

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

Customs Appeal No. 3 of 2024

The Commissioner of Customs (Preventive), North Eastern Region,
Custom House 110 M.G. Road, Meghalaya State Shillong-793001.

..... Appellant/s

- Versus -

Shri R.K. Swami Singh aged about 56 years S/o (Late) Ketuki Sana Singh, Resident of Sagolband Bijoy Govinda Leikai, P.O. Imphal, District Imphal West, Manipur-795001.

..... Respondent/s

-AND-

IN THE MATTER OF:

In the CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL (CESTAT) Eastern Zonal Bench, Kolkata, Regional Bench, Court No. 1.

IN CUSTOMS APPEAL NO. 75171 of 2016

(Arising out of order-in-Appeal No. 37/CUS(A)/GHY/2015 dated 20/11/2015 passed by the Commissioner of Customs and Central Excise (Appeals), 5th Floor, Customs House, Nilamoni Phukan Path, Christian Basati, Guwahati-795005).

Shri R.K. Swami Singh aged about 56 years S/o (Late) Ketuki Sana Singh, Resident of Sagolband Bijoy Govinda Leikai, P.O. Imphal, District Imphal West, Manipur-795001.

.....Appellant

- Versus -

The Commissioner of Customs (Preventive), North Eastern Region,
Custom House 110 M.G. Road, Meghalaya State Shillong-793001.

.....Respondent

With
MC(Customs Appeal) No. 1 of 2025 with
MC(Customs Appeal) No. 5 of 2024

The Commissioner of Customs (Preventive), North Eastern Region,
Custom House 110 M.G. Road, Meghalaya State Shillong-793001.

..... Applicant/s

- Versus -

Shri R.K. Swami Singh aged about 56 years S/o (Late) Ketuki Sana
Singh, Resident of Sagolband Bijoy Govinda Leikai, P.O. Imphal,
District Imphal West, Manipur-795001.

..... Respondent/s

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. K. SOMASHEKAR
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Appellant/s	::	Mr. N. Brojendro Singh, Adv.
For the respondent/s	::	Mr. Nihar Dasgupta, Adv. Mrs. I. Bimola, Adv.
Date of Hearing	::	27.08.2025
Date of Order	::	11.09.2025

ORDER (CAV)

[A. Guneshwar Sharma, J.]

[1] Heard Mr. N. Brojendro Singh, learned counsel for the appellant and Mr. Nihar Dasgupta, learned counsel along with Mrs. I. Bimola, learned counsel for the respondent on the question of maintainability of the present appeal in terms of Instruction dated 02.11.2023 issued by Central Board of Excise & Customs [in short, CBEC], Department of Revenue, Ministry of Finance, Government of India whereby the minimum monetary limits for preferring appeal has been laid down. For the High Court, the minimum threshold monetary value for filing appeal is Rs.1 crore while the seized goods are valued as ₹ 49,74,605/- (Rupees Forty Nine Lakhs Seventy Four Thousand Six Hundred and Five) only.

[2] The present appeal has been preferred against the Final Order dated 29.04.2024 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Eastern Zonal Bench Kolkata, Regional Bench Court No. 1 in Customs Appeal No. 75171 of 2016 against the order dated 30.11.2015 of the Commissioner (Appeals), Customs and Central Excise, Guwahati. The appeal filed by the respondent was allowed by setting aside the order of confiscation and imposition of penalty. It was also held that the authority could not prove the factum of smuggled gold.

[3] The brief facts of the case are that on 20.06.2014, the respondent herein was intercepted by the Officers of Imphal Customs at Luwangshangbam near NRL Petrol Pump along National Highway No. 39 at around 2:00 pm and found 12 pieces of gold biscuits, total weighing 2002.26 grams approximately and worth of ₹ 49,74,605/- (Rupees Forty Nine Lakhs Seventy Four Thousand Six Hundred Five) from his possession. As the respondent was not having any document for the illicit importation and without payment of customs duty, the gold was seized under Section 110(1) of the Customs Act, 1962. On interrogation, the respondent disclosed that the gold was handed over to him by one Shri Ramaswami at Moreh Bazar on 20.06.2014 for the purpose of transporting from Moreh to Guwahati and promised him to pay ₹ 12,000/- (Rupees Twelve Thousand) only as carrier charges.

[4] Under Section 104 of the Customs Act, 1962, the respondent herein was arrested and produced before the Chief Judicial Magistrate, Imphal West/East on 21.06.2014 and remanded in judicial custody till 05.07.2014.

[5] On 14.11.2014, the Additional Commissioner, Customs (Preventive), NER, Shillong issued Show Cause Notice to the respondent to submit explanation within 30 (thirty) days as to why the seized gold biscuits should not be confiscated U/S 111(b)(d) of Customs Act, 1962 and as to why penalty should not be imposed upon him under Section 112(b)(ii) of the Customs Act, 1962. However, the respondent herein failed to file reply to the Show Cause Notice.

