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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CUSAA 46/2023**

COMMISSIONER OF CUSTOMS (PREV.)Appellant

Through: Ms. Anushree Narain, SSC

versus

RAJESH KUMAR

.....Respondent

Through: Mr. Rahul Raheja, Mr. Rohit Raheja,
Mr. Gaurav Prakash, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

ORDER

% **16.12.2025**

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed on behalf of the Appellant *inter alia* challenging the order dated 31st October, 2022 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (*hereinafter, 'the impugned order'*).
3. A brief background of the present case as stated in the appeal is that the Respondent was working in the bullion market as a broker in Kucha Mahajni, Chandini Chowk, Delhi. He was involved in the trade of selling gold received on consignment basis. On 14th October, 2016, the Directorate of Revenue Intelligence, Delhi Zonal Unit, New Delhi searched the premises of the Respondent. During the said search, around 20 kgs of gold of foreign origin, having a market value of Rs. 6,46,57,189/- was recovered. There was also recovery of a substantial amount of currency.
4. On the basis of these facts, the concerned Additional Commissioner, *vide* Order-in-Original dated 31st January, 2019, directed seizure of the said



gold weighing around 20 kgs, having a market value of Rs. 6,46,57,189/- and confiscation of the Indian currency bearing an actual value of Rs. 6,43,74,000/-. The impugned order held the said confiscation of goods to be bad in law and *inter alia*, observed that the seized goods of the Respondent herein are not liable for confiscation. It is this order dated 31st October, 2022 which is challenged by the Appellant *vide* the present appeal.

5. On 2nd April, 2025, the questions of law were framed for adjudication in this matter.

6. During the pendency of this appeal, the Respondent, Shri Rajesh Kumar passed away on 4th November, 2025.

7. The clear issue that arises for consideration in this matter is whether the penalty, if any, imposed by the Department against the Respondent would abate or not.

8. A perusal of the Impugned Order would show that the Customs, Excise and Service Tax Appellate Tribunal, (*hereinafter*, 'CESTAT') has set aside the confiscation of goods of the Respondent on the ground that there was no definite evidence to arrive at a conclusion that the gold weighing around 20 kgs was smuggled.

9. This was a case of town seizure and not of seizure in the Customs area and since there was no chain of events to support the movement of smuggled goods to the town from anyone coming from the International Border, the CESTAT held that the conclusion that the gold weighing around 20 kgs is smuggled, cannot be arrived at. The operative portion of the impugned order is set out below:

“23. I further find substance in the submission of Id. Counsel for the appellant that investigation does not adduce



any evidence to arrive at a definite conclusion, if the gold was smuggled or not. Penalty under Section 112(b) requires mens rea to be established i.e. conscious knowledge of the appellant that he was dealing in smuggled gold. This fact is not coming out from the evidence on record. Admittedly, it is a case of town seizure and not a seizure (or near) in customs area or in the vicinity of international border. Thus, the suspicion of Revenue that the gold is smuggled does not lead to inevitable evidence that the gold is smuggled. Admittedly, the seized gold was of 99.5% purity, whereas normally the smuggled gold is of 99.9% purity. On this score also there can be no presumption of gold being smuggled only on the basis of foreign marking. In absence of any chain of events supporting movement of smuggled gold from the border area or customs area to town or a person coming from an international border, I hold that simply possession of foreign marking gold without a bill does not lead to the conclusion that it is smuggled. It has been so held by this Tribunal in the case of **Nand Kishore Modi vs. CC (Prev.), West Bengal - 2015 (325) ELT 781 (Tri Kolkata)**. This Tribunal has held in the case of **Sanjiv Kumar & Others vs. CCE, Lucknow** vide Final Order No. 72924-72926/2018 dt. 27-(Tri. All.) that mere foreign marking on gold without any corroborative evidence is at best hearsay evidence.

24. In view of my findings and observations, I hold that the confiscation of gold under the facts and circumstances is bad in absence of condition precedent, as provided under Section 111(d), (o) and (p) of the Customs Act. I hold that the appellant has not violated any of the provisions of Section 111 as alleged. I further hold that appellant is not involved in acquiring possession of or is any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knew or has reason to believe are liable to confiscation under Section 111. Accordingly, I hold that no penalty is imposable on the appellant in the facts and circumstances



under Section 112(b)(i). Accordingly, penalty imposed on this appellant is set aside.”

10. The stand of the Department in the appeal is that one Mr. Amit Goel, who is stated to be the main seller of the foreign origin gold did not claim any rights in the said gold. Neither did the Respondent, Mr. Rajesh Kumar, at the relevant point of time, claim any rights over the gold. Thus, the confiscation could not have been set aside, as there was no challenge to the confiscation by either of the parties.

11. Further, the said gold weighing around 20 kgs has itself been disposed of by the Department on 31st March, 2019 as stated in its Affidavit .

12. Insofar as the appeal of Mr. Amit Goel is concerned, the said appeal, being **CUSAA 76/2024**, titled ‘**Commissioner of Customs Prev v. Amit Goel**’ has already been disposed of vide order dated 15th October, 2024, in the following terms:

“1. The learned counsel for the parties submit that the tax effect involved in the present appeal is below the threshold limit as stipulated in the instructions dated 02.11.2023 issued by the Central Board of the Indirect Taxes and Customs.

2. The appeal is, accordingly, dismissed on account of low tax effect.”

13. In view of the fact that neither of the parties were claiming any rights in the said gold, weighing around 20 kgs, the setting aside of the confiscation is no longer tenable.

14. The impugned order, to the extent that it sets aside the confiscation of the gold and the currency is accordingly set aside.

15. The penalty imposed upon the Respondent is also set aside. In any



case, the penalty would now abate due to the demise of the Respondent.

16. In view of the above facts, the questions of law no longer require to be adjudicated.

17. The Appeal is disposed of in the above terms. Pending applications, if any, are disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

DECEMBER 16, 2025/tg/ss