

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

**CUSTOMS APPEAL NO: 85770 OF 2022
WITH
CUSTOMS APPLICATION (MISC) NO: 85528 OF 2022
(on behalf of appellant)**

[Arising out of Order-in-Appeal No: MUM-CUSTM-AMP-APP-1298-2021-22 dated 20th December 2021 passed by the Commissioner of Customs (Appeals), Mumbai – III.]

Prakash Mistry

22/2 Dalmia Building, T.H. Kataria Marg
Matunga (W), Mumbai 400 016.

... Appellant

versus

Commissioner of Customs

Air Special Cargo

Awas Corporate Point, Makwana Lane
Andheri-Kurla Road, Air Cargo Complex, Sahar
Andheri (E), Mumbai 400 059.

...Respondent

APPEARANCE:

Shri Stebin Mathew, Advocate for the appellant

Shri S B Hatangadi, Assistant 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 / 86383/2023

DATE OF HEARING: 23/03/2023
DATE OF DECISION: 14/09/2023

PER: C J MATHEW

This appeal of Shri Prakash Mistry is hinged upon the scope and extent to which section 121 of Customs Act, 1962 may be invoked against property that ostensibly had no connection with any activity within the purview of Customs Act, 1962 and arises from proceedings before Commissioner of Customs (Appeals), Mumbai-III initiated by the appellant herein, without success, against order of Additional Commissioner of Customs (Import), Air Cargo Complex (ACC), Chhatrapati Shivaji Maharaj International Airport (CSMIA), Mumbai confiscating immovable property belonging to the appellant. The impugned order¹ had dismissed the plea of the appellant on several counts, including procedural.

2. The facts, briefly, are that, acting on information, officers of Directorate of Revenue Intelligence (DRI) intercepted a consignment, covered by airway bill no. 176-86657502/24.12.2017, for carrying on Emirates Airlines (EK 504) of 25th December 2017 consigned to M/s Shankar Enterprises by M/s Trans Arabia General Trading LLC, Ajman, UAE at Mumbai International Airport on arrival on board and, on examination, was found to contain, among the clamps, nuts and bolts in six packages weighing 108 kgs, 'washers' made of gold weighing 10.950 kgs that were seized under section 110 of Customs Act, 1962. Investigations undertaken apace included the role of Mr Mangesh Prakash Mistry and he admitted in statement of 12th March

¹ [order-in-appeal no. MUM-CUSTM-AMP-APP-1298-2021-22 dated 20th December 2021]

2018 that he had purchased two properties, viz., 2201 and 2401, Shreeji Heights, TH Kataria Marg, Matunga (W), Mumbai from his share of earnings through similar smuggling of gold in the past; other details of investigative outcome are not relevant to the present proceedings. Other consequences of the order of the original authority are not in appeal here which is concerned solely with the deprivation of one of the two properties in the name of the appellant herein who is the father of the said Mr Mangesh Prakash Mistry merely on the basis of admission that it procured by deploying proceeds of smuggled goods.

3. Learned Counsel for appellant submitted that the appropriation of flat no. 2401 in proceedings relating to alleged smuggling of gold was entirely uncalled for. He contended that the procedure under section 124 of Customs Act, 1962 was not complied with inasmuch as the appellant, as owner of the property, had not been put to notice of intention to confiscate under section 121 of Customs Act, 1962 and, thereby, was unable to plead his lack of connection with the alleged offence; moreover, the noticees in the proceedings would have been handicapped in attempting to disprove lack of title to the said property. It was further contended that the property could not be termed as 'sale proceeds' even if it be conjectured that 'sale proceeds' of smuggled goods had been used for the purchase. According to him, the adjudicating authority had not examined the intent of the

expression ‘sale’ in section 121 of Customs Act, 1962. He argued that the first appellate authority had, after conceding *locus standii* in accordance with section 128 of Customs Act, 1962, gone on to rule, and incorrectly, on the ownership of the property.

4. Relying upon the decisions of the Tribunal in *Commissioner of Customs (Prev), Mumbai v. Shamshuddin MA Kadar [2010 (259) ELT 44 (Bom)]*, in *Kanha Vanaspati Ltd v. Commissioner of Customs, Kandal [2003 (157) ELT 659 (Tri-Del)]* and *Pradeep Master Batches Pvt Ltd v. Commissioner of Customs (Export), Mumbai [2017 (348) ELT 692 (Tri-Mumbai)]*, Learned Authorized Representative elaborated upon the seizure and investigation into smuggling in which the son of the appellant was involved and submitted that statements recorded from the person concerned with flow of money had corroborated the source of funding for the purchase of the impugned property.

5. Confiscation of sale proceeds of smuggled good is authorized by section 121 of Customs Act, 1962. Without going into the issue of intent of ‘sale’ therein, we find that the appellant was not placed on notice of proposal to confiscate his property. It is clear from

‘124. Issue of show cause notice before confiscation of goods, etc.—No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

(a) is given a notice in writing with the prior approval of the officer of customs not below the rank of a Deputy Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter: Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may at the request of the person concerned be oral.'

of Customs Act, 1962 that notice is a pre-requisite and 'constructive notice' at that. Inclusion of such proposal in a notice issued to another is premised on conclusion that the property is owned by such notice. That, in itself, is premature and compromises the integrity of adjudication proceedings.

6. Indeed, both the lower authorities have failed to determine ownership of the property in question and have merely concerned themselves with its alleged characteristic as 'sale proceeds' of smuggled goods for dealing with it in the context of finding on gold having been smuggled. This is a dangerous trend for such action could be used whimsically to deprive any legal owner of property – an act of expropriation under cover of law.

7. The essential condition of the owner having to be placed on notice before depriving title to the goods has rendered the confiscation illicit. For that reason the impugned order is set aside. We make it abundantly clear that we have not rendered a ruling on the legality of the source of funds used for purchase of the property but only on the legal requirement to issue notice to the appellant of proposal to confiscate.

8. Appeal is allowed on above terms. Miscellaneous application disposed off.

(Order pronounced in the open court on 14/09/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*