CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. – I
Single Member Bench

Customs Appeal No. 30241 of 2024
(Arising out of **Order-in-Appeal** No.HYD-CUS-000-APP-087 to 90 & 116-23-24 (APP-I), dated 29.11.2023 passed by Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

M/s Vinod Jewellers .. **APPELLANT**
1465, Main Road, Rizala Bazar,
Bajrang Nagar Colony,
Bolarum, Secunderabad,
Telangana – 500 010.

VERSUS

Commissioner of Customs Hyderabad - Customs .. **RESPONDENT**
GST Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri V S Sudhir, CA for the Appellant.
Shri A. Rangadham, Authorised Representatives for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30383/2024

Date of Hearing:16.10.2024
Date of Decision:22.10.2024

[ORDER PER: A.K. JYOTISHI]

M/s Vinod Jewellers (hereinafter referred to as appellant) have come in appeal against the Order-in-Appeal dated 29.11.2023, whereby, the Commissioner (Appeals) has, interalia, upheld the order passed by the Original Adjudicating Authority in respect of Shri Vinod Kumar Jain, Proprietor of M/s Vinod Jewellers. The appellant had gone in appeal vide Appeal No. 187/2022-Cus before Commissioner (Appeals) against the Order-in-Original dated 24.06.2022.

2. The case, in brief, is that the Officers of Customs Department intercepted certain consignment at Domestic Terminal Air Cargo Complex,

Hyderabad on 03.10.2020 under reasonable belief that the said consignments were carrying foreign marked gold and therefore the same were liable for confiscation. On further examination of the said consignments it was observed that the Courier Company was carrying consignments from different persons to different destinations and therefore, the Department opened the said consignment and found various smaller packets belonging to different persons. On further verification of the gold, jewellery etc., with the help of assayer they found that certain consignments/packets were carrying 24 carat gold, which Department felt was of foreign origin and therefore smuggled in nature. Therefore, under reasonable belief that the said foreign marked gold and jewellery etc., were liable for confiscation under Customs Act and CGST Act, seized the consignments. Subsequent investigations were carried out and on conclusion of investigation, a common show cause notice dated 01.04.2021 was issued to many people, including the present appellant, asking them to explain as to why foreign mark gold should not be confiscated and why penalty should not be imposed on them under the relevant provisions of Customs Act 1962.

3. On adjudication, after going through evidence on record, defence taken by appellant etc., by different persons, including the present appellant, the Original Authority in his common order held as under:

> "32. In view of the above, I observe that the jewellers could not present their case in substantial terms as to how they have procured the gold from their sellers and could not produce the proper and relevant documents. Further, they could not produce documents evidencing the mode of transport of the gold said to have been purchased. Further, it is observed that vide their letters and also during personal hearing submissions they have not tried to establish through documentary proof that the gold under seizure is not imported goods.

33. The Jewellers have referred to a number of citations in support of their arguments. I find that in all the said cases the material facts are different from the facts of the subject case and hence I do not propose to deliberate on them in detail.

34. Thus, I hold that the impugned gold is of foreign origin and the jewellers have failed to discharge the burden of proof cast on them in terms of Section 123 of the Customs Act, 1962."

4. Learned CA for the appellant has mainly contested on the ground that firstly, the test report of the assayer relied upon by the Department itself gives a disclaimer that they are not in a position to say whether the gold is of foreign origin or otherwise even though the Department has alleged the said gold is of foreign origin. Therefore, there is no sufficient evidence for the Department to establish that this was of foreign origin, based on the said report. He has further argued that in the course of recording a statement dated 10.11.2020 appellant has clearly stated that the gold was being sent to one M/s Swarn Shrishti Jewellers, Mumbai in lieu of settlement/payment of their purchase of 821.560 gms of gold jewellery from them under invoice SG2 dated 01.10.2020. This was being sent through courier, who had brought the gold jewellery and it was covered under Invoice No. 203 dated 02.10.2020. He has also stated that said invoice was given to the Courier company, however, it is not known why it was not shown to the Department at the time of inspection of the consignment. He has also submitted that they have explained the entire transaction, including the source of procurement of 800 gms and related document, to the Departmental Officers in the course of the statement recorded on 10.11.2020. According to appellant, said gold is converted gold (out of old jewellery etc) through one Mr. Akshay of M/s Shri Siddanath Gold Refinery, Secunderabad. He also points out that Department did not find anything

suspicious in these premises in the course of search on 28.10.2020, as is evident from para 1.9 of show cause notice.

