

Mens rea is an important ingredient for imposing penalty - CESTAT

24 August 2022



Summary

The Customs Excise and Service Tax Appellate Tribunal (CESTAT) Ahmedabad observed that the department had imposed a penalty on the appellant merely on the ground of the statement of parties involved in smuggling gold. The evidence on record was not sufficient to hold that the appellant was involved in the alleged activity of smuggling. It is a well-settled law that the statements of the co-noticee cannot be adopted as legal evidence to penalise the accused unless the same is corroborated in material particulars by independent evidence. The evidence brought out by the department nowhere suggests that the appellant was aware that the goods in question were smuggled into India. In absence of any finding that the appellant has dealt with the goods physically, a penalty under the customs law for improper importation of goods cannot be imposed on the appellant.

Facts of the case

- The officers of Airport Intelligence Unit found out from the evidence gathered that the appellant¹ had financed a smuggling racket, which was involved in smuggling gold into India from Dubai. Based on the evidence, a show cause notice (SCN) was issued to the appellant alleging that he was knowingly involved in the smuggling of goods and therefore, imposed penalty² on the appellant.
- The penalty was confirmed by the adjudicating authority. Therefore, the appellant preferred present appeal before the CESTAT Ahmedabad³.

Ahmedabad CESTAT observations and ruling⁴

- **Conditions must be satisfied to impose the penalty:** The CESTAT stated that for imposition of penalty under the customs law⁵, the person must have acquired possession of the goods and must have a reason to believe or

have knowledge that such goods are liable for confiscation⁶.

- **Statements of co-noticee are not corroborated:** The department did not take any steps to confirm regarding the knowledge and involvement of the appellant with the co-noticee. The evidence on record was not sufficient to hold that the appellant was involved in alleged activity of smuggling gold. It is a well-settled law that the statements of the co-noticee couldn't be adopted as legal evidence to penalise the accused unless the same are corroborated in material particulars by independent evidence. Further, the CESTAT stated that statements of parties involved in such smuggling remain uncorroborated during the investigation.
- **Without cross-examination evidence cannot be admissible:** The statement of co-accused cannot be relied upon, particularly when the appellant has denied his involvement in respect of the goods in question. For

¹ Lalit Jain

² Section 112(b)(i) of the Customs Act 1962

³ Customs Appeal No. 10061 of 2022

⁴ order dated 12 August 2022

⁵ Section 112 of the Customs Act, 1962

⁶ u/s 111 of Customs Act, 1962

admissibility of evidence of the witness, it should be cross examined. In the instant case, statements are not cross-examined⁷.

- **No evidence against the appellant:** The CESTAT stated that during the investigation, the officers did not find any evidence against the appellant to show he had financed the money for the smuggling of gold into India. Also, the Revenue has nowhere ascertained whether the appellant had knowledge or reason to believe that the goods in question were liable for confiscation and hence, the penalty cannot be imposed.
- **For imposing the penalty, *mens rea* is an important ingredient:** For imposing penalty on improper importation of goods under the customs law, *mens rea* is an important ingredient. In the present case, penalty cannot be imposed because the department has failed to prove the knowledge of the appellant in the activities relating to the smuggled gold.
- **For the imposition of penalty, goods must be dealt with physically:** In absence of the finding in the impugned order that the appellant has dealt with the goods physically or any allegation to this effect raised in the proceeding, penalty for improper importation of goods under customs law cannot be imposed⁸. The appellant had had never acquired possession or in any way concerned in any of the activities

mentioned in the provision or any measure dealing with any goods, which the appellant knew or had reason to believe are liable to confiscation. Therefore, the CESTAT held that the appellant is not liable imposition of penalty.

Our comments:

In case of Akbar Badruddin Jiwani, the Apex Court had held that while imposing a penalty, the requisite *mens rea* must be established. In another case, the Apex Court⁹ had observed that the discretion to impose a penalty must be exercised judicially and after consideration of all the relevant circumstances. Penalty cannot be imposed merely because it is lawful to do so.

On a similar issue, the Apex Court¹⁰ had held that in absence of direct/circumstantial evidence to show the role of the appellant as abetting to the activity of smuggling, the appellant is not liable to any penalty in absence of *mens rea* or knowledge of the actual smuggling activity.

The present ruling is in line with the above ruling and has further highlighted that *mens rea* is an important factor for imposing penalty under the customs law.

⁷ Section 138B of Customs Act

⁸ R.C. Jain, D. Ankeedu Chowdhry, Rakesh Kumar Rajendra Kumar & Co.

⁹ Hindustan Steel Ltd.

¹⁰ SURESH RAJARAM NEWAGI

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI

National Office,
Outer Circle,
L 41, Connaught Circus,
New Delhi - 110001
T +91 11 4278 7070

NEW DELHI

6th Floor, Worldmark 2,
Aerocity,
New Delhi - 110037
T +91 11 4952 7400

AHMEDABAD

Unit No - 603 B, 6th Floor,
Brigade International
Financial Center,
GIFT City Gandhinagar,
Ahmedabad - 382355
T +91 79 6900 2600

BENGALURU

5th Floor, 65/2, Block A,
Bagmane Tridib,
Bagmane Tech Park,
CV Raman Nagar,
Bengaluru - 560093
T +91 804 243 0700

CHANDIGARH

B-406A, 4th Floor,
L&T Elante Office Building,
Industrial Area Phase I,
Chandigarh - 160002
T +91 172 433 8000

CHENNAI

9th floor, A wing, Prestige
Polygon, 471 Anna Salai,
Mylapore Division, Teynampet,
Chennai - 600035
T +91 44 4294 0000

DEHRADUN

Suite No 2211, 2nd Floor,
Building 2000, Michigan Avenue,
Doon Express Business Park,
Subhash Nagar,
Dehradun - 248002
T +91 135 264 6500

GURGAON

21st Floor, DLF Square,
Jacaranda Marg,
DLF Phase II,
Gurgaon - 122002
T +91 124 462 8000

HYDERABAD

Unit No - 1, 10th Floor,
My Home Twitza, APIIC,
Hyderabad Knowledge City,
Hyderabad - 500081
T +91 40 6630 8200

KOCHI

6th Floor, Modayil Centre Point,
Warriam Road Junction,
MG Road
Kochi - 682016
T +91 484 406 4541

KOLKATA

10C Hungerford Street,
5th Floor,
Kolkata - 700017
T +91 33 4050 8000

MUMBAI

11th Floor, Tower II,
One International Center,
SB Marg Prabhadevi (W),
Mumbai - 400013
T +91 22 6626 2600

MUMBAI

Kaledonia, 1st Floor,
C Wing,
(Opposite J&J Office),
Sahar Road, Andheri East,
Mumbai - 400069

NOIDA

Plot No 19A, 2nd Floor,
Sector - 16A,
Noida - 201301
T +91 120 485 5900

PUNE

3rd Floor, Unit No 310-312,
West Wing, Nyati Unitree,
Nagar Road, Yerwada
Pune - 411006
T +91 20 6744 8800

For more information or for any queries, write to us at GTBharat@in.gt.com



Follow us @GrantThorntonIN

© 2022 Grant Thornton Bharat LLP. All rights reserved.

“Grant Thornton Bharat” means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly Grant Thornton India LLP, is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001. References to Grant Thornton are to Grant Thornton International Ltd. (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.