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W.P.No.15217 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	23.08.2024
Pronounced On	.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.15217 of 2021
and
W.M.P.No.16125 of 2021

Smt.Jhansi Rani,
W/o.Shri Sathyanarayana

... Petitioner

Vs.

- 1.The Principal Commissioner of Customs,
Chennai-I Commissionerate,
New Custom House, Meenambakkam,
Chennai – 600 027.
- 2.The Joint Commissioner of Customs
(Adjudication-Air),
Office of the Chennai-I Commissionerate,
New Custom House,
Meenambakkam, Chennai – 600 027.
- 3.The Commissioner of Customs (Appeals-I),
No.60, Rajaji Salai, Custom House,
Chennai – 600 001.



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4. The Principal Commissioner and Ex-Officio
Additional Secretary to Government of India,
Ministry of Finance,
Department of Revenue,
8th Floor, World Trade Centre,
Centre 1, Cuff Parade,
Mumbai – 400 005.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records in and connected with the order of the fourth respondent in Order No.17/2021-Cus.(SZ)/ASRA/Mumbai dated 27.01.2021 in F.No.373/214A,B,C/B/16-RA/1035 and to quash the same and consequently direct the fourth respondent to pass orders afresh allowing redemption in terms of Section 125 of the Customs Act, 1962 of the seized/confiscated gold jewellery weighing 791 grams valued at Rs.19,89,365/- which is the subject matter of proceedings of the first respondent in F.No.794/2015-AIR.

For Petitioner : Mr.B.Sathish Sunder

For Respondents :
For R1 to R3 : Mr.K.Umesh Rao
Senior Standing Counsel



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ORDER

The petitioner is before this Court against the Impugned Order No.17-18-19/2021-Cus.(SZ)/ASRA/Mumbai dated 27.01.2021 made in F.No.373/214A,B,C/B/16-RA/1035 passed by the fourth respondent under Section 129DD of the Customs Act, 1962.

2. The petitioner is aggrieved by Impugned Order No.17 in respect of order of the third respondent in Order-in-Appeal C.Cus-I Nos.263 to 265 of 2016 dated 27.06.2016 whereby, the order passed by the Additional Commissioner of Customs in Order-in-Original No.356/2015-2016-AIRPORT made in F.No.O.S.No.793/2015-AIR dated 23.11.2015 has been affirmed.

3. The petitioner flew from Dubai on 09.08.2015 along with two others namely Smt.Deepa Sathishkumar and Smt.Ekambaram Devi. As far as the petitioner is concerned, the petitioner was found wearing one gold chain and eight gold bangles totally weighing about 791 grams and valued at Rs.19,89,365/-.

4. The case of the Department is that the petitioner attempted to walk



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through the Green Channel without declaring the gold jewellery to the requirements of the Customs Act, 1962 and the rules and thus, by an Order dated 23.11.2015, the Additional Commissioner of Customs vide Order-in-Original No.356/2015-2016-AIRPORT made in F.No.O.S.No.793/2015-AIR, ordered absolute confiscation of the jewellery items and imposed a penalty of Rs.2,00,000/- on Smt.Ekambaram Devi under Section 112(a) of the Customs Act, 1962.

5. It is submitted that the petitioner's appeal before the Appellate Commissioner was also rejected and therefore, the petitioner preferred revision before the fourth respondent under Section 129DD of the Customs Act, 1962, which has now culminated in the impugned order rejecting the prayer of the petitioner. Operative portion of the impugned order reads as under:-

“8. The Applicants have contended that gold is not a prohibited item. In addressing this contention, Government observes, the Hon'ble High Court of Madras, in the case of Commissioner of Customs (Air), Chennai-I Vs. P.Sinnasamy reported in 2016 (344) E.L.T.1154 (Mad.) relying on the judgment of the Hon'ble Apex Court in the case of Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta and others reported in 1970 (2) SCC 728 has laid down that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition. The Hon'ble Court ruled that “..... any goods which are imported or attempted to be imported contrary to “any prohibition imposed by any law for the time being in



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force in this country” is liable to be confiscated. “Any prohibition’ referred to in that section applies to every type of “prohibition”. That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression “any prohibition” in Section 111(d) of the Customs Act, 1962 includes restrictions”. It is thus clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition, “prohibited goods”. In para 47 of the said case the Hon'ble High Court has observed “Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confiscation”. Thus failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold “prohibited” and therefore liable for confiscation and the Applicants thus liable for penalty.

