

(2021) 01 CESTAT CK 0022

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Custom Appeal No. 52717 Of 2019

**Asalam Khan @Hash Commissioner Of Central Excise And Customs,
Central Goods And Service Tax, Jaipur-I**

Date of Decision : 19-01-2021

Acts Referred:

Customs Act, 1962 — Section 102, 108, 111, 111(d), 111(i), 111(j), 111(l), 111(m),
112(a)(i), 114AA, 125, 129A
Baggage Rules, 2016 — Rule 3

Citation : (2021) 01 CESTAT CK 0022

Hon'ble Judges : Anil Choudhary, J

Bench : Single Bench

Advocate : Kumud Bhatnagar, P.K. Gupta

Final Decision : Partly Allowed

Judgement

1. The appellant is Asalam Khan is working as a road cleaner in Dubai. Earlier he went to Dubai on 12 December, 2014 and returned on 6 July, 2016 i.e. after about 18 months. Second time he went to Dubai on 16 August, 2016 and returned on 28 February, 2017 (after stay of more than six months), at Jaipur Airport by Spice Jet Flight No. SG-058 at around 9.30 A.M. After collecting his checked in baggage he passed through the Green Channel and approached the exit gate of the arrival hall. He was intercepted by the officers of Air Customs, at the exit gate and was asked whether he had any dutiable/contraband goods to which he replied in negative. The appellant is holder of Indian Passport No. L-9748883 and is a resident in India of Village Jaswantgarh, Tehsil Ladnu, Distt. Nagaur (Rajasthan). The officers X-rayed his checked in baggage near to the exit gate, in presence of witnesses. On the reasonable belief that the appellant was concealing something in his checked in baggage, the officers once again asked him whether he is carrying any dutiable/contraband goods, which he denied.

Thereafter, the officers again X-rayed for detailed examination of his baggage and some dark round shaped images appeared in one of his checked in baggage " 20 yellow metal discs concealed in 10 lids of Tiger Balm and 4 cartons of Gudang Garam International Cigarettes" were recovered and seized. Thereafter, the officers served a notice under Section 102 and after taking his consent, conducted his personal search wherein nothing incriminating was found. On verification from the Government valuer as per his certificate dated 28 February, 2017, it was certified that the yellow metal discs were made of gold having purity 24 Carat, totally weighing at 233.00 Grams and valued at Rs.6,32,362/- (assessable value). The officers seized the gold and the 4 Cartons of Cigarettes (valued at Rs.10,000/-) under Panchnama dated 28 February, 2017, on the reasonable belief that the gold discs and Cigarettes were liable to confiscation under Section 111 of the Customs Act.

2. The statement of the appellant was recorded under Section 108 of the Act on 28 February, 2017 and again on 1 March, 2017, wherein he inter alia stated that he has studied up to 8th standard and he could read and write in Hindi. That he was a road cleaner in Dubai and was coming back home. His friend, Arif handed him a carton box to be delivered to the friend of Arif at Jaipur Airport. That his ticket from Dubai to Jaipur was arranged by Arif. That he was not aware about the contents of the said carton, therefore, he walked through Green Channel without making any declaration. In follow up action, search was conducted at the residential premises of the appellant at Jaswantgarh village, wherein no contraband or incriminating documents could be recovered.

3. It appeared to the Revenue that as per Rule 3 of Baggage Rules, 2016, an Indian returning to India is not permitted to import gold in any form other than ornaments in his baggage. Entry No.321 of Notification No. 12/2012-Cus. dated 17 March, 2012, as amended exempts following goods from so much of Customs duty leviable on gold bars, other than tola bars, bearing manufacturers or refiners' engraved serial number and weight expressed in metric units and gold coins having gold content no below 99.5% imported by the eligible passenger, but excluding ornaments studded with stones or pearls, in excess of 10% of the amount calculated at the standard rate subject to condition(s) laid down at S. No. 35 of the notification, if-

1.(a) the duty is paid in convertible foreign currency ; (b) the total quantity of gold under items (i) and (ii) of Sr. No. 321 does not exceed one kilogram

per eligible passenger, provided that the eligible passengers files a declaration in the prescribed form on his arrival in India before the proper officer of

Customs and pays the duty exigible thereon. The eligible passenger means a passenger of Indian origin, or a passenger holding a valid passport issued

under the Passport Act, 1967, who his coming to India after a period of not less than six months of stay abroad.

