CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Customs Appeal No.70685 of 2024

(Arising out of Order-in-Appeal No.255-CUS/APPL/LKO/2024 dated 26/06/2024 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

Mr. Sunil Kumar Keswani, **.....Appellant**
(53, Kamla Nehru Marg, Freeganj, Ujjain-456010)

VERSUS

Commissioner of Customs (Pre.), Lucknow **....Respondent**
(11th floor, Kendriya Bhawan, Lucknow-226024)

APPEARANCE:

Shri Anuj Agarwal, for the Appellant
Shri A.K. Choudhary, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.70591/2025

DATE OF HEARING : 19 August, 2025
DATE OF DECISION : 19 August, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.255-CUS/APPL/LKO/2024 dated 26/06/2024 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow.

2.1 The appellant arrived at CCSI Airport, Lucknow on 22.07.2022 from Dubai by Flight No. 6E-1088. He did not declare any dutiable goods. However, on personal search of the appellant, a yellow coloured metal chain and a yellow coloured metal Kada suspected to be of gold concealed on the body of the appellant was recovered. The government approved valuer certified that both the items are made up of gold and reported the weight of the Chain and Kada as 124.00 grams and 100.00

grams respectively total valuing at Rs. 11,71,520/-. As the impugned foreign origin gold, not being bonafide in nature as baggage was illegally brought into India in concealment without making any declaration to this effect under Customs Act in the aforesaid manner contravening the provisions of Section 77 & 79 of the Customs Act, 1962 read with Baggage Rules, 2016, it appeared that the recovered gold was liable for confiscation under Section 111 of the Customs Act, 1962, the same was seized under Section 110 of the Customs Act, 1962 under Panchnama dated 22.07.2022.

2.2 After enquiry and investigations in the matter, a show cause notice dated 30.11.2022 was issued proposing confiscation of the seized gold along imposition of penalties on the appellant.

2.3 The show cause notice was adjudicated vide Order-in-Original dated 29.09.2023.

2.4 Aggrieved appellant filed appeal before the Commissioner (Appeal) which has been dismissed as per the impugned order.

2.5 Aggrieved appellant has filed this appeal.

3.1 I have heard Shri Anuj Agarwal learned Counsel appearing for the appellant and Smt Chitra Srivastava Authorized representative appearing for revenue.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 From the facts of the case as referred in para 2.1 it is evident that this appeal is filed in case of seizer/confiscation of gold recovered during search of a person and his luggage. The person had traveled from Dubai to India. The case being of a baggage seizure case, appeal against the order of Commissioner (Appeals) in this case could not lie before this Tribunal.

4.3 Rule 129A of the Customs Act, 1962 provides as under:-

> *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) ----------------------

(b) an order passed by the "Commissioner (Appeals)] under section 128A;

(c) ----------------------------

(d) -------------------------------

[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) ------------------------------
(c) --------------------------------"

4.4 At Sl. No.5 of appeal preamble of Order-in-Appeal No.261-Cus/Appl/LKO/2024 dated 22/04/2024 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow following has been recorded:-

"5. *सीमा शुल्क अधिनियम*, 1962 की धारा 129 *ए* की उपधारा के प्रथम प्रावधान में क्लॉज (धारा) (*ए*) *(सी) तथा (बी)में निर्धारित प्रकृति के* मामलों में केंद्रीय उत्पाद शुल्क आयुक्त (अपील) के द्वारा पारित अपील पर आदेश *के विरुद्ध ट्रीब्यूनल में अपील नहीं की जायेगी और ऐसे मामलो में उक्त अधिनियम की धारा* 129 *डी डी में निहित प्रावधान* को *देखा जाए।*"

4.5 Thus the appeal before CESTAT in the present case is not maintainable. Similar view has been expressed in the following cases:

- Ashok Kumar [2000 (124) E.L.T. 770 (Tribunal)]
- Mahabubunissa [Mumbai bench Final Order No. A/85267-85268/2025 dated 17.02.2025 in Customs Appeal No. 85903 & 85904 OF 2022]

4.6 In the case of Ahamed Gani Natchiar [2022 (10) T.M.I. 100 - Madras High Court] Hon'ble Madras High Court has held as follows:

"7. Against the above background, the following questions arise for consideration:

a. Whether the Tribunal was right in rejecting the plea of the appellant herein of lack of authority/ jurisdiction of the Tribunal, in view of the fact that the issue according to the appellant relates to goods imported as "Baggage" and thus falls within the exclusions carved out in the proviso to Section 129A(1) of the Customs Act, 1962 which reads as under:

Section 129A(1) in the Customs Act, 1962 …….

A reading of the above provision would show that the Tribunal shall not have jurisdiction to decide any appeal in respect of an order passed by the Commissioner (Appeals) under Section 128 A of the Customs Act, 1962 relating to any goods imported or exported as "Baggage".”

