

Neutral Citation No. - 2024:AHC:48658-DB

Court No. - 39

Case :- CUSTOM APPEAL No. - 1 of 2020

Appellant :- The Commissioner Of Customs

Respondent :- Disha Tulsiani

Counsel for Appellant :- Gaurav Mahajan

Counsel for Respondent :- Ashish Bansal, Nishant Mishra, Surendra Kumar Garg

Connected with

Case :- CUSTOM APPEAL No. - 2 of 2020

Appellant :- The Commissioner Of Customs

Respondent :- Ashok Kumar Tahlani

Counsel for Appellant :- Gaurav Mahajan

Counsel for Respondent :- Ashish Bansal, Nishant Mishra, Surendra Kumar Garg

Case :- CUSTOM APPEAL No. - 3 of 2020

Appellant :- The Commissioner Of Customs

Respondent :- Disha Tulsiani

Counsel for Appellant :- Gaurav Mahajan

Counsel for Respondent :- Ashish Bansal, Nishant Mishra, Surendra Kumar Garg

Case :- CUSTOM APPEAL No. - 4 of 2020

Appellant :- The Commissioner Of Customs

Respondent :- Ashok Kumar Tahlani

Counsel for Appellant :- Gaurav Mahajan

Counsel for Respondent :- Ashish Bansal, Nishant Mishra, Surendra Kumar Garg

Case :- CUSTOM APPEAL No. - 5 of 2020

Appellant :- The Commissioner Of Customs

Respondent :- Nirmal Tulsiani

Counsel for Appellant :- Gaurav Mahajan

Counsel for Respondent :- Ashish Bansal, Nishant Mishra, Surendra Kumar Garg

And

Case :- CUSTOM APPEAL No. - 6 of 2020

Appellant :- The Commissioner Of Customs

Respondent :- Nirmal Tulsiani

Counsel for Appellant :- Gaurav Mahajan

Counsel for Respondent :- Ashish Bansal, Nishant Mishra, Surendra Kumar Garg

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Surendra Singh-I, J.

1. Heard Sri Gaurav Mahajan, learned counsel for the revenue and Sri Nishant Mishra along with Sri Ashish Bansal, learned counsel for the respondents.

2. The Custom Appeal No. 1 of 2020 has been filed by the revenue against Disha Tulsiani. Five other exactly similar appeals have been preferred by the revenue being Custom Appeal Nos. 2/2020, 3/2020, 4/2020, 5/2020 and 6/2020 against Ms. Disha Tulsiani, Sri Nirmal Tulsiani and Sri Ashok Kumar Talhani.

3. The transaction giving rise to six appeals has remained one. 3.5 kg. of gold bars valued at Rs. 1,03,25,000/- initially seized by the Custom Authority. Later, they were confiscated by order dated 29.03.2018 passed by the adjudicating Authority. The respondents/assessee carried the matter in appeal before the Commissioner of Appeals. Vide order dated 11.01.2019, the Commissioner (Appeals) Customs, GST & Central Excise allowed the three appeals filed by Ms. Disha Tulsiani, Sri Nirmal Tulsiani and Sri Ashok Kumar Talhani. It observed as below :-

"In view of the above, there is no sufficient ground for absolute confiscation of the impugned gold. The appellant is hereby given the option to redeem the confiscated gold (value Rs. 1,03,25,000/-) on payment of redemption fine of twenty lakh rupees. Needless to say that in terms of section 125 (2) of the said Act the appellant shall be liable to pay the applicable duty and charges in respect of such goods.

In the facts and circumstances of the case, the imposition of penalty on the appellants is also justified."

4. Against the above order, the assessee as also the revenue preferred individual appeals before the Customs, Excise and Service Tax Appellate Tribunal, Allahabad Bench, Allahabad. The Tribunal has allowed the appeal filed by the assessee. In that, it has been observed as below :-

9. No doubt that gold is specified item in terms of the provisions of section 123 of the Customs Act and the onus to prove that the foreign origin gold, found in possession of any person, was legally imported by them is on the possessor. In the present case, the appellants have contended that the gold bars in question were possessed by them as a result of execution of the Will by her grandmother, after her death in the year 2010. Revenue has tried to find some holes in the said Will to discard the same and to cast the onus on the appellants to prove the licit receipt of the gold bars. We note that the Will executed by the grandmother carries her signatures along with signatures of the beneficiaries and the executor Shri Ashok Kumar Tahlani. The said Will which was

executed in the year 2005 was duly Notarized and stand probated also. Revenue has not established that the Will produced before them was a fraud or a fake document. Except referring to the fact that original copy of the Will was not produced and there was no stamp number on the stamp paper etc., they have not, by concrete evidence, proved that the Will produced before the authorities was a fabricated one. No investigations, no enquiries stand made from the Notary, who Notarized the Will or from the office of the District Magistrate, where the same was probated. As such we are of the view that Revenue's endeavor to discard the said Will without the production of any evidence to establish the same as a fraudulent document, cannot be appreciated.

Similarly we find ourselves in favour of the appellants that the gold bars in question, which were originally mentioned in the Will, without giving any details, might have been exchanged by her grandmother. There was no requirement to amend the specifications of the gold bar in the old Will inasmuch as no specifications, in any case, were mentioned in the original Will. We also note that apart from the said gold bars, Revenue has not found any other gold bars from the possession of the appellant. If the gold bars mentioned in the Will of Smt. Dadan Devi were not the one which stand seized and confiscated by the officers, then the authorities would have found another set of three gold bars from the appellants' possession.

