CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85203 OF 2021

[Arising out of Order-in-Appeal No: MUM-CUSTM-PREV-APP-537 & 538/2020-21 dated 9th November 2021 passed by the Commissioner of Customs (Appeals), Mumbai – III.]

Ashuram Modaji Modi
15/23 Shivam CHS, Shop No.4, Old Satta Galli
Shaikh Memon Street, Mumbai - 400002 … ***Appellant***

versus

Commissioner of Customs (Preventive)
New Custom House, Ballard Estate, Mumbai - 400001 …***Respondent***

APPEARANCE:

Shri Anil Balani, Advocate for the appellant

Shri Manoj Kumar, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 87300 /2021

DATE OF HEARING:	08/12/2021
DATE OF DECISION:	08/12/2021

PER: C J MATHEW

This appeal of Ashuram Modaji Modi against order-in-appeal no. MUM-CUSTM-PREV-APP-537 & 538/2020-21 dated 9th November 2021 of Commissioner of Customs (Appeals), Mumbai –

III brings the dispute before us for the second time. On the former occasion, owing to dismissal of their appeal by the first appellate authority on the ground of non-compliance with condition of pre-deposit, the Tribunal, *vide* order no. A/86974/2019 dated 25th October 2019 in customs appeal no. 86676 of 2019, restored the matter before the first appellate authority for deciding on merits. In the impugned order the first appellate authority has upheld the order of the original authority confiscating 2,668.74 gms of gold bars and coins of foreign origin valued at ₹ 81,97,233/- under section 111(d) of Customs Act, 1962 and also Indian currency of ₹ 1,13,19,000/- under section 121 of Customs Act, 1962 with no option to redeem besides imposing penalty of ₹ 80,00,000/- and ₹ 3,00,00,000/- on the appellant herein under section 112 and 114AA of Customs Act, 1962.

2. Briefly, search of the premises of the appellant by customs authorities on 23rd November 2017 yielded 29 pieces of gold bars / coins with foreign marking weighing 4688.74 gms, gold bars with Indian marking weighing 2531.08 gms, silver weighing 200 gms and Indian currency amounting to ₹ 1,13,19,000/-. It is seen from the records that the investigating authority had released gold bars with foreign marking weighing 2000 gms as well as the entirety of gold bars of Indian marking and the silver upon production of documents validating ownership with the remaining goods seized on 1st March 2018.

3. Owing to the absence of any other acceptable documentation, the original authority confiscated the remaining goods and the Indian currency absolutely.

4. In the proceedings before the first appellate authority, the written submissions filed on 28th November 2019, the date of hearing, was discarded as afterthought to uphold the order of the original authority. The present appeal lies against that confirmation. According to Learned Counsel for the appellant, M/s. Ashapura Gold, is a bullion trader and carries on legitimate business for which documents of possession and title are available. It is further submitted by him that, upon conclusion of hearing afforded by the first appellate authority on 28th November 2019, they had been permitted to file the supporting documents and which was done on 3rd December 2019. It is the contention of Learned Counsel that the first appellate authority had failed to take these documents into consideration while dismissing their appeal.

5. We have heard Learned Authorized Representative who submits that, under section 123 of Customs Act, 1962, it is the responsibility of the person from whom the goods were seized to establish licit possession and that, in the absence of such evidence, the first appellate authority had no other option but to upheld the order of confiscation.

6. On going through the records, we find that the goods, to the

extent evidenced as legally possessed, were not proceeded against and absolute confiscation was restricted on such goods that were not so established. We find no evidence that the first appellate authority had been intimated during the hearing that further documentation would be made available. Nevertheless, one set of documents, now been produced before us, is claimed by Learned Counsel for the appellant to have also been placed before the first appellate authority. In the light of the claim that licit possession of the remaining goods can be established on the basis of these documents, it would be only be appropriate for these to be scrutinized.

7. To enable that course of action, we set aside the impugned order and remand the matter back to the original authority for further disposition of the seized goods and Indian currency in accordance with the provisions of law. The Tribunal had considered this matter to be of sufficient urgency to be listed out-of-turn for disposal. Therefore, it is only appropriate to direct the original authority to complete the process and conclude the proceedings within a period of three months from the date of receipt of this order.

8. Appeal is accordingly disposed off.

(Operative Part of the Order Pronounced in Open Court on 8th December 2021)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*