

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20748 of 2024

(Arising out of Order-in-Appeal No.270/2024 dated
31.05.2024 passed by the Commissioner of Customs
(Appeals), Bangalore)

M/s. Sri Exports

101, Eido Rado Estates 3-6-526,
Opp. Hotel Minerva, Himayathnagar,
Hyderabad, Telangana-500 029.

....Appellant

VERSUS

Commissioner of Customs,

Airport and Air Cargo Complex-
Bengaluru.

.....Respondent

Appearance:

Mr. Kishore Kunal and Anuj Kumar Advocates for the Appellant
Mr. K.A. Jathin, Deputy Commissioner (AR) for the Respondent

CORAM:

Hon'ble Dr. D. M. Misra, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER NO. 20513 / 2025

Date of Hearing: 27.03.2025

Date of Decision: 17.04.2025

Per: Pullela Nageswara Rao

M/s Sri Exports the Appellant, filed this appeal against the Order-in-Appeal No. 270/2024 dated 31.05.2024, which has upheld the Speaking Order (Order-in-original) No. O01/2023/AS/AC/ACC/JPR dated 23.05.2023.

2 The brief facts of the case are the Appellant imported vide Bill of Entry No. 5126967 dated 20.03.2023 goods declared as "Articles of Gold, 22 Karat Gold Medallions Purity 91.60% (14180 grams) (709Pcs)" valued at Rs. 6,73,67,226/- and claimed

classification of the goods, under Customs Tariff Item entry (CTI) 7114 1910 as "Articles of gold" and claimed the benefit of exemption of 'Nil' rate of Basic Customs Duty at Sl. No. 966 of Notification No. 46/2011-Cus dated 01.06.2011 as the goods are imported from Indonesia under the ASEAN-India Free Trade Agreement (AIFTA). The goods were assessed under Faceless Assessment System by the Jaipur Customs. The assessing/adjudicating authority held that the goods are to be classified under Customs Tariff Item entry (CTI) 7118 9000 as "Gold Coins". Further as the goods are classifiable under Customs Tariff Heading (CTH) 7118, adjudicating authority held that the impugned goods can only be imported by nominated agencies of the DGFT and in the absence of a licence, the goods are held to be liable for confiscation and the issue was referred to the Port Assessment Group (PAG), where the goods are imported and are physically available i.e., Bangalore Air Cargo Customs (ACC) for action on seizure and confiscation. The SIIB unit of Air Cargo Customs, Bangalore seized the goods under Mahazar dated 08.08.2024.

3. The appellant aggrieved by the assessment order of the assessing/adjudicating authority filed an appeal before Commissioner (Appeals), who has passed the impugned Order-in-Appeal No.270/2024 dated 31.05.2024, whereby the assessment order of the adjudicating authority was upheld. The appellant aggrieved by the impugned order passed by the Commissioner (Appeals) has filed this appeal before the Tribunal.

4. The learned counsel during the hearing submitted that the assessment order of the adjudicating authority was upheld by Commissioner (Appeals) ignoring the binding precedents, *inter alia* based on the following findings:

- a. "Coin" is not defined under the Act or the Tariff Act and as per dictionary meanings, it is a round piece of metal that is used as money;

b. The Customs Tariff Heading (CTH) 71181000 at single dash (-) level includes "Coin (other than gold coin), not being legal tender" and under the successive single dash (-), CTH 71189000 covers "Other". Thus, the Heading 71189000 read with the Explanatory Notes covers the impugned goods i.e. the Gold coins (declared by Appellant as Gold medallion), not being legal tender;

c. CTH 7118 covers coins which is also explained in the HSN Explanatory Notes to the effect that the heading applies to coins of any metals (including precious metals) of officially prescribed weight and design, issued under Government control for use as legal tender. Further, CTH 71181000 covers all the coins (other than gold coin) not being legal tender and coin of any metal will be covered by this heading falling under Chapter 71 of Precious Metals and gold coins which are not legal tender will fall under the heading 71189000;

d. Gold Coins which are not being legal tender have not been excluded from CTH 7118;

e. As per the present status of the case laws cited by the Appellant, it is noted that the issue on classification of Gold articles having images of Gods, Saints, Temples or historical sites struck in form of a coin and loosely described as gold coins but not intended to be a legal tender whether classifiable under Tariff Item 71141910 or under Tariff Item 7118 90 00 of Customs Tariff Act, 1975 are still sub-judice and pending decision before the Hon'ble Supreme Court. Hence, the case laws cited by the appellant to justify the classification under CTH 7114 cannot be relied upon;

