OD–42

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CUSTA/19/2023
IA NO: GA/1/2024
COMMISSIONER OF CUSTOMS (PREVENTIVE)
VS.
SHRI AMIT JALAN

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 19th April, 2024

Appearance :
Mr. Kaushik Dey, Adv.
Ms. Aishwarya Rajyashree, Adv.
...for appellant

Mr. Arijit Chakraborti, Adv.
Mr. Prabir Bera, Adv.
...for respondent

The Court : This appeal filed by the revenue under Section 130(1) of the Customs Act, 1962 (the Act) is directed against the order passed by the Customs, Excise & Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata dated 31st December, 2021.

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

i) Whether the Learned Tribunal erred in law in not holding that the statements recorded by the DRI officials while examining him on 10.06.2019 and 11.06.2019, wherein Ashok Kumar Jalan had clearly stated about the smuggling business of gold ?

ii) Whether the Learned Tribunal erred in law in not holding that the statements of the Noticee No.1 i.e. Rajendra Kumar Damani was voluntary, while giving credence to the Noticees submission that they were retracted. The statements made by Noticee No.1 on 07.08.2018, 08.08.2018, and 25.07.2019 were all in his own handwriting and in his vernacular, which indicates that the statements were all voluntary ?

iii) Whether the Learned Tribunal erred in law in not holding that the third statement, which is also in Rajendra Kumar Damani's own handwriting and in his vernacular, is after the gap of almost a year, in which Rajendra Kumar Damani has reiterated his original statements. The attempted retraction was almost a year after the initial statement and the noticee had made no mention of any threat or coercion in the initial bail hearing, and hence has to be construed as an after thought ?

iv) Whether the Learned Tribunal was correct in holding Noticees claim that the gold was melted from old jewellery, since this claim was never made at any stage of the investigation, nor any shred of documentary evidence was produced ?

v) Whether the Learned Tribunal erred in law in holding the claim of the Noticee at face value in the face of overwhelming evidence against the same and not considering Section 123 of the Customs Act, 1956 which places the burden of proof on the Noticees ?

vi) Whether the Learned Tribunal erred in law in dismissing the Department's appeal, and not considering that it was duty bound by the principles and propriety of law and justice to consider the Department's submissions, discuss them and then arrive at a logical conclusion ?

vii) Whether the Learned Tribunal erred in law in placing reliance on Ram Nath Sah Vs. Commissioner of Customs, Patna [2007(219) ELT 546 (Tri-Kolkata)] which does not stand as the order of the Tribunal has been set aside by Order dated 18.05.2010 of Hon'ble High Court at Patna ?

viii) Whether the Learned Tribunal has wrongly placed reliance on Jaynath Shaw Vs. Commissioner of Customs, Patna reported in 2007(218) ELT 710 (Tri-Kolkata) affirmed by Hon'ble Patna High Court on the ground that procedure laid down in section 103(3) & (4) has not been followed by the Department in case of rectum carrier of Gold, which has no relevance in the present case ?

ix) Whether the Learned Tribunal has wrongly placed reliance on Nand Kishore Sumani Vs. Commissioner of Customs, Central Excise & Service Tax, Siliguri wherein absolute confiscation by the department has been set aside observing that the person had discharged the onus as the person who sold the goods to Nand Kishore Sumani has also confirmed supplies and in the instant case the Noticee No. 1, time and again failed to present any such documents in support of his claim before the investigating agency in the course of investigation ?

x) Whether the Learned Tribunal failed to appreciate the observation of the Hon'ble Supreme Court passed in the Criminal Appeal No. 74 of 1978, State of Gujarat Vs. Shri Mohanlal Jitamalj Porwal & Anr. [1987 (29) ELT 483 (S.C.)] is very much relevant, wherein it has observed that Section 123 of the Act does not admit of any other construction. Whether or not the officer concerned had entertained reasonable belief under the circumstances is not a matter which can be placed under legal microscope, with an over-indulgent eye which sees no evil anywhere within the range of its eyesight. The circumstances have to be viewed from the experienced eye of the officer who is well equipped to interpret the suspicious circumstances and to form a reasonable belief in the light of the said circumstances ?

xi) Whether the Learned Tribunal failed to appreciate that Hon'ble Supreme Court in Judgement dated 03.04.1974 passed in Collector of Customs, Madras and Ors. Vs. D. Bhoormul has held that with regard to these specified goods if seized under this Act in the reasonable belief that they are smuggled goods, the burden of proof that they are not such goods shall be on the person from whose possession, they are seized. The prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree ?

xii) Whether the Learned Tribunal failed to appreciate that Hon'ble Supreme Court in Vinod Solanki Vs. Union of India [2009(233) ELT, 157(S.C.)], from which it is clearly clarified that merely because a statement is retracted, it cannot be regarded as involuntary or unlawfully obtained. It also says that the authority or the Court should apply its mind, while deciding on whether the Statement in voluntary or extorted and should accept/reject the same in writing ?

We have heard Mr. Kaushik Dey, learned Counsel appearing for the appellant and Mr. Arijit Chakraborti, learned Counsel for the respondent.

On perusal of the impugned order, we find that the penalty which has been imposed on the assessee which was set aside by the Tribunal against which the revenue is in appeal is far below the threshold limit fixed under the Notification issued by the CBDT. Thus, on the ground of monetary policy revenue cannot proceed with this appeal.

Consequently, the appeal stands disposed of on the ground of monetary limit and consequently, substantial questions of law which have been suggested are left open.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

SN.
AR(CR)