9. The contentions of the Applicants that the “eligibility” criteria for import of gold, was only to extend concessional rate of duty is not correct. The Applicants, were held ineligible passengers for import of gold as they did not satisfy the conditions prescribed for the import of gold as prescribed “per Clause 3 of Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, issued under Foreign Trade (Development and Regulation) Act, 1992, read with Customs Notification No.171/94, dated 30-9-94 (as amended). The Applicants did not fulfill the basic condition of eligibility of staying abroad for a minimum period of six months. Thus they are not eligible passengers for the import of gold as they did not satisfy the conditions. If the Applicants were not intercepted they would have smuggled the gold without payment of Customs duty and without any accountal of the same.

10. The Applicants were well aware that gold is not only



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a dutiable item and needs to suffer customs duty for its import into India, but gold is also subjected to certain restriction with conditions and eligible agencies/persons can only bring the same into India. The manner of opting for the green channel, and making their way to the exit, clearly indicates that they were planning to escape the payment of customs duty and smuggle the gold into India. The impugned gold was discovered only after the Applicants were intercepted and subjected to a search. The Applicants have pleaded for setting aside the Appellate Order and have requested for redemption of the gold. The impugned gold has been absolutely confiscated. Government observes in the present case, the Original Adjudicating Authority has considered it appropriate to direct absolute confiscation of the goods, which indicates that he did not consider it a fit case for exercise of his discretion to give an option to pay the redemption fine under Section 125 of the Act. The Appellate Authority has also not considered allowing redemption against absolute confiscation of the gold. Considering legal position as discussed in Para 8 above, Government does not find any grounds to differ from the above conclusion of absolute confiscation.

11. The Government therefore does not find any reason to take a different view, and the Appellate Order does not merit interference. The question of giving option of re-export does not arise. The revision application is therefore liable to be dismissed.

12. Revision application is accordingly dismissed.”

6. Learned counsel for the petitioner would submit that the issue is covered in favour of the petitioner in terms of the Judgment of the Hon'ble Supreme Court in **Directorate of Revenue Intelligence Vs. Pushpa Lekhumal Tolani**, 2017 (353) E.L.T. 129 (S.C.).



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7. That apart, the learned counsel for the petitioner would submit that gold is not a notified item (specified item) under Section 11 of the Customs Act, 1962 as there is no notification issued in the Official Gazette, prohibiting the importation and exportation of goods either absolutely or subject to such conditions and therefore, the question of ordering absolute confiscation under Section 125 of the Customs Act, 1962 was unwarranted.

8. That apart, the petitioner is a *bona fide* passenger who was wearing jewellery items and therefore walking through the Green Channel, however, the goods were seized and later detained and have been ordered to be confiscated.

9. Learned counsel for the petitioner has placed reliance on the decision of this Court in **Smt.G.K.Shanmuga Priya Vs. The Principal Commissioner & Ex-Officio, Additional Secretary to the Government of India, Mumbai and others**, W.P.(MD) No.198 of 2020 dated 27.01.2023, wherein, this Court had set aside the order of the revisional authority and remitted the case back to the same authority to exercise discretion under Section 125 of the Customs Act, 1962.



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10. Learned counsel for the petitioner has also relied on the following decisions of the Hon'ble Supreme Court and that of the various High Courts:-

- i. **A.Krishnamoorthy Vs. The Commissioner of Customs, Trichy and others** in W.P(MD)Nos.3456, 3460, 3469 & 3557 of 2022 dated 30.03.2022.
- ii. **Chandrasegaram Vijayasundaram Vs. Principal Commissioner (Revision Application) and Ex-Officio Additional Secretary to the Government of India, Mumbai, (2022) 1 Centax 62 (Mad.)**
- iii. **Thirumurugan Durairaj Vs. The Principal Commissioner & Ex-Officio Additional Secretary to the Government of India, Mumbai** in W.P(MD)No.26438 of 2019 dated 14.06.2022.
- iv. **Rayavarapu Sri Devi Vs. The Principal Commissioner of Customs (Adjudication-Air), Chennai I Commissionerate, Chennai and others** in W.P.No.6734 of 2022 dated 19.02.2024.
- v. **Hargovind Das K.Joshi Vs. Collector of Customs, 1992 (61) E.L.T.172 (S.C.)**
- vi. **Neyveli Lignite Corporation Limited Vs. Union of India, 2009 (242) E.L.T.487 (Mad.)**