[6] The Additional Commissioner (Preventive), NER, Shillong directed the respondent herein to pay a penalty of ₹10,00,000/- (Rupees Ten Lakhs) only under Section 112(b)(ii) of the Customs Act, as the seized gold biscuits has been illegally imported from Myanmar to India via Moreh in violation of Section 7(i)(b)(c) of the Customs Act, 1962.

[7] Being aggrieved by the Order-in-Original dated 31.07.2015, the respondent herein filed an appeal being Order-in-Appeal No. 37/CUS(A)/GHY/15 before the Commissioner (Appeals), Customs and Central Excise, Guwahati and the same was rejected vide order dated 30.11.2015 and the Order-in-Original dated 31.07.2015 was upheld.

[8] Being aggrieved, the respondent herein filed an appeal against the Order-in-Appeal before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Eastern Zonal Bench Kolkata, Regional Bench, Court No. 1 and vide order dated 29.04.2024, the Customs Appeal No. 75171 of 2016 was allowed with the observation that provisions of Section 123 of Customs Act, 1962 are not applicable, as it was not established that the gold is of foreign origin and the penalty imposed on the respondent herein is not sustainable under Section 112(b)(ii) of the Customs Act, 1962. It was further held that there was no material to substantiate the charge of smuggled gold bars against the respondent herein.

[9] By the present appeal, the appellant prayed that the impugned order dated 29.04.2024 passed in Customs Appeal No. 75171 of 2016 be set aside and dismissed.

[10] It may be noted that the Ministry of Finance, Government of India issued INSTRUCTION dated 11.08.2011 prescribing financial limits for preferring appeals before Supreme Court, High Court and CEGAT as ₹ 25,00,000/- (Rupees Twenty Five Lakhs), ₹ 10,00,000/- (Rupees Ten Lakhs) and ₹ 5,00,000/- (Rupees Five Lakhs) respectively and the same reads as follows:

*Customs Appeal No. 3 of 2024 with
MC(Customs Appeal) No. 1 of 2025 with
MC(Customs Appeal) No. 5 of 2024*

“INSTRUCTION
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi 17th August 2011

Sub:- Reduction of Government litigation – providing monetary limits for filing appeals by the Department before CESTAT/High Courts and Supreme Court – Regarding.

In exercise of the powers conferred by Section 35R of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994 and Section 131BA of the Customs Act, 1962 the Central Board of Excise & Customs (hereinafter referred to as the Board) fixes the following monetary limits below which appeal shall not be filed in the Tribunal, High Court and the Supreme Court:

Sl. No.	Appellate Forum	Monetary limit
1.	CESTAT	Rs. 5,00,000/-
2.	HIGH COURT	Rs. 10,00,000/-
3.	SUPREME COURT	Rs. 25,00,000/-

2. For ascertaining whether a matter would be covered within or without the aforementioned limits, the determinative element would be duty/tax under dispute. To illustrate it further in a case involving duty of Rs. 5 lakhs or below with equal penalty and interest, as the case may be, no appeal shall be filed in the Tribunal. Similarly, no appeal shall be filed in the High Courts if the duty involved does not exceed Rs. 10 lakhs with or without penalty and interest. Further, the Commissionerates shall not send proposal to the Board for filing Civil Appeal or Special Leave Petition in the Supreme Court in a case involving duty up to Rs. 25 lakhs, whether with penalty and interest or otherwise. However, where the imposition of penalty is the subject matter of dispute and the said penalty exceeds the limit prescribed, then the matter could be litigated further. Similarly where the subject matter of dispute is the demand of interest and the amount of interest exceeds the prescribed limit, then the matter may require further litigation.

3. Adverse judgments relating to the following should be contested irrespective of the amount involved:

- (a) Where the constitutional validity of the provisions of an act or Rule is under challenge.*
- (b) Where Notification/Instruction/Order or Circular has been held illegal or ultra vires.*

4. Several queries connected with application of monetary limits have been raised by the field formations which were considered by the Board and are being clarified as below:

Issues	Clarifications
<i>Whether duty involved mentioned in the Instruction dated 20.10.2010 refers to duty outstanding to be collected or the total duty demanded for deciding the threshold limit prescribed.</i>	<i>In a case where a part of the duty demanded is not disputed and is paid and the outstanding duty under dispute is less than the monetary limit prescribed by the Board, no appeal shall be filed. In other words, monetary limit shall apply on the disputed duty and not on the total duty demanded in a case.</i>
<i>Whether monetary limits could apply to cases of refund.</i>	<i>It is clarified that the monetary limits being prescribed by the Board would apply to cases of refund as well.</i>
<i>Whether applications being filed by the Department before office of Joint Secretary (Revision Application) would also be covered under the stipulation of monetary limits.</i>	<i>The limit specified herein will not be applicable to application filed before the Joint Secretary (Revision Application).</i>
<i>Whether exclusion of audit objections mentioned in para 6(c) of Instruction dated 20.10.2020 would cover internal audit objection cases also or whether they would be limited to cases of revenue audit alone.</i>	<i>The intention was to apply the exclusion clause mentioned at para 6(c) only to disputes arising out of revenue audit objections accepted by the Department. It has now been decided to delete the said exclusion clause (refer para 3 of this Instruction). Therefore, in all cases of audit objections accepted by the Department, while protective demands may continue to be issued but the same could be</i>

	<i>subjected to monetary limits for filing appeal in the Tribunal, High Courts and the Supreme Court.</i>
--	---

5. *The revised monetary limits shall come into force from 01.09.2011.*

6. *This Instruction is in continuation of earlier instruction of even number dated 20.10.2020 and seeks to revise the monetary limits, exclusion clauses and clarifies the doubts raised by the filed formations on this issue.*

F.No. 390/Misc./163/2010-JC

*(Sunil K. Sinha)
Director (R)”*

[11] The Finance Ministry issued another INSTRUCTION dated 02.11.2023 further enhancing the financial limits for preferring appeal to ₹ 2 crore, ₹ 1 crore and ₹ 50 lakhs for the Supreme Court, High Court and CESTAT respectively and in Para 2, three exceptions are carved out for preferring appeal notwithstanding the financial limits. The Instruction dated 02.11.2023 reads as follows:

*“F.No. 390/Misc/30/2023-JC
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs
(Judicial Cell)*

*‘B’ wing, 4th Floor, HUDCO VISHALA Building
Bhikaji Cama Place, R.K. Puram, New Delhi-66
Date: 02.11.2023.*

INSTRUCTION

To,

1. *All Pr. Chief Commissioners/Chief Commissioners/Pr. Commissioners/Commissioners of Customs/Customs (Prev.)/GST & CX;*
2. *All Pr. Director Generals/Directors Generals under CBIC;*
3. *Chief Commissioner (AR); Commissioners (Legal) CBIC/ Directorate of Legal Affairs.*
4. *Webmaster.cbec@icegate.gov.in*

Subject: Reduction of Government litigation – providing monetary limits for filing appeals by the Department before CESTAT, High Courts and Supreme Court – regarding.

In exercise of the powers conferred by Section 131 BA of the Customs Act, 1962 and in partial modification of earlier instruction issued from F. No. 390/Misc/163/2010-JC dated 17.08.2011, the Central Board of Indirect Taxes & Customs (hereinafter referred to as the Board) fixes the following monetary limits below which appeal shall not be filed in the CESTAT, High Court and the Supreme Court:

Sl. No.	Appellate Forum	Monetary limit
1.	SUPREME COURT	Rs. 2 Crore
2.	HIGH COURT	Rs. 1 Crore
3.	CESTAT	Rs. 50 Lakh

2. *Adverse judgments relating to the following should be contested irrespective of the amount involved:*

- (a) Where the constitutional validity of the provisions of an Act or Rule is under challenge;*
- (b) Where Notification/Instruction/Order or Circular has been held illegal or ultra vires;*
- (c) Classification and refund issues which are of legal and/ or recurring nature.*

3. *Withdrawal process in respect of pending cases in above forums, as per the above revised limits, will follow the current practice that is being followed for the withdrawal of cases from the Supreme Court, High Courts and CESTAT.*

(Bhagwat Prasad)
Deputy Secretary, Review
Email: sojc-cbec@nic.in”

[12] Mr. Nihar Das Gupta, learned counsel of the respondent has submitted the following points that the appeal is not maintainable in the present form:

1) Maintainability :

The present appeal is not maintainable in view of **CBIC Instruction No. 390/Misc./30/2023/JC dated 02.11.2023**, which prescribes a monetary threshold of Rs. 1 crore for filing appeals before the Hon'ble High Court. The seizure value in the present case is ₹49.74 lakhs, which falls well below the prescribed limit.

2) Binding nature of the circular.

It is settled law that circulars issued by the Board in exercise of statutory powers are binding on the Revenue. The Hon'ble Supreme Court in *CCE v. Ratan Melting & Wire Industries [(2008) 13 SCC 1]* (Constitution Bench) has categorically held that departmental circulars are binding on the Revenue. Consequently, the appellant cannot act in derogation of the latest binding Instruction issued by the CBIC.

3) No application of earlier Circulars.