f. The impugned goods which are declared as Gold Medallion are made by the process as detailed in the Explanatory Notes and hence, impugned goods merit classification under Chapter heading 7118 of the CTH;

g. The goods classifiable under CTH 7118 are not covered under the AIFTA as the goods are under restricted category and as per Notification No. 49/2015-2020 dated 05.01.2022 issued by DGFT, import under HS code 71189000 is restricted and can only be imported through nominated agencies as notified therein;

h. The Country of Origin Certificate issued to the Appellant which mentions that the goods are classifiable under CTH 7114 cannot be considered as valid document to allow claimed notification benefit. The exemption benefit claimed by the appellant since the goods imported were of Indonesian origin and covered under the AIFTA as notified by the above Notification does not hold water. Since the issue is sub-judice before the Hon'ble Supreme Court, there is no infirmity in the order of the Ld. Lower Adjudicating Authority in denying the exemption to the Appellant;

i. In view of restriction imposed in terms of Notification No. 49/2015-2020 dated 05.01.2022 issued by DGFT, the impugned goods became liable for confiscation under Section 111 of the Act.

5.0 The learned counsel further submitted that; the goods imported by the Importer are round in shape and have images of flowers and swastika (religious or other medallions and insignia); the imported goods are more akin to medals and medallions and thus, have been classified under CTH 7114. The said goods are not and were never at any stage 'legal tender' and thus, cannot be classified under CTH 7118 as 'coins'; there is no dispute to the fact that the imported goods are gold medallion of 22K purity; this is also fortified from the examination report dated 18.04.2023 as well as invoice and Country of Origin (COO) Certificate.

5.1 Therefore, the nature of the goods is not in dispute and the only issue which survives is whether these gold medallions can be classified under CTH 7114 as 'Articles of Gold' as claimed

by the importer or under CTH 7118 as 'Coins' as claimed by department. The Impugned Speaking Order erroneously disputes the nature of the goods and holds that the same are not medallions on the basis of physical appearance. However, the said finding is based on the presumption that any article which is round in shape, is a coin meriting classification under CTH 7118.

5.2 CTH 7118 as explained in the HSN Explanatory Notes only applies to coins of officially prescribed weight and design, which are issued under government control for use as legal tender. The heading also includes those coins which were earlier legal tender and are no longer legal tender or those which are intended to be legal tender. However, in the present case, undisputedly, the imported goods are neither legal tender, nor are issued under government control.

5.3 The imported goods are round shaped medallions, which may be struck as coin, but are not legal tender and were never legal tender in the past. Therefore, the imported goods are not gold coins classifiable under CTH 7118. In fact, the Explanatory Notes to CTH 7118 specifically excludes "medals/medallions even if struck in the same way as coins", HSN Explanatory Notes to CTH 7118 points to the classification of such medals/medallions to CTH 7114. Therefore, the imported goods, i.e., gold medallions are not classifiable under CTH 7118 and are instead, classifiable under CTH 7114.

5.4 Para E of the HSN Explanatory Notes to CTH 7114 specifically provides that the heading includes articles for domestic or similar use like medals and medallions. The imported goods are round in shape and have images of flowers and swastika (religious or other medallions and insignia). Hence are more akin to medals and medallions and thus, rightly classifiable under CTH 7114.

5.5 Medallions/medals are made to commemorate an event, person, or place. Although, medallions/medals are typically round in shape like coins but they are not same as coins which

are classified under CTH 7118. They are not legal tenders which could be spent like coins. In this regard, reliance is placed on:

a. Abans Jewels Pvt. Ltd. Vs. Principal Commissioner of Customs, ACC (Imports), New Delhi-(2023) 2 Centax 283 (Tri-Del), where, by way of a detailed judgment, it was categorically held that gold medallions are classifiable under CTH 7114. This judgment specifically discusses that CTH 7118 is only applicable to those coins which were or are legal tenders. All articles of gold which are struck in the form of a coin cannot be classified under CTH 7118.

b. Abans Jewels (supra.) has also been followed by the Hon'ble Tribunal in Raja & Co. Overseas Ltd. Vs. PCC, New Delhi-(2023) 6 Centax 23 (Tri.-Del) which also holds that round shaped gold coins are classifiable under CTH 7114.