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vii. **Shaik Jamal Basha Vs. Government of India**, 1997 (91) E.L.T.277

(A.P.)

viii. **T.Elavarasan Vs. Commissioner of Customs (Airport), Chennai**,
2011 (266) E.L.T.167 (Mad.)

ix. **Palaniappan Vs. Principal Commissioner of Customs, Chennai-I**,
2016 (339) E.L.T.367 (Mad.)

x. **Union of India Vs. Dhanak M.Ramji**, 2009 (248) E.L.T.127 (Bom.)

xi. **Sapna Sanjeev Kohli Vs. Commissioner of Customs, Mumbai**, 2009
(240) E.L.T.207 (Bom.)

xii. **Shabir Ahmed Abdul Rahman Vs. Union of India**, 2009 (235)
E.L.T.402

xiii. **Dinker Khindria Vs. Commissioner of Customs**, 2009 (237)
E.L.T.41 (Tri.Del.)

xiv. **Yakub Ibrahim Yusuf Vs. Commissioner of Customs, Mumbai**,
2011 (263) E.L.T.685 (Tri.Mum.)

xv. **Commissioner of Customs Vs. Atul Automation Private Limited**,
2019 (365) E.L.T.465 (SC)

xvi. **Commissioner of Customs (Preventive), Kolkata Vs. India Sales
International**, 2009 (241) E.L.T.182 (Cal.)



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xvii. **Horizon Ferro Alloys Private Limited Vs. Union of India**, 2016

(340) E.L.T.27 (P&H)

xviii. **Commissioner of Customs Vs. P.Chinnasamy**, 2016 (344)

E.L.T.1154 (Mad.)

11. Mr.K.Umesh Rao, learned Senior Standing Counsel for the first to third respondents on the other hand would submit that this writ petition is devoid of merits. It is further submitted that this writ petition under Article 226 of the Constitution of India is not maintainable as the impugned order has been passed by the fourth respondent in Mumbai. It is therefore submitted that the writ petition is liable to be dismissed.

12. In this connection, learned Senior Standing Counsel for the first to third respondents has placed reliance on the decision of the Hon'ble Supreme Court in **Surya Devi Rai Vs. Ram Chander Rai and others**, Civil Appeal No.6110 of 2003 [Arising out of S.L.P.(C) No.12492 of 2002] dated 07.08.2003, **(2003) 6 SCC 675**, wherein, the Hon'ble Supreme Court has held that the remedy if any that is available to the petitioner under Article 227 of the Constitution of India is supervisory jurisdiction (by the High Courts).



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13. Specifically, the learned Senior Standing Counsel for the first to third respondents would submit that the jurisdiction of this Court under Article 226 of the Constitution of India is not available in terms of the law laid down by the Hon'ble Supreme Court. A reference was made to Paragraphs 23 and 24 from the said decision of the Hon'ble Supreme Court. It reads as under:-

“Difference between a writ of certiorari under Article 226 and supervisory jurisdiction under Article 227.

23. The difference between Articles 226 and 227 of the Constitution was well brought out in Umaji Keshao Meshram and Ors. Vs. Smt. Radhikabai and Anr., (1986) Supp. SCC 401. Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this Article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.



24. Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, maybe, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.”



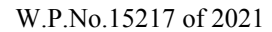
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14. Learned Senior Standing Counsel also drew attention to the decision of this Court in **Coal Oremin Trading Corporation Private Limited Vs. MSTC Limited and another**, W.P.No.5586 of 2020 dated 14.07.2023. Specifically, a reference was made to Paragraph 10 from the said decision of this Court. It reads as under:-

“10. In this case, the Officers of the respondents are located in Vishakapatnam and in Nellore both within the jurisdiction of the High Court of Andhra Pradesh. Any clarification will have to be furnished only by these Officers from Andhra Pradesh of the respondents herein. Merely because, the first respondent also has an office in Chennai Ipso facto would not entitle to the petitioner to invoke the jurisdiction of this Court under Article 226(2) of the Constitution of India. The writ petition is therefore liable to be dismissed in the light of the above discussion.”

