IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.528 of 2022

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The Commissioner of Customs (Preventive) Patna, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna-800001.

... ... Appellant/s

Versus

Sh. Rajendra Sethiya S/o Late Shobhmalji Sethiya, At-101, Palash,DM Vatika, Khamhaardih, Kachana Road, Shankar Nagar, Raipur (Chattisgarh)- 492007

... ... Respondent/s

Headnotes

Customs Act, 1962 – Section 129A(2) – 2 kilos of gold with swiss marking were seized from the body of a person travelling in a train from Howrah to Mumbai by Howrah mail. The said person was intercepted and searched at Tatanager railway station. Gold was confiscated and penalty was imposed by the original authority – First appellate authority reversed the order of the original authority – Appeal to the Appellate Tribunal – Appellate Authority affirmed the order of the First Appellate Authority. Held that the invoice, even if found to have established the transaction between Saheli Gems and Jewellers and Adinath Jewellers – it does not discharge the burden of proof insofar as the import having been done in accordance with the custom Act. If Saheli Gems and Jwellers had imported it by a proper bill of entry filed and the same received from a notified entry point for the purpose of home consumption, then and only then would the burden of proof u/s -123 be discharged -. The gold bars which demonstrably were manufactured and sourced from outside the country should be proved to have been brought into the country in accordance with the provisions of the customs Act.

We set aside the orders of Appellate Authorities and restore the orders of the original authority.

We allow the appeal with cost of Rs. 5000/- to be recovered from the respondent by the revenue.

[Para 32,34 and 35]

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... ... Respondent/s

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Appearance :

For the Appellant/s	:	Dr. K.N.Singh, ASG Mr.Anshuman Singh, Sr. SC, CGST & CX Mr. Shivaditya Dhari Sinha, Advocate Mr. Devnath Shankar Singh, Advocate
For the Respondent/s	:	Mr.Saket Gupta, Advocate Mr. Abhishek Anand, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-03-2024

Two kilograms of gold, with Swiss markings, indubitably indicating its source from abroad, was seized on prior information received of the transport, based on which, proceedings were taken under the Customs Act, 1962 (for brevity the 'Act'), culminating in the Order-in-Original (Annexure-B), confiscating and imposing penalties under the Act. The First Appellate Authority reversed the order of the Original Authority. Under Section 129-A(2) of the Act, the

Committee of Commissioners directed the Proper Officer to file an appeal to the Appellate Tribunal; in which the Tribunal affirmed the order of the First Appellate Authority. The impugned appeal is filed under Section 130 of the Act, raising the following question of law: -

> *Whether the Appellate Authority on the basis of facts and evidences and circumstances of the case, has completely erred in its findings and came to conclusion overlooking a number of material facts as well as the judgments cited?*

2. Dr. K.N.Singh, learned Additional Solicitor General, appearing for the appellant, argued that the contraband was seized from the body of a person travelling in a train from Howrah to Mumbai; the Howrah-Mumbai Mail Express, when the said person was intercepted and searched at Tatanagar Railway Station. On recovery of the contraband, which did not have any supporting documents, the person was brought to Patna where he had given a sworn statement under Section 108 of the Act, which has an evidentiary value. The statement was retracted later on, when the person was granted bail; which is usual in such cases and this does not affect the evidentiary value of the statement, if the statement, at least in some aspects, are

substantiated by other material evidence. The story put forth by the intercepted person was also verified by the customs authorities, and the owner as also the persons who were alleged to have supplied the contraband to the owner, were summoned and examined. The statements made by the various persons examined by the officer under Section 108, were contradictory to each other, thus, putting to peril the explanation offered.

3. The Swiss markings on the gold bars clearly established the source of the contraband, which was from outside the country. It was for the person from whom the contraband was seized and the alleged owner to establish how the contraband entered the country. The mere invoice produced, at best, indicating a transaction within the country, would not absolve the goods from seizure as an imported goods. The First Appellate Authority and the Tribunal failed to notice this important fact and ignored material evidence recovered on investigation, thus, making the order completely perverse. The First Appellate Authority, on erroneous consideration and based on irrelevant facts, arrived at a contrary finding from that of the Proper Officer; the Officer who passed the Order-in-Original. The Tribunal merely referred to the grounds of the First Appellate Authority and extracted them, thus, adopting it

without any application of mind.