c. Khandwala Finstock Pvt. Ltd. Vs. UOI,
-(2023) 12 Centax 192 (Del.)

d. In Cross Ruling HQ H266605 dated 09.04.2018), the commemorative gold coins were classified under heading 7114 and it was held that commemorative coins are similar to medals and medallions which, apart from being of decorative and ornamental use, could be given as gifts to memorialise a certain event or milestone. Similarly, in the present case, the imported goods, the gold medallions imported by the Importer are classifiable under CTH 7114. Reliance is also placed on the Cross Rulings R01031 dated 15.11.2014, N200017 dated 24.01.2012, N200016 dated 24.01.2012, N249940 dated 20.02.2014 and A86378 dated 06.08.1996, wherein similar goods were held to be classifiable under heading 7114.

e. In Appellant's own case in Sri Exports Vs. Commissioner of Customs, Bangalore,-2019 (368)

E.L.T. 985 (Tri-Bang) it was held that gold medallions are classifiable under CTH 7114. This judgment was also upheld by the Hon'ble High Court of Karnataka in Commissioner of Customs, Bangalore Vs. Sri Exports, 2021 (375) E.L.T. 169 (Kar.).

f. Recently, the Tribunal in M/s Giriraj Propmart Pvt., Ltd. Vs. Principal Commissioner Customs, New Delhi C/50208/2021, has considered the Appellant's own case and has held that the present issue is no more res-integra and has been decided by the Tribunal's Principal Bench in Abans Jewels (supra.) and this Hon'ble bench in Sri Exports Vs. Commissioner of Customs, Bangalore, (supra.).

5.6. Since the gold medallions imported by the Appellant are classifiable under CTH 7114, as per the import policy, there is no requirement to obtain license from DGFT for the import of such gold medallions. The DGFT vide its Notification No. 22/2015-20 also explained that only gold in any form above 22 carats can be imported only by nominated agencies. Since, the gold medallions imported by the Appellant are of 22 carats, the same were free to be imported by the Importer without obtaining any license. Therefore, no license is required to be obtained from DGFT for the import of gold medallions classifiable under CTH 7114, in any case, there is no RBI regulation which exists prohibiting or restricting the import of gold coins. The clarification cited in the Impugned Order is not a 'Regulation' as held in Abans Jewels (supra.) as well as Sri Exports (supra). Thus, assuming without admitting that the goods are classifiable under CTH 7118, the same are not subject to any restrictions as per the ITC (HS) and therefore, the order of confiscation is completely erroneous.

5.7. It is noteworthy that above judgments and specifically Abans Jewels (supra.) and Raja & Co. (supra) were pointed out before the adjudicating authority and have, in fact, been noted in the Impugned Order. Further, the Commissioner (Appeals)

has also referred to these judgments (at Para 6.5 as well as at Para 7). However, in gross violation of principles of judicial discipline, the judgments have been ignored on the grounds that appeals are pending before the Hon'ble Supreme Court. It is submitted that there is no stay against the above judgments and thus, in the light of decision in Kamalakshi Finance-(1991) 55 SCC 433 (SC), the Impugned Order is liable to be set aside. In any case, there is no appeal against M/s. Sri Exports (supra.) of the jurisdictional High Court and the said judgment ought to have been followed.

5.8. In view of the above seizure and confiscation of the imported Goods and further denial of the exemption notification is completely untenable and the Impugned Order passed on this basis, ought to be set aside.

6.0 The learned counsel submitted the following additional submissions on behalf of the Appellant on 27.03.2025.

1. The aforementioned appeal was heard on 17.03.2025, wherein, the Department Representative for the Respondent was directed to ascertain whether any confiscation order has been passed or not. In this regard, the Respondents have furnished copy of Mahazar dated 08.08.2023 whereby, the imported consignment was seized and have further been handed over to the Deputy Manager, WFS Terminal, Air Cargo Complex. Further, letter dated 25.08.2023 referred in Para 8 of the Impugned Order has also now been provided to the Appellant.

2. However, perusal of the said Mahazar and letter dated 25.08.2023, clearly establishes that the Imported Goods although were seized on 08.08.2023 in compliance with Speaking Order dated 25.05.2023, however, no confiscation order is passed under the Customs Act, 1962 confiscating the imported goods.

