

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 52125 of 2022 [SM]

[Arising out of Order-in-Appeal No. CCA/CUS/D-I/Air/14-16/2022-23 dated 28.04.2022 passed by the Commissioner of Customs (Appeals), New Delhi]

Gurpreet Singh Alias Sonu

...Appellant

M/s. Jyoti Money Exchange (P) Ltd.
K-11 & K-12, Palika Parking,
Connaught Place, New Delhi - 110001

VERSUS

**Commissioner of Customs (Appeals),
New Delhi**

...Respondent

New Customs House,
Near IGI Airport,
New Delhi - 110037

APPEARANCE:

Ms. Harsimran Kaur and Ms. Prabjyoti K. Chadha, Advocates for the Appellant
Shri Rohit Issar, Authorized Representative for the Respondent

CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 10.04.2024
DATE OF DECISION: **02.08.2024**

FINAL ORDER No. 56218/2024

DR. RACHNA GUPTA

The present appeal has been filed to assail the Order-in-Appeal No. 14-16/2022-23 dated 28.04.2022 vide which the three appeals filed by Shri Suneet Kalra s/o Rajinder Kalra, Shri Rajinder Kalra s/o Shri Ramanand Kalra and Shri Gurpreet Singh Alias Sonu (the present appellant) have been decided holding the present appellant/appellant no. 3 therein to liable to penal action and thus upholding the penalty imposed upon the appellants. The factual matrix in brief relevant for the present purpose is as follows:

1.1 Shri Suneet Kalra and Shri Rajinder Kalra were intercepted on 30.08.2017 at exit gate of Terminal-3, IGI Airport, New Delhi when

they arrived New Delhi from Dubai. They were intercepted when they had already crossed the customs green channel and were diverted for detailed examination. From their personal search was recovered yellow metal in the shape of buckle of belt, kada and chain weighing 1700 gms. The jewellery appraiser had confirmed the said metal to be gold of 995 purity to be valued at Rs.46,29,560/-. Hence, the same was seized under Section 110 of Customs Act, 1962. Both of them could not provide any documentary evidence for purchase of impugned gold. However, the gold recovered was admitted vide their voluntary statement dated 30.08.2017, to have been purchased jointly for 244000 UAE Dhiraams which they carried with them at the time of departure from Delhi to Dubai. They stated said foreign currency to have been purchased from M/s. Jyoti Money Exchange (P) Ltd against cash (INR). Shri Sonu was mentioned to be the owner of the same having Contact No. 9716129847. No purchase invoice for foreign currency was produced by both, the father and son duo. Based on the said statement search was conducted in the office premises of M/s. Jyoti Money Exchange (P) Ltd, Palika Parking, Connaught Place also on 30.08.2017 itself. Foreign exchange/INR equivalent to Rs.16,11,666/- was detained vide Panchanama of the said date. The statement of Shri Gurpreet Singh alias Sonu was also got recorded who denied ever meeting to Shri Suneet Kalra and Shri Rajinder Kalra. However, from the call records obtained from the respective mobile network operator i.e. Airtel it got revealed that Shri Gurpreet Singh/the appellant herein was communicating with Shri Suneet Kalra multiple times. Specifically on 26.08.2017 and

29.08.2017 the dates when Shri Suneet Kalra departed from India. He and Shri Rajinder Kalra both since had admitted to have illegally imported gold which was purchased against the foreign currency procured from Shri Gurpreet Singh of M/s. Jyoti Money Exchange (P) Ltd. that show cause notice was served upon the present appellant along with Shri Suneet Kalra and Rajinder Kalra alleging that foreign currency equivalent to Indian Rupee (INR) Rs.4135800 has illegally been sold by the appellant on 29.08.2017 and for currency equivalent to Rs.40,84,907/- has illegally been sold on 26.08.2017 by the appellant to Shri Suneet Kalra. The said money since had already been utilized was not available for confiscation however the foreign currency equivalent of Rs.16,11,666/- which was detained vide Panchnama dated 30.08.2017 was proposed to be seized and confiscated under Section 113 of Customs Act, 1962 and penalty under Section 114, 114AA, 117 of Customs Act, 1962 read with Section 13 of FEMA Act, 1962 was proposed to be imposed upon the appellant vide Show Cause Notice No. 5453 dated 22.02.208. The said proposal was initially confirmed by the original adjudicating authority as far as the imposition of penalty under the aforesaid provisions is concerned. However, the currency detained from the office premises of the appellant equivalent to INR 1611666/- was ordered to be released. The said order has been confirmed by Commissioner (Appeals) vide the order under challenge. Being aggrieved the appellant is before this Tribunal.