4.7 During the Course of argument Counsel has referred to the decision of Hon’ble Delhi High Court dated 19.02.2025 W.P.(C) 2030/2025, wherein Hon’ble High Court has held as follows:-

“6. It is noted that this is another case where the Department is relying upon the standard form undertaking signed by the Petitioner waiving the show cause notice and personal hearing. Clearly, the Department had the email address and the mobile number of the Petitioner. Thus, after not receiving a reply to the email dated 20th February, 2024, the Department could have issued a proper show cause notice within the time prescribed as per law. None of this was done. No hearing was also granted.

7. Under such circumstances, this Court has already held in Amit Kumar v. The Commissioner of Customs, 2025:DHC:751-DB that oral waiver of show cause notice and personal hearing in a standard form would not be in accordance with law. The observations in the said judgement are set out below:

“12. The Court has considered the matter. The main plank of the Respondent’s submission is on the basis of the Standard Printed Form which is titled Green

Channel Violation (Request for Release of Detained Goods) which has been extracted hereinabove.

13. A perusal of the above would show that in Printed Form, the following has been included:- "It is humbly requested that said detained goods may please be RELEASED. I regret my mistake of opting for Green Channel and further request you to please take a lenient view in the matter. I undertake that my case may be decided on merit and as such I do not want any written Show Cause Notice and Personal Hearing in the matter. An oral SCN has been received."

14. When a request for release of goods is being made by the person whose goods have been detained, the said person cannot be expected to read a printed form, where –

- *waiver of Show Cause Notice has been agreed to,*
- *waiver of personal hearing has been agreed to and*
- *it has also been recorded that an oral SCN has been received.*

Such signing of the standard form would not be in compliance with the principles of natural justice, inasmuch as, the waiver under Section 124 of the Act would have to be a conscious wavier and an informed wavier.

15. A perusal of Section 124 of the Act would show that even after an oral show cause notice is given, the authority has the discretion to issue supplementary notice under circumstances which may be prescribed. For ready reference, Section 124 of the Act is set out below:-

"124. Issue of show cause notice before confiscation of goods, etc.—No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

(a) is given a notice in [writing with the prior approval of the officer of Customs not below the rank of [an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

[Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]"

16. A perusal of Section 124 of the Act along with the alleged waiver which is relied upon would show that the oral SCN cannot be deemed to have been served in this manner as is being alleged by the Department. If an oral SCN waiver has to be agreed to by the person concerned, the same ought to be in the form of a proper declaration, consciously signed by the person concerned. Even then, an opportunity of hearing ought to be afforded, inasmuch as, the person concerned cannot be condemned unheard in these matters. Printed waivers of this nature would fundamentally violate rights of persons who are affected. Natural justice is not merely lip-service. It has to be given effect and complied with in letter and spirit.

> *17. The three-pronged waiver which the form contains is not even decipherable or comprehensible to the common man. Apart from agreeing as per the said form that the oral SCN has been served, the person affected has also waived a right for personal hearing. Such a form in fact shocks the conscience of the Court, that too in cases of the present nature where travellers/tourists are made to run from pillar to post for seeking release of detained goods.*
>
> *[...]*
>
> *19. This Court is of the opinion that the printed waiver of SCN and the printed statement made in the request for release of goods cannot be considered or deemed to be an oral SCN, in compliance with Section 124. The SCN in the present case is accordingly deemed to have not been issued and thus the detention itself would be contrary to law. The order passed in original without issuance of SCN and without hearing the Petitioner, is not sustainable in law. The Order-in-Original dated 29th November, 2024 is accordingly set aside."*

8. Though the Petitioner ought to have disclosed the fact that he had submitted the documents in response to email dated 20th February, 2024, in a belated manner, however, the fact that show cause notice was not issued in this case cannot be ignored by the Court.

9. Following the decision in Amit Kumar (supra) the detention of the subject goods is itself liable to be set aside due to non-issuance of show cause notice, and the goods are accordingly directed to be released to the Petitioner within a period of two weeks.

10. The Petitioner shall visit the concerned warehouse personally to obtain the release of the goods. Whatever charges for storage would be payable, shall be paid by the Petitioner."

4.8 I find that the above judgment do not helps the case of the appellant. Hon'ble High Court has in a writ petition decided vis-à-vis the question whether the statement made in request for relies of goods can be considered and deem to be fit, in compliance with Section 124 of the Customs Act and where the order was passed without issuance of SCN, without hearing the petitioner is possible.

4.9 I am not concern with the issue decided in that matter. Hon'ble High Court has not even commented on the appeal provisions as per Section 129 A of the Customs Act.

4.9 Hon'ble High Court has not said that appeal in baggage cases against order of Commissioner (Appeals) shall lie upon the Tribunal and not to be as provided in law.

5.1 The appeal is dismissed as not maintainable. Appellant may pursue for remedy before appropriate forum, if possible.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Akp