3. In light of the above following submissions are being made supplementing the earlier submissions:

a. There is no confiscation order passed in the present case and therefore, the Impugned Order upholding the confiscation, is completely misplaced and erroneous.

b. The letter dated 25.08.2023 in this regard, which is referred in Para 8 of the Impugned Order is not a confiscation order and there is no confiscation order which has been passed till date.

c. In view of the fact that neither any notice proposing confiscation under Section 111 read with Section 124 of the Act has been issued to the Appellant, nor any order of such confiscation has been passed or served on the Appellant, it is clearly evident that the seizure of goods undertaken on 08.08.2023 lapses and is *non est* in view of Section 110 (2) of the Act.

d. In view of provisions of Section 110 (2) of the Act, where no notice is issued under Section 124 of the Act within 6(six) months of the seizure, the same has to be released to the importer.

6.1 In view of the above additional submissions, apart from the fact that the impugned order classifying the imported consignment of medallions under CTH 7118 9000 as "Gold Coins" instead of CTH 7114 1910 as "Articles of Gold" and to order confiscation is contrary to the HSN Explanatory Notes and the consistent position of law laid down by this Hon'ble Tribunal in several cases as well as the Hon'ble High Court in the Appellant's own case, it is clearly evident that on account of Section 110 (2), the seizure dated 08.08.2023 is *non est*.

6.2 In light of the above, it is prayed that the Impugned Order dated 31.05.2023 may be set aside and the consignment imported by the Appellant vide Bill of Entry dated 20.03.2023 may be ordered to be released to the Appellant.

7. The learned Authorized Representative (AR) for the Revenue, reiterated the findings in the impugned order. He also submitted the copy of the Mahazar dated 08.08.2023 wherein

the goods, 709 pieces of 'Gold Coins' weighing 14.18 Kgs valued at Rs. 6,65,11,400/- have been seized by the Special Intelligence and Investigation Branch (SIIB) under Section 110 of Customs Act, 1962 on the grounds that the goods are liable for confiscation under Section 111 of the Customs Act, 1962, the copy of the handing over letter (Supurdnama) to the custodian of WFS Cargo Terminal of the seized goods and copy of letter dated 14.08.2023 addressed to the Deputy Commissioner of Customs (Import Assessment-1 section) Bangalore sent by the Deputy Commissioner of Customs CIU, Airport and Air Cargo Customs, Bangalore enclosing the copy of the Mahazar, wherein the goods were seized.

8. Heard both sides and perused the records.

9.0 In this case the appellant M/s. Sri Exports filed a bill of entry for clearance of "Articles of Gold, 22 Karat Gold Medallions Purity 91.60% (14180 grams) (709Pcs)" classifying them under Customs Tariff Item entry 71141910 claiming the benefit of exemption under Sl. No. 966 of Notification No. 046/2011-Cus dated 01.06.2011 as the goods are imported from Indonesia under the ASEAN-India Free Trade Agreement (AIFTA). The importer has filed the relevant documents along with the bill of entry including the Country of Origin (COO) certificate. The goods were assessed by the Faceless Assessment Group (FAG) and ordered for classification under Customs Tariff Item entry 7118 9000 as against the claimed classification under Customs Tariff Item entry 7114 1910. Further the assessing authority has held that the goods classifiable under Customs Tariff Item entry 7118 9000 come under the restricted category and in the absence of the import license from the DGFT the goods are liable for confiscation. As per the instructions with regard to Faceless Assessment, the issue was referred by the Faceless Assessment Group (FAG) to the Port Assessment Group (PAG) for action regarding seizure and confiscation of the import goods. Thereafter the SIIB unit of Air Cargo Customs, Bangalore seized the imported goods under a Mahazar dated 08.08.2024 and the

seizure intimation was sent by the CIU, AP & ACC unit, Bangalore to the Import Assessment group vide letter dated 14.08.2024.

9.1 In the meantime, the appellant has filed an appeal with Commissioner (Appeals), aggrieved by the assessment order of the assessment/adjudicating authority. We find that Commissioner (Appeals) vide his Order-in-Appeal No. 270/2024 dated 31.05.2024 has upheld the classification of the impugned goods declared as 'Gold Medallion' under CTH 71189000, denial of benefit under Sl. No. 966 of Notification No. 046/2011-Cus dated 01.06.2011 as legally tenable and justifiable and also the order for seizure and confiscation of impugned goods as legally tenable and justifiable. The case was taken up for hearing on 17.03.2025 and was adjourned to 27.03.2025 for certain clarifications both by the appellant and the Revenue. When the matter came up for hearing on 27.03.2025 the applicant has filed additional submissions wherein he has contended that though the Commissioner (Appeals) has upheld the confiscation there was no confiscation proceedings by the department under Section 124 and goods are not confiscated under Section 111 as was observed and upheld by the Commissioner (Appeals), therefore in the absence of confiscation proceedings having not taken up within 6(six) months of the seizure, the goods are liable to be released as per Section 110(2) of the Customs Act, 1962.