4. The invoices produced by the alleged owner, though dated earlier to the confiscation, admittedly, there was no consideration paid at that point of time. The consideration was paid only after the seizure and part payments made after the alleged owner was examined on oath. The very explanation offered and the facts disclosed clearly indicate that the invoice was a concocted document. There was nothing to prove the transaction of sale and the transport of the gold from the alleged seller to the purchaser. The seller and the purchaser had no prior transactions, which makes the credit granted doubly suspicious. There was sufficient corroboration for the statement under Section 108 and both the appellate authorities ignored the same. Reliance is placed on ***Naresh J. Sukhawani v. Union of India; 1995 Supp (4) SCC 663***, ***Surjeet Singh Chhabra v. Union of India & Ors., (1997) 1 SCC 508, K.I. Pavunny v. Asstt. Collector (HQ), Central Excise Collecotrate Cochin, (1997) 3 SCC 721.***

5. The learned Counsel for the respondent vehemently argued for sustaining the orders of the appellate authorities. It is first argued that the interception was not proper and there was no satisfaction entered, which was imperative as per the

statutory provision. Tatanagar was not a notified area and the recording of reasons to believe, which is imperative as per the statutory provisions, should also be objective. The statement under Section 108 was under threat and coercion and was detracted at the first opportunity. The statement was made under the custody of the Directorate of Revenue Intelligence (DRI) and later the person who was intercepted was produced before the jurisdictional Magistrate from where he was sent into judicial custody. The witnesses who affixed their signatures to the statement under Section 108, are said to be the witnesses who were present at the time of interception. It is difficult to believe that the very same independent witnesses travelled from Tatanagar to Patna for the purpose of witnessing the statement under Section 108.

6. There is absolutely no evidence that the gold seized was of foreign origin. The proceedings were on a presumption that the gold bars were smuggled into the country from Bangladesh; which presumption arises only from the statement under Section 108. The specific case of the respondent was that the invoices were accompanied with the goods and the same were produced on interception; which was destroyed by the intercepting officer. The goods were also supported by

'*Karigar* Issue Slips' indicating the gold bars to be transported for the purpose of manufacturing of jewellery by one '*Subh Karigar*'. These documents were completely ignored and not included in the *Panchanama*. The search was made immediately after mid-night in the very early hours of 24.07.2017, but the arrest was only at 21:30 hours; by which time, the intercepted person was in the custody of the DRI officials.

7. Reliance was placed on ***Chandna Impex (P). Ltd. v. Commissioner of Customs; (2011) 7 SCC 289*** to argue that there is no substantial question of law arising from the appellate order. ***A. Tajudeen v. Union of India; (2015) 4 SCC 435*** was relied on to contend that the prosecution has to prove that there was no coercion, especially when, in the instant case, the arrest was delayed and so was the production before the jurisdictional Magistrate. To repel the contention of the State regarding the evidentiary value of sworn statements under Section 108 of the Act, reliance was placed on ***Commissioner of Customs(Imports), Mumbai v. Ganpati Overseas through its Proprietor Shri Yashpal Sharma & Anr.; (2023) 10 SCC 484***. ***Vinod Solanki v. Union of India & Ors.; (2008) 16 SCC 537*** was also relied on to further buttress the grounds regarding need for corroboration of the statement recorded under Section 108, if

retracted later on the allegation of coercion and threat having been employed. Reliance was also placed on a Division Bench judgment of this Court in ***Om Sai Trading Company & Anr. v. Union of India & Ors.; 2019 SCC Online Pat 2262.***

8. The grounds taken by the respondent in support of the appellate orders and in challenge of the Order-in-Original, starts from the very inception; right from the time of interception. We are quite conscious of the fact that we are not in appeal from the findings on facts as recorded in the order of the appellate authorities and we, under Section 130, only look at the substantial question of law. As has been held in ***Chandna Impex (P) Ltd.*** (supra), the Tribunal being the last fact finding authority, it does not lie within the domain of the High Court to investigate the grounds on which the fact findings were arrived at, by the Tribunal. However, while making such observation, it was also opined that the order of the Tribunal, in that case, which essentially referred to the order of the Commissioner, does not give rise to any question of law, since the Commissioner's analysis was extensive. It was also noticed that there was also no question raised challenging the findings of the Tribunal, as perverse(sic-Para-15).