The present case is governed exclusively by the latest CBIC Instruction dated 02.11.2023 prescribing the monetary limit of ₹1 crore. Reliance on earlier instructions prescribing lower limits is wholly misconceived, as once a fresh instruction is issued, it overrides and supersedes all prior circulars & Instruction on the same subject.

4) Circulars cover all revenue litigation.

That it is further submitted that the CBIC's Instruction dated 02.11.2023 prescribing monetary limits is of general application and covers **all types of Revenue litigation involving monetary consideration**, without distinction as to whether the matter pertains to seizure, assessment, refund, drawback, penalty or any other proceeding. The object of the circular is to reduce frivolous litigation and avoid burdening the Courts with matters of low revenue effect. The Hon'ble Supreme Court, in a catena of decisions including *Commissioner of Customs v. Indian Oil Corporation Ltd. [(2004) 3 SCC 488]* and *CCE v. Ratan Melting & Wire Industries [(2008) 13 SCC 1]*, has consistently held that such circulars are binding on the Department and

must be applied in their true spirit across all categories of cases where the dispute is only of monetary value.

5) No substantial question of law raised.

That apart from being barred by the monetary limit, the appeal does not raise any substantial question of law. The issues have already been **conclusively adjudicated by the learned Tribunal**, which is the final fact-finding authority. Under Section 129 B (4) of Customs Act, 1962, the findings are factual in nature and do not give rise to any debatable or substantial legal issue under Section 130 of the Customs Act, 1962.

6) Judicial precedents.

That the Judicial pronouncement, including *Commissioner of Customs v. Indian Oil Corporation Ltd.* [(2004) 3 SCC 488] and *CIT v. Hero Cycles Pvt. Ltd.* [(2015) 379 ITR 347(SC)], have consistently held that Revenue is bound by the circulars/ Instructions of the Board and appeals contrary to such instructions or not involving a substantial question of law are liable to be dismissed at the threshold.

[13] Case Laws referred by the respondent :

(a) In the High Court of Calcutta in the case of CEXA/10/2020, *Commissioner of CGST AND CEX, Bolpur Commissionerate vs M/S. Steel Authority of India Limited* which held that

“2. Learned counsel for the appellant fairly states that the tax effect involved in the present appeal is much below the limit fixed under circular No.F.No.390/Misc/30/2023-JC dated 02.11.2023 issued by the Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs. Therefore, this appeal deserves to be dismissed.

3. In view of the aforesaid circular, the appeal (CEXA/10/2020) is dismissed.”

(b) In the High court of Calcutta in the case of CUSTA/12/2022, Commissioner of Customs (Preventive), Kolkata vs Shri Gulshan Ahmed Barbhuiya which held that

“2. Learned counsel for the appellant states that the tax effect involved in the present appeal is below the limit fixed by circular No.F.No.390/Misc/30/2023-JC dated 02.11.2023 for filing appeals by the department and as such, the appeal may be dismissed in view of the aforesaid circular.

3. Learned counsel for the respondent does not dispute that the tax effect involved is below the limit fixed under the aforesaid circular for filing appeals.

4. In view of the aforesaid, the appeal is dismissed in view of the aforesaid circular dated 02.11.2023. “

(c) In the High Court of Gujarat in the case of R/TAX APPEAL NO. 884 of 2007 With R/TAX APPEAL NO. 885 of 2007 The Commissioner of Central Excise, Ahmedabad vs Sinhal Brothers held that

“5. On perusal of the notifications, it is clear that the Tax Appeal would be maintainable only if there is a question of constitutional validity of the provision of the Act or the Rules is under challenge or the cases where the Notification/Instruction/Order/Circular is held to be illegal or ultra vires.

6. In the facts of the present case, none of the above conditions are fulfilled and therefore, in view of the Instruction, the appeals would not be maintainable in spite of the instructions of the respondent authorities to the learned advocate for the appellant to proceed with matter on merits. We, therefore, decline to answer the questions which are framed while admitting the appeals. The appeals are accordingly dismissed.”

(d) In the High Court of Delhi in the case of CUSAA 88/2023, Principal Commissioner of Customs vs M/S. Linear Technologies India Pvt. Ltd., it was held that

“ 17. For the purposes of determining the threshold limit, it would only be the duty element which would be taken into account and the same could not be clubbed with penalty and redemption fine.

18. In cases involving duty, fine, penalty and interest, the decisive element would only be duty. However, in cases where duty is not in issue and only fine and penalty are in issue then they would cumulatively be the decisive factor for determining the applicability of threshold limit.

19. Since the duty element involved in the subject appeal is less than the threshold limit, we are of the view that the appeal would not lie in view of the said instructions. The same is accordingly dismissed on the ground of low tax effect.”