5. On the other hand, Leaned AR submits that in this case, Section 123 of the Customs Act, 1962 has been rightly invoked and therefore the burden of proof is on the appellant to establish that the confiscated gold were not of smuggled nature or liable for confiscation. He also submits that the submissions of the Learned CA about bringing to the notice of Department, the documents like invoices covering the consignment being sent to Mumbai, as also the procurement of gold jewellery etc., were never produced or shown to the Department as alleged by the appellants and therefore the appellants have not been able to discharge the burden of proof and therefore the gold were rightly liable for confiscation and the appellant is also liable for penalty.

6. Heard both the sides and perused the records.

7. I find that the entire case is based on interception of certain consignments in the Air Cargo Complex, Hyderabad which were being carried by the Courier companies. In the case of the appellant, it is apparent from the record that no document was produced by the courier company or the representative of the appellant, even though appellant's have claimed to have given to Courier company. However, what is apparent is that as part of further investigation a statement of the appellant dated 10.11.2020 was recorded under Section 108 of Customs Act 1962, which clearly reveals that the appellants have explained both the source of procurement of the seized gold and also the reasons for the transfer of the said consignment to Mumbai. This assertion of the appellant has been cryptically dismissed by the Adjudicating Authority holding it as an

afterthought to cover their intention to sell the impugned gold procured without documents and without appreciating the facts disclosed by the appellant to Department in the course of recording of statement under Section 108 of Customs Act.

8. I find that the entire case is decided by the Adjudicating Authority in a very cryptic manner without going into detail as far as the defence taken by the appellant is concerned. One of the major point which appellants have been claiming is that the gold in question was procured from legitimate source as also supply of the gold was being made as a legitimate business transaction. This aspect has not been dealt with at all by the Adjudicating Authority and very cryptic remark has been made to dismiss the defence. The claim that it's a remelted gold and that duty paid invoice has been given to Courier company has also not been examined. When in a statement recorded under Section 108 of Customs Act 1962, someone gives evidences, it has to be carefully evaluated and it's authenticity or otherwise has to be examined. If the appellant has made wrong assertions about the source of purchase etc., and therefore making false statements, they are liable for penal action under relevant provisions of IPC. Therefore, it appears that order has passed in a bland and routine manner and without following the principles of natural justice. The Adjudicating Authority should have examined all the documents and submissions and then taking up the issue of authenticity with regard to the claim that the gold were procured from legitimate source following prescribed procedure before coming to the conclusion that the said gold was of foreign origin.

9. Even in the impugned order, where the Commissioner (Appeals) has concurred with the order of the Original Authority without adequately

addressing the defence taken by the appellant, the appellant had clearly pointed out in their grounds of appeal that Order-in-Original has been passed in gross violation of principles of natural justice and without considering facts of the case, evidence or record etc. The conclusion, at para 15 of Order-in-Appeal by Commissioner (Appeals) is cryptic and without any substantive ground and based on incorrect appreciation of fact. Para 15 of impugned order is reproduced below for ease of reference:

> "15. Therefore, I find no reasons to disagree with the observation made by the respondent in Para 36 of the impugned order that invoices and documents produced is created one and an afterthought to cover up their illicit act of procuring foreign gold as no documents were accompanying with the gold when they were seized. Also, I find the fact that the Government assayer has certified that the gold to of foreign origin is evidence enough to conclude that the impugned gold is not of Indian origin as is being claimed by the Appellants."

10. It is also on record that when the assayer has made a disclaimer that he is not in a position to say whether gold is of foreign origin or otherwise, how Commissioner (Appeals) can say that he has certified the gold to be of foreign origin. A cryptic common and general order passed for all the persons, without appreciating factual matrix and evidence adduced by each of the appellants, would not be correct and may tantamount to non-application of mind.

11. When a serious charge of smuggling is being levelled, the evidence has to be carefully and duly evaluated, notwithstanding the provisions under Section 123 of Customs Act 1962, and the concerned person should be accorded all reasonable opportunities to defend his case and thereafter by way of speaking order, the matter should be decided. In the present case, the impugned order is clearly not a speaking order nor it appears to have

followed the principles of nature justice in true spirit of the doctrine. However, it is also made clear that I have not expressed any view on the merits of the case at this stage.

12. Therefore, in the interest of justice, the matter is required to be remanded back to the Original Adjudicating Authority with the above observations. The Adjudicating Authority should decide this matter by way of speaking order within a period of 3 months subject to appellants providing necessary documents and appearing on the date(s) fixed by the Adjudicating Authority. The order of Commissioner (Appeals), to the extent it deals with appeal filed by the appellant before him (Appeal No. 187/2022-Cus), is set aside.

13. Appeal allowed by way of remand to Original Adjudicating Authority.

(Order Pronounced in open court on 22.10.2024)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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