9. In the present case, we have extracted the question

of law, which is clearly on the appellate authorities having completely erred in overlooking material facts, the purport of which is perversity in the order passed. Though there is no specific reference to perversity, the general purport of the question framed, of overlooking material facts, is perversity in full regalia. Hence, we are constrained to look into the facts, not in re-appreciation of the same but to understand whether relevant facts were ignored and extraneous considerations were reckoned, in which event, the orders would have to be set aside on the ground of clear perversity. This is why we venture to look into the facts from the very beginning of the case.

10. The first contention raised is of no reasons to believe being disclosed from the seizure memo, which ground the respondent seeks to urge, based on the decision in ***Om Sai Trading Company*** (supra). In the cited case, betel nuts were prohibited to be imported and as such under Section 111, any importation was liable to confiscation. Even when confiscation was an imperative action, the Division Bench found that there is a *sine qua non,* which is the belief of the officers seizing the goods to have reasons to believe that such goods are liable to confiscation. Therein, the goods described as ‘cut dried Areca Nuts (dark pink in colour)’ were seized by the DRI official,

which goods undisputedly were owned by the petitioners in that case. The seizure was also not made from any zones identified and earmarked as a warehouse or a check post and was intercepted at a Toll Collection Point set up on the High-way, within the State of Bihar. There was no material to show that the goods had its origin outside the territory of India, more specifically Nepal. The documents produced by the owner also indicated the name of the consignor and consignee, who were within the territory of India. The learned Single Judge dismissed the writ petition only on the ground that the laboratory report indicated the goods to be not fit for human consumption. The said report was not a valid ground for confiscation under the Act.

11. The arguments raised by the learned Additional Solicitor General, in the cited case, in supplementing the reasons for formation of reason to believe, were found to be in violation of the decision in ***Mohinder Singh Gill v. The Chief Election Commissioner & Ors.; (1978) 1 SCC 405***. The reasons to believe, in the cited case, were not available in the order and could not be supplemented in court with a counter affidavit or arguments addressed. The reason to believe was held to be not a mere suspicion, gossip or rumor. Belief should arise on an

honest basis and on reasonable grounds and if the officer acts on direct or circumstantial evidence, it is with jurisdiction as held in ***Sheo Nath Singh v. CIT; (1972) 3 SCC 234.*** We have to notice that the dictum in ***Om Sai Trading Company*** (supra) was on the particular facts coming out in that case, (i) of the ownership of the goods being undisputed, (ii) nothing indicating the goods to be sourced from outside from the country and (iii) the laboratory report being extraneous to the Customs Act, which resulted in quashing of the very seizure notice, without even relegating the petitioner to the adjudicatory procedure. The Division Bench also noticed that the information of the seized nuts, being not of Indian origin, was asserted to be the opinion of some Customs Officers, as recorded in the *Panchanama.* Neither were the details of such officers mentioned nor was it discernible as to their expertise in finding the nuts to be of foreign origin merely on visual inspection.

12. We are of the opinion that the said decision does not have any application looking at the character of the goods seized and also the manner in which it was done. It is an admitted fact that the intercepted person was carrying gold in a train which commenced from Howrah, where he boarded the train and was intercepted at Tatanagar before it reached its

destination at Mumbai. The owner of the goods who is the respondent herein, was subsequently summoned, who had also admitted that the goods were purchased from a third party and had been entrusted with the person who was intercepted; an employee of the owner/respondent. The entrustment was also for transporting it to Kolkata to enable manufacture of ornaments.

