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

\+ **W.P.(C) 9861/2025**

M/S M.D. OVERSEAS PRIVATE LIMITED .....Petitioner

Through: Mr. Pradeep Jain & Mr. Sambhav Jain, Advs.

versus

JOINT COMMISSIONER OF CUSTOMS & ANR.

.....Respondents

Through: Mr. R.Ramachandran, SSC, CBIC with Mr. Prateek Dhir, Adv. (9868211477)

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

O R D E R

% 18.12.2025

1. This hearing has been done through hybrid mode.

2. This is a petition under Article 226 of the Constitution of India *inter alia* challenging the impugned Order-in-Original dated 26th June, 2025 *(hereinafter, 'impugned OIO'*) .

3. The background of the case is that the Petitioner is a refiner of imported gold dore bars and imports the same from various international jurisdictions with valid import authorisation. The Petitioner had imported the following seven gold bars from Bolivia with the assessable value in the following terms:

Sl. No.	tem	CTH	Description of goods	Qty in Kgs	Assessable value of goods (in Rs)
1	1	71081200	Gold Dore Bar as per Packing List	11.037000	100148406.36
2	2	71081200	Gold Dore Bar as per Packing List	11.022000	100118019.56
3	3	71081200	Gold Dore Bar as per Packing List	10.680000	97052448.73
4	4	71081200	Gold Dore Bar as per Packing List	10.516000	95521783.1
5	5	71081200	Gold Dore Bar as per Packing List	10.501000	95103504.1
6	6	71081200	Gold Dore Bar as per Packing List	10.009700	90922822
7	7	71081200	Gold Dore Bar as per Packing List	4.228100	38324714.14
TOTAL					61,71,91,698

4. The challenge before the Petitioner today is that the supplier in the country of origin is not accepting the gold consignment back and thus, the Petitioner is willing to export the same to a purchaser in Dubai.

5. Ld.Counsel for the Petitioner has relied upon the notification dated 30th June, 2017 bearing ***Notification No.50/2017- Customs*** to argue that there is a special rate of customs duty in respect of goods that are directly shipped from the country in which they are produced and each bar has a weight of 5 kgs or above.

6. In terms of Condition Nos. 9 & 40 of ***Notification No.50/2017–Customs,*** dated 30th June, 2017, the standard rate of duty imposed is 5% and the same has been clarified as under:

Notif. S. No.	Chapter or heading or sub-heading or tariff item	Description of goods	Standard Rate	Integrated Goods and Services tax	Condition No.
354	71	Gold dore bar, having gold content not exceeding 95%	5%	----	9 and 40

"Condition No.9 and 40 of Notification No-50/2017-Cus dated 30.06.2017
9. If the importer follows the procedure set out in the

Customs (Import of Goods at Concessional Rate of Duty or Specified End Use) Rules, 2022.
40. If,-
(a) the goods are directly shipped from the country in which they were Produced and each bar has a weight of 5kg or above;
(b) the goods are imported in accordance with the packing list issued by the Mining company by whom they were produced;
(c)the importer produces before the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, an assay certificate issued by the mining company or the laboratory attached to it, giving detailed precious metal content in the dore bar;
(d)the gold dore bars are imported by the actual user for the purpose of refining and manufacture of standard gold bar of purity 99.5% and above; and
(e) the silver dore bars are imported by the actual user for the purpose of refining and manufacture of silver bars of purity 99.9% and above.
"

7. In terms of the above Notification, therefore, if the goods are shipped from the country from where they were produced and the gold bar has a weight of 5kg and above, the concessional rate of duty would be permitted to be availed of by the Petitioner.

8. As can be seen from the table above, except for the last gold bar, all the other gold bars are above 5kg and in the case of the last gold bar, it is short of 5kg by about 800g. The said gold bar was not permitted to be cleared and the Petitioner then submitted a request for permitting release of the seventh gold bar also, which had been shipped inadvertently to the Petitioner.

9. The Petitioner has not been permitted and the impugned OIO was

passed on 26th June, 2025, directing the Petitioner to export the gold bar back to the country of its origin. The relevant portion of the said order reads:

> *"i) I order for confiscation of one gold dore weighing 4.228100 kg having assessable value of Rs. 38324714/- (Rs. Three Crore Eighty Three Lakh Twenty Four Thousand Seven Hundred Fourteen only) imported vide Bill of Entry No. 2800363 dated 21.06.2025 under section 111(d) of the Customs Act,1962 for the reasons mentioned above. However, considering the importer's request for re-export, based on bonafide mistake as discussed above, and the fact that they had informed department regarding offending nature of the goods., I allow importer an option to re-export it back to origin on payment of redemption fine of Rs 10,00,000/- (Rs. Ten Lakhs only) under Section 125 of the Customs Act, 1962.*
> *ii) I impose a penalty of Rs. 5,00,000/- (Rs. Five Lakhs only) on the importer under Section 112(a)(i) of the Customs Act, 1962 for act of omission and commission which led the goods liable for confiscation.*
> *iii) I allow consequent amendments in the subjected Bill of Entry for clearance of remaining 06 dore bars for home consumption subject to the provisions of Customs Act, 1962."*

The Petitioner then submitted a request stating that the buyer in Bolivia is not willing to take the gold bar back and therefore, the Petitioner sought permission to sell it to an alternate buyer in Dubai which was rejected on 22nd July, 2025.

