Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO.83 OF 2024
IN
CUSTOM APPEAL NO.1 OF 2024

COMMISSIONER OF CUSTOMS,
GOA COMMISSIONERATE ... APPLICANT
Versus
SHEHBAZ NASIR KHAN
RIZWANI ... RESPONDENT

Ms Asha Desai, Senior Standing Counsel for the Applicant.
Mr Mohammed Wasim Qureshi, Advocate for the Respondent (through V.C.).

CORAM:- M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.

DATED :- 05th February, 2025

ORAL ORDER:(PER M. S. Karnik, J)

1. Heard Ms. Asha Desai, learned counsel for the Applicant and Mr. Mohammed Qureshi, learned counsel for the Respondent. The appeal has been admitted on 17/10/2024 on the following substantial questions of law which reads thus:-

> *(i) Whether on the facts and circumstances of the case, the learned CESTAT had jurisdiction to decide the case of the respondent when in fact the order in appeal was revisable as contemplated under Section 129DD of the Customs Act, 1962?*
>
> *(ii) Whether the order of the learned CESTAT is*

perverse as the learned CESTAT ignored the facts on record that respondent herein being a frequent flyer is not an eligible passenger under the Act to carry gold and as per Para 2.20 of Foreign Trade Policy and provisions of Section 3(3) and 11(1) of Foreign Trade (Development & Regulation) Act, 1992 the same would appropriately constitute as "prohibited goods" as per the definition provide at sub Section 2 (33) of the Customs Act 1962, that, it is evident from the numerous (90) short visits made abroad from the year 2014 to May 2019?

2. In paragraph 8 of the impugned order dated 28/09/2023, the Appellate Tribunal has recorded thus:-

> *8. Consequently, it suffices for the purposes of law for the gold ornaments to be assessed and cleared in the manner prescribed in Customs Act, 1962. The goods are liable for confiscation owing to ineligibility as passenger. It is not the case of the appellant that confiscation is not warranted as the appeal is merely concerned with access of the appellant to the gold ornaments. As gold ornaments are not restricted for import. confiscation without option to redeem is not valid exercise of authority under section 125 of Customs Act, 1962. Accordingly, the option of*

redemption is granted to the appellant herein, who may, upon payment of fine of ₹1,25,000/-, have possession of the gold ornaments restored to him. Penalty of 2.50,000/- is reduced to 50,000/-.

3. The Tribunal has observed that the goods are liable for confiscation owing to ineligibility as passenger. Further it is observed that it is not the case of the Appellant that confiscation is not warranted as the appeal is merely concerned with access of the Appellant to the gold ornaments. However, the option of redemption is granted upon payment of fine as gold ornaments are not restricted for import, confiscation without option to redeem which according to Appellate Tribunal is not valid exercise of authority under Section 125 of the Customs Act, 1962.

4. Learned counsel for the Applicant prayed that the order of the Appellate Tribunal needs to be stayed during the pendency of the appeal having regard to the questions of law framed while admitting the appeal. The application is opposed by Mr. Qureshi, learned counsel for the Respondent. Mr. Qureshi submitted that the Respondent though may have made frequent trips to India but there was never any occasion when he carried gold ornaments. The

Respondent, according to him, came to India for a family function and it is for this reason that he was carrying gold which was his personal property. Thus in such circumstances, it is prayed that the application be dismissed as in any case the interest of the revenue is secured by the Appellate Tribunal.

5. Considering the questions of law on which the appeal is admitted, and having regard to the issues involved in the present appeal, in our opinion, as an interim arrangement, the impugned order needs to be stayed and is accordingly stayed.

6. Application is allowed. No costs.

NIVEDITA P. MEHTA, J. **M. S. KARNIK, J.**