4. It further appeared to Revenue that the aforementioned exemption as an eligible passenger is not available, as the appellant have indulged in

smuggling and hence the basic rate of Customs duty applicable shall be 100% ad valorem, the tariff rate for baggage, as in force.

5. Accordingly, Show Cause Notice dated 13 July, 2017 was issued requiring the appellant to show cause as to why the 20 gold discs weighing totally

233.00 grams valued at Rs.6,32,362/- should not be confiscated along with 4 cartons of GGI Cigarettes (240 sticks x 4 or 960 sticks) valued at

Rs.10,000/- under Section 111(d), (i), (j) (l) and (m) of the Act. Further proposal to impose penalty under Section 114AA of the Act.

6. The appellant contested the show cause notice denying the allegations and claimed the benefit of Notification No. 12/2012-Cus. dated 17 March,

2012, as amended. He has not concealed the goods with intention to evade payment of duty. He had brought the gold and cigarettes for marriage

purpose which was to be celebrated on 28 August, 2017 at Nagaur. As he has to go to the Nagaur by bus which is about 236 km. away from Jaipur,

therefore, for safety point of view he had kept all the gold discs in tiger balm bottles for safety purposes, which does not amount to concealment. It

was further urged that after collecting the baggage from the conveyor belt, he was walking towards Custom office in search of help desk for

clearance on payment of duty. The way to the Custom office at Jaipur Airport is near to the exit gate. Although the appellant had not opted for exit

gate, nor was intercepted outside the exit gate. While searching the help desk, the Customs officer approached him and he informed about the gold

and cigarettes to the said officer and sought help in making the declaration, as he is not much educated. However the officer instead of helping, took

him to the X-ray machine and recovered the items. The officer also recorded the statement as per their choice, and appellant had signed on the dotted

line. Thus there is no case of mis-declaration or suppression nor any act of smuggling on the part of the appellant. Further, the gold discs was of very small quantity of 233.00 gms., which is not a commercial quantity. The gold was for personal use in marriage. Similarly the cigarettes were not in commercial quantity, but meant for personal use in marriage for the guests. The appellant was entitled to bring 100 cigarette sticks without declaration, and further he intended to declare, but did not receive the proper cooperation and guidance from the Customs officer at the Airport. The appellant is practically illiterate and of 24 years of age, engaged in the job of cleaning of road in Dubai. As the appellant had been working in Dubai for 24 months or more (18 months + 6 months), he had saved money and had purchased the gold at Dubai and brought the same for personal use. Further the appellant was a bona fide passenger and entitled to concessional rate of duty under Notification No. 12/2012-Cus. It was further stated that he had taken the name of Arif, goods belonging to him, due to fear, but the gold and cigarettes actually belonged to him. He also stated that there is very narrow space between the Customs counter and exit gate, and one has to travel towards the exit gate for approaching the Customs counter. Accordingly, it was prayed to drop the show cause notice and to release goods on payment of appropriate duty.

7. The show cause notice was adjudicated vide Orderin-Original dated 29 December, 2020, ordering absolute confiscation of the 233.00 gms of gold (comprising 20 gold discs of about 11 gms each) valued at Rs.6,32,232/- along with 4 cartons of cigarettes, (240 sticks x 4 total 960 sticks) valued at Rs.10,000/- under Section 111(d)(i),(j), (l) and (m) of the Act. Further 10 Tiger Balm bottles were also absolutely confiscated having no commercial value. Further penalty of Rs.50,000/- was imposed under Section 112(a)(i) and penalty of Rs.10,000/- under Section 114AA of the Act.

8. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) vide impugned order in appeal dated 26 March, 2019, learned Commissioner has been pleased to dismiss the appeal observing that the appellant had not filed the declaration, but attempted to smuggle the goods with intent to evade payment of duty. Being aggrieved the appellant is in appeal before this Tribunal on the following grounds.

9. Learned Counsel for appellant Shri Kumud Bhatnagar urges that the appellant is a bona fide eligible passenger and accordingly, absolute

confiscation of the seized goods is bad, on the sole ground of non-declaration and alleged concealment. As the appellant was carrying gold in a small quantity, which is not a commercial quantity by any stretch of imagination. The charge of smuggling is bad and fit to be set aside. The appellant being bona fide eligible passenger was entitled to import the small quantity of gold of 233.00 gms under Notification No. 12/2012-Cus. The appellant also satisfies the additional conditions as specified in Sr. No. 35 of the said notification. It is further urged that neither gold nor cigarettes are prohibited items and are importable on payment of duty. The intention of the appellant, being import for personal use is also evident, as he was importing in the form of discs for use by himself and his family members. It is urged that the confiscation is bad and redemption under Section 125 should have been allowed. It is further urged that duty calculated in the show cause notice of Rs.2,27,967/- on the gold discs is erroneous, and the same should have been calculated @ 10.3% ad valorem in terms of Notification No. 12/2012- Cus. as amended, which works out to Rs.65,133/- approximately. It is further urged that the penalty imposed is fit to be set aside. Accordingly, learned Counsel prays for allowing the appeal.

10. Learned Authorised Representative for Revenue opposes the appeal. Further he raises preliminary objection that as the appellant had brought the gold with him, it is a case of import under Baggage Rules. As such, the appeal against the order of the Commissioner (Appeals) shall lie before the Joint Secretary, in Department of Revenue and not before this Tribunal. He further reiterates the orders of the Court below. He relies on the provisions of Section 129A proviso (a) of the Act.

11. So far the preliminary objection is concerned, I find that pure gold does not come under Baggage Rules, 2016 and accordingly, this case being mainly related to seizure of gold, the appeal shall lie to this Tribunal. Accordingly, the preliminary objection is dismissed.

12. Having considered the rival contentions, I find that the appellant had brought a small quantity of 233.00 gms. of gold in the shape of 20 disc (about 11.66 gm. per disc) for personal use. Further, I find that there is no commercial quantity either of gold or cigarettes. Further I find that the appellant is an eligible passenger, as defined in condition No. 35 of the Notification No. 12/2012-Cus and entitled to import gold up to one kilogram, on returning to

India on payment of concessional duty. I further hold that the appellant is eligible to pay concessional duty as provided under Notification No. 12/2012-

Cus read with the provisions of Customs Tariff Act and there is no case of alleged violation of the provisions of Section 111(d), (i), (j), (l) and (m) so

far gold is concerned. Accordingly, I direct that the seized gold is to be released to the appellant on payment of concessional duty under Notification

No. 12/2012-Cus. Confiscation of gold is set aside. 13. So far cigarettes are concerned, it is not a commercial quantity. However, the appellant was

entitled to import only 100 sticks (duty free). Accordingly, I uphold absolute confiscation of the cigarettes (being 960 sticks in quantity) valued at

Rs.10,000/-. Further, I reduce the penalty under Section 112(a)(i) to Rs.10,000/-. The penalty under Section 114AA is set aside, as the condition

precedent for imposition under the said section are not found under the facts and circumstances of this case.

14. To sum up:-

(i) confiscation of gold is set aside. Concessional duty is payable under Notification No. 12/2012-Cus.

(ii) Absolute confiscation of cigarettes is upheld.

(iii) Penalty under Section 112(a)(i) reduced to Rs.10,000/-.

(iv) Penalty under Section 114AA is set aside.

15. Appeal is allowed in part.

(Pronounced in Court on 19.01.2021)