

A COMMISSIONER OF CUSTOMS AND ORS.  
v.  
VASANT MAGALAN CHOKSHI AND ORS.

NOVEMBER 7, 2006

B [DR. AR. LAKSHMANAN AND ALTAMAS KABIR, JJ.]

*Customs Act; Ss. 111(d) and 112(a):*

C *Seizure of gold bars by Revenue authorities—Show Cause Notice—Commissioner directing confiscation of the gold bars—Challenge to—Tribunal remanding the matter for de novo adjudication by the Commissioner—Commissioner directed confiscation of 8 gold bars only as 70 out of 78 gold bars were received from genuine sources—Appeals and cross-appeals—Tribunal set aside order of confiscation as there was no evidence of illegal import of the gold bars in question—Challenge to—High Court directing release of all the gold bars so confiscated by Revenue—In view of the order of High Court, Tribunal dismissed the pending appeals of Revenue—On appeal, Held: Revenue failed to point out to the Tribunal about pendency of appeals preferred by them at appropriate time—Hence, setting aside orders of the Courts below would amount to giving premium to the negligence of the Revenue, especially, when the Revenue and the Courts below, all held in favour of noticees.*

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**Customs Authorities conducted raid and seized 78 bars of gold from respondents as imported clandestinely. Later, Commissioner of Customs ordered confiscation of the seized gold bars. The order was challenged before the Tribunal. The Tribunal set aside the order of confiscation passed by the Commissioner and remanded the matter to the Commissioner for de novo adjudication. The Commissioner held that out of the 78 gold bars, 70 bars had been received from genuine sources, but as far as the remaining 8 bars of gold were concerned, the legality of their import had not been properly explained. It directed confiscation of 8 gold bars only. Appeals and cross-appeals were filed by the parties.**

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**In the appeals filed by the noticees, the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) set aside the order of confiscation on the**

ground that the gold bars in question did not bear any foreign mark and that there was no evidence that the same had been illegally imported. The order was challenged by the Revenue. The noticees also filed a Writ Petition before the High Court praying for release of the gold bars. The High Court directed to release all the gold bars. After the directions of the High Court for release of the gold bars, the appeals filed by the Revenue came up for final hearing and disposal before the Tribunal. Tribunal dismissed the appeals filed by the Revenue. Hence the present special leave petitions. A  
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Revenue contended that the Tribunal had committed a grave error in disposing of the appeals filed by the noticees without disposing of the appeals filed by them at the same time; that the appeals filed by them had been rendered infructuous since the same had not been taken up along with the appeals preferred by the noticees; that the said fact had been brought to the notice of the High Court but the High Court had held that it was no longer possible to entertain such a plea since the facts about pendency of the appeals had not been brought to the notice of the Tribunal when the appeals filed by the noticees were disposed of; and that in the interest of justice the orders passed by the Tribunal in appeals preferred by the noticees were required to be set aside; and that the Tribunal should be directed to dispose of all the appeals by taking them together. C  
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Respondents submitted that since the petitioner had failed in its duty in pointing out the fact that the Revenue's appeal was pending when the Tribunal took the assessee's appeal for hearing, it was no longer open to the petitioner to turn round and to point a finger at the Tribunal in these circumstances. E

#### Dismissing the petitions, the Court

HELD: Revenue had failed to point out to the Tribunal that the appeals preferred by them were also pending. Under the circumstances, setting aside the decision of the Tribunal, as also of the High Court, in order to accommodate the Revenue would unsettle matters which have already been settled and would amount to giving premium to the negligence of the Revenue especially when the Commissioner of Customs, CESTAT and the High Court had all held in favour of the noticees and have directed return of all the 78 bars of gold to them. More than 8 years have passed since the gold bars were seized and there can be no justification for the matter to be dragged on further on account of the laches of the Revenue. Hence, the Revenue is directed to forthwith release all the 78 gold bars in question to the respondents. F  
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A CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 15872-15873 of 2006.

From the Judgment and Order dated 24.6.2005 of the High Court of Gujarat at Ahmedabad in S.C.A. No. 7342 of 2005 and Order dated 7.7.2005 in Misc. Civil Appln. No. 1214 of 2005 in S.C.A. No. 7342 of 2005.

B K. Radhakrishnan, Shalini Kumar, T.A. Khan, A. Patnaik and B. Krishna Prasad, for the Appellants.

Devan Parikh, Pragya Baghel, Nandini Gore and Manik Karanjawala, for the Respondents.

C The Judgment of the Court was delivered by

D **ALTAMAS KABIR, J.** All these special leave petitions have been filed by the Commissioner of Customs, Navrangpura, Ahmedabad. Since all the special leave petitions arise out of the same set of facts, they have been taken up together for consideration.

E On the presumption that 78 bars of gold had been clandestinely imported, the Revenue Department seized the same on 16th January, 1998, and issued show cause notices to the concerned parties as to why the said 78 gold bars, said to be of foreign origin, should not be confiscated under Section 111(d) of the Customs Act and also why personal penalty should not be imposed under Section 112 (a) of the said Act. Initially, the Commissioner of Customs, by his Order dated 10th November, 2000, ordered confiscation of the seized gold bars. The said order was challenged before the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) which by its Order dated 23rd August, 2001 set aside the order of confiscation passed by the Commissioner on 10th November, 2000, and remanded the matter to the Commissioner for denovo adjudication after giving the noticees a reasonable opportunity of being heard.

