

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, BANGALORE**

Appeal No. C/21918/2018-SM

**Arising out of Order-in-Appeal No. 315/2018, Dated:
07.09.2018**

**Passed by Commissioner of CUSTOMS, BANGALORE-I
(Appeals)**

**Date of Hearing: 25.03.2019
Date of Decision: 29.03.2019**

**M/s RAKHEEB ULLA BAIG
S/o SIRAL ULLA BAIG NO 114 5TH CROSS TEACHERS
COLONY KADIRENAHALLI CROSS BSK 2ND STAGE
BENGALURU KARNATAKA 560070**

Vs

**COMMISSIONER OF CUSTOMS BANGALORE-CUS
C.R. BUILDING, QUEENS ROAD, P.B.NO. 5400
BANGALORE KARNATAKA 560001**

**Appellant Rep by: M S Nagaraja, Adv.
Respondent Rep by: Mr Gopa Kumar, AR**

CORAM: P Dinesha, Member (J)

Cus - The assessee had taken up employment at Dubai, UAE during period April 2013 to July 2015 after finishing college - He had gone to Dubai for attending interviews in connection with his employment and on his return from Dubai on 03.10.2016 at Bangalore Airport, removed and handed over the gold chain weighing about 100 gms, which he was wearing, and two Gold Biscuits weighing 233.28 gms for examination - A SCN was issued to assessee - The Additional Commissioner of Customs, Bangalore passed the order confirming confiscation of Gold Chain

and 2 Gold Biscuits seized under Mahazar under Section 111(d),(i),(1) and (m) of Customs Act, 1962 and imposing penalty under Section 112(a) and under Section 114AA of Customs Act, 1962 - The fact that the impugned goods were seized from assessee is not dispute nor is there any denial with regard to the Gold Biscuits concealed inside his socks - The contentions of assessee that the Mahazar drawn is not beyond suspicion deserves credit because, there appears to be some serious mis-match with regard to the dates - In this case, Mahazar is the only piece of evidence placed on record and relied on by the Revenue - A perusal of the Mahazar makes it clear that is has recorded what transpired on the eventful day of 03.10.2018 at the Airport upon the arrival of the assessee - The Mahazar dated 03.10.216 has also been signed by witnesses on 03.10.2016 wherein it refers to valuation certificate dated 04.06.2016, i.e, the next day - With this discrepancy, the evidentiary value of the Mahazar cannot therefore be sustained - The assessee is only questioning the validity of SCN on the ground that the same is in violation of Section 110(2) of the Act - The Notice here in this case has gone to the assessee on 04.09.2017, just after the expiry of six months from the date of seizure Mahazar - Further, admittedly, there is no allegation by Revenue that the service of notice in question is for the reasons attributable to the assessee - The time-limit of six months has also been reiterated, even by the CBEC, vide Circular No. 7/2013-Cus - The impugned order is not sustainable for which reason the same is set aside - Assessee pleads that release of the impugned items may be directed to be released on the payment of applicable Customs Duties - Accordingly, Revenue may release the impugned items after collecting the applicable Customs Duty with regard to the penalty under Section 112A, since the appeal is being allowed on the technical ground, Tribunal do not propose to interfere and the same is therefore sustained: CESTAT

Appeal partly allowed

Case laws cited:

CCE, Surat-I v. Vakharia Dyg & Furnishing Works, 2010 (259) ELT 120 (Tri.-Ahmd.)... Para 3

Vinod Solanki v. UOI - 2009-TIOL-01-SC-FEMA... Para 3

K I Pavunny v. Asst. Collector (HQ) C.Ex Collectorate, Cochin - 2002-TIOL-739-SC-CUS-LB... Para 3

Purushottam Jajodia v. DRI, New Delhi - 2014-TIOL-1303-HC-DEL-CUS ... Para 3

Shiv Shakti Trading Co. v. CC (Preventive), 2016 (336) ELT 837 (Del.)... Para 3

Iqbal Hussain v. UOI - 2017-TIOL-502-HC-DEL-CUS... Para 3

Collector of Customs v. Jayant Oil Mills, 1989 (41) ELT 111 (Tri.)... Para 3

Prem Nath Khanna v. CCE, Allahabad & Others, 1987 (29) ELT 9 (All.)... Para 3

UOI v. Kanti Tarafdar, 1997 (91) ELT 51 (Cal.)... Para 4

Rajesh Kumar Jain v. UOI, 1999 (113) ELT 57 (Cal.)... Para 4

CCE Indore, v. Ram Kumar Aggrawal, 2012 (280) ELT 13 (M.P.)... Para 4

I.J. Rao, Assistant Collector of Customs v. Bibhuti Bhusan Bagh, 1989 (42) ELT 338 (SC)... Para 6

FINAL ORDER NO. 20300/2019

Per: P Dinesha:

Heard Mr. M.S. Nagaraj, Learned Counsel for the appellants and Mr. Gopa Kumar, learned AR for the Revenue.