15. Learned Senior Standing Counsel has also drawn attention to the recent decision of the Division Bench of the Delhi High Court in **Nidhi Kapoor Vs. Principal Commissioner and Additional Secretary to the Government of India and others**, W.P.(C) Nos.8902 of 2021 etc batch dated 21.08.2023. He drew attention to Paragraph 74 of the said decision of the Delhi High Court. It reads as under:-

“74. Therefore, without further ado, we have no hesitation in holding that the discretionary powers were properly exercised by the Adjudicating Authority under





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the Constitution of India and therefore submitted that the writ petition is liable to be dismissed. Even otherwise, the learned Senior Standing Counsel for the first to third respondents would submit that the impugned order does not suffer from any infirmity warranting interference from this Court under Article 226 of the Constitution of India.

19. Learned Senior Standing Counsel for the first to third respondents drew the attention of this Court to a detailed order passed by the Division Bench of the Delhi High Court in **Nidhi Kapoor Vs. Principal Commissioner and Additional Secretary to the Government of India and others** and **Supriya Vs. Additional Secretary to the Government of India and others**, 2023 DHC 5933 DB, in W.P.(C)Nos.8902 of 2021 etc batch dated 21.08.2023.

20. Specifically, the learned Senior Standing Counsel for the first to third respondents would submit that under identical circumstances, the Division Bench of the Delhi High Court has concluded that the gold imported by the petitioners therein were prohibited notwithstanding the fact that there was no notification issued under Section 11 of the Customs Act, 1962.



21. It is submitted that the Division Bench of the Delhi High Court had come to the conclusion that golds were smuggled and they were held to be not imported for the purpose of Section 2(33) of the Customs Act, 1962 and the petitioners therein are not “eligible passengers” within the meaning of Notification No.12/2012-Cus dated 17.03.2012.

22. It is submitted that the Division Bench of the Delhi High Court has also dealt with Baggage Rules, 2016 as amended with effect from 01.04.2016.

23. Learned Senior Standing Counsel for the first to third respondents has drawn attention to various paragraphs of two views of the Judges of the Delhi High Court, which are re-produced below:-

“32. A bare perusal of section 2(33) of the Act would show that “prohibited goods” are defined as goods, the import or export of which is prohibited by virtue of any prohibition under the Act or any other law for the time being in force. Though at first blush there appears to be a deviation to the effect that it does not include any goods which are not prohibited and such goods in respect of which certain conditions are provided thereby permitting import/export, however, there is more to the legal text than what meets the eyes.

34. A meaningful perusal of section 11 of the Act would show that the Central Government by notification may provide for goods the import or export of which is prohibited either



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absolutely or subject to such conditions that may be fulfilled before or after clearance of the goods from the customs. It empowers the Central Government to specify the goods which are subject to such conditions either absolutely or its import or export is subject to conditions to be fulfilled. The purpose for which such notifications may be issued are, inter alia, the prevention of smuggling, conservation of foreign exchange and safeguarding balance of payments, for prevention of an injury to the economy of the country by the uncontrolled import of gold or silver, prevention of deceptive practices and prevention of contravention of any law for the time being in force and such other purpose conducive to the interest of the general public. However, it is pertinent to mention here that section 11(3) of the Act which was brought by way of the Finance Act, 2018, is yet to come into force.

35.

37. Section 2(39) of the Act read in conjunction with sub-clauses (e), (f), (i), (j) and (m) to section 111 of the Act clearly bring out that import of any “dutiabale”; or “prohibited” goods which are not declared at the customs when imported, would be an act or omission amounting to smuggling, and would therefore subject the goods to confiscation. As much is canvassed as to whether “smuggling” of goods can be read or not into the definition of “prohibited” goods, and further that its confiscation and release/redemption are severable course of actions, we reach to the crucial issue of interpreting section 125 of the Act, which provides as under:

“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, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1) the owner of such goods or the person referred to in sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods."

38. During the course of arguments, much had been urged at the behest of the petitioners that if the importation or exportation of the goods is prohibited under this Act or any other law for the time being in force, the adjudicating officer may allow or afford an option to pay such fine in lieu of confiscation, as the officer thinks fit; whereas in case of any other non- prohibited goods, an option "shall be" mandatorily given to the owner of the goods or where such owner is not known, the person from whom possession or custody of such goods had been seized, an option to pay fine or penalty in lieu of confiscation.

