

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 11971 of 2016- SM

(Arising out of OIO-AHM-CUSTOM-000-COM-005-16-17 dated 21/09/2016 passed by Commissioner of Central Excise and Service Tax-AHMEDABAD)

Shri Lookman Mohamed Yusuf

.....Appellant

Resident Of 39, Altom Street Blackburn, Lancashire, Uk
Also At, Takadia, Street, Manuber,
Bharuch Surat Gujarat

VERSUS

C.C.-Ahmedabad

.....Respondent

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:

Shri Devashish K Trivedi, Advocate for the Appellant
Shir P Ganesan, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No 10254 /2024

DATE OF HEARING: 28.11.2023

DATE OF DECISION: 29.01.2024

RAMESH NAIR

The present appeal is arising out of impugned order No. AHM-CUSTOM-000-COM-005-16-17 dated 21.09.2016.

1.1 The relevant facts of the case, in brief, are that Mr. Lookman Mohamed Yusuf (Appellant) arrived at SVPI, Airport on 24.02.2015 from Manchester via Dubai by Emirates Flight EK 540. The officers of DRI on the basis of intelligence, intercepted the Appellant after he crossed the green channel. Appellant had not declared any dutiable goods to Customs. As appellant denied having any dutiable goods, his body and baggage were screened. The gold chains were recovered from his trouser and blazer. The Government approved valuer valued 10 Gold chains to be weighing 4999.180 grams having a market value of Rs. 1,34,47,794/- and tariff value of Rs. 1,24,63,755/-. These 10 Gold chains were seized during the course of the Panchnama drawn on 24.02.2015 on a reasonable belief that the same were liable for confiscation.

1.2 The officers further detained foreign currency amounting to USD 11325 on 24.02.2015 recovered from his hand baggage. As the foreign

currency was in excess of USD 5000 and not declared as per Regulation 6 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, the currency was seized on 02.03.2015. Statement of Appellant was recorded on 24.02.2015. The Appellant was arrested on 25.02.2015 and the Hon'ble High Court of Gujarat granted the regular bail on 19.06.2015.

1.3 It was alleged that the Appellant had contravened Para 2.20 of the EXIM Policy 2009-2014 as he had not imported bonafide goods as allowed under the provisions. There was a contravention of the provisions of Section 77 of the Customs Act, 1962 as he has not declared dutiable goods in his Customs declaration form on arrival and Rule 6(6) of FEMA as he had not declared the foreign currency which was excess of USD 5000.

1.4 A Show Cause Notice dated 20-08-2015 was issued to the appellant proposing confiscation of the seized gold and foreign currency and also to impose penalties. In adjudication, the Adjudicating authority ordered absolute confiscation of the 10 Gold Chains totally weighing 4999.180 Grams having tariff value at Rs. 1,24,63,755/- and confiscation of foreign currency worth USD 11,325/- with an option to redeem the same on payment of redemption fine of Rs. 1,00,000/- within 30 days. He also imposed penalty of Rs. 15,00,000/- under the provision of Section 112(a) of the Act and of Rs. 1,00,000/- under the provisions of Section 114AA of the Act. Being aggrieved with the impugned order appellant filed the present appeal before this Tribunal.

2. Shri Devashish K Trivedi, the Learned Advocate appearing on behalf of the appellant submits that on arriving at Sardar Vallabhbhai Patel International Airport, Ahmedabad, the Appellant immediately went to the Customs Welcome Desk. However he had not found anyone present there. On inquiring with one person who was standing near the said welcome desk, he was guided by way of pointing out index finger to go on the other side of the airport and meet officers who would further guide him about the procedure to be followed. However, the said other side was other side of the green channel. The Appellant simply followed the guidance given to him. However after inquiring with the officers present there instead of appreciating his queries, the officers started misbehaving manhandling, and even beating the appellant. Before the Appellant could understand as to what had happened, he was handed over a "Indian Customs Declaration

Form” and was asked to write his name and particulars and also sign the same. On perusing the said declaration for, it may be observed that it is not the case that appellant has misguided the officers or that he had given a false declaration that he was not caring any Gold Chains. It may be observed that he had neither mentioned ‘Yes’ nor mentioned ‘No’ in the form at the relevant place. He has simply signed the same without mentioning any of the above. This shows that the signature on the declaration was obtained by the officers of the DRI afterwards and that it is not the case of mis-declaration. He was beaten up worse than an animal so that he was badly injured and started vomiting. He was also arrested by the officers of DRI. They took the appellant along with them to the DRI office and Panchnama and Statement both dated 24.02.2015 were fabricated by the officers of DRI and appellant was forced to put his signature on the same.

