

## *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 appellant<sup>1</sup> 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 penalty<sup>2</sup> on the appellant.
- The penalty was confirmed by the adjudicating authority. Therefore, the appellant preferred present appeal before the CESTAT Ahmedabad<sup>3</sup>.

## Ahmedabad CESTAT observations and ruling<sup>4</sup>

- **Conditions must be satisfied to impose the penalty:** The CESTAT stated that for imposition of penalty under the customs law<sup>5</sup>, 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 confiscation<sup>6</sup>.

- **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

<sup>1</sup> Lalit Jain

<sup>2</sup> Section 112(b)(i) of the Customs Act 1962

<sup>3</sup> Customs Appeal No. 10061 of 2022

<sup>4</sup> order dated 12 August 2022

<sup>5</sup> Section 112 of the Customs Act, 1962

<sup>6</sup> 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-examined<sup>7</sup>.

- **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 imposed<sup>8</sup>. 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 Court<sup>9</sup> 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 Court<sup>10</sup> 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.

<sup>7</sup> Section 138B of Customs Act

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