10. In view of the foregoing, having held that the gold in question were possessed by the appellants as a result of the legacy transferred to the appellants by Smt. Disha Tulsiani's grandmother through her Will, it cannot be held that the goods in question were smuggled items. In such a scenario, the confiscation of the same or imposition of penalties upon the appellants cannot be held to be sustainable. Accordingly the same are set aside and all the three appeals are allowed.

11. Inasmuch as the appellants' appeals have been allowed, the Revenue's appeals which are only against conversion of absolute confiscation into option of redemption, no longer survives. Accordingly the same are rejected.

5. In such circumstances, present appeals have been preferred raising following questions of law :-

1. Whether the CESTAT is justified in law in setting aside confiscation of seized foreign origin gold bars weighing 3.5 kg. valued at Rs. 1,03,25,000/- made under the provisions of Section 111 (d) and Section 111 (1) of the Customs Act, 1962 without reversing the findings of fact recorded by the Adjudicating Authority in the order in original dated 29.03.2018 ?"

2. "Whether the CESTAT is justified in not appreciating the admitted fact that 1 gold bar and 1 cut gold piece bearing engraving of Nadir Metal Refinery, Istanbul (Estd. in the year 2006) and Al Etihad Gold, Dubai (Estd. in the year 2009) could find mention in the purported bill dated 03.04.2005 and this leads to non-application of mind on facts by CESTAT ?"

3. "Whether the CESTAT is justified in deleting the penalty imposed u/s 112 (a) of the Customs Act in the peculiar set of facts and circumstances of the present case ?

6. On the earlier date, when the appeal was taken up, the learned counsel for the respondents/assesseees raised an objection as to maintainability of the present appeals by relying on the Circular/Letter No. 390/Misc/30/2023. For

ready reference, it reads as below :-

"To,

1. All Pr. Chief Commissioners/ Chief Commissioners/ Pr. Commissioners/ Commissioners of Customs/ Customs (Prev.)/ GST & CX;
2. All Pr. Director Generals/ Directors Generals under CBIC;
3. Chief Commissioner (AR); Commissioners (Legal) CBIC/ Directorate of Legal Affairs
4. webmaster.cbec@icegate.gov.in

Subject: Reduction of Government litigation – providing monetary limits for filing appeals by the Department before CESTAT, High Courts and Supreme Court – regarding

In exercise of the powers conferred by Section 131BA of the Customs Act, 1962 and in partial modification of earlier instruction issued from F. No. 390/Misc./163/2010-JC dated 17.08.2011, the Central Board of Indirect Taxes & Customs (hereinafter referred to as the Board) fixes the following monetary limits below which appeal shall not be filed in the CESTAT, High Court and the Supreme Court:

S. No.	Appellate Forum	Monetary Limit
1	SUPREME COURT	Rs. 2 Crore
2	HIGH COURTS	Rs. 1 Crore
3	CESTAT	Rs. 50 Lakh

2. Adverse judgements relating to the following should be contested irrespective of the amount involved:

- a) Where the constitutional validity of the provisions of an Act or Rule is under challenge;
- b) Where Notification/Instruction/Order or Circular has been held illegal or ultra vires;
- c) Classification and refund issues which are of legal and/or recurring nature.

3. Withdrawal process in respect of pending cases in above forums, as per the above revised limits, will follow the current practice that is being followed for the withdrawal of cases from the Supreme Court, High Courts, and CESTAT."

7. Thus it is litigation policy of the Union of India to not prefer or press revenue appeals wherein the revenue implication may not exceed monetary limit of Rs. 1 crore.

8. While the confiscated gold was valued at more than Rs. 1 crore at the same time that was apportioned amongst three assesseees namely Ms. Disha Tulsiani, Sri Nirmal Tulsiani and Sri Ashok Kumar Talhani.

9. Thus individual dispute in each of the appeals is far below the monetary limit of 1 crore. On the earlier dates, we allowed learned counsel for the revenue to file supplementary affidavit to bring on record the revenue effect involved in each of the appeals. While an affidavit has been filed by the revenue on 18.11.2023, it does not bring on record the revenue effect

involved in each of the appeals. In fact, in paragraph 6 of the affidavit, it has been stated as below :-

6. That in view of the direction given by the Court vide its orders dated 20.09.2021 and 02.11.2023 the present affidavit is being filed to bring on record the fact that the objection regarding maintainability of the appeal raised by the Respondent on the ground of duty component being less than the amount prescribed by the Board for filing appeals before the Hon'ble High Court has to be turned down in view of the fact that the question of quantification of duty does not arise in the present case as no duty what so ever was demanded/confirmed in the present case.

10. Clearly despite time granted, no disclosure has been made by the revenue to establish that the revenue implication in each or any of the appeals exceeds the monetary limit of 1 crore.

11. Since the order passed by the Tribunal is clearly in favour of the assessee and there is no cross appeal filed by revenue, no justification or occasion survives for this Court to allow the revenue the luxury of maintaining the present litigation against its own stated litigation policy.

12. For the above reason, the present appeal and the connected appeals are dismissed being below monetary limit. No order as to costs.

Order Date :- 18.3.2024

Pratima

(Surendra Singh-I, J) (S.D. Singh, J)