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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CUSTOMS)
ORIGINAL SIDE

CUSTA 62 OF 2024
IA NO: GA/1/2024

COMMISSIONER OF CUSTOMS (PREVENTIVE), KOLKATA
VS.
M/S. J. S. JEWELS PRIVATE LIMITED

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Dated : 19TH FEBRUARY, 2025

Appearance:
Mr. Uday Shankar Bhattacharyya, Advocate
Mr. Tapan Bhanja, Advocate
...for the appellant.
Mr. Mainak Bose, Sr. Advocate
Mr. Neeraj Kumar Pandey, Advocate
Mr. Shakeel Mohammed Akhter, Advocate
…for the respondent

THE COURT: This appeal filed by the revenue under Section 130 of the Customs Act, 1962 (the Act) is directed against the order passed by the Customs, Central Excise and Service Tax Appellant Tribunal, East Zonal Branch, Kolkata in ITA No.1313/Kol/2023 (the Tribunal) in Excise Appeal No.75202 of 2024 on 8th May, 2024.

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

> *"(i) Whether the Learned Tribunal has committed gross error of law by directing to release the gold when the respondent has failed to establish their ownership of the said gold and has failed to substantiate that the gold bars are not smuggled one?*
>
> *(ii) Whether the Learned Tribunal has properly appreciated the provisions of Section 110A of the Customs Act, 1962 at the time of passing the order for release of gold?*
>
> *(iii) Whether the Learned Tribunal's observation is correct that the preceeding and subsequent challans and gate pass is in serial, therefore the goods can be released on considering the same?*
>
> *(iv) Whether the Learned Tribunal is required under the law to appreciate the documentary evidences before passing the order for release of gold to the respondent and also required to state what the wrong has been committed by the Adjudicating Authority by non-releasing the gold?*
>
> *(v) Whether the respondent has discharged their burden of proof in terms of Section 123 of the Customs Act or not?*
>
> *(vi) Whether the Order dated 10.05.2024 passed by the Learned Tribunal is perverse, bad in law and liable to be set aside or not?"*

We have heard Mr. Uday Shankar Bhattacharyya, learned counsel assisted by Mr. Tapan Bhanja, learned advocate appearing for the appellant and Mr. Mainak Bose, learned Senior Advocate, assisted by Mr. Neeraj Kumar Pandey, Advocate for the respondent.

Earlier, the revenue had filed an appeal before this Court challenging an order passed by the Tribunal on 20th February, 2024 by which the learned Tribunal had directed provisional release of the seized gold. The said appeal in CUSTA/34/2024 was allowed by judgment dated 10th April, 2024 by way of remanding the matter with a direction to the Tribunal to consider certain aspects of the matter, as in the opinion of the Court, the learned Tribunal did not go into the facts and contentions raised by either sides. Upon remanding, the learned Tribunal had taken up the matter for consideration.

We find from the impugned order that the learned Tribunal has endeavoured to verify the genuineness of the challans submitted by the respondent and the respondent was directed to produce copies of the preceding and succeeding challans issued and accordingly, the respondent produced challans in respect of serial numbers 220, 221, 222 and 223 at the time of personal hearing before the Tribunal. The learned Tribunal on facts found that the challans were serial in number and the signatures of the authorized signatory available in challan nos. 220, 221 and 222 were tallying. Therefore, the learned Tribunal came to the conclusion that the respondent had prima facie established that they have issued the challans bearing Gate Pass No.RM/2023-24/KOL/222 dated 11.10.2023 for the purpose of job work of the 4 gold bars of 1 kg. each through M/s. Kalyan Jewellers. Further, the learned Tribunal verified the challans and found that the gold bars having mark/numbers as 4400493-96 were issued for job work by the respondent. Further, the same marks and numbers were also found to be available in the packing list issued by M/s. Brinks India Pvt. Ltd. at the time of release of the 14 kgs. of gold bars to the respondent. Therefore, the learned Tribunal came to the prima facie conclusion of correlation between the 4 kgs. of gold bars purchased by them from HDFC Bank Ltd. and the gold seized by the officers on 11.10.2023.

Thus, taking note of the prayer made by the respondent being one for provisional release of the seized goods and noting that the respondent has prima facie established correlation between the 4 kgs. of gold bars purchased by them from M/s. HDFC Bank Ltd. and the 4 gold bars seized by the officers, the Tribunal came to the conclusion that the goods can be provisionally released subject to certain conditions to safeguard the interest of revenue. Accordingly, provisional release was ordered on condition that the respondent provides a Bond for the full value of the seized golds supported by bank guarantee to the extent of 25% of the value of the seized goods.

Thus, we find that the learned Tribunal has examined the facts and come to the prima facie conclusion that the gold bars can be provisionally released to the respondent subject to certain conditions.

Thus, we find no questions of law, much less substantial questions of law, arising for considering in this appeal.

Accordingly, the appeal fails and is dismissed.

The seized gold bars shall be provisionally released to the respondent within three weeks from the date on which the bond as well as the bank guarantees furnished in terms of the directions issued by the learned Tribunal.

With the dismissal of the appeal, the stay application being IA NO: GA/1/2024 also stands dismissed.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

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