2. I have heard Ms. Harsimran Kaur and Ms. Prabjyoti K. Chadha, learned Advocates for the appellant and Shri Rohit Issar, learned Authorized Representative for the department.

3. Learned counsel for the appellant has submitted that appellant is duly authorized 'money exchange dealer' running the shop in the name and sale of M/s. Jyoti Money Exchange (P) Ltd., Palika Parking, Connaught Place. Though appellant sold foreign currency to Shri Suneet Kalra and Shri Rajinder Kalra, however has denied its collusion with both of them in illegal import of foreign currency. The penalty under several provisions of Customs Act and under Section 13 of FEMA Act is wrongly been imposed. It is submitted that penalty under Section 114AA can be imposed only in case a person is an importer or an exporter, and in the present case, the appellant is neither an importer or the exporter, and also the major ingredients to be fulfilled for imposition of penalty under Section 114 AA is knowledge and intention, and in the present case there is no evidence brought on record which suggests that, the appellant had knowledge or the intention to smuggle foreign currency or gold into or out of the country.

3.1 It is submitted that, the statements of the Co-Noticees duly state that, the foreign exchange was purchased by them from the appellant on payment of the consideration of Rs.17.80 per UAE Dhiram, and there is nothing in the statements which suggest that, anything extra or more was paid to the appellant for the purchase of the foreign currency; also the notice 1 and 2 have duly stated that the gold was smuggled after they heard about the quick profit in sale of gold, so Noticee No. 1 and 2 thought of themselves buying gold and bringing the gold to India without payment of customs duty. They also stated that, the gold was purchased from the saving and the profits they earned from their work. Despite

this there is nothing on record to prove that appellant at all was the beneficiary of the gold imported illegally by both of them. Learned counsel has relied upon the following decisions:

(i) Ingram Micro India Pvt. Ltd. Vs. Commissioner of Customs vide Order No. 51067/2019 dated 08.04.2019 – CESTAT NEW DELHI

(ii) Reported as 2019 (369) ELT 1683 (GOI) In RE: Jitender Singh

(iii) Commissioner of Customs Vs. M/s. Trinetra Impex Pvt. Ltd. passed by the Hon'ble Delhi High Court vide Order No. CUSAA 195/2019, CM APPL 30592/2019 dated 11.10.2019.

Accordingly, the order under challenge therefore prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative has stated that as regards to contention of the appellant that penalty imposed upon him not sustainable as the adjudicating authority had released the currency recovered from his premises unconditionally, it is submitted that penalty on appellant is not related to said released foreign currency recovered from his premises on 30.08.2017 (the currency had been released, later on, when the appellant submitted the documents in relation to legal possession for the currency); rather, it is related to that foreign currency which was provided by him to both of them who smuggled the same out of India to buy gold which was smuggled back into India. Both Shri Suneet Kalra and Shri Rajinder Kalra had categorically admitted to have purchased foreign currency from the

appellant in cash, without legal documents. These statements have not been retracted till date.

4.1 The appellant in his voluntary statement dated 30.08.2017 tendered before Air Customs Superintendent (Preventive) u/s 108 of Customs Act accepted that no daily register regarding purchase and sale of foreign currency is maintained in his office. On scrutiny of call records it was observed that Shri Suneet Kalra and the appellant had been in touch and had communicated with each other on 26.08.2017 and thereafter on 29.08.2017. Hence, it is evident that contrary to the statement of the appellant, he well knew Shri Suneet Kalra and had talked with him multiple times. Thus, the appellant Shri Gurpreet Singh has acted in connivance with Shri Suneet Kalra as much as for illegally selling him 244000 UAE Dharams on 29.08.2017 which was used for purchase of the said recovered 1700 gms of gold on 30.08.2017 and foreign currency equivalent of Rs.40,84,907/- on 26.08.2017 which was used for purchase of 1500 gms of gold cleared on 27.08.2017. Impressing upon no infirmity in the order, the appeal is prayed to be dismissed.