(e) In the High Court of Delhi, in the case of CUSAA 135/2022 & CM APPL. 41288/2022, The Principal Commissioner of Customs, ACC Imports, New Delhi vs. M/S Salasar Synthetics, it was held that:

“5. By instruction date 20.10.2010, the Central Board of Indirect Taxes had fixed a monetary limit below which appeals were not to be filed by the Department before the Tribunal, High Court or the Supreme Court, as the case may be. The monetary limit has undergone increased from time to time. The latest instruction dated 02.11.2023 prescribed a monetary limit of Rs. 1 Crore for appeal to the High Court. The instruction further state that process has to be initiated for withdrawal of pending cases which are below the monetary limit.

6. In the subject case, the issue involved is with regard to redemption, fine of Rs. 40 Lakhs and penalty of Rs. 20 lakhs which cumulatively is below the threshold limit. Consequently, we are of the view that the appeal being below the monetary limit as prescribed by the instruction is not maintainable and is accordingly dismissed on the ground of low tax effect.”

(f) In CEXA/9/2021, Commissioner of Service tax, Kolkata v. Sourav Ganguly of the High Court of Calcutta, it was held that

“That apart, the learned writ Court while allowing the writ petition by order dated 30th June, 2016 had quantified the quantum of interest at the rate of 10%. The factual matrix has been thoroughly examined by the Tribunal and interest has been directed to be paid only from the date on which the amount was recovered till it was deposited with the Registrar General of this Court and, therefore, we find that there can be no error in directing such payment of interest. That apart we note that the total interest which was sanctioned and refunded to the respondent/assessee is Rs.59,85,338/-. If that be so, then the present appeal will be hit by the monetary limit fixed by the CBIC in its Circular dated 22nd August, 2019 which fixed the monetary limit of Rs.1

crore for the revenue to pursue appeals before this Court against the order passed by the Tribunal. Therefore, on that score also we are of the view that the revenue is liable to be non suited. That apart there is nothing on record to indicate that the case on hand would fall within any one of the exception which have been curved out in the circular issued by the CBIC.

Thus, for the above reason we find that there is no question of law arising for consideration in this appeal. Accordingly, the appeal ((CEXA/9/2021) fails and is dismissed.”

(g) In the case of Commissioner of Customs (Import) vs. ATLAS Merchantile Pvt. Ltd., 2024 (387) E.L.T. 262 (S.C.), it was held that :

“1.Learned senior counsel appearing for the appellant(s) submitted that in view of the recent instructions dated 02.11.2023 issued by the Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs (Judicial Cell), the monetary limit in so far as appeals filed before the Supreme Court from the judgments arising from Customs Excise and Service Tax Appellate Tribunal (CESTAT) has been raised to Rs.2,00,00,000/- (Two Crores). That in the instant case, the tax effect is of only Rs.75,00,000/- (seventy-five lakhs). Hence, an appropriate order may be made in these appeals keeping open the question of law, if any, to be agitated in any other subsequent assessment year in so far as the very assessee is concerned.

2. Submission of learned senior counsel for the appellant(s), Ms. Sonia Mathur, is placed on record.

3. In view of the low tax effect, the civil appeals are dismissed.”

(h) In the HIGH COURT OF KERALA AT ERNAKULAM PRESENT THE HONOURABLE MR. JUSTICE SATHISH NINAN & THE HONOURABLE MR.JUSTICE P. V. BALAKRISHNAN TUESDAY, THE 12TH DAY OF NOVEMBER 2024 / 21ST KARTHIKA, 1946 CUS.APPEAL NO. 17 OF 2018, it was held that:

“7. The main part of Section 125 of the Customs Act reads thus: “125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have

been seized, and option to pay in lieu of confiscation such fine as the said officer thinks fit: Gold is not a prohibited good under the Act. Section enables payment of redemption fine as an option in lieu of confiscation, to redeem the goods confiscated. The redemption fine cannot be more than the market price of the goods. The circulars referred to above mention the reason for fixing such a monetary limit as "Reduction of Government Litigation."

8. The Apex Court in Commissioner of Customs, Amritsar v. Harish Chander (Civil Appeal No.8690 of 2011), took into consideration the value of the goods at the time of seizure and held that it being below the threshold fixed, no appeal would lie. The Allahabad High Court in the Commissioner of Customs v. Disha Tulsiani (Neutral Citation No. 2024 : AHC:48658-DB) has, while dealing with a case of confiscation gold, adopted the same view.

9. In Cust. Appeal No.3/2008, between Commissioner of Customs, Amritsar and Customs, Excise and Service Tax Appellate Tribunal, the High Court of Punjab and Haryana at Chandigarh, held the goods involved were gold. Therein also, the High Court relying on the ceiling limit regarding the valuation, held the appeal to be not maintainable. The said judgment was affirmed by the Apex Court in Civil Appeal No.8690 of 2011. A similar view was adopted by the Calcutta High Court in Cust. Appeal No.8/2016 between Commissioner of Customs(Preventive), WB, Customs House and Nitya Gopal Biswas and Anr."

