



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

% Judgment reserved on: 09.02.2024
Judgment delivered on: 20.03.2024

+ **W.P.(C) 9273/2021 & CM APPL. 28834/2021**

SHRI RAMESHWAR TIWARI Petitioner

versus

UNION OF INDIA & ORS Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Umakant Mishra and Mr. D. Dash, Advocates

For the Respondents: Mr. Vijay Joshi and Mr. Shubham Chaturvedi, Advocates

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner impugns order dated 05.01.2021 whereby the Revision Petition filed by the Petitioner impugning the Order in Appeal dated 05.03.2018 has been dismissed. By the Order in Appeal dated 05.03.2018, the Commissioner of Customs (Appeals) had dismissed the Appeal challenging the Order in Original dated 23.02.2017. By the Order-in-original dated 23.02.2017 passed by the Additional Commissioner of Customs, Kolkata, *inter alia* absolute confiscation of gold weighing 3203.900 grams was ordered and a



penalty of Rs. 10,00,000/- had been imposed on the petitioner under Section 112(a) and 112(b) of the Customs Act, 1962 (hereinafter referred as 'the Act').

2. As per the Order in Original, acting on spot intelligence, Petitioner, who arrived at Kolkata from Bangkok by Thai Airlines flight on 06.01.2015 was intercepted by the Officers of Air Intelligence Unit (AIU), Kolkata Customs, while he was walking through the Green Channel along with his baggage and was about to exit the Arrival Hall. On being inquired whether he was carrying any dutiable goods, gold or gold items in his baggage, he replied in the negative. Not being satisfied with his replies, Petitioner with his baggage was brought into the Air Intelligence Unit Room at the Airport.

3. In his hand baggage one multi coloured zipper jute bag containing two medicines Sachet of "LASINA" brand was found. On cutting the two sachets it was found that they contained three rectangular cut pieces of yellow metal bars, five pieces yellow metal chains and two small pieces of uneven size yellow metal. On testing it was confirmed that they were made of 24 Karat Gold, collectively weighing 3203.900 gm. totally valued at Rs. 88,42,764/-.

4. Petitioner could not produce any licit document in support of the possession/acquisition or legal importation of the said gold. In the



Indian Customs Declaration Form that was filled by the Petitioner he had not declared the total value of dutiable goods imported by him. He had also declared that he was not bringing any gold bullion into India. The Gold bars and chains were seized under Section 110 of the Act.

5. The statement of the Petitioner under Section 108 of the Act was recorded on 07.01.2015, wherein he confirmed the above facts.

6. Learned counsel for the Petitioner contends that Petitioner was a carrier of the legitimate goods, inter-alia ready-made garments, cosmetics, toiletries and other miscellaneous goods, from shopkeepers in Bangkok to Kolkata and used to be paid around Rs. 15,000 to 20,000. He contends that he had no knowledge that the packet he was carrying contained gold and as such he is not seeking release of the Gold as the same does not belong to him. He submits that Petitioner never voluntarily made any statement but he was forced to record his statement.

7. The challenge made by learned counsel for the Petitioner is that a composite penalty could not have been imposed under section 112(a) and 112(b) of the Act. It is further the case of the Petitioner that he could not be fastened with the penalty as he had no knowledge that the packet he was carrying contained Gold. He further submits that Petitioner is a carrier without knowledge and thus there was no



concealment on behalf of the Petitioner and penalty imposed under section 112(b) of the Act is not sustainable.

8. It is not in dispute that the Gold that was brought from Bangkok into India was imported contrary to the prohibition imposed on such importation. It is also not in dispute that the Gold was concealed in medicines packets and that it was not declared or disclosed in the declaration form.

9. As noticed above, Petitioner does not impugn the confiscation of the Gold under section 110 of the Act but confines his challenge to the imposition of composite penalty under Section 112(a) and 112(b).