13. With this bare and simple admitted facts, we first look at the valuation carried out by the Department on interception and detection of goods, which is at page 73 of the appeal memorandum. The valuation was done by a government registered valuer and it indicates markings on both the gold bars, which are as follows: -

"Valcambi Suisse (995) CHI Essayeur Foundeur"

These markings available in both the gold bars; found on the person of the employee of the respondent, intercepted by the DRI officials. The gold bars, with the recital thereon, is admitted to be that entrusted by the respondent to his employee; the person intercepted. The seizure memo of 24.07.2017, which was prepared at the DRI Regional Unit Patna Office, clearly indicated violation of Sections 7, 46 and 47 of the Act, as the reasons to believe. Section 7 speaks of appointments of customs ports, airports etc. Section 46 requires entry of goods on

importation by presenting a bill of entry for home consumption or warehousing as prescribed and Section 47 speaks of clearance of goods for home consumption. Hence, the reason to believe is very clear from the violations alleged and in the present case, there can be no challenge to the goods being sourced from outside the country, which is evident from a mere visual inspection; the Swiss markings were crystal clear to even a layman who does not have any expertise in the matter. The gold bars apparently, from the mere inspection were not sourced from India.

14. Now, we come to the statement recorded under Section 108. The learned Counsel for the respondent specifically urged that it is impossible that the seizure memo and the sworn statement were witnessed by the very same person. We cannot but observe that there can only be alleged an improbability and not an impossibility. When any person is called as a witness by the officials and directed to accompany the officials, especially since the interception was at a far-away place, the citizen would definitely agree; more out of fear of official retaliation. Rather than discard the statement merely on the ground of impossibility raised by the respondent, we are of the opinion that the statement and its retraction are to be looked

at.

15. It is from the statement under Section 108 itself that the identity of the person intercepted was revealed, which was found to be verified and correct by the Assistant Commissioner (Preventive) in the office of the Principal Commissioner, Central Goods and Service Tax and Central Excise, Tikrapara Dhamtari Road, Raipur by communication dated 02.08.2017, which is produced in the memorandum of appeal at page 76 along with the documents in support of the notice issued, produced at Annexure-A. The identity of the owner of the gold seized from the intercepted person also was revealed from the statement. The statement also admitted the person having boarded Howrah-Mumbai Mail Express, and that he was travelling to Raipur; in the course of which, some persons in civil dress woke him up and introduced themselves as officers of DRI, Patna. They searched his body and during the course of search, the smuggled gold kept hidden and covered inside the pants, was detected. So much of the statement has not been retracted from.

16. The person intercepted had also disclosed the name of the person from whom he had received the gold bars at Kolkata, who had directed him to hand over the same to the

respondent, who was his employer. The statement indicated the intercepted person having confessed to his knowledge, that the gold was smuggled from Bangladesh, as told to him by one Sonu, who handed over the gold bars for onward transmission to his employer, the respondent. The statement disclosed the mobile number of Sonu and the respondent. He confessed that he did not have any document relating to the gold. Hence, the intercepted person from whose body the gold was seized had categorically admitted to the possession of the gold which was clearly imported, going by the markings on it. Even if we ignore the inculpatory statement of receipt of gold bars smuggled from Bangladesh, which statement was retracted, the fact remains that he admitted to the possession of two gold bars with Suisse markings; which definitely was sourced from outside India. That the gold bars were in his possession for onward transmission to the respondent; who had later accepted its ownership, also is admitted.

17. We have already noticed that the reason to believe under which the seizure was made, was also the lack of any document to show that import was made in accordance with Sections 7, 46 and 47 of the Act. It is very pertinent that even the retracted statement merely states that the documents and the

bill voucher which accompanied the goods were forcibly taken from him and destroyed by the DRI officials, who carried out interception. It was also stated that there was an assault made and the officials forcefully made him sign many documents.