2. Learned Counsel for the appellants points out that the appellant, Shri Rakeeb Ulla Baig, had taken up employment at Dubai, UAE during the period from April 2013 to July 2015 after finishing college. The appellant had gone to Dubai on 29.09.2016 for attending interviews in connection with his employment. On his return from Dubai on 03.10.2016 at Bangalore Airport, on completion of immigration formalities, the Customs Officers took him aside and asked him to take out gold chain which he was wearing and also asked him to handover any gold that he may be carrying. The appellant removed and handed over the gold chain weighing about 100 gms, which he was wearing, and two Gold Biscuits weighing 233.28 gms (each weighing 116.64 gms) for examination. The Customs Officers issued Customs Receipt No. 1660 dated 04.10.2016 for taking possession of the same. The Customs Officers obtained the appellant's signature on a few documents. Thereafter, the Additional Commissioner of Customs, ACC, Bangalore issued SCN dated 21.03.2017. The appellants submitted reply dated 16.05.2017 to the notice and also appeared for personal hearing. The Additional Commissioner of Customs, Bangalore passed Order-in-Original No. 43/2017-18 (AP-ADM) dated 01.01.2018 confirming confiscation of Gold Chain and 2 Gold Biscuits totally weighing 333.280 gms of 24 Karat/99.9% purity gold value @ Rs.10,45,833/- seized under Mahazar dated 03.10.2016 under Section 111(d),(i),(1) and (m) of the Customs Act, 1962 and imposing penalty of Rs.3,50,000/- under Section 112(a) and Rs.2,50,000/- under Section 114AA of the Customs Act, 1962. On Appeal, the Commissioner of Customs (Appeals), Bangalore has set aside the penalty of Rs.2,50,000/- imposed under Section 114AA of the

Customs Act, 1962 and confirmed the confiscation of the goods and penalty of Rs.3,50,000/- imposed under Section 112(a) of the Customs Act, 1962. Hence this appeal.

3. Learned Counsel relied upon the following cases:

- *CCE, Surat-I v. Vakharia Dyg & Furnishing Works, 2010 (259) ELT 120 (Tri.-Ahmd.)*.

- *Vinod Solanki v. UOI, 2009 (233) ELT 157 (SC) = 2009-TIOL-01-SC-FEMA*.

- *K I Pavunny v. Asst. Collector (HQ) C.Ex Collectorate, Cochin, 1997 (90) ELT 241 (SC) = 2002-TIOL-739-SC-CUS-LB*.

- *Purushottam Jajodia v. DRI, New Delhi, 2014 (307) ELT 837 (Del.) = 2014-TIOL-1303-HC-DEL-CUS*.

- *Shiv Shakti Trading Co. v. CC (Preventive), 2016 (336) ELT 837 (Del.)*.

- *Iqbal Hussain v. UOI, 2017 (351) ELT 145 (Del.) = 2017-TIOL-502-HC-DEL-CUS*.

- *Collector of Customs v. Jayant Oil Mills, 1989 (41) ELT 111 (Tri.)*

- *Prem Nath Khanna v. CCE, Allahabad & Others, 1987 (29) ELT 9 (All.) maintained in 1999 (108) ELT A123 (SC)*.

4. Per Contra Learned AR Mr. Gopa Kumar has supported the findings of lower authorities and he also relied upon the following decisions to the effect that it is sufficient if the notice in question is issued within six months and it is not necessary that the delivery of the same should take place within six months.

- *UOI v. Kanti Tarafdar, 1997 (91) ELT 51 (Cal.)*

- *Rajesh Kumar Jain v. UOI, 1999 (113) ELT 57 (Cal.)*.

- CCE Indore, v. Ram Kumar Aggrawal, 2012 (280) ELT 13 (M.P.)