10. With regard to imposition of Penalty under section 112(a) and 112(b), the Adjudicating Authority by the Order in Original dated 23.03.2017 held as under:

“Ongoing through the voluntary statement of Mr. Rameswar Tiwari, I find that he is the carrier of the seized gold items and committed this offence knowingly, for financial gains. The mode of concealment of the seized gold items inside the two pieces of Sachets which were kept inside the Multi coloured zipper jute bag further kept in the Black coloured zipper hand bag that carried by the passenger reveals the noticee's knowledge about the prohibited nature of the goods. This clearly proves his guilt knowledge/ mens-rea.

I find Mr. Rameswar Tiwari guilty of concealing the seized gold items and non-declaring the subject seized gold items in the Indian Customs Declaration Form duly filled in by the noticee himself proves that he had tried to hoodwink the Customs authorities and evade Customs duty and hence he is liable to penal action under Section 112(a) and 112 (b) of the Customs Act, 1962 .”



11. The adjudicating authority relying upon the admissions made by the Petitioner in his statement under Section 108 of the Act; the fact that the Gold items were concealed in various packaging and the non declaration of the gold items in the Indian Customs Declaration Form established that he had tried to hoodwink the Customs authorities to evade Customs Duty thus held him liable to penal action under Section 112(a) and 112(b) of the Act.

12. The appeal memo dated 02.01.2018 filed by the Petitioner before the Commissioner (Appeals) shows that the submission made by the Petitioner that both Section 112(a) and 112(b) could not have been invoked by a composite order of punishment was never raised before the Commissioner Appeals.

13. The Revision Application filed by the Petitioner under section 129DD of the Act was filed mainly on the ground that the Penalty that was imposed should be reduced.

14. Reference may be had to Section 112(a) and 112(b) of the Act. They read as under:

“112 . Any person,

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing,



selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,—

- (i) *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;*
- (ii) *in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher: Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;*
- (iii) *in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;*
- (iv) *in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;*
- (v) *in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.”*

15. Any person, who, in relation to any goods, *inter alia* does or omits to do any act which would render such goods liable to



confiscation under section 111 of the Act, or abets the doing of such act or omission to do such act, is liable under section 112(a) of the Act to be imposed penalty. Further under section 112(b), any person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111 is liable to be imposed penalty specified in clauses (i) to (v). Under clause (i) pertaining to goods in respect of which a prohibition is in force penalty not exceeding the value of the goods or five thousand rupees is liable to be imposed. Admittedly, in the instant case, the goods brought in were gold which are prohibited and as such the penalty could be equal to the value of the gold. Petitioner brought in 24 Karat Gold, collectively weighing 3203.900 gm. totally valued at Rs. 88,42,764/-. Thus the penalty that could be imposed was upto Rs. 88,42,764/-.

16. Section 112 (a) of Customs Act also applies on a strict liability concept. It does not require any *mens rea*. Section 112 (a) of the Customs Act may be contrasted with the provisions of section 112 (b) of the Customs Act. It is clear that for Section 112 (a) to be applicable, no *mens rea* is required whereas for Section 112 (b) to be applicable *mens rea* or knowledge is required. The expression used in Section 112(b) is “*dealing with any goods which he knows or has*



reason to believe are liable to confiscation under section 111".
Section 112(b) imposes an obligation on the authorities to establish *mens rea* and/or knowledge.

17. As noticed above, the Gold had been confiscated under section 110(d), (i), (l) and (m) of the Act. Said provisions read as under:

"111. The following goods brought from a place outside India shall be liable to confiscation:—

(a) *****

(d) *any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

(i) *any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;*

(l) *any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*

(m) *any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54*****"*

18. Petitioner has imported the gold within the Indian customs waters contrary to the prohibition imposed for its import. The Gold was concealed in medicine packets, which were concealed under



several layers of packing. The goods were also not declared in the Indian Customs Declaration Form. On the other hand false declaration was made in the said Form.

19. Consequently, the gold was liable to be confiscated under section 111 of the Act. Petitioner has also conceded to the said position and has not objected to the confiscation of the said gold items.