18. We notice that the retraction, which is produced at Annexure-R/F, was made while the intercepted person was in judicial custody. He retracts from his earlier statement that he was carrying the gold from Kolkata to Raipur, as entrusted to him by Sonu at Kolkatta. In the retraction, he states that he had commenced his journey, from Raipur with the gold bars entrusted to him by his employer, and took it to Kolkatta for the purpose of manufacturing ornaments and since the goldsmith could not be traced, he was returning by the Howrah-Mumbai Mail Express. The retraction admits the possession of the gold bars at the time of interception. The description of which, as is found with the DRI, is also admitted to be that which was seized.

19. We would, for the present, assume that the story, as stated in the retracted confession, is correct. Even then it has to be established that the gold, which even on a visual inspection, is clearly discernible as sourced from outside the country, is imported in accordance with the Act, specifically

Sections 46 and 47 read with Section 7 of the Act. There is no escape from this, even if, we fail to reckon the statement of the person intercepted that in his knowledge the gold was smuggled from Bangladesh. We reiterate, at the risk of repetition, that the fact of possession of the gold bars, which was seized by the DRI official from his person and that he was carrying it in the Howrah-Mumbai Mail Express, stands clearly established. Whether it was first taken from Raipur or it was obtained in Kolkata, are irrelevant facts; when looking at the aspect of importation and the validity of seizure, by reason of the belief entertained by the DRI official that the gold bars were not imported in accordance with the provisions of the Act.

20. On the above admitted facts, we have looked at the decision in ***Ganpati Overseas*** (supra) and the principles deduced by the learned Judges from the judicial pronouncements in ***Naresh J. Sukhawani*** and ***K.I. Pavunny*** (both supra). We specifically extract Paragraph-53 from ***Ganpati Overseas*** (supra): -

> "**53.** Thus, what is deducible from an analysis of the relevant legal provisions and the corresponding judicial pronouncements is that a customs officer is not a police officer. Further, the person summoned and who makes a statement under Section 108 is not an accused.

However, a statement made by a person under Section 108 of the Customs Act before the customs officer concerned is admissible in evidence and can be used against such a person. Object underlying Section 108 is to elicit the truth from the person who is being examined regarding the incident of customs infringement. Since the objective is to ascertain the truth, the customs officer must ensure the truthfulness of the statement so recorded. If the statement recorded is not correct, then, the very utility of recording such a statement would get lost. It is in this context that the customs officer who is empowered under Section 108 to record statement, etc. has the onerous responsibility to see to it that the statement is recorded in a fair and judicious manner providing for procedural safeguards to the person concerned to ensure that the statement so recorded, which is admissible in evidence, can meet the standard of basic judicial principles and natural justice. It is axiomatic that when a statement is admissible as a piece of evidence, the same has to conform to minimum judicial standards. Certainly, a statement recorded under duress or coercion cannot be used against the person making the statement. It is for the adjudicating authority to find out whether there was any duress or coercion in the recording of such a statement since the adjudicating authority exercises quasi-judicial powers."

21. Applying the said principles to the instant case, we find that even if the allegation of coercion is accepted, we have to eschew from consideration, only the statement made by the person intercepted that, to his knowledge, the gold was smuggled from Bangladesh, as told to him by the person who delivered it to him in Kolkata. The delivery in Kolkata, as stated by the person intercepted, also would have to be eschewed. We are left with the admitted statement of the ownership, the possession and the interception as also the description of the seized contraband. There is no escape from the fact that the contraband was imported as revealed from a mere visual inspection, which discloses the markings on the gold bars. Now, the question arises as to whether the alleged owner of the goods referred to as Noticee No. 2, the respondent herein, had obtained valid possession through a legal import made by him.

