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IA NO.GA/2/2022
CUSTA/28/2022

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction
ORIGINAL SIDE

COMMISSIONER OF CUSTOMS
(PREVENTIVE), WEST BENGAL

-Versus-

GOPAL KUMAR AGARWAL

Appearance:
Ms. Manasi Mukherjee, Adv.
...for the appellant.

Mr. Dhiman Roy, Adv.
Mr. H. K. Pandey, Adv.
Mr. Dip Chanda, Adv.
.. . for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 5th December, 2022.

The Court This appeal filed by the revenue under Section 129B of the Customs Act, 1962 is directed against the order dated 26th February, 2020 passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Regional Bench, Kolkata (the Tribunal) in Customs Appeal No.C/75454/2016-DB.

The revenue has raised the following substantial questions of law for consideration:

(i) Whether the burden of proof under Section 123 of the Customs Act with respect to smuggled nature of goods lies with the department or respondent i.e., the owner of goods or who claims to be the owner of goods or from whose possession the goods are seized ?

(ii) Whether in case of gold foreign inscription is a necessity to prove the foreign origin of gold ?

(iii) Whether reasonable belief has to be proved with mathematical precision in case of seizure by the department ?

(iv) Whether prima facie wrong recording of facts and interpretations by an Hon'ble trial Court be binding on the party who is prejudiced by such wrongful recording of facts and interpretations ?

Heard Ms. Manasi Mukherjee, learned standing counsel for the appellant/department and Mr. Dhiman Roy, learned counsel assisted by Mr. H. K. Pandey and Mr. Dip Chanda, learned Advocates for the respondent.

The issue before the Tribunal was whether the gold said to have been seized from the respondent was contraband or smuggled goods. The learned Tribunal framed three issues for consideration :

(i) *"Whether the Revenue established the existence of reasons to believe that the impugned gold was smuggled;*

(ii) *Whether the impugned gold is liable to be categorized as of foreign origin;*

(iii) *Whether the Customs have followed procedure vis-a-vis search and seizure of the gold."*

After going through the facts the Tribunal found that after the seizure which was a city seizure, the person in possession of the gold appears to have given an explanation stating that he had purchased gold ornaments weighing 2.14 kgs. from one Pradip Sarkar as mentioned in his letter dated 20th September, 2014 addressed to the Deputy Director, DRI, Siliguri and that he is in the trading of gold bullion and is proprietor of M/s. Gopal Jewellers at Sona Chandi Building, Naya Bazar, Siliguri. Further, he had stated that he purchased 2 kgs. of gold bars from M/s. Jamuna Gold and Silver Pvt. Ltd. and the total price of the goods was Rs.54,18,300/- and he paid the same by account payee cheque dated 19th September, 2014, drawn on State Bank of India, Mangaldeep Branch, Siliguri. Further, the tribunal recorded that the said person had stated that he was tortured and coerced by the officers of DRI, Siliguri to sign a statement typed in English without knowing its content. Certain other factual details have also been recorded by the

Tribunal. Further, after considering these facts, the Tribunal has held on facts that no evidence could be adduced by the Department in the subsequent investigation that the seized gold was of foreign origin and smuggled into the country. Further, the Tribunal held that the respondent had submitted all the relevant document including GST, purchase invoice etc. covering the gold which have been examined by the Department and no discrepancies were pointed out.

Thus, we are of the view that the issue is entirely factual and the substantial questions of law which have been suggested by the revenue do not arise for consideration in this appeal.

Accordingly, the appeal (CUSTA/28/2022) is dismissed and the substantial questions of law are left open. Consequently, the application for stay (IA No.GA/2/2022) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

As/S.Das.