

\$~42 to 45

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

- + **CUSAA 70/2019 & CM Appl. 5080-81/2019**
KESHAV DEV Appellant
- + **CUSAA 71/2019 & CM Appl. 5082-83/2019**
PRASHANT MODI Appellant
- + **CUSAA 72/2019 & CM Appl. 5084-85/2019**
LUCKY RAIKWAR Appellant
- + **CUSAA 73/2019**
MUKESH BATHAM Appellant

Through: Mr.Ashish Bansal, Advocate

versus

PRINCIPAL COMMISSIONER
OF CUSTOM (PREVENTIVE) Respondent

Through: Mr.Harpreet Singh, Sr.Std.Counsel
with Ms.Suhani Mathur, Advocate

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
% **04.02.2019**

CM Appl. 5080/2019 in CUSAA 70/2019
CM Appl. 5082/2019 in CUSAA 71/2019
CM Appl. 5084/2019 in CUSAA 72/2019
CM Appl. 5086/2019 in CUSAA 73/2019

Exemption allowed, subject to all just exceptions.

The applications are disposed of.

CM Appl. 5081/2019 in CUSAA 70/2019
CM Appl. 5083/2019 in CUSAA 71/2019
CM Appl. 5085/2019 in CUSAA 72/2019
CM Appl. 5087/2019 in CUSAA 73/2019

For the reasons stated in the applications, the delay in filing the re-filing the appeals is condoned.

The applications are disposed of.

CUSAA 70/2019 & CM Appl. 5080-81/2019
CUSAA 71/2019 & CM Appl. 5082-83/2019
CUSAA 72/2019 & CM Appl. 5084-85/2019
CUSAA 73/2019 & CM Appl. 5086-87/2019

1. Issue notice. Mr.Harpreet Singh, Sr.Std.Counsel accepts notice.
2. The question of law urged on behalf of the appellants is with respect to the allegedly excessive nature of penalty imposed upon them.
3. The appellants were caught with different quantities of gold – in three cases [CUSAA Nos.70/2019, 71/2019 73/2019], the appellants [Keshav Dev, Prashant Modi & Mukesh Batham respectively] were each caught with 2 kgs. of gold and in one case [CUSAA No.72/2019], 3 kgs. of gold was recovered from the appellant [Lucky Raikwar]. During the course of show cause notice and subsequent proceedings, it is transpired that the appellants were mere carriers of gold for a meagre sum of ₹3,000/- - ₹5,000/-. The proceedings culminated in confiscation of gold and imposition of penalty upon the appellants. The penalty amount of Lucky Raikwar was ₹15 lakhs and in the case of others it was ₹10 lakhs each. The CESTAT on appeal reduced these to ₹12 lakhs in the case of Lucky Raikwar and to ₹7 lakhs each in the case of others.
4. We have heard learned counsel for the parties and considered the record. What is apparent is that the appellants were carriers of the contra-

band; it is equally matter of record that the gold was confiscated and subsequently auctioned. The duty amounts were realised in those proceedings.

5. Given the straitened circumstances that the appellants are placed in the Court is of the opinion that the penalty imposed upon them, needs to be reduced in the interest of justice. Accordingly, penalty imposed upon Keshav Dev, Prashant Modi, Mukesh Batham are hereby reduced to ₹75,000/- each and in the case of Lucky Raikwar the penalty amount is reduced to ₹1,00,000/-. The pre-deposits made by each of them, as a requirement of the hearing of their appeals before the CESTAT, shall be duly adjusted in the recovery of the amounts; it is clarified that only the balance amounts, if any, need to be paid by them.

6. The appeals are allowed on the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 04, 2019

'hkaur'