(2023) 09 CESTAT CK 0040

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 76060 Of 2016

Ramkrishna Gain APPELLANT

Vs

Commissioner Of Customs (Preventive), Kolkata RESPONDENT

Date of Decision : 27-09-2023

Acts Referred:

Citation : (2023) 09 CESTAT CK 0040

Hon'ble Judges : R. Muralidhar, Member (J);Rajeev Tandon, Member (T)

Bench : Division Bench

Advocate : Atika Sumran Ahmed, S. Chakraborty

Final Decision : Disposed Of

Judgement

R. Muralidhar, Member (J)

1. When the Appellant was going towards Machalandapur Station, he was intercepted by Customs officers and 60 pieces of gold biscuits and cut pieces of gold were recovered from him. After due process, the gold with the value of Rs.1,61,77,675/- was absolutely confiscated and sale proceeds of Rs.1,62,43,453/- were appropriated to the Government exchequer. The Appellant was imposed with penalty of Rs. 25 lakhs. Being aggrieved, the Appellant is before the Tribunal.

2. The Appellant submits that he is a small time farmer with monthly income of Rs. Approx. 3,500/- per month. He was given the packet by one Mr. Nasir of Bangladesh and was told that Rs. 1,000/- would be given to him, if the packet was delivered in India to one Mr. Partha. He did not know that he was carrying gold in the packet. He also did not know who was the actual owner of the gold. He only received the packet from Nasir to be delivered to Partha for which he was paid Rs. 1,000/-. Therefore, the Appellant pleads that the penalty imposed on him is very harsh and may be set aside.

3. Heard the Learned AR who reiterates the findings of the Adjudicating Authority.

4. Admittedly, the gold was of foreign origin and was recovered from the person of the Appellant. No one has claimed the ownership of the gold which has been auctioned and Rs.1,62,43,453/- has been realized by the Government. It is seen from the record that the Appellant was only a carrier who got lured by some extra amount which could be made by him by taking the packet and delivering to a person in India.

5. There is nothing to suggest that he was actually involved in the smuggling of the gold. However, definitely, it is the case of gross negligence and carelessness on his part to have ace. 000000.pted the parcel from foreign national to deliver within India. Therefore, we hold that the penalty is imposable on him in terms of Section 112 (b).

6. However, considering all the factual details, and the role and financial condition of the Appellant, we reduce the penalty to Rs. 1,87,500/-, which already stands paid by him by way of pre-deposit.

7. The Appeal is disposed of thus.