2.1 He also submits that appellant was produced before the Hon’ble Additional Chief Metropolitan Magistrate on 25.02.15 i.e. on the next day of his arrest. Since he was beaten up very badly by the officers of DRI, a request was made to the Hon’ble Magistrate to direct for medical examination of the appellant in presence of police officers. Accordingly, medical examination was conducted by the medical officers of Government Hospital. It may be observed that even after two days of being beaten up, it is clearly found during medical examination that there is a abrasion(redness) on (Lt) left side of back of liver on the appellant’s body. Therefore, it is quite clear that the statement and panchnama are not reliable as evidence. The statement although recorded under Section 108 of the Customs Act, 1962, before the DRI officer shall not have any evidence value because it is absolutely clear that it was not a voluntary statement. Further cross-examination of DRI officer Shri Rakesh Rajani who claims to have recorded statement of the appellant conducted before Hon’ble Additional Chief Metropolitan Magistrate. On perusing the same, it may be observed that there are innumerable contradictions. The said officers have contradicted from the statement. He accepts that some panchanama was drawn at the DRI office which was not in his presence. Meaning thereby, the Panchnama was not drawn at the Airport but was fabricated at the DRI office. Not only that but in answer to a specific question as to whether, in order to give statement, any summon was served to the appellant herein?. The said officer states and clarifies that no written summons was given to the appellant herein. However, a perusal to a statement of the appellant would

show that in the very second line the appellant is said to have stated that he has appeared before the officer to give statement in response to his summons. All these contradictions clarified beyond doubt that the statement of the appellant dated 24.02.2015 cannot be relied upon as evidence as the same is not lawful statement, much less it is a voluntary statement. He placed reliance on the decision of Commissioner of Customs (Preventive) Vs. Puni Dhapa Lokeshwara Rao -2009(248) ELT 141 (Cal.)

2.2 He further submits that as far as the law under Baggage Rules is concerned, previously Baggage Rules, 1994 were in existence. Rule 11 thereof contemplated that the 'personal effects' of the tourist shall be allowed to be imported temporarily free of duty. The term 'Personal Effects' was also particularly defined which included any articles excluding all merchandise imported for commercial purpose. W.e.f. 02.06.1998 i.e. date of its publication by Notification No. 30/98-Cus.(N.T.) dated 02.06.1998, Baggage Rules 1998 had superseded Baggage Rules 1994. Rule 7 contemplated that a tourist arriving in India shall be allowed clearance free of duty articles in his bona-fide baggage to the extent mentioned in Column (2) of Appendix-E. Said Column (2) of Appendix -E provided that tourist of Indian Origin can import duty free used 'personal effects' if they are for personal use of the tourist and out of those, other than those consumed during the stay in India are re-exported when the tourist leaves India for foreign destination. Notification No. 30/2005-Cus. (N.T) dated 04.04.2005 and Notification No. 76/2006-Cus. (N.T.) dated 30.06.2006 were issued whereby one Appendix -IV was inserted in Baggage Rules, 1998 and its scope was extended respectively. Further vide Notification No. 77/2011-Cus(N.T.) dated 14.11.2011, Appendix-E was substituted. As such, for our purpose, the said substitution has no effect.

2.3. He argued that it is pertinent to note that Notification No. 45/92-Cus (N.T.) dated 19.06.1992 Tourist Baggage (Amendment) Rules, 1992 was introduced. The term 'personal effect' was particularly explained therein. It particularly illustrated that amongst other things personal jewellery is included in the scope of 'Personal Effects'. Likewise, since unlike in the case Baggage Rules, 1994, Baggage Rules, 1998 did not contain definition of 'Personal Effects' vide circular No. 72/98-Cus. dated 24.09.1998 issued from F.No. 520/136/92-Cus. VI, it was clarified that even for the purpose of Baggage Rules, 1998, more particularly Regulation 7, read with Appendix -

E, 'Personal Effects' includes 'Personal Jewellery'. It is also clarified in the said circular that Baggage Rules, 1998, allows only used 'Personal Effects' of a tourist, however, it is not the intention of the Board to verify the newness of every product which a traveler brings so long as it is not prima-facie new goods in their original packing which can be disposed of off-hand. Thus, on perusing the aforesaid provisions, it may be observed that since the appellant who is a foreign tourist of Indian origin, landed at Sardar Vallabhbhai Patel International Airport on 24.02.15, Baggage Rules, 1998 alongwith its aforesaid amendments and clarification shall apply. It is absolutely clear that gold jewellery are undoubtedly covered under the scope of 'Personal Effects' and the appellant was allowed to bring the same into India duty free as in accordance with Appendix -E read with Rule 7 (supra), the said 'Personal Effects' were for his personal use and he was going to take it back to US after the said gold chains were converted into beautiful necklaces for his four daughters so that they can wear it for the wedding functions in the family on 22.05.15 .