22. At this juncture, we look at the Original and the appellate orders which the respondent seeks to sustain. The order of the Tribunal extracts the reasoning of the First Appellate Authority, which reasoning and further findings by the Tribunal, are challenged as perverse by the appellant herein. The Department placed reliance on the fact that none of the cars owned and used by the noticee Nos. 3 and 4, son and father,

who allegedly sold the gold bars to Noticee No. 2, had travelled from Bhilai to Raipur. This is in the context of the specific statement made by Noticee No. 3; a dealer located at Bhilai, that he had delivered the goods to Noticee No. 2; with his business at Ranchi. Investigation revealed that none of the cars, owned by the Noticee Nos. 3 and 4, the numbers of which were supplied to the DRI, crossed the Kharun Toll Plaza. The goldsmith 'Subh', to whom the gold bars were allegedly send for conversion into ornaments, whose mobile number was revealed by the respondent and the person who is alleged to have introduced the *Karigar* to the owner, one Mukesh Ganatra had both declined to support the contention of the owner. Mukesh Ganatra in his statement categorically stated that though he had acquaintance with the respondent, Noticee No. 2, he had not introduced any *Karigar* to the respondent. The person who held the mobile number allegedly possessed by Subh also refused to support the case of the respondent. In which circumstance, the original authority found that the respondent failed to discharge the burden of proof under Section 123 of the Act.

23. The First Appellate Authority found that the entire case of the Department spins around the confessional statement

of the intercepted person. The First Appellate Authority found that the statement recorded under Section 108 was specifically stated to be under duress and there was a finding by the Original Authority that he had not retracted the statement; while, in fact, the statement was specifically retracted. It was found that Section 108 of the Act, though is substantive evidence, some corroboration has to be available before acting upon it, which can be the slightest corroboration. Having found the intercepted person to have retracted his statement and there being no corroboration, it was held to be incapable of any reliance. Reliance was placed also on the retracted statement of the person intercepted that he was, in fact, carrying valid documents, which were destroyed by the DRI official who intercepted and later on arrested him. The retracted statement was found to have absolutely no evidentiary value

24. It was found that M/s Saheli Gems & Jewelers Pvt. Ltd., a dealership owned by the Noticee No. 4, had produced relevant bills and stock register to clearly indicate the supply of the said gold bars and also substantiated the entire payments received by the seller. It was held that the Department had not gone beyond the door steps of the seller to reveal the source of the said gold bars, so as to dislodge or disprove the

claim of the owner about the purchase of the gold bars from another dealer. The authenticity and genuineness of the said transactions cannot be questioned merely on presumptions that the said gold bars with foreign markings were smuggled into India, especially when the statement under Section 108 was retracted and was not corroborated by any material evidence. It was also found that there was no attempt by the Department to trace out the whereabouts of Sonu and Chandan Malik, the former of whom was referred to, in the retracted statement, as the person who handed over the smuggled goods. There was no attempt made by the customs authorities to trace out the entire chain of the alleged smuggling of gold. The absence of description of the gold bars in the invoice produced to support the sale and purchase was held to be irrelevant in the libralised economy, post repeal of the Gold Control Act; which does not remain to be a legal requirement. The Tribunal accepted the findings of the First Appellate Authority.

25. We have already referred to the admitted position that the two gold bars recovered were sourced from abroad; which is undisputed. The possession of the person intercepted also is admitted and the ownership is said to be on the respondent in the present appeal. Section 123 (2) of the Act

specifically makes it applicable to gold and when gold is seized under the Act, as per sub-section (1) on a reasonable belief that it is smuggled, the burden of proof rests entirely on the person from whom the seizure was made or on such person who claims to be the owner.

26. We have found that the description of the gold bars itself indicate that it is imported. Further probe on the investigative exercise though inconsequential, since it has been faulted by the appellate authorities, we looked at the manner in which the investigation was proceeded with. The statement under Section 108 revealed that one Sonu of Kolkata had handed over the gold to the person intercepted, who also passed on the information that it was smuggled into the country from Bangladesh. Two mobile numbers were indicated to be that of Sonu, which on procurement of consumer application forms (CAF) was found to be belonging to one Shri Chandan Malik and Shri Sachin Gupta. Summons were issued to them and both denied any connection with the seizure, one by a communication directly from him and the other through an advocate. We notice these facts, only for completion, since we have already found that the statement under Section 108 insofar as the receipt of gold from Kolkata can be eschewed. However

the authority who seized the goods cannot be faulted for not having investigated the facts disclosed in the case.