10. Ld. Counsel for the Petitioner relies upon the decision dated 21st May, 2018 passed by the Kerala High Court in ***W.P.(C). 13174/2018*** titled ***Hassoun Manufactures India Pvt. Ltd. v/s Commissioner of Customs, Ernakulam,*** wherein it has been observed as under:

> *"3, The Learned Standing Counsel for the second respondent submits that going by convention, re-export in a case of this nature, can be made only to the supplier. it is pointed out that the supplier in the instant case is an entity in China and as such the petitioner can be permitted to re-export the goods only to China. It is stated that since the request of the petitioner was for re-export of goods to Dubai, the same was not considered.*
> *4. No provision of law which interdicts re-export of confiscated goods to a destination other than the destination from which the goods were imported is brought to my notice. In the absence of any legal impediments, according to me, the request made by the petitioner cannot be turned down.*
> *5. In the result, the writ petition is allowed and the second respondent is directed to permit the petitioner to re-export the goods referred to in Ext. P1 order as requested for by them."*

11. Ld. Counsel for the Respondent, on the other hand, submits that in their counter affidavit, the regulations of Bolivia have been placed which shows that there is no bar on Bolivian manufacturers taking the gold bar back.

12. The question that arises in this case is whether the gold bar should be permitted to be released for the purpose of re-export or not and if so, can the re-export be permitted to an alternate buyer/country.

13. One of the findings in the impugned order itself is that the shipment had been sent on 18th June, 2025 and upon receipt of the packing list itself, the Petitioner had realised the one gold bar which was below the 5kg limit. Accordingly, a letter dated 21st June, 2025 was written by the Petitioner in which the Petitioner informed the Customs Department that the seventh bar weighed 4228.10g gross and 3995.55g net. The Petitioner then prayed for re-

export of the seventh gold bar and the same was claimed to be a genuine mistake. This stand of the Petitioner was, in fact, accepted by the Department in paragraph no.13 of the impugned OIO, which reads as under:

> *"13. I also find that, the importer has promptly informed this violation to the department vide their letter dated 21.06.2025 and has requested for the first check of that goods. As per the exam report available in ICES 1.5 System it is found that the impugned consignment consists of 07 gold dore bars weighing i) 11.037000 Kgs, ii)11.022000 Kgs, iii)10.680000 Kgs, iv)10.516000 Kgs, v)10.501000Kgs, vi)10.009700 & vii)4.228100 Kgs respectively. Therefore, it is established that the consignment covered under Bill of entry 2800363 dated 21.06.2025 contains certain goods, i.e. 01 (one) gold dore bar which is in violation to condition No. 40 (a) of Notification No. 50/2017-Customs dated 30.06.2017. It is also on record that the importer has given prior information about the said offence to the proper officer and has also filed B/E which was examined on first check to determine actual nature of the goods.* ***Therefore, it appears that there is no case of mala-fide intention being brought out against the importer****."*

14. The Court has considered the matter. Considering that the shortage in weight of the seventh gold bar is merely 800g, it clearly appears to be a bonafide mistake by the Petitioner. It could be an error which took place at the end of the exporter. Moreover, out of seven gold bars, six bars have already met the criteria. The only benefit that the Petitioner would get is that the concessional rate of duty would be applicable. However, the Customs Department insists on imposing a fine and penalty as well.

15. The Court has put to ld. Counsel for the Respondent as to what is the

rationale behind the 5kg limit, to which there is no response in the counter affidavit. In any event, since this is only a *bona fide* mistake, the Court is of the opinion that the Petitioner ought to be permitted to seek release of the gold bar by paying the normal applicable Customs duty and not the concessional Customs duty without any redemption fine and penalty or the Petitioner shall be permitted to re-export.

16. Insofar as the re-export is concerned, the reasons as to why the Bolivian exporter is not taking the gold bar back is a commercial transaction between the Petitioner and the Bolivian exporter. The OIO itself permits re-export to Bolivia, but the Petitioner is seeking export to an alternate country. Following the decision of the Kerala High Court in ***Hassoun Manufactures India Pvt. Ltd. (supra),*** where it has been held that there is no bar against re-export of confiscated goods to any other destination, this Court is inclined to permit the re-export to Dubai, as prayed by the Petitioner.

17. Accordingly, the Customs Department is directed to permit re-export of the seventh gold bar to Dubai, subject to fulfilment of all other terms and conditions. The release for the purposes of re-export shall be affected by 10th January 2026.

18. The writ petition along with pending application(s), is disposed of in the aforesaid terms.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

DECEMBER 18, 2025/*kk/ss*