along with him in the same flight and further explained that he had made several similar trips from Dubai to India and in each trip, he carried gold for Mr. Shakil. He also gave a mobile number which was belonging to Mr. Shakil. One Mr. Zahid Jafar Miya Hasan Miya (brother-in-law of Mr. Shakil Patel) also gave a statement under Section 108 of the Customs Act, wherein he stated, inter alia, that his younger son Firoz was working with Mr. Shakil Patel and used to book tickets for passengers of Shakil and that Shakil was regularly receiving calls on their residential telephone number 3747414. Numerous other statements were also recorded by the investigating agency from many others. Some of these statements were used by the investigating agency to fix Mr. Shakil Patel in his alleged smuggling of gold. It appears from the records that Mr. Shakil Patel's role was ascertained from the manner in which the above telephones were used by the persons who were found to have been involved in the smuggling of the goods. The allegations framed against the appellant in the show-cause notice came to be sustained in the impugned order. Hence the impugned penalty on Mr. Shakil Patel.

3. After going through the impugned order and after appreciating the submissions made by both sides, we note that the entire case of the Revenue is based upon the statement of co-noticee without there being any further evidence. Though a number of summons were issued to the present appellant, but his statement could not be recorded as the appellant did not honour the summons. Further, no efforts were made by Revenue to approach the present appellant in person, so as to record his statement. As such, we note that there is no statement of the appellant and the penalties stand imposed upon him only on the basis of incriminating statements of the co-noticee. It is well settled law that such statement of the co-noticee cannot be made the sole basis for penalizing a person.

4. As such, in the absence of any other corroborative evidence, we find that the penalty imposed by the appellant is unsustainable. We, accordingly, set aside the same and allow the appeal with consequential relief to the appellant, if any, in accordance with law.

(Pronounced in Court on ....)

(Raju)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

Sinha