39. At the outset, there is indeed no notification issued by the Central Government declaring importation of gold in the category of "prohibited" goods such as narcotics, armoured cars, arms and ammunition, endangered species, live stock, etc. However, that alone is no closure to the issue. As the instant writ petitions involve individual passengers who were found bringing in gold, it is expedient to examine the entire scheme of the Act to ascertain not only the legislative intent as also how prohibited and/or smuggled goods are to be treated under the Act.



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57. Thus, it was categorically held that wherever the conditions prescribed for import or export of goods are not complied with, such goods shall fall in the category of “prohibited” goods withing the scope and meaning of section 2(33) of the Act. At this stage there is a twist in the tale since it is relevant to take note that the ratio in the aforesaid two cases (the latter decided by the two honourable judges of the Supreme Court) was not referred to or perhaps overlooked in a decision by three honourable judges of the Supreme Court in the cited case of *Commissioner of Customs v. Atul Automations Pvt. Ltd.* [(2019) 7 GSTR-OL 313 (SC); (2019) 3 SCC 539.]. *Atul Automations* [(2019) 7 GSTR-OL 313 (SC); (2019) 3 SCC 539.] was a case where the appellant in October-November, 2016 imported MFDs without requisite permission, viz., multi-function device, digital photocopiers and printers, which incidentally were also classified as “other wastes” under rule 3(1)(23) of the Hazardous Waste Management Rules, and the goods were confiscated with penalty imposed, declining relief of release/redemption. The challenge was upheld observing that (para 9, pages 318 and 319 in 7 GSTR-OL):

“8. Unfortunately, both the Commissioner and the Tribunal did not advert to the provisions of the Foreign Trade Act. The High Court dealing with the same has aptly noticed that sections 11(8) and (9) read with rule 17(2) of the Foreign Trade (Regulation) Rules, 1993 provide for confiscation of goods in the event of contravention of the Act, Rules or Orders but which may be released on payment of redemption charges equivalent to the market value of the goods. Section 3(3) of the Foreign Trade Act provides that any order of prohibition made under the Act shall apply *mutatis mutandis* as deemed to have been made under section 11 of the Customs Act also. Section 18A of the Foreign Trade Act reads that it is in addition to and not in derogation of other laws.



Section 125 of the Customs Acts vests discretion in the authority to levy fine in lieu of confiscation. The MFDs were not prohibited but restricted items for import. A harmonious reading of the statutory provisions of the Foreign Trade Act and section 125 of the Customs Act will therefore not detract from the redemption of such restricted goods imported without authorization upon payment of the market value. There will exist a fundamental distinction between what is prohibited and what is restricted. We, therefore, find no error with the conclusion of the Tribunal affirmed by the High Court that the respondent was entitled to redemption of the consignment on payment of the market price at the reassessed value by the customs authorities with fine under section 112(a) of the Customs Act, 1962.”

58.

74. Therefore, without further ado, we have no hesitation in holding that the discretionary powers were properly exercised by the adjudicating authority under section 125 of the Act in passing the order-in-original dated September 16, 2016. The plea of the petitioner that she had been gifted the gold items of such huge quantity weighing about 3100 grams was considered and it was held that deed was neither bearing any acceptance nor had any legal sanctity. Therefore, no illegality, perversity or incorrect approach is decipherable from the impugned order dated January 2, 2020 passed by the learned revisional authority. Hence, the writ petition is liable to be dismissed.

75.

W.P. (C) No. 9561/2021 (Supriya v. Additional Secretary to the Government of India.)

78. In the present writ petition, learned adjudicating authority vide order-in-original dated January 1, 2021 decided to



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absolutely confiscate the gold items besides imposing penalty without any option to the petitioner for its release/redemption. The findings recorded are reproduced as under:

“7.1... The imported goods in the instant case have been concluded to be non-bona fide baggage as the same were being attempted to be removed from the customs area without declaration and the pax would have been successful in evading applicable customs duty if the customs officer had not intercepted the pax. As the free allowance is allowed only on the bona fide baggage as per rule 3 of the Baggage Rules, 2016, I find that the benefit of free allowance is not available to the pax.”