9.2 In this case we further find that the issue of classification is pending decision before the Hon'ble Supreme Court and there is no stay. However, on merits we find that the goods which are in the form of coins with embossing/ struck on both sides of the coin with Flower and Swastika or not legal tender issued under the control of the government, nor it was a legal tender earlier nor proposed to be a legal tender.

9.3 We find that the issue is no longer *res integra*. The issue of classification and importability was decided in the case of Abans Jewellers Pvt., Ltd. Vs. Pr. CC, Acc (Imports), New Delhi

reported in 2023 (2) Centax 283 (Tri-Del), wherein it is held that:-

60. A perusal of the order passed by the Principal Commissioner, however, shows that the judgment of the Delhi High Court in Khandwala has been completely mis-read. The Principal Commissioner in Paragraph 57 held that Delhi High Court in Khandwala has clarified that all gold coins are classifiable under CTI 7118 90 00 and has also held that gold coins cannot be classified under CTI 7114 19 10. The Principal Commissioner also observed that Office Memorandum dated 6-9-2017 has been upheld by the Delhi High Court.

61. In regard to the Office Memorandum dated 6-9-2017 issued by the DGFT, the Delhi High Court clearly observed that the said Office Memorandum merely sets out the statutory position and, therefore, there was no reason to interfere with the Office Memorandum but at the same time the Delhi High Court also observed that an importer can always establish before the adjudicating authority by cogent and convincing evidence that the goods imported by it are entitled to the benefit of exemption. The Delhi High Court also observed that the manner in which in import item is described in the Bills of Entry is not necessarily conclusive regarding its classifiability and an importer can always establish that an item is not exactly conforming to the description contained in the Bills of Entry. The Delhi High Court specifically clarified that the Office Memorandum dated 6-9-2017 issued by the DGFT and the Office Memorandum dated 16-2-2018 issued by C.B.E. & C. cannot fetter or bind the adjudicating authority in any manner and the factual position would have to be assessed on their own merits by the adjudicating authority

62. Thus, merely because the goods were described as gold coins, though with a rider "other than legal tender", the Principal Commissioner could not have concluded that the goods imported would necessarily fall under CTI 7118 90 00

63. The Principal Commissioner has assumed that the goods were "gold coins" and, therefore, classified them under CTI 7118 90 00. The Principal Commissioner should have also examined that the appellant had also stated "other than legal tender in the Bills of Entry. This had to be interpreted in the light of HSN Explanatory Notes to Heading 71.18 of HSN and the two sub-headings.

64. *The orders passed by the Principal Commissioner are based on an incorrect application of the GRI provisions and wrongly classify the imported goods under CTH 7118 on this basis. Even on application of GRI, the imported goods will not be classifiable under CTH 7118 90 00 in view of Explanatory Notes to HSN for Heading 71.18. Rule 1 of the GRI states that classification has to be ascertained on the basis of Section and Chapter Notes. In terms of the Chapter and Section Notes read with the HSN Explanatory Notes, coins would be classifiable under CTH 7114 and CTH 7118 cannot be assumed to be the only entry with respect to classification of all coins. The imported goods were correctly classified under CTH 7114, inasmuch as non-legal tender coins cannot be classified under CTH 7118*

65. *The Principal Commissioner erred in holding that coins are specifically described in CTH 7118 and accordingly, on application of Rule 3(a) of GRI, the imported goods merit classification under CTH 7118, Rule 3(a) can only be applied where goods fall in two or more headings. However, where coins which are not legal tender are excluded from CTH 7118 in terms of HSN Explanatory Notes, the same cannot be included under CTH 7118 on application of Rule 3(a) of GRI.*

66. *It needs to be remembered that the burden of proof in classification matters is always on the Department, which has necessarily to place evidence on record to establish mis-declaration by an importer. The Department did not place any evidence on record to establish that the goods will fall in CTI 7118 90 00 and infact even the order passed by the Principal Commissioner does not refer to any such evidence. The documents placed by the appellant conclusively establish the correctness of the classification made by the appellant in the Bills of Entry under CTI 7114 19 10.*