5. I have considered the contentions, gone through the orders as well as the documents placed on record and have also gone through the various decisions/orders referred to during the course of arguments. The fact that the impugned goods were seized from the person of the appellant is not dispute nor is there any denial with regard to the Gold Biscuits concealed inside his socks. The contentions of the Learned Counsel that the Mahazar drawn is not beyond suspicion deserves credit because, there appears to be some serious mis-match with regard to the dates. In this case, Mahazar is the only piece of evidence placed on record and relied on by the Revenue. A perusal of the Mahazar makes it clear that is has recorded what transpired on the eventful day of 03.10.2018 at the Airport upon the arrival of the appellant. There are two witnesses already assembled at the arrival hall, at 19:15 Hrs; but it is not clear if they were also the other passengers are outsiders. In their presence, the said Mahazar is drawn, they witness the appellant identifying his bag/baggage, its screening through the screening machine and then the body search of the appellant at Air Intelligence Unit Room situated near arrival hall. The gold chain allegedly concealed in the neck area and two Gold Biscuits allegedly hidden in his both socks were found and the same were weighed with the help of electronic weighing scale available in the customs arrival hall; they also witness one Mr. C.N. Badrinath being requested for valuation, who heeds to the request and weighs the above items there only and informs that as on 04.10.2016, the rate per gram was Rs.3138/-, assess the value of the above items at Rs.10,45,833/-; he also submits a certificate dated 04.10.2016, etc. I find that the above Mahazar dated 03.10.216 has also been signed by the witnesses on 03.10.2016 wherein it refers to valuation certificate dated

04.06.2016, i.e, the next day. With this discrepancy, the evidentiary value of the Mahazar cannot therefore be sustained.

6. Be that as it may, on a perusal of the documents, I find that the appellant is only questioning the validity of SCN on the ground that the same is in violation of Section 110(2) of the Act. Further, in this connection, Advocate also relied upon the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of *I.J. Rao, Assistant Collector of Customs v. Bibhuti Bhusan Bagh, 1989 (42) ELT 338 (SC)* wherein, with regard to the time-limit of six months, the Hon'ble Court has observed and held as under:

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"There can be no right in any person to be informed midway; during an investigation, of the material collected in the case against him. Consequently, while notice may be necessary to such person to show why time should not be extended he is not entitled to information as to the investigation which is in process. In such circumstances, the right of a person, from whose possession the goods have been seized, to notice of the proposed extension must be conceded, but the opportunity open to him on such notice cannot extend to information concerning the nature and course of the investigation. In that sense, the opportunity which the law can contemplate upon notice to him of the application for extension must be limited by the pragmatic necessities of the case. If these considerations are kept in mind, we have no doubt that notice must issue to the person from whose possession the goods have been seized of the proposal to extend the period of six months.

In the normal course, notice must go to such person before the expiry of the original period of six months. It is true that the further period of six months contemplated as the maximum period of extension is a short period, but Parliament has contemplated an original period of six months only and when it has fixed upon such period it must be assumed to have taken into consideration that the further detention of the goods can produce damage or injury or hardship to the person from whose possession the goods are seized.

14. We have said that notice must go to the person, from whose possession the goods have been seized, before the expiry of the original period of six months. It is possible that while notice is issued before the expiry of that period, service of such notice may not be affected on the person concerned in sufficient time to enable the Collector to make the order of extension before that period expires."

7. The Notice here in this case has gone to the assessee on 04.09.2017, just after the expiry of six months from the date of seizure Mahazar. The Hon'ble Apex Court in the above referred case has emphasized that the notice must go to the person before the expiry of six months which, is not the case here. Further, admittedly, there is no allegation by the Revenue that the service of the notice in question is for the reasons attributable to the assessee. I also find that the time-limit of six months has also been reiterated, even by the CBEC, vide Circular No. **7/2013-Cus. Dated 19.02.2013.**

8. In view of the above and on the basis of the binding decision of Constitution Bench (supra), I have to hold that the impugned order is not sustainable for which reason the same is set aside and the appeal is allowed. Learned Advocate, however, pleads that release of the impugned items may be directed to be released on the payment of

applicable Customs Duties. Accordingly, Revenue may release the impugned items after collecting the applicable Customs Duty, etc. With regard to the penalty under Section 112A, since the appeal is being allowed on the technical ground, I do not propose to interfere and the same is therefore sustained. Appeal is partly allowed.

(Order was pronounced in Open Court on 29.03.2019)