(i) CUSTOM APPEAL No. - 1 of 2020/CUSTOM APPEAL No. - 2 of 2020/CUSTOM APPEAL No. - 3 of 2020/CUSTOM APPEAL No. - 4 of 2020/CUSTOM APPEAL No. - 5 of 2020 Hon'ble Allahabad High Court

"8. While the confiscated gold was valued at more than Rs. 1 crore at the same time that was apportioned amongst three assessee namely Ms. Disha Tulsiani, Sri Nirmal Tulsiani and Sri Ashok Kumar Talhani.

9. Thus individual dispute in each of the appeals is far below the monetary limit of 1 crore. On the earlier dates, we allowed learned counsel for the revenue to file supplementary affidavit to bring on record the revenue effect involved in each of the appeals. While an affidavit has been filed by the revenue on 18.11.2023, it does not bring on record the revenue effect involved in each of the appeals. In fact, in paragraph 6 of the affidavit, it has been stated as below :- 6. That in view of the direction given by the Court vide its orders dated 20.09.2021 and 02.11.2023 the present affidavit is being filed to bring on record the fact that the objection regarding maintainability of the appeal raised by the Respondent on the ground of duty component being less than the amount prescribed by the Board for filing appeals before the Hon'ble High Court has to be turned down in view of the fact that the question of quantification of duty does not arise in the present case as no duty what so ever was demanded/confirmed in the present case.

10. Clearly despite time granted, no disclosure has been made by the revenue to establish that the revenue implication in each or any of the appeals exceeds the monetary limit of 1 crore.

11. Since the order passed by the Tribunal is clearly in favour of the assessee and there is no cross appeal filed by revenue, no justification or occasion survives for this Court to allow the revenue the luxury of maintaining the present litigation against its own stated litigation policy.

12. For the above reason, the present appeal and the connected appeals are dismissed being below monetary limit. No order as to costs.”

(j) In Commissioner of customs, export, New Delhi ICD, TKD Vs Balaji Overseas, Civil Appeal Nos. 9032-9034 of 2019, 2024(389)E.L.T. 289(S.C.)

“1. It is stated at the bar that in terms of the latest circular dated 2-22-2023, the monetary limit has been enhanced to Rs. 2 crores. The appeal would have to be disposed of having regard to the said threshold limit as the amount in dispute in the instant cases is only Rs, 1,28,73,481/- (Rs. One crore, twenty eight lakhs seventy three thousand, four hundred and eighty one only)

2. In the circumstances, the appeal are dismissed owing to low tax effect.”

(k) In Civil Appeal No. 4835 of 2011, Commissioner of Customs, Chennai Vs Godavari Drugs Ltd., 2014(387) E.L.T. 3(S.C.)

“1. Shri Arijit Prasad, Learned Senior Counsel appearing for the appellant-Department submitted that in view of the Circular dated 2-11-2023 issued by Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs, the monetary limit for matters before the Supreme Court has been raised to Rs, 2 Crores even in the cases pertaining to indirect Taxes and Customs. Hence an appropriate order may be made in this appeal.

2. Submission of Learned Senior Counsel is place on record.

3. Consequently, the appeal stands dismissed on account of the aforesaid reason owing to low tax effect.”

[14] Per contra, Mr. N. Brojendro, the learned counsel of the appellant submitted that Customs Duty/Tax dispute may arise only in cases of duty payable where goods are legally imported and subjected to assessment of customs duty

upon filling the Bill of import, etc. It is also reiterated that the monetary limit for filling Appeal has been prescribed only for such revenue matters/ disputes involving realization of duty and others levies.

[15] The learned counsel further submitted that the issue involved in the present Appeal is not customs duty/tax dispute but a case of outright smuggling of gold and confiscation thereof as well as imposition of penalty. The core issue involved in the present case is illegal importation of gold in violation of the Customs Act, 1962 which is liable to be confiscation by the authorities under the said Act. It is submitted that such cases are not covered within the monetary limit prescribed under the Circular F.No. 390/Misc./30/2023-JC dated 02.11.2023 (Annexure X/3) issued by the central Board of Indirect Taxes & Customs.