67. *In any view of the matter, the exact nature of the imported goods was independently not examined either in the show cause notice or in the order passed by the Principal Commissioner and classification has been decided on a complete mis-reading of the judgment of the Delhi High Court in Khandwala.*

68. *What also needs to be noted is that the goods in terms of the notification dated 31-12-2009, as amended on 31-12-2016 reduces the rate of duty to Nil on goods under Heading CTH 7114 and 7118. It further needs to be noted is that even under the Foreign Trade Policy CTH*

7114 was "free" and no condition was imposed. With respect to CTH 7118, the Foreign Trade Policy specified "free" and "subject to RBI Regulations". If the classification under CTH 7114 is correct there is no prescription under the Foreign Trade Policy regarding restriction on the goods. Even if the goods are held to be classifiable under CTH 7118, Regulations have not been issued by the RBI in this context. Regulations can be issued by the RBI only under Section 58 of the Reserve Bank of India Act, 1934 or Section 47 of the Foreign Exchange Management Act, 1999 [FEMA]. Section 58 of RBI Act requires such Regulations to be issued only by way of a notification with the previous sanction of the Central Government. Section 48 of FEMA requires Regulations issued under Section 47 FEMA to be presented before the parliament. Such Regulations have not been placed by the Department and only a reference has been made to a letter issued by the RBI dated 13-9-2017 or the DGFT Memorandum. These cannot be termed as Regulations issued by RBI or under FEMA.

69. This position has also clearly been explained by the Bangalore and Hyderabad Benches of the Tribunal in Sri Exports and by the Karnataka High Court in the matter arising out of the appeal filed by the Department against the decision of the Bangalore Tribunal. The Karnataka High Court clearly held that in the absence of a specific notification issued by DGFT, there is no restriction which existed in the import of gold medallion and such restriction cannot be imposed by way of communications.

70. The power of RBI to issue directions under Section 11 of FEMA extends only to authorized person with regards to making payment for foreign exchange or foreign security and RBI cannot regulate imports which are in the exclusive domain of DGFT.

9.4 We also find that the decision in Abans Jewellers Pvt., Ltd. (supra) was followed in the case of Raja & Co. Overseas Pvt., Ltd. Vs. Pr. CC, Acc (Imports), New Delhi reported in 2023 (6) Centax 23 (Tri.-Del), wherein it is held that:-

13. The phrase legal tender is not defined in any tariff heading or in any explanatory notes. Hence the dictionary meaning has to be taken into consideration. Oxford legal Dictionary defined legal tender as coins or any other money which the creditor is bound by law to accept when tendered in payment of debt. According to Webster Dictionary, legal Tender is money that may be legally offered in payment of

an obligation and that a creditor must accept. According to a new Collins dictionary, legal tender is money in the form of coin or banknote which is officially part of a country's currency at a particular time. Thus it is clear that for the coins to be legal tender, they should have the face value and should be allowed to be spent in the country of issue. Applying this definition to the coins in question, it is clear that these are not the legal tender. But admittedly these non legal tender coins are made of gold. These observations are sufficient to hold that the impugned goods (gold coins) do not fall under CTH 7118.90, being gold of non legal tender. These goods do not even fall under CTH 7118.10 these being made of gold

14. *Entry at CTH 7114 covers all articles of Gold. The word article has also not been defined under any of the Notes to Chapter 71. Again the dictionary meaning has to be relied upon. As per Oxford Dictionary article is a particular item or object and include household articles. Cambridge Dictionary also define article to mean as an object, a particular thing specially one i.e., one of several things of a similar type or a thing similarly placed. As per Merriam Webster dictionary article is a thing or a person of a particular and distinctive kind of class in the light of above discussion, it becomes clear that goods in question, (gold coins) being an object a thing of particular kind, hence are nothing but the articles.*

15. *In addition to explanatory notes to the Chapter of CTH, there are General Rules of Interpretation which require that classification to be determined first according to the terms of the heading of the tariff schedule and no relevant section or chapter notes are, unless otherwise required, according to the remaining GRIs, taken in their appropriate order, the Rules require that the classification of goods in the sub heading of headings shall be determined according to the terms of those sub headings, not related to sub heading notes. Similarly, the explanatory notes of Chapter although a dispositive or legally binding but provide a commentary on the scope of each heading and are generally indicative of the proper interpretation of heading of chapters or entries. As already discussed above CTH 7114 covers all goldsmiths, silversmiths wares of precious metal and all such things as are mentioned under note 10, as discussed above, whereas CTH 7118 applies to the coins of any metal including precious metals but the coin should be such as shall be issued under Government control for use as legal tender. Though coins of non legal tender are also covered in*