2.4 He further submits that it is a settled preposition of law that in this case, there is absolutely no offence and that no duty in regard to gold chains in question can be charged from the appellant herein; no penalty can be imposed on the appellant herein and the gold chains in question cannot be seized /confiscated but the appellant herein must be given the gold chains back to him so that he can bring them back to UK with him. He placed reliance on the following judgments:-

- Pushpa Lakhumal Tulani Vs. Additional Commissioner of Customs, - 2008(227)ELT 368(Del.)
- Vighneswaran Sethuraman Vs. Union of India - 2014(308)ELT 394(Ker.)

2.5 He further submits that since gold is not a prohibited items, same must be returned back from whose possession the same is seized. He placed reliance on the following decisions:-

- Shaik Jamal Basha Vs. Govt. of India - 1997(91)ELT 277(A.P.)
- T. Elavarasan Vs. Commissioner of Customs (Airport), Chennai - 2011(266)ELT 167 (Mad.)
- Shik Mastani Bi Vs. Principal Commr. Of Cus., Chennai -I 2017(345)ELT 201(Mad.)

- Shibabudeen Mannambath Vs. Principle Commr. Of Cus (I) Chennai - 2017(345)ELT 617 (Mad.)

2.6 He also submits that as per the provision of Section 80 of the Customs Act , 1962 the gold chains may be returned to the appellant and he would take the same back with him at the time of leaving India or he would send the same through someone in accordance with the said provisions. He placed reliance on the decisions of Manori Mistry Vs. Commissioner of Customs, Mumbai -2002(149) 1345 (Tri. Mumbai).

2.7 He further submits that on perusing the impugned order, it may be observed that as far as 11325 US is concerned the same is not absolutely confiscated. However a redemption fine of Rs. 1,00,000/- is imposed. Considering the facts and circumstance that the same were brought with an intension to pay Custom duty on the Gold chains in question, if any was impossible and that there was no other ill-intension, the said Redemption Fine may be set aside as the same is not warranted. The Appellant shall take back the said USD 11,325 back to the UK himself or he may send the same back to the UK through some one.

2.8 He also submits that no penalty under Section 112(a) of the Customs Act, 1962 could be imposed on the appellant herein because appellant has not done or omitted to do any act which act or omission would render aforesaid goods liable to confiscation under Section 111, or that appellant has not abetted the doing or omission of such an act. Likewise, no penalty under Section 114AA of the Customs Act, 1962 could be imposed on the appellant herein because, the appellant has not either knowingly or intentionally made, signed or used, or caused to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purpose of the Customs Act , 1962. Despite that since the penalties are imposed, the same deserves to be set aside.

3. Shri P Ganesan Learned Authorised Representative appearing for the Revenue reiterates the findings of the impugned order. He also raised the preliminary objection regarding maintainability of appeal before this Tribunal. It is urged that Section 129A of the Act prohibits the Tribunal in deciding the cases of any goods imported or exported as baggage, in which case the jurisdiction lies with the Revision authority in the Department of

Revenue, Ministry of Finance. Proviso to Section 129A restricts this Tribunal to decide the appeal.

4. Heard both sides and perused the records.

4.1. At the outset, the Bench entertained a doubt whether the appeal would lie before the Tribunal due to the restriction provided under first proviso to sub-clause (a) of clause (1) to Section 129A of the Customs Act, 1962. The relevant provision is extracted as under :-

“Section 129A. Appeals to the Appellate Tribunal. - (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

- (a) a decision or order passed by the Principal Commissioner of Customs or Commissioner of Customs as an adjudicating authority;*
- (b) an order passed by the Commissioner (Appeals) under section 128A;*
- (c) an order passed by the Board or the Appellate Commissioner of Customs under Section 128, as it stood immediately before the appointed day;*
- (d) an order passed by the Board or the Principal Commissioner of Customs or Commissioner of Customs, either before or after the appointed day, under section 130, as it stood immediately before that day.*

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to -

- (a) any goods imported or exported as baggage;*
- (b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;*
- (c) payment of drawback as provided in Chapter X, and the rules made thereunder.”*

As per the above proviso, no appeal would lie before the Tribunal in respect of any order passed by Commissioner (Appeals) if such order relates to any goods imported or exported as baggage. In the present case, the appeal has been filed by the appellant against the order of Principle Commissioner of Customs, Ahmedabad and not against the order of Commissioner (Appeals), So it would not fall under sub-clause (b) of clause (1) of Section 129A of the Customs Act, 1962. Accordingly, the appeal is maintainable.