79. In arriving at such findings, the learned adjudicating authority took note of section 7 of the FTDR Act as well as rule 3(1)(h) of the Foreign Trade (Exemption from application of rules in certain cases) Amendment Order, 2017. It was concluded that the petitioner was not an eligible passenger and her intention was to evade payment of customs duty and it was a clear case of mis-declaration under section 77 of the Act. It was further held as under:

“8.3 I observe that gold once confiscated can be redeemed under section 125 of the Customs Act, 1962. In the instant case, I am not inclined to give an option to the pax for redemption of the said goods as the passenger not only violated the Green Channel but also attempted an act of theft of goods detained by the Department. The intention of the pax was not to clear the goods on payment of applicable duty, fine and penalty but to clear the goods through Green Channel without payment of duty and then to clear the same by way of theft. Hence, the instant case is fit for absolute confiscation.”

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121. Having noticed the different views which have been expressed by various High Courts, this may be an appropriate juncture to briefly take note of some of the incidental rules, circulars and notifications which are asserted to govern the subject. However, the said discussion must necessarily be prefaced with the observation that undisputedly there is no specific notification issued either under section 11 of the Act or section 3(2) of the FTDR relating to the import of gold.

122. To enable us to have a broad overview of the statutory scheme which prevails, our attention was invited firstly to the Baggage Rules, 2016. It may however be noted that rules 3, 4 and 5 essentially deal with the permissible limit of gold and jewellery which may be carried or brought in by passengers arriving from different countries including foreigners. Those Rules essentially deal with the limits up to which such articles may be carried by passengers. We were further informed that subsequently the Central Board of Excise and Customs [CBEC.] has promulgated the Customs Baggage Declarations Regulations, 2013 and which embodies the Customs Declaration Form specifically requiring passengers to make an appropriate declaration with respect to gold jewellery being carried above the free allowance as well as gold bullion. The duty free allowance is also specified in those Regulations.”

24. The facts are not in dispute. In this case, the petitioner has travelled to Dubai on 05.08.2015 and returned to India on 08.08.2015 carrying 791 grams of gold jewellery, which according to the respondents was concealed.



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25. While dealing with an identical situation, this Court has passed a detailed order in W.P.Nos.61 of 2022 etc., batch dated 02.01.2025. The operative portion of the said order reads as follows:-

“22. I have perused the Impugned Order dated 25.10.2021 passed by the 4th respondent rejecting the revision application filed by the petitioners. I have also perused the Appellate Order of the Commissioner of Customs (Appeals) and the Order-in-Original No.281 in F.No.O.S.No.55/2013-INT (AIR) dated 25.04.2014 passed by the 2nd respondent Original Adjudicating Authority. I have also perused the provisions of the Customs Act, 1962, Notification No.12/2012-Customs dated 17.03.2012 as amended from time to time and as it stood during the period in dispute. I have also perused the provisions of the Baggage Rules, 1998.

23. The Impugned Order dated 25.10.2021 passed by the 4th respondent under Section 129DD of the Customs Act, 1962 has proceeded on assumption that the petitioners were not entitled to the benefit of Sl.No.321 to Exemption under Notification No.12/2012-Customs dated 17.03.2012.

24. Sl.No.321 to Exemption under the above notification relates to goods falling under Chapter/Heading No.71 or 98 of the 1st Schedule to the Customs Tariff Act, 1971 (51 of 1975). The description of the goods in Sl.No.321 to Notification No.12/2012-Customs dated 17.03.2012 is as follows:-

- i. Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger.*



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ii. Gold in any form other than,

i. including tola bars and ornaments, but excluding ornaments studded with stones or pearls.

25. Sl.No.321 to the above notification deals with import of goods by “eligible passenger” amended in view of the amendment to the above Notification vide M.F.(D.R.) Corrigendum F.No.334/1/2012-TRU dated 20.03.2012.

26. Thus, Sl.No.321 to Notification No.12/2012-Customs dated 17.03.2012 is applicable to gold in any other form including tola bars and ornaments. Sl.No.321 to Notification No.12/2012-Customs dated 17.03.2012 however would include only ornaments studded with stones or pearls.