CTH 7118 but these coins should not be of gold. Keeping in view the entire above discussion about Chapter Notes, explanatory notes, the General Rules of Interpretation and the description of respective entries under CTH 7114 and 7118, it becomes clear that gold coins are such articles of gold which are in the form of coin, but being the coins of non legal tender, these cannot be covered under CTH 7018. These being articles of precious metals are therefore held to be covered under CTH 7114. This issue is otherwise no more res integra as has been decided by this Tribunal's Principle Bench in the case of Abans Jewels (supra) case and also by the Regional Bench of Hyderabad as well as of Bangalore in the case of Sri Exports (supra). Accordingly, the above formulated issue No. 1 stands decided in favour of the importer and against the Department.

Issue No. 2 & 3

16. Coming to the issue No 2, we observe that the gold coins in question have been imported from Korea. It has been brought to notice by learned Counsel for the appellant and acknowledged by the Department that Republic of India entered into a Comprehensive Economic Partnership Agreement with the Republic of Korea (Indo Korean CEPA), affirming their respective commitments to develop an open market economy in Asia. This agreement obliges both the parties not to maintain any non-tariff barriers and to follow the Harmonized System of Nomenclature as the basis for classification. The Reserve Bank of India on 18-2-2015 issued a circular No. 79 dated 18-2-2015 specifically removing the prohibition from import of gold coins and medallions which were prohibited prior to February 2015. Pursuant thereto, the Foreign Trade Policy 2015-20 was notified vide Notification No. 01/2015 to remain in force from 1-4-2015 to 31-3-2020. In terms of Para 2.01 of the FTP, the imports of goods in India shall be free except regulated by way of 'prohibition', 'restriction' etc. as laid down in the Indian Trade Classification ("ITC (HS)") of exports and imports. As far as goods imported and classified under CTH 7114 1910 are concerned, in terms of the Schedule I of the ITC (HS), the same were freely importable without any restrictions prior to the issuance of the Notification No. 25/2017 dated 25-8-2017. Vide the said Import Policy, the Articles of gold were allowed to be imported free whereas coins of any metal other than gold, though were freely importable but were subject to RBI regulations, thus import Policy of 2017 clarifies that since the goods in question were though coins but of gold, no

prohibition is at all applicable upon these coins which were merely articles of gold.

17. The department also in its letter dated 14-9-2017 issued by the Commissioner of Customs and addressed to CBEC while referring to in the judgment of Abans Jewels Pvt. Ltd (supra) has mentioned that gold coins (other than legal tender) are excluded from CTH 7118 as per the Explanation to HSN Notes and are covered under CTH 7114 and no restrictions/prohibitions exists on Imports of such gold coins till 24-8-2017. Relevant portion of the letter read as

"4. in this context, it is stated that gold coins other than legal tenders are excluded from CTH 7118 as per explanation provided in HSN Explanatory Notes and therefore, the same are covered under CTH 7114. As per import policy given in ITC (HS) Schedule 1 for CTH 7114, policy for imports of the goods covered under the said heading is 'Free' without any policy conditions. Further, reference is also made to RBI Master Circular No.17/2016-17 dated 1-1-2016 updated as on 12-1-2017 (as available on RBI website). As per para C. 11.1 iv of the said Master Circular, "The import of gold coins and medallions is permitted.

5. In view of the above, this office is of the view that gold coins other than legal tender are covered under CTH 7114, that is an article of gold struck in the form of coin and there was no bar till 24-8-2017 on import of such gold coins. However, the matter is being brought to your kind notice for necessary clarification"

18. The DGFT has also issued Notification No. 25/2017 dated 25-8-2017 in connection with the amendment in import policy of gold and silver under Chapter 71 of the Tariff Act. The same is reproduced below:

"Directorate General of Foreign Trade

Notification No. 25/2015-2020

New Delhi, Dated: 25th August, 2017

Subject: Amendment in import policy of gold and silver under Chapter 71 of the ITC (HS) 2017, Schedule-1 (importPolicy)

S.O. (E). In exercise of powers conferred by Section 3 (2) of the FT(D&R) Act, 1992 as amended from time to time. read-with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, the Central Government

hereby inserts Policy Condition No. 4 under Chapter 71 of the ITC(HS) 2017, Schedule-1 (Import Policy) to read as under