5. Having heard the rival contentions and perusing the records, I observe and hold as follows:

5.1 It is observed that Shri Suneet Kalra and Shri Rajinder Kalra have been held to have illegally imported gold into India from Dubai without payment of duty but having full knowledge and intention of committing the alleged act. Both of them have also been held to have illegally exported foreign currency of UAE Dharams valuing INR 244000. There is a voluntary admission of both Shri Suneet Kalra

and Shri Rajinder Kalra for these acts. Both of them have also been held to have violated the provisions of Foreign Exchange Management (possession and retention of foreign currency) Regulations, 2015. The order in question has also not been challenged by either of them. With respect to the present appellant, the allegations are that the said illegally exported currency and also got exchanged INR from the present appellant who is also been alleged of conniving with Shri Suneet Kalra and Shri Rajinder kalra in the act of illegally exporting the foreign currency and illegally importing the gold solely on the basis of call records of the mobile numbers of three of them that appellant had communicated with Shri Suneet Kalra on 26th August and 27th August when Shri Suneet Kalra had departed from India. Commissioner (Appeals) has confirmed the imposition of penalty upon him on the ground of admission by Shri Suneet Kalra and Shri Rajinder Kalra to have purchased currency from the present appellant in cash without legal documents. To my understanding this only evidence against the present appellant i.e. the call records and the voluntary statements of admission of Shri Suneet Kalra and Rajinder Kalra is highly insufficient to prove the alleged connivance of the appellant with both of them in illegal export of currency and illegal import of gold. There is no denial that the appellant is a licensed money exchanger i.e. he is authorized to exchange currencies pertaining to different countries into various respective denominations. Resultantly, it is clear that he was authorized to exchange. INR into UAE Dhiraams though he has exchanged the money without any legal document admittedly no invoice was issued but this admission proves violation

of conditions of his license or the respective regulations and the directions of RBI, if any. In no circumstance the act of the licensed money exchanger to exchange the money but without issuing an invoice cannot, from any stretch of imagination, be called as an act of illegal export or illegal import. The call detail record shows that Shri Suneet Kalra had called the appellant on 26.08.2017 and 29.08.2017. From the statement of Shri Suneet Kalra as recorded on 30.08.2017 it is clear that they purchased UAE Dhiraams from the appellant at the time when they were about to leave for Dubai to bring back the gold. Mobile number of appellant was provided by Shri Suneet Kalra and Shri Rajinder Kalra only, thus, the call record relied upon by the appellant proves nothing beyond the fact that Shri Suneet Kalra and Shri Rajinder Kalra had communicated with the appellant to get Indian currency with them to be exchanged into Dhiraams. The Indian Currency is stated to be in cash which definitely could be a reason with both them to resist for getting an invoice. Though appellant was required by law to not to receive cash and to issue an invoice while exchanging the money but this failure on part of appellant cannot prove him to be a conspirator of act of illegal exports/imports.

5.2 I further observe that appellant premises were also search and nothing incriminating which may suggests his involvement/indulgence in any kind of illegal exports or imports. In fact, the original adjudicating authority has refrained itself from ordering confiscation of money as was detained from the appellant premises at the time of search. I also observe that there is no finding discussed by the adjudicating authorities below while

imposing penalty on the appellant under Section 114, Section 114 AA and Section 117 of the Customs Act, 1962. Under Section 114 penalty is to be imposed for attempts to export goods improperly. In the light of entire above discussion it has already been observed that the role of appellant is confined only to exchanging money though without issuing an invoice. The said act cannot be an act of attempting improper export of goods. Penalty under Section 114AA is to be imposed for use of false and incorrect material but I do not find anything on record as to what false or incorrect material is found being used by the appellant. There is not even an allegation for the same in the show cause notice. Penalties under Section 117 of Customs Act are to be imposed for contravention etc. which are not expressly mentioned. But the provision makes it clear that the contravention has to be vis-à-vis the provisions of the impugned act the abatement for any such contravention or on account of failure to comply with the provisions but of the Customs Act to which there is no penalty elsewhere is provided in the act. The above discussion is clear enough to hold that appellant has not contravened any provision of the Customs Act nor has failed to comply therewith. Hence I hold that the penalties under three of the sections have wrongly been imposed on appellant no. 3.

5.3 Otherwise also, the order under challenge is absolutely silent about specifically mentioning the reason for imposing penalty under each respective section. The order confirming imposition of penalty upon appellant is therefore liable to be set aside. Similarly, the penalty under Section 13 of FEMA Act confined under discussion in the order under challenge. The said penalty is also liable to be set

aside. With these observations, were hereby set aside the order under challenge. Consequent thereto the appeal is hereby allowed.

[Order pronounced in the open court on **02.08.2024**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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