F In remand, the Commissioner by his Order 23rd January, 2003, came to the conclusion that out of the 78 gold bars, 70 bars had been received from genuine sources, but as far as the remaining 8 bars of gold were concerned, the legality of their import had not been properly explained. Consequently, the Commissioner directed confiscation of 8 of the 78 gold bars which had been seized.

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Separate appeals were filed against the Commissioner's Order dated 23rd January, 2003. While the noticees filed the appeals against the aforesaid order passed by the Commissioner on 23rd January, 2003, directing confiscation of the 8 bars of gold, the Department challenged the said order directing release of the 70 bars of gold. The appeals filed by the notices were heard by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) which by its order dated 30th June, 2004, held that the 8 bars of gold which had been directed to be confiscated did not bear any foreign mark and that there was no evidence that the same had been illegally imported. The appeals filed by the noticees were accordingly allowed and the order of confiscation was set aside.

The aforesaid order of CESTAT dated 30th June, 2004, was challenged by the Department by way of a Writ Petition, being S.C.A. No. 13519/2005. The noticees also filed a Writ Petition, being S.C.A. No. 7342/2005, before the Gujarat High Court at Ahmedbad, *inter alia*, praying for release of the 78 bars of gold. By its Orders dated 24th June, 2005, 2005 and 7th July, 2005, the High Court directed the petitioners and their authorities to release to the noticees all the 78 bars of gold.

After the High Court had directed the release of the 78 bars of gold, the appeals filed by the Department came up for final hearing and disposal before CESTAT on 21st's July, 2005. Holding that no relief could be granted since the High Court had already directed release of the 78 bars of gold, the Tribunal dismissed the appeals filed by the Department.

All these special leave petitions arise out of the different orders passed by the High Court as well as CESTAT.

Special Leave petition (C) Nos. 15872-15873/2005 have been filed against the judgment and order dated 24th June, 2005 and 7th July, 2005 passed by the Gujarat High Court on the Writ Application filed by the notices directing release of the 78 gold bars.

Special Leave Petition (C) No. 16621 - 16632/2005 have been filed against the order passed by the Customs, Excise & Service Tax Appellate Tribunal at Mumbai on 21st July, 2005. The last of the three special leave petitions, being No. 16635/2005, has been filed against the judgment and order passed by the Gujarat High Court at Ahmedabad on 7th July, 2005.

Mr. Radhakrishnan, learned senior advocate, appearing for the

A petitioners, urged that the Tribunal had committed a grave error in taking up and disposing of the appeals filed by the noticees without at the same time the appeals filed by the noticees without at the same time disposing of the appeals filed by the Department. It was submitted that inasmuch as the appeals filed by the noticees had been heard independently and direction had already been given to release the 78 bars of gold, which order was subsequently confirmed by the Gujarat High Court, there was no scope of passing any other order in the appeals preferred by the Department. Mr. Radhakrishnan submitted that the appeals filed by the Department had been rendered infructuous since the same had not been taken up along with the appeals preferred by the noticees. It was urged that the said fact had been brought to the notice of the High Court but the High Court had held that it was no longer possible to entertain such a plea since the pendency of the appeals filed by the Department had not been brought to the notice of the Tribunal when the appeals filed by the noticees were disposed of.

D Mr. Radhakrishnan urged that in the interest of justice the orders passed by the Tribunal in appeals preferred by the noticees were required to be set aside and the Tribunal should be directed to take up all the appeals, including the appeals filed by the Department, together, for disposal.

E The aforesaid submissions were vehemently opposed on behalf of the noticees and it was pointed out that the High Court had dealt with this question in its order dated 7th July, 2005 passed in S.C.A. No. 13519/2005 and had held that it was not possible for the Tribunal on its own to link up two cross appeals unless the said fact was brought to the notice of the Tribunal by the concerned party. It was also observed that since the petitioner had failed in its duty in pointing out the fact that the Department's appeals was pending when the Tribunal took the assessee's appeal for hearing, it was no longer open to the petitioner to turn round and to point a finger at the Tribunal in these circumstances.

G While we are able to appreciate the anxiety now being shown by the Department, we are unable to accept Mr. Radhakrishnan's submission that the decision of the Tribunal, as also of the High Court, should be set aside in order to accommodate the Department which had failed to point out to the Tribunal that the appeals preferred by the Department were also pending. Such an order would unsettle matters which have already been settled and would amount to giving premium to the negligence of the Department especially when the Commissioner of Customs, CESTAT and the High Court had all held

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in favour of the noticees and have directed return of all the 78 bars of gold to them. More than 8 years have passed since the gold bars were seized and there can be no justification for the matter to be dragged on further on account of the laches of the Department. A

There is no special feature in this case which warrants any interference with the orders passed by the Tribunal and the High Court and the special leave petitions are accordingly dismissed. The Department is directed to forthwith release all the 78 gold bars in question to the concerned respondent. B

S.K.S.

S.L.Ps. dismissed.