27. A perusal of the above notification indicates that the above exemption is applicable only to an “eligible passenger” as defined in the said notification. The expression “eligible passenger” has been defined in Condition No.35 to Annexure to Notification No.12/2012-Customs dated 17.03.2012 [General Exemption No.165 in the Customs Manual]. It reads as under:-

*“For the purposes of this notification, “**eligible passenger**” means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.”*



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28. *In this case, none of the petitioner are “eligible passengers” within the meaning of the Explanation 2 to Condition No.35 to Notification No.12/2012-Customs dated 17.03.2012. Therefore, imports rather attempt to smuggle gold ornaments by these petitioners are not in the contemplation of the exemption under Sl.No.321 to Notification No.12/2012-Customs dated 17.03.2012.*

29. *Therefore, the Impugned Order dated 25.10.2021 holding that the petitioners were not entitled to clear the gold carried in person by them were liable to be confiscated and cannot be countenanced on the reasoning given in the Order. Instead, the attempt of these petitioner to walk away with the gold ornaments without making appropriate declarations under Chapter XI of the Customs Act, 1962 ought to have been examined from the perspective of Chapter XI of the Customs Act, 1962, if applicable which deals with special provisions regarding “Baggage, Goods and Imported or Exported Goods by Post, Courier, and/or Stores”.*

30. *As per Section 77 of the Customs Act, 1962, the owner of any “baggage” shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.*

31. *The expression “baggage” has been defined in Section 2(3) of the Customs Act, 1962, as follows:-*

“baggage” includes unaccompanied baggage but does not include motor vehicles.”

32. *The gold ornaments worn in person are not “baggage” within the definition in Section 2(3) of the Customs Act, 1962.*

33. *As far as the “jewellery” is concerned, as per the Rule 6 of the Baggage Rules, 1998, a passenger returning to India is allowed clearance free of duty jewellery in his bona*



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fide baggage to the extent mentioned in column (2) of Appendix D. Appendix D relates to Indian Passenger who has been residing abroad for over one year. It reads as under:-

“Column (2)

- i. Jewellery upto an aggregate value of Rs.10,000/- by a gentleman passenger, or*
- ii. Upto an aggregate value of Rs.20,000/- by a lady passenger.”*

34. As far as passengers returning from countries other than Nepal, Bhutan, Myanmar, China is concerned, the requirement is specified in Rule 3 of the Baggage Rules, 1998. Appendix A is reproduced below:-

	<i>Articles allowed free of duty</i>
<i>(1)</i>	<i>(2)</i>
<i>(a) All passengers of an above 10 years of age and returning after a stay abroad of more than three days.</i>	<i>i. Used personal effects, excluding jewellery, required for satisfying daily necessities of life.</i> <i>ii. Articles other than those mentioned in Annex.I up to a value of Rs.25,000/- if these are carried on the person or in the accompanied baggage of the passenger.</i>
<i>(b) All passengers of and above 10 years of age and returning after a stay abroad of three days or less.</i>	<i>i. Used personal effects, excluding jewellery, required for satisfying daily necessities of life.</i> <i>ii. Articles other than those mentioned in Annex.I up to a value of Rs.12,000/- if these are carried on the person or in the</i>



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	<i>Articles allowed free of duty</i>
	<i>accompanied baggage of the passenger.</i>
<i>(c) All passengers up to 10 years of age and returning after stay abroad of more than three days.</i>	<i>i. Used personal effects, excluding jewellery, required for satisfying daily necessities of life. ii. Articles other than those mentioned in Annex.I up to a value of Rs.6,000/- if these are carried on the person or in the accompanied baggage of the passenger.</i>
<i>(d) All passengers up to 10 years of age and returning after stay abroad of three days or less.</i>	<i>i. Used personal effects, excluding jewellery, required for satisfying daily necessities of life. ii. Articles other than those mentioned in Annex.I up to a value of Rs.3,000/- if these are carried on the person or in the accompanied baggage of the passenger.</i>
<i>Explanation.- The free allowance under this rule shall not be allowed to be pooled with the free allowance of any other passenger.</i>	

35. In fact, Appendix A to F to the Baggage Rules, 1998, have framed to implement the requirement of Section 79 of the Customs Act, 1962.

1. Even under the Baggage Rules, 1998, these petitioners could not have walked free without making appropriate declarations if gold ornaments were kept in their “baggage”.



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37. Thus, neither under the provisions of the Baggage Rules, 1998 nor under Notification No.12/2012-Customs dated 17.03.2012, the petitioners were entitled to any duty exemption.

38. Thus, these petitioners ought to have declared with the customs authority soon after they alighted from the flight about gold ornaments which were worn by them in person before the customs authorities at the airport.

