

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CUSTOMS APPEAL NO. 26 OF 2017

Suresh Gangaram Hole

.. Appellant

v/s.

The Commissioner of Customs
Mumbai

..Respondent

Mr. Anil Balani I/b Rajeev Ravi and R. Balani for the appellant
Mr. Pradeep S. Jetly a/w Mr. Jitendra B. Mishra for the respondent

**CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA, J.J.**

DATED : 20th AUGUST, 2018.

P.C.

1. Heard. This appeal under Section 130 of the Customs Act (Act) challenges the order dated 15th January, 2015 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal). The impugned order dated 15th January, 2015 while upholding the penalty under Section 114(i) of the Act reduced the quantum from Rs.50 lakhs to Rs.5 lakhs.

2. The appellant urges the following questions of law for our consideration :-

(a) Whether in the facts and circumstances of the case and in law, the Tribunal was justified in upholding the impugned order to the extent adverse to the appellant?

(b) Whether in the facts and circumstances of the case and in law, the Tribunal was justified in sustaining the penalty of Rs.5,00,000/- imposed on the appellant?

(c) Whether in the facts and circumstances of the case and in law, the impugned order of the Tribunal is sustainable in law to the extent adverse to the appellant?

3. The brief facts leading to the filing of this appeal are that the appellant was intercepted by the Air Customs Intelligence Unit at Mumbai Airport on 8th January, 2006 while he was proceeding for security check after clearance by the immigration and the custom authorities which resulted in recovery of foreign currency equivalent to Rs.1.59 crores. This led to proceeding against the appellant as well as the persons (Mr. Rajendra Bhutada and Smt. Bharti Bhutada), who had allegedly supplied the foreign currency to the appellant for carrying abroad. The Commissioner of Customs by order dated 22nd July, 2011 confiscated the foreign currency being prohibited goods under Section 113(d) and (h) of the Act and imposed penalty of Rs.1.25 crores on

Mr. Rajendra Bhutada, Rs.25 lakhs on Smt. Bharti Bhutada and Rs.50 lakhs upon the appellant herein.

4. Being aggrieved, the appellant filed an appeal to the Tribunal. In appeal, the impugned order dated 15th January, 2015 of the Tribunal on examination of the role of each of them found that though the penalty was justified, the quantum of penalty had to be reduced in respect of all the three i.e. Shri. Rajendra Bhutada, Smt. Bharati Bhutada and the appellant. In the circumstances, the penalty imposed under Section 114(i) of the Act was reduced from Rs.1.25 crores to Rs.25 lakhs in respect of Mr. Rajendra Bhutada, from Rs.25 lakhs to Rs.1 lakh in respect of Smt. Bharati Bhutada and from Rs.50 lakhs to Rs.5 lakhs in respect of the appellant.

5. The grievance of the appellant with the impugned order is as under :-

(a) the amount of penalty imposed upon the appellant is excessive when Smt.Bharati Bhutada, wife of the master mind has only been imposed a penalty of Rs.1 lakh;

(b) An opportunity to cross-examine certain witness who had deposed against the appellant has not been given; and

(c) The statements made by the appellant in English language were retracted and also that the statements were made under coercion.

6. We find that the impugned order of the Tribunal has examined these very contentions raised by the appellant before us and reduced the penalty imposed upon Smt. Bharti Bhutada and the appellant from Rs.25 lakhs to Rs.1 lakh and Rs.50 lakhs to Rs.5 lakhs taking into account the role attributable to each of them in illegal export of foreign currency. This is a finding of fact and in the absence of it being pointed out that the role of Smt. Bharati Bhutada was much more than mere handing over the foreign currency, no reason to interfere with the impugned order can arise. So far as non grant of cross-examination of witnesses are concerned, the impugned order of the Tribunal has considered the same and held that some of the witnesses had been offered for cross-examination and those not offered for cross-examination were not shown to have prejudiced the appellant in any manner. Thus, reliance was placed on the decision of the Supreme Court in *Telestar Travels Pvt. Ltd. Vs. Special Director of Enforcement* (2013-TIOL-17-SC-FEMA) to hold that no fault in these fact can be found in not granting cross-examination of some of the witnesses.

7. So far as statement made under duress and/or threat is concerned, the impugned order records the fact that in the remand application before the Chief Metropolitan Magistrate, it has been recorded that there was no complaint made by the appellant when he was produced before the Magistrate. Besides holding that retraction of the statement by the appellant was an after thought. Thus, partially dismissing the appeal while reducing the quantum of penalty.

8. On the whole, the view taken by the Tribunal on the facts as available before it, is a possible view. Thus, it does not give rise to any substantial question of law.

9. It may be pointed out that the appeals filed by Mr. Rajendra Bhutada and Smt. Bharti Bhutada, being Custom Appeal Nos. 57 and 52 of 2016 were dismissed on 17th April, 2017 as being pure findings of facts not giving rise to any substantial question of law. Similarly, appeals by the Revenue seeking enhancement of the quantum of penalties upon the appellant, Rajendra Bhutada and Smt. Bharti Bhutada, being Custom Appeal Nos. 90, 91 and 92 of 2015 were also dismissed by order dated 10th April, 2017. This after holding that the penalties have been reduced proportionately after examining the role of

each of the person involved in illegal export of foreign currency.

10. In the above view, no occasion to entertain this appeal can arise.
Accordingly, appeal dismissed.

(RIYAZ I. CHAGLA, J.)

(M.S. SANKLECHA, J.)