"Imports from South Korea of articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal under Exim code 7113: articles of goldsmiths' or silversmiths wares and parts thereof, of precious metal or of metal clad with precious metal under Exim code 7114: other articles of precious metal or of metal clad with precious metal under Exim code 7115, and coins under Exim code 7118 are Restricted"

19. Both these documents are sufficient to hold that gold coins in question were not restricted. Only such coins as are classified under CTH 7118 that were restricted. As already held above that impugned gold coins are classified under CTH 7114 The RBI can issue regulations under section 58 of the Reserve Bank of India Act, 1934 or section 47 of the foreign Exchange Management Act, 1999. Section 58 of RBI Act requires such Regulations to be issued only by way of Notification. Section 48 of FEMA requires Regulations issued under section 47 FEMA to prior be presented before the parliament. None of such regulations have been placed by the Department except a reference has been made to a letter issued by the RBI dated 13-9-2017 or the DGFT Memorandum. None of these documents can be called as Regulations issued by RBI under any of the discussed provisions. Otherwise also bar of RBI to issue directions under section 11 of Foreign Exchange Management Act extends only to authorized person with regard to making payment for foreign exchange or foreign security and RBI cannot regulate imports which are in the exclusive domain of DGFT.

20. The issue of prohibition has also been dealt with by this Tribunal in Abans Jewels (supra) case. We do not find any reason to differ from those findings which have been already followed in the case of Credence Commodities Exports v. Principal Commissioner of Customs, ACC (Imports) in Customs (Appeal No. 50467 of 2021) [2023 (383) ELT 560 (Tri. - Delhi) (2023) 2 Centax 285 (Tr. Delhi)]. Thus the issue number 2 & 3 as formulated above also stand decided in favour of the importer holding that the gold coins herein were not restricted/prohibited goods. Accordingly, the exemption as availed by the appellant under Notification No. 152/2009-Customs dated 31-12-2009 as amended by Notification No. 66/2016 Cus dated

31-12-2016, is held to be very much available to the appellant. We are of the opinion that Commissioner (Appeals) has wrongly relied upon the decision of Hon'ble High Court of Delhi in the case of Khandwala Enterprises Pvt. Ltd. v. Union of India case (supra). We find that Hon'ble High Court of Delhi while appreciating the above office memorandum dated 6-9-2017 as issued by Principal Commissioner has merely held that there was no reason to interfere with office memorandum. But, at the same time, the Hon'ble Delhi High Court also observed that importer can always establish before the Adjudicating Authority the cogent and convenient evidence to the effect that goods imported by it are entitled to the benefit of exemption. It was also observed by the Hon'ble Delhi High Court that manner in which the import item is described in the Bill of Entry is not necessarily conclusive as regards to its classifiability and importer can always establish that the item is not exclusively confined to the description contained in the Bill of Entry. Accordingly we hold that Adjudicating Authority below has wrongly interpreted the said decision. In fact has wrongly applied the same to the facts of the present case despite that the facts are not identical."

10. We find that there is no reason to differ with the above decisions of the Tribunal and the classification of the impugned goods under Customs Tariff Item entry 7118 9000 as held by the original assessment/adjudicating authority and the appellate authority is not sustainable and we find that the goods are rightly classifiable under Customs Tariff Item entry 7114 1910. The learned counsel for the appellant during the hearing has submitted that in view of the fact that the goods were not confiscated they are liable to be released as per Section 110(2) of the Customs Act, 1962 after a period of 6(six) months in case no action is taken for confiscation of the goods. We find merit in the argument of the learned counsel.

11. In view of the above discussion though the goods were not confiscated, we find that on merits the goods are classifiable under Customs Tariff Item entry 7114 1910, hence they do not come under the restricted category requiring a valid import

license for their import. Therefore, the impugned goods are not liable for confiscation.

12. In the facts and circumstances of the case the seized goods are liable to be released as there was no confiscation as well as the goods are not liable for confiscation under section 111 of Custom Act, 1962, as held above. We also find that the seizure of the goods under Section 110 of the Customs Act is not sustainable.

13. Consequently, the impugned order is set aside, the goods are classifiable under Customs Tariff Item entry (CTI) 7114 1910 and are eligible for the benefit of exemption under Sl. No. 966 of Notification No. 046/2011-Cus dated 01.06.2011.

14. Accordingly, the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 17.04.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)