4.2 Having considered the rival contentions and on perusal of record I find that any passenger entering into India is required to make a declaration of his baggage before entering into India as provided under Section 77 of Customs Act, 1962. Further if it is found that the goods accompanying him which are also called as baggage, import of which is prohibited and in respect of which true declaration has been made under Section 77 the proper officer may at the request of the passenger detain such articles for the purpose of being returned to him on his leaving India under Section 80 of Customs Act, 1962. The revenue alleged that in the present case appellant signed the declaration but not mentioned any goods in declaration. I have gone through the said disputed form and found that neither appellant mentioned the detail YES nor mention details as NO in the said declaration form. Appellant simply signed the declaration form and handover to the officers at Airport. However, the said option was not exercised and officers seized the goods and detained the passenger. In the instant case, the passenger is neither a habitual offender nor carrying the said goods for smuggling purpose. In this circumstance the Order of the Ld. Commissioner for absolute confiscation of gold chains legally not correct. Further I find that the gold is not a prohibited item. It can be imported only with certain conditions as prescribed under Exim Policy as well as guidelines laid down by the RBI.

4.3 I find that there are series of judgments where redemption of absolutely confiscated gold/gold jewellery has been allowed. In *Hargovind Das K. Joshi v. Collector of customs* - [1992 \(61\) E.L.T. 172](#) (S.C.) the Hon'ble Apex Court remanded the case to the Collector for exercising the option of redemption under Section 124 of Customs Act, 1962. In *Universal Traders v. Commissioner* - [2009 \(240\) E.L.T. A78](#) (S.C.) also the Apex Court allowed redemption of exported goods being not prohibited, In *Gauri Enterprises v. CC, Pune* - 2002 (145) E.L.T. 706 (Tri.-Bang.) the CESTAT held that if similar goods have been released on fine earlier, selective absolute confiscation is not called for as absolute confiscation should be an exception rather than a rule. In *CC (Airport), Mumbai v. Alfred Menezes* - [2009 \(242\) E.L.T. 334](#) (Bom.), the Hon'ble High Court held that Section 125(1) *ibid* clearly mandates that it is within the power of adjudicating authority to offer redemption of goods even in respect of prohibited goods. In *Yakub Ibrahim Yusitf* - 2011 (263) E.L.T. 685 (Tri.- Mumbai) the Tribunal held that option of redemption has to be given to person from whose

possession impugned goods are recovered, even though he had not claimed its ownership. In *Shaik Jamal Basha v. Government of India* - [1997 \(91\) E.L.T. 277](#) (A.P.) the Hon'ble High Court held that gold is allowed for import on payment of duty and therefore Gold in the form other than ornaments imported unauthorised can be redeemed. In *VP Hameed v. Collector of Customs, Mumbai* - [1994 \(73\) E.L.T. 425](#) (Tri.) it was held that there is no bar in allowing redemption of gold being an item notified under Section 123 of Customs Act, 1962 or for any other reason. In *P. Sinnasamy v. Commissioner of Customs, Chennai* - [2007 \(220\) E.L.T. 308](#) (Tri. - Chennai), the Hon'ble Court allowed redemption of absolutely confiscated gold observing that option to redeem the gold to be given as there is no bar against such option by reason of goods being an item notified under Section 123 of Customs Act, 1962 or for any other reason. In *T. Elavarasan v. Commissioner of Customs (Airport), Chennai* - [2011 \(266\) E.L.T. 167](#) (Mad.), the Hon'ble High Court held that gold is not a prohibited item and option is available to owner of goods or person from whom goods seized, to pay fine in lieu of confiscation. In *Union of India Vs Dhanak M. Ramji* - [2009 \(248\) E.L.T. 127](#) (Bom.) affirmed vide [2010 \(252\) E.L.T. A102](#) (S C.) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered. In *A. Rajkumari v. CC (Chennai)* - [2015 \(321\) E.L.T. 540](#) (Tri.-Chennai) the redemption of 70 gold bars brought by concealing in air conditioner was allowed and fine was reduced to 14%. In *Kadar Mydin v. Commissioner of Customs (Preventive), West Bengal* - [2001 \(136\) E.L.T. 758](#) it was held that in view of the liberalised gold policy of the Government, absolute confiscation is unwarranted and redemption can be allowed. In *Sapna Sanjceva Kohti v. Commissioner of Customs, Airport, Mumbai* - [2008 \(230\) E.L.T. 305](#) the Tribunal observed that the frequent traveller was aware of rules and regulations and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine. In *Vatakkal Moosa v. collector of Customs, Cochin* - [1994 \(72\) E.L.T. 473](#) (G.O.I.); *Halithu Ibrahim v. CC* [2002-TIOL 195-CESTAT-MAD. = [2002 \(148\) E.L.T. 412](#) (Tribunal)]; *Krishnakumari v. CC, Chennai* - [2008 \(229\) E.L.T. 222](#) (Tri-Chennai) ; *S. Rajagopal v. CC, Trichy* - [2007 \(219\) E.L.T. 435](#) (Tri-Chennai); *M. Arumugam v. CC, Trichirapalli*, [2007 \(220\) E.L.T. 311](#) (Tri-Chennai) also it was held that absolute confiscation is not warranted and redemption of gold should be allowed.