39. In this case, all the petitioners have attempted to “smuggle” the gold by wearing them in their persons which they could not have imported duty free either under the above mentioned notification or under the Baggage Rules, 1998.

40. At the same time, one should not lose sight of the fact that gold is no longer prohibited after the Gold (Control) Act, 1968 was repealed in the year 1990 i.e., with effect from 6th June 1990.

41. The import of gold is not prohibited. Rather, it is restricted and regulated. Therefore, any person carrying gold ornament ought to have paid appropriate customs duty if whether such gold jewellery/ornament was worn in person or kept in the “baggage”.

42. Absolute confiscation of the imported quantity of gold in the hands of each of these petitioners cannot be ordered to be absolutely confiscated under Section 125 of the Customs Act, 1962.

43. The option ought to have been given to the owner of such gold to redeem in lieu of confiscation under Section 125 of the Customs Act, 1962. Therefore, the Order rejecting the request for redemption or reexport cannot be sustained.

44. Considering the fact that the goods are not absolutely confiscable, the Court is of the view that the Impugned Order



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dated 25.10.2021 passed by the 4th respondent, holding the goods are not redeemable and is not liable to be confiscated is to be interfered with.

45. Therefore, the Impugned Order dated 25.10.2021, affirming the Order of the lower authority or the lower appellate authority is liable to be interfered with. Accordingly, the Impugned Order dated 25.10.2021 is liable to be quashed.

46. Therefore, the case can be remitted back to the 2nd respondent to impose the redemption fine on each of the petitioners under Section 125 of the Customs Act, 1962 taking note of the value of the gold that was attempted to be smuggled by these petitioners.

47. This exercise shall be carried out by the 2nd respondent Joint Commissioner of Customs within a period of 8 weeks from the date of receipt of a copy of this order.

48. If required, the respective petitioners shall be heard before final orders are passed.

49. These Writ Petitions are allowed. No costs. Connected Writ Miscellaneous Petitions are closed."

26. Therefore, the Impugned Order passed by the fourth respondent affirming the Orders of the lower Authority is liable to be interfered with. The objection with the Order passed by the fourth respondent sitting at Mumbai also cannot be countenanced as the Order-in-Original No.356/2015-2016-AIRPORT made in F.No.O.S.No.793/2015-AIR dated 23.11.2015 passed by the second respondent was the subject matter of the Appeal before the third respondent,



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whereby, the third respondent vide Order-in-Appeal C.Cus-I Nos.263 to 265 of 2016 dated 27.06.2016 confirmed the view of the second respondent.

27. The cause of action has arisen within the jurisdiction of this Court. Therefore, the objection of the respondents before this Court has to be overruled.

28. In view of the above discussion and also taking note of the observation made in the Common Order dated 02.01.2025 passed in W.P.Nos.61 of 2022 etc., batch, this writ petition deserves to be allowed with the directions contained therein.

29. Accordingly, the Impugned Order dated 27.01.2021 passed by the fourth respondent herein is set aside and the case is remitted back to the second respondent to pass a fresh order allowing the redemption of imported gold on payment of redemption fund.

30. Since the dispute pertains to the year 2016, the second respondent is directed to pass a fresh order on merits. The second respondent is also directed



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to permit the petitioner to re-export the confiscated gold jewellery on payment of appropriate redemption fund.

31. This Writ Petition is allowed with the above observations. No costs.

Connected Writ Miscellaneous Petitions is closed.

.01.2025

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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To

1.The Principal Commissioner of Customs,
Chennai-I Commissionerate,
New Custom House, Meenambakkam,
Chennai – 600 027.

2.The Joint Commissioner of Customs
(Adjudication-Air),
Office of the Chennai-I Commissionerate,
New Custom House,
Meenambakkam, Chennai – 600 027.



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3.The Commissioner of Customs (Appeals-I),
No.60, Rajaji Salai, Custom House,
Chennai – 600 001.

4.The Principal Commissioner and Ex-Officio
Additional Secretary to Government of India,
Ministry of Finance,
Department of Revenue,
8th Floor, World Trade Centre,
Centre 1, Cuff Parade,
Mumbai – 400 005.



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C.SARAVANAN, J.

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Pre-delivery Order in W.P.No.15217 of 2021
and
W.M.P.No.16125 of 2021

.01.2025