27. Then we come to the '*Karigar Issue Slip*' raised as against one Sohan Verma @ Subh Karigar, which is available along with the relied upon documents, produced at Page 79 of the memorandum of appeal. The name of the *Karigar* is shown as 'Subh', in the said document dated 22.07.2017. The summons was issued on the *Karigar*, but the same was returned undelivered with the endorsement "the addressee moved". Again, a summons was issued and a response was received from an advocate that Shri Sohan Verma did not know the respondent herein. As per the statement of the respondent; one Shri Mukesh Ganatra introduced him to Sohan Verma, whose mobile number was also furnished by the respondent. The voluntary statements of Sohan Verma and Mukesh Ganatra recorded on 15.12.2017 clearly demolished the story set up by the respondent that he had issued a *Karigar Slip* and sent the gold bars through the person intercepted for the purpose of manufacturing ornaments. Sohan Verma specifically said that he does not know Mukesh Ganatra or the respondent or the person intercepted and that the person intercepted never called him over telephone. Mukesh Ganatra who was also carrying on the business of gold jewelry,

feigned ignorance about Subh Karigar @ Sohan Verma. He admitted to have known the respondent with whom he had no business relations and he denied that he introduced any person by name of Subh Karigar to the respondent.

28. We have also looked at the statements of the Noticee Nos. 2 to 4, as extracted in Annexure-A. Noticee No. 2, the respondent herein, was summoned thrice and the statements were recorded on 04.08.2017, 05.08.2017 and 18.08.2017. The respondent at the first instance, produced the photocopy of the invoice dated 21.07.2017 issued from Saheli Gems and Jewellers Pvt. Ltd. for purchase of 2 kilograms of gold bar valued at Rs.58,80,000/- along with stock details and sale and purchase invoices from January 2014 to January 2017. He also produced the original of the *Karigar Issue Slip* which was received and signed by the respondent and a faded copy of Letter No.2702/2017 in the letter-head of Sri Adinath Jewellers addressed to Shubh. Both the *Karigar* slip and letter addressed to Shubh are of no consequence since already it has been found that Shubh did not exist in the manner in which he was portrayed to be; as a *Karigar*.

29. The invoice produced was of 21.07.2017, before the interception and seizure of the gold bars, but there was

nothing produced to indicate payment of any amounts for the gold purchased at any time before the interception. There was an amount of Rs.5,50,000/- paid on 02.08.2017 through RTGS to Saheli Gems and Jewellers by the respondents. On 18.08.2017 when he gave a statement, the respondent had stated that the original copy of the invoice was with him and that he had not brought it by mistake. If the original copy of the invoice was with him, we wonder as to what was the document which was accompanying the goods as stated by Noticee No.1. Here, we have to observe that Noticee No.1 did not have a case in the retracted statement that the original invoice was with him. The vague statement was that there were documents which were destroyed by the officers, who intercepted him. Even Noticee No.2 does not say that he had given the original invoices to Noticee No.1, who was carrying the gold to Kolkata and back to Ranchi, as was the story set up by Noticee Nos.1 and 2.

30. Noticee No.3 was one of the Directors of Saheli Gems and Jewellers Pvt. Ltd. and so was Noticee No.4, who was the founder of Saheli Gems and Jewellers and the father of Noticee No.3. According to them, the payment for the seized gold was made in installments of Rs.5,50,000/- on 02.08.2017, Rs. 32,00,000/- on 28.08.2017 and Rs.11,00,000/- on

31.08.2017. The last two of such installments having been made after the three statements of Noticee No.2, the owner/respondent, was recorded by the DRI. Noticee No.3 deposed that he had delivered the goods at the shop premises of Sri Adinath Jewellers on 21.07.2017 along with his father. He produced two sets of bills books from one of which, 5 bills were issued between 01.05.2017 to 10.05.2017. Bill books from Serial No.1-6 pertains to gold sale between 01.04.2017 to 10.09.2017 and bill books from Serial No.1-9 pertains to bullion sale from 05.04.2017 to 20.08.2017. Hence, the sales were not made serially and there was absolutely no mode by which the genuineness of the sale invoice issued on 21.07.2017 of 2 kilograms of gold to Adinath Jewellers, could have been established as that issued on the date shown therein. Both Noticee Nos.3 and 4 informed the DRI officials that they were not well acquainted with Noticee No.2, but asserted that they had given 2 kilograms of gold on credit; highly suspicious.