20. Petitioner has clearly done an act that has rendered the gold liable to confiscation under section 111 of the Act and as such is liable under 112(a) of the Act. Further, Petitioner had carried the gold and had concealed the gold knowing or having reason to believe that the article he was carrying was liable to confiscation under section 111 of the Act and as such he is also liable under Section 112(b) of the Act.

21. Further, in the statement dated 07.01.2015, recorded under Section 108 of the Act, Petitioner *inter-alia* stated that he used to travel to Bangkok frequently for over 2 years. On his departure to Bangkok, he used to take eatables and sell them for a profit and on his return to Kolkata, he would usually bring readymade garments for which he would earn a profit of approx. Rs. 15,000 – 20,000/- per trip. He stated that on 06.01.2015, when he returned to Kolkata, and while he was about to exit through green channel, the Customs Officers enquired him about the contents of his baggage. He replied that it



contained only his own belongings. His baggage and person was searched in presence of two independent witnesses and the Air Customs Superintendent. On examination of his black coloured hand baggage, a small zipper bag which contained 06 pieces of gold biscuits, 05 pieces of gold chains and 02 small cut pieces of gold was recovered. He stated that the said goods were handed over to him by a person named *Mattu* at Bangkok Airport and he was asked to hand it over to a person unknown to him outside Kolkata airport for which he was to be paid a sum of Rs. 20,000/- for the completion of this job. He stated that he did this job in greed and need of money. He accepted his mistakes and confessed for the same.

22. Though, learned counsel for the Petitioner contends that the statement was not voluntary and he was made to write the same but there is no retraction of the said statement before the concerned authorities.

23. There is no merit in the contention of learned counsel for the Petitioner that he was not aware of the gold. Petitioner was carrying the packet containing gold. The gold items were concealed inside two pieces of Medicine Sachets which were kept inside a Multi coloured zipper jute bag further kept in the Black coloured zipper hand bag that was carried by the Petitioner. The manner of concealing the gold clearly establishes knowledge of the Petitioner that the goods were



liable to be confiscated under section 111 of the Act. The Adjudicating Authority has rightly held that the manner of concealment revealed his knowledge about the prohibited nature of the goods and proved his guilt knowledge/mens-rea.

24. Petitioner admits to be a carrier of goods for others for valuable consideration. In a span of three months between 05.10.2014 and 31.12.2014. Petitioner had taken as many as 18 trips between Kolkata and Bangkok. Admittedly, petitioner would always bring back goods for others. Petitioner, who travels internationally so often cannot be permitted to contend that he was not aware of the law and that he was not aware of the contents of the packets that he was carrying. A person carrying any article on his belonging would be presumed to be aware of the contents of the articles being carried by him.

25. Reliance placed by learned counsel for the Petitioner on the judgment of the Supreme Court of India on *Amrit Foods vs. CCE 2005 (13) SCC 419* to contend that the assessee should be put to notice about the exact contravention, is misplaced. Petitioner was issued a Show Cause Notice dated 23.06.2015 pursuant thereto the Order in Original was passed. Petitioner had never taken a stand that he was not put to notice about the exact contravention.

26. The Supreme Court of India in *State of Maharashtra v. Natwarlal Damodardas Soni*, (1980) 4 SCC 669 has held that



smuggling particularly of gold, into India affects the public economy and financial stability of the country.

27. For the contravention Petitioner was liable to be imposed penalty not exceeding the value of the goods. As noticed hereinabove, Petitioner brought in 24 Karat Gold, collectively weighing 3203.900 gm. totally valued at Rs. 88,42,764/-. Thus the penalty that could be imposed was upto Rs. 88,42,764/- but only a penalty of Rs. 10,00,000/- was imposed on the petitioner. We find that the penalty imposed is not disproportionate in the facts and circumstances of the case.

28. In view of the above, we find no merit in the Petition. The same is consequently dismissed.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

MARCH 20, 2024/HJ