[16] In a similar case before the Hon'ble High Court of Meghalaya in the case of ***The Commissioner Of Customs vs . Daleep Kumar Verma & Ors Meghalaya High Court, Cus./Appeal.No.1 of 2024 with MC (Cus.Appeal) No. 2 of 2014*** where the case also pertains to smuggling of gold and confiscation thereof and the confiscated goods were valued at ₹ 1,59,15,033/- (Rupees One Crore Fifty Nine Lakhs Fifteen Thousand and Thirty Three) only by the original adjudicating authority. The Hon'ble Court of Meghalaya rejected the point raised against the maintainability of the Appeal and held as follows :-

“First of all, the intent and purpose of the Circular is very plain. Where realisation of duty and other levies are involved, the Government would only challenge any adverse order, if on success in the proceedings, it would be able to realize an amount equal to or above the threshold limit indicated in the notification. Any realization below the threshold limit did not seem to have been considered significant by the Government. This notification clearly would not cover cases of smuggling where orders for confiscation and imposition of fine, penalty etc. are provided, without any right given to the delinquent to redeem the goods upon payment of duty, penalty etc. This is a case where no such right has been given.

Therefore, if the revenue succeeds before us the order-in- original is likely to be restored resulting in absolute confiscation of the goods along with other penalties. If the respondents succeed, it would result in affirmation of the order of the Tribunal. So if one possible result is absolute confiscation of the goods without any right of redemption on payment of duty, penalty etc. there

is no question of the appeal being dismissed on the ground that the duty payable would be less than Rs.1 crore.

For all those reasons, the point of maintainability does not succeed and it is hereby rejected.”

[17] The learned counsel of the appellant further submitted that the circular dated 02.11.2023 prescribing monetary limit for filing appeal by the customs authorities does not cover the present case as the issue involved is smuggling of gold and order has been issued by the competent authority for confiscation of the goods as well as for imposition of penalty without any right to the delinquent/respondent to redeem the goods upon payment of duty, penalty etc. (U/S 125 option to pay fine in lieu of confiscation under Customs Act 62).

[18] We have perused the materials on record, the submissions at bar, the case law referred by parties and specially the Instruction dated 02.11.2023 issued by the Ministry of Finance, Government of India prescribing monetary limits below which appeal shall not be filed in the CESTAT, High Court and Supreme Court.

[19] It may be noted that Central Board of Excise & Customs [in short, CBEC], Department of Revenue, Ministry of Finance, Government of India issued an INSTRUCTION dated 17.08.2011 stipulating that no appeal shall be filed before CESTAT, High Courts and Supreme Court, if the monetary limits are below ₹5,00,000/- (Rupees Five Lakhs), ₹10,00,000/- (Rupees Ten Lakhs) and ₹25,00,000/- (Rupees Twenty Five Lakhs) respectively. However, in Para 3 of the Instruction, it has been mentioned that ‘Adverse judgments’ relating to two aspects- (a) Where the constitutional validity of the provisions of an Act or Rule is under challenge; and (b) Where the Notification/Instruction/Order or Circular has been held illegal or *ultra vires*. Except for these two conditions, no appeal lies against any order if the amount involved is below the monetary limits prescribed by the Instruction.

[20] CBEC issued another INSTRUCTION dated 02.11.2023 in partial modification of the earlier Instruction dated 17.08.2011 thereby increasing the monetary limits of filing appeal before CESTAT, High Courts and Supreme Court,

above ₹50,00,000/- (Rupees Fifty Lakhs), ₹1,00,00,000/- (Rupees One Crore) and ₹2,00,00,000/- (Rupees Two Crore) respectively. Hence, ₹50 lakh, ₹1 Crore and ₹2 Crore are the new monetary limits threshold for filing appeal. These instructions are issued from time to time to weed out appeal as a measure to reduce government litigation at all levels. Para 2 of the Instruction dated 02.11.2023 prescribes three types of 'Adverse judgments' which can be contested irrespective of the monetary limits so fixed: (a) Where the constitutional validity of the provisions of an Act or Rule is under challenge; (b) Where the Notification/Instruction/Order or Circular has been held illegal or *ultra vires*; and (c) Classification and refund issues which are of legal and/or recurring nature. Para 3 enables withdrawal of the pending cases in the fora as mentioned above as per the revised limits, thereby implying that the new limits shall also be applicable in the pending cases. In other words, Para 3 is in tune with the government litigation policy of eliminating low amount cases. Para 2 adds one more condition apart from the two mentioned in the earlier Instruction dated 17.08.2011. New Instruction of 2023 sets higher monetary limits of ₹50 lakh, ₹1 Crore and ₹2 Crore for filing appeals in the Tribunal, High Courts and Supreme Courts respectively and Para 2 prescribes three situations where appeal can be preferred irrespective of the amount involved.

