CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85755 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-PREV-APP-1287 & 1288/2021-22 dated 14.12.2021 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s G R Jewellers **.... Appellant**
13 A, Ground Floor, 1165 Kucha Mahajan, Chandani Chowk, New Delhi, Delhi – 110006.

Versus

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

Appearance:

Shri Rajesh Chhibber, Advocate for the Appellant
Shri Ram Kumar, Auth. Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85732/2023

Date of Hearing: 24.04.2023
Date of Decision: 08.05.2023

Per: Anil G. Shakkarwar

Present appeal is directed against the impugned Order-in-Appeal No. MUM-CUSTM-PREV-APP-1287 & 1288/2021-22 dated 14.12.2021 passed by the Commissioner of Customs (Appeals), Mumbai-III modifying the Order-in-Original dated 05.03.2020 wherein 255.85 gms. of gold was ordered to be absolutely confiscated by learned Commissioner (Appeals) modifying the Original Authority's order to release the said goods on payment of redemption fine of Rs.25,000/-.

2. Brief facts of the case are that the said goods were intercepted by Revenue from a delivery van at Mumbai on 31.03.2019. The appellant claimed the ownership of the same. The appellant produced purchase invoice indicating that they purchased the said goods from Mr. Pravin Kumar Jain. Further investigation were carried out and a show cause notice dated 24.09.2019 was issued wherein there was a proposal for assessment of the said goods to customs duty and there was proposal to confiscate the same and there was also proposal to impose penalty. The said show-cause notice was adjudicated through Order-in-Original dated 05.03.2020. The Original Authority classified the goods under Customs Tariff Item No. 71081200 and held that the same were chargeable for customs duty @ 17.163% *ad valorem*. The Original Authority determined the assessable value to be Rs.8,40,467/- and determined customs duty of Rs.1,44,249/-. The Original Authority in the same order has set aside the duty demand of customs duty and interest thereon. The original authority further ordered confiscation of said gold and gave option to redeem the same on payment of redemption fine of Rs.25,000/-. The original authority further directed that if the confiscated gold is to be redeemed, then along with redemption fine of Rs.25,000/-, customs duty of Rs.1,44,249/- has to be paid. Aggrieved by the said order, the appellant preferred an appeal before the Commissioner (Appeals). Revenue also preferred appeal before the Commissioner (Appeals). Both the appeals were decided through the impugned order. Learned Commissioner (Appeals) has rejected the appeal filed by the appellant stating that appellant did not pay the mandatory pre-deposit. The learned Commissioner (Appeals) has modified the Order-in-Original in terms of Section 128A(3)(a)

of the Customs Act, 1962 and ordered absolute confiscation of said gold and dropped the demand of customs duty and imposed penalty in disposing appeal filed by the Revenue. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned Counsel for the appellant. He has submitted that learned Commissioner (Appeals) has rejected their appeal stating that appellant has not made mandatory pre-deposit. The learned Counsel for the appellant has argued that original authority himself through his Order-in-Original has set aside the demand of customs duty at para 47.5 of Order-in-Original and, therefore, there was no question of payment of pre-deposit. He further submitted that the learned Commissioner (Appeals) while deciding Revenue's appeal has resorted to provisions under Section 128A(3)(a) of the Customs Act, 1962. He has submitted that said sub-section needs to be read with proviso where proviso states that if the learned Commissioner (Appeals) wants to enhance the penalty or fine, he has to give a reasonable opportunity of showing cause and said procedure was not followed.

4. Heard the learned AR for the Revenue, who has carefully gone through the impugned order and agreed that procedure as provided in first proviso of sub-section(3) of Section 128A of the Customs Act, 1962 was not followed by the learned Commissioner (Appeals).

5. I have carefully gone through the records of the case and submissions made. I find that the original authority has set aside customs duty demanded and therefore, there was no customs duty

demand in the original order if the goods were not redeemed. The goods were not redeemed. Accordingly, there was no need for any pre-deposit by the appellant for filing appeal before the Commissioner (Appeals). Therefore, to that extent finding of learned Commissioner (Appeals) in the impugned order is erroneous. I, further, find that the original authority did not impose any penalty whereas learned Commissioner (Appeals) has enhanced penalty to Rs.8,40,467/- and such enhancement of penalty was done without following the procedure laid down in first proviso of sub-section (3) of Section 128 of the Customs Act, 1962 which requires learned Commissioner (Appeals) to put the appellant before him on notice and give him a reasonable opportunity of showing cause against proposed order of enhancing penalty. I, therefore, find that the impugned order is not sustainable. For the said reason, the impugned order is set aside and the matter is remanded to Commissioner (Appeals) for deciding afresh both the appeals filed by the appellant and Revenue by following the proper procedure as laid down in the Act and as observed in the foregoing paragraphs .

6. In the above terms, appeal is allowed by way of remand.

(Order pronounced in open court on 08.05.2023)

(Anil G. Shakkarwar)
Member (Technical)

Sinha