31. The First Appellate Authority and the Tribunal had entirely relied on the invoice dated 21.07.2017 produced by Noticee No.2 to hold that the seized gold bars were purchased from Saheli Gems and Jewellers Pvt. Ltd. We cannot but hold that the reliance placed is wholly irrelevant since the two sets of

bill books produced requires further evidence to establish the transactions between Saheli Gems and Jewellers and Adinath Jewellers having occurred on the day it is said to have occurred; prior to the interception and seizure, especially since no payment was made for the purchase. Viewed in this context, it is pertinent that the invoice does not contain the description of the gold bar sold, thus, making it impossible to identify the gold sold, to be the very same gold recovered from the person of Noticee No.1. Then again, if the gold recovered, from its physical appearance itself did not disclose its source; probably the invoice would have had a semblance of evidentiary value, even if the payments were made after the seizure of the gold; which discounts the evidentiary value of the invoice and the genuineness of the transaction.

32. As is the present position, the invoice even if found to have established the transactions between Saheli Gems and Jewellers and Adinath Jewellers, it does not discharge the burden of proof insofar as the import having been done in accordance with the Customs Act. If Saheli Gems and Jewellers had imported it by a proper bill of entry filed and the same received from a notified entry point for the purpose of home consumption, then and only then would the burden of proof

under Section 123 be discharged and the goods seized from Noticee No.1 be absolved of the confiscation proceedings under the Customs Act. The falsity of the story projected by the owner of the gold bars, is one another circumstance standing against the claim raised by the owner and in favour of the confiscation proceedings.

33. The invoice dated 21.07.2017 cannot be accepted as genuine for the very many reasons pointed out by us. If the gold bars belonged to Noticee No.2 and he purchased it from Noticee No.s 3 & 4; as is the story put forth, then it was purchased without due caution. In that circumstance when the gold bars are seized under the Customs Act and proceedings for confiscation is initiated, it is for the purchaser; Adinath Jewellers, or the seller; Saheli Gems and Jewellers, to prove that the gold was validly imported into the country from abroad, in accordance with the provisions of the Customs Act. Whoever be the owner, the gold being one manufactured outside the country, if it is seized in the same form, the owner who raises a claim for release of the said gold should establish unequivocally before the Authority that it had been brought into India duly in accordance with the provisions of the Customs Act. This is the rigor placed on the person possessing or the owner of the seized

goods, by Section 123, which puts the burden of proof squarely on the person from whose possession or the owner who has entrusted the said gold to the person possessing it, to establish the source from which it has been received.

34. The appellate authorities have found the findings of the original authority, regarding the absence of proof of the transaction, including the movement of the goods to be bad, only by reason of the invoice produced. We have found that the invoice is not a document on which any reliance can be placed. Even if such reliance can be placed, in the present case, the gold bars; which demonstrably were manufactured and sourced from outside the country, should be proved to have been brought into the country in accordance with the provisions of the Customs Act. We cannot but answer the question of law in favor of the revenue-appellant and against the respondent, owner of the goods seized, especially finding the reasoning of the Tribunal and the First Appellate Authority to be based on irrelevant material and extraneous considerations, making the impugned orders perverse.

35. We set aside the orders of the Appellate Authorities and restore the orders of the original authority. We allow the appeal with costs computed at Rs. 5,000/- which can

be recovered from the respondent by the Revenue.

36. Interlocutory applications, if any, shall also stand closed.

(K. Vinod Chandran, CJ)

I agree.

Harish Kumar, J:

(Harish Kumar, J)

Sujit/Sharun

AFR/NAFR	AFR
CAV DATE	29.02.2024
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