4.4 In the case of *Yakub Ibrahim Yusuf* cited supra, it has been held that prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation. It does not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine. The gold does not fall under the prohibited category and therefore it cannot be absolutely confiscated. Further I find that in the case of *Mohd. Zia Ul Haque* [2014 \(314\) E.L.T. 849](#) (G.O.I.) , the Revisionary Authority in identical circumstances has held that if the gold ornaments are brought by passenger without declaration, then the same are not liable to absolute confiscation without giving any option to redeem the same. It is further held that when the goods are not prohibited, the adjudicating officer shall give option to pay redemption fine in lieu of confiscation, as the officer thinks fit, which discretion has to be exercised judiciously and if the passenger is not a habitual offender and not carrying the said goods for somebody else, nor did he conceal the goods in any ingenious manner, should be given option to redeem the goods on payment of redemption fine.

4.5 Therefore keeping in view of my above discussion, I am of the considered view that in the present case considering the facts and circumstances, the order of absolute confiscation is not sustainable in law and therefore I set aside the order of absolute confiscation and give an option to the appellant to redeem the Gold Chains on payment of redemption fine of Rs.3,00,000/-

4.6 As regard the confiscation of foreign currency worth USD 11,325, I find that Section 111 of the said Act, under which the impugned foreign currency has been confiscated, which provides for confiscation of improperly imported goods. Thus, unless the improper importation is proved with evidence, the said section is not applicable, there is no evidence on record to prove that the impugned foreign currency was improperly imported. Mere improper procurement, if at all, in contravention of FEMA, will not attract Section 111 of the said Act. Hon'ble Tribunal in the case of *CC v. L. Rajkumar*, reported at [2014 \(312\) E.L.T. 99](#) (Tri.-Chennai), in para 15, has held as under:-

“The above section [i.e. Section 111(d)] makes it amply clear that the goods are liable to confiscation under Customs Act if the goods are imported or attempted to be imported contrary to any prohibition under Customs Act or under any other law for the time being in force. So the prohibition imposed under Customs Act or any other law for the time being in force referred therein has to be a prohibition on import. The prohibition in FEMA on trading and possession of foreign currency will not come within the scope of Section 111(d) because this section deals with import and prohibition on import and no other prohibition...”

10. There is no evidence on record to prove improper importation of the impugned foreign currency. Therefore, the same cannot be confiscated under Section 111(d) of the said Act. Consequently, there is also no ground to confiscate the impugned Indian currency and the Wagon-R vehicle and to impose penalty under Section 112 of the said Act on the noticees. Thus, the impugned order is not sustainable and the same is set aside.”

4.7 I observed that, in the present matter Revenue has not advanced any evidence to show that the foreign currency, in question, was smuggled into the country by the appellant. In the absence of such evidence, confiscation of the same cannot be upheld. Hence I set aside the confiscation of the currency. Accordingly the revenue shall release the currency of \$11,325/- to the appellant.

4.8 As far as penalties imposed on appellant under Section 112(a) and Section 114AA is concerned, having regard to the totality of the facts and circumstances of the impugned matter the penalty imposed is reduced to a sum of Rs. 1,00,000/- under Section 112(a) of the Act and the penalty of a sum of Rs. 50,000/-, under Section 114AA of the Act.

5. In the result, the appeal is partly allowed in the above terms.

(Pronounced in the open court on 29.01.2024)

**(RAMESH NAIR)
MEMBER (JUDICIAL)**