[21] In the case of ***K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering: (1997) 3 SCC 571***, Hon'ble Supreme Court held that the executive instructions issued by the Government conferred a right to the employees of private schools to claim parity of pay scale at par with the government school teacher. In other word, the executive instructions issued by the government is binding on the authority. Further in the case of ***Karnati Ravi v. Commr. Survey Settlements & Land Records, (2018) 12 SCC 635***, it is held that “..... it is well within the powers of the executive under Article 162 of the Constitution to provide for the required instructions with regard to the procedure for selection, so long as they do not come in conflict with the Rules.” From the above decisions, it is clear that the executive instructions are binding on the authority. Thus, we are in agreement with the submission of Mr. Nihar Das Gupta, learned counsel for the respondent that executive instructions issued by CBEC are binding on the authority

under Articles 73 and 162 of the Constitution of India. The Instruction dated 02.11.2023 will hold the field for filing appeal by fixing minimum threshold monetary limits for filing the appeal with the three exceptions. The maintainability of appeal under Customs Act has to be examined under this Instruction.

[22] We have minutely gone through the judgments cited by Mr. Nihar Das Gupta, learned counsel for the respondent. All these decisions consistently held that the appeals are not maintainable due to the monetary limits fixed by the Instruction dated 02.11.2023. None of the cases falls within the three exceptional categories as mentioned in Para 2.

[23] On the other hand, Mr. N. Brojendro, learned counsel for the appellant refers to the decision of Meghalaya High Court in Cus Appeal No. 1 of 2024 & order dated 22.10.2024, where it has been held that the Instruction dated 02.11.2023 prescribing monetary limits will not be applicable to the smuggled goods and appeal relating to such goods would be maintainable irrespective of the monetary limits. The plea of non-maintainability of the appeal was rejected. It is urged that in the present case at hand, the goods involved is smuggled one and hence the monetary limits will not be applicable as per the decision of Meghalaya High Court. It may be noted that SLP(C) No. 4566 of 2025 is pending before the Hon'ble Supreme Court against the decision of Meghalaya High Court.

[24] From a bare perusal of the Instruction dated 02.11.2023, it is seen that only on satisfaction of any of the three conditions, i.e., where the matter involves challenge to the constitutional validity of an Act/Rule; where the Notification/Instruction/Order/ Circular has been held illegal; or where classification and refund issues are legal/ recurring in nature, appeal will be maintainable irrespective of the monetary limits. With respect, we are not able to agree with the decision of the Meghalaya High Court that appeal will be maintainable notwithstanding the monetary limits, if the goods under investigation is smuggled one. The 'smuggled goods' is not included in any of the three conditions laid down in Para 2 of the Instruction dated 02.11.2023 and the same is incorporated by judicial interpretation. Such a construction of statute cannot be adopted when the

wordings in the relevant rules are clear. Resort to the golden rule of interpretation of statute can be resorted when the words in the rules are ambiguous and in order to achieve the object of the statute. In the case of ***Patheja Bros. Forgings & Stamping v. ICICI Ltd.:* (2000) 6 SCC 545**, a three Judge Bench of the Hon'ble Supreme Court held that *"12. We have analysed the relevant words in Section 22 and found that they are clear and unambiguous and that they provide that no suit for the enforcement of a guarantee in respect of any loan or advance granted to the industrial company concerned will lie or can be proceeded with without the consent of the Board or the appellate authority. When the words of a legislation are clear, the court must give effect to them as they stand and cannot demur on the ground that the legislature must have intended otherwise".* In the present case, the Instruction dated 02.11.2023 does not mention the words 'smuggled goods' in Para 2 for maintainability of the appeal irrespective of the minimum monetary limits. In the circumstances, we are of the considered opinion that the category of 'smuggled goods' cannot be read into Para 2 of the Instruction dated 02.11.2023.

[25] Even if the 'smuggled goods' has to be read into Para 2 as held by Meghalaya High Court, the decision will not be applicable to the facts of the present case. The Customs, Excise & Service Tax Appellate Tribunal, Kolkata has held in para 12.5 of the impugned order dated 29.04.2024 in Custom Appeal No. 75171 of 2016 that the authority could not establish that the gold bars were smuggled into India. Since the total value of the gold bars of ₹49,74,605/- (Rupees Forty Nine Lakhs Seventy Four Thousand Six Hundred and Five) only along with the penalty of ₹10,00,000/- (Rupees Ten Lakhs) only is less than the minimum threshold limit of ₹1 crore for filing appeal before High Court in terms of the Instruction dated 02.11.2023, the present appeal is not maintainable and hence the same is dismissed on this ground alone. Misc. applications are disposed of.

JUDGE

FR/NFR

Kh. Joshua Maring

CHIEF JUSTICE

Customs Appeal No. 3 of 2024 with
MC(Customs Appeal) No. 1 of 2025 with
MC(Customs Appeal) No. 5 of 2024

**KH. JOSHUA
MARING**

Digitally signed by
KH. JOSHUA MARING
Date: 2025.09.11
11:14:33 +05'30'

Page 20