CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 21138 of 2015

(Arising out of Order-in-Original No. COC-CUSTM-000-COM-44-14-15 dated 09.02.2015 passed by the Commissioner of Customs, Cochin.)

Mohammed Ashraf V.
Proprietor, M/s. Universal Exports,
Flat No. 3A, III Floor,
Malabar Cityscape Apartment,
Kuthiravattam Road,
Kozhikode – 673 016.

Appellant(s)

VERSUS

The Commissioner of Customs,
Office of the Commissioner of Customs,
Custom House, Willingdon Island,
Kochi – 682 009.

Respondent(s)

APPEARANCE:

Mr. Haaris Moosa, Advocate for the Appellant

Ms. Arpitha S., Joint Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20166 /2026

DATE OF HEARING: 22.08.2025
DATE OF DECISION: 20.02.2026

PER : DR. D.M. MISRA

This is an appeal filed against Order-in-Original No.COC-CUSTM-000-COM-44-14-15 dated 09.02.2015 passed by the Commissioner of Customs, Cochin.

2. Briefly stated the facts of the case are that the appellant had filed Shipping Bill No.1515330 dated 11.03.2014 for export of a consignment of gold jewellery declaring 5268.600 gms valued at USD 221820 through Air Cargo Complex, Cochin International Airport, Nedumbassery. On examination of the said consignment, it was found to have 61 packets, containing gold bangles totalling to 244 gold bangles. On examination of the said goods by a Gold Assayer, it revealed that the 244 numbers of gold bangles contained 2396.130 gms. of enamel and 282.470 gms of 22ct purity against the declared quantity of gold of 5268.60 gms. Statement of the appellant Shri Mohammed Ashraf revealed that the gold was procured by them under '20:80 Import of Gold Scheme' declared by Government of India vide Circular No.34/2013-Cus. Dated 04.09.2013 and he has admitted to the discrepancy in the declaration made in the shipping bill about the content of the gold found in the consignment of 244 numbers of gold bangles. Consequently, the said goods were seized under Mahazar dated 11.03.2014. Later, investigation was initiated including search of the residence premises of the appellant on 11.03.2014 resulting to recovery of 1607.820 gms of 22ct gold jewellery; since the same was believed to be made from the balance quantity of gold meant for export quantity of gold bangles, the same was also seized. On completion of the investigation and analysing the statements of various persons and documents recovered, show-cause notice was issued to the appellant on 14.11.2014 alleging contravention of the provisions of Customs Act, 1962 and proposed confiscation of 244 nos. of gold bangles valued at Rs.72,19,571/- under Section 113(i) of Customs Act, 1962 (CA, 1962, for short), 22ct gold ornaments weighing 1607.820 gms valued at Rs.42,46,735/- under Section 111(o) of CA, 1962 and remaining 22ct gold weighing 1036.84 gms valued at

Rs.27,38,605/- which could not be recovered; penalty proposed on the appellant-proprietor of the appellant company under Section 112(b), 114 and 114AA of the CA, 1962. Also, notice was issued to M/s. Metals and Minerals Trading Corporation Ltd. (MMTC Ltd., for short) to show-cause as to why customs duty of Rs.13,64,851/- and interest of Rs.82,788/- paid by them on the imported quantity of gold as per the Board's circular dated 04.09.2013 should not be appropriated against Bill of Entry No.4636653 dated 14.02.2014. On adjudication, the learned Commissioner ordered as follows:-

> 1. I order confiscation of 244 Nos. gold bangles, totally valued at Rs.72,19,571/- attempted to be exported vide Shipping Bill No. 1515330 dated 11.03.2014 by M/s.Universal Exporters (IEC No.1012013286), IP 11/2221, Aysha Complex, Thamarassery, Kozhikode 673573, under Section 113(i) of the Customs Act, 1962;
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> 2. I order confiscation the 22ct gold ornaments weighing 1607.820 gms, valued at Rs.42,46,735/-, recovered from the residence of Shri Mohammed Ashraf V, proprietor of M/s.Universal Exporters (IEC No.1012013286), TP 11/2221, Aysha Complex, Thamarassery, Kozhikode -673573, under Section 111(0) of the Customs Act, 1962;
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> 3. I order confiscation of the remaining 22ct gold weighing 1036.84gms, valued at Rs.27,38,605/-, and which could not be recovered, under Section 111(0) of the Customs Act, 1962;
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> 4. I impose penalty of 3,00,000/-(Rupees Three Lakh Only), on Shri Mohammed Ashraf V, proprietor of M/s.Universal Exporters (IEC No.1012013286), TP 11/2221, Aysha Complex, Thamarassery, Kozhikode 673573, under Section 112(b) of the Customs Act, 1962.
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> 5. I impose penalty of 5,00,000/-(Rupees Five Lakh Only), on Shri Mohammed Ashraf V, proprietor of M/s.Universal Exporters (IEC No.1012013286), TP 11/2221, Aysha Complex, Thamarassery, Kozhikode 673573, under Section 114 of the Customs Act, 1962.
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> 6. I impose penalty of 1,35,00,000/-(Rupees One Crore Thirty Five Lakh Only), on Shri Mohammed Ashraf V, proprietor of M/s. Universal Exporters (IEC No.1012013286), TP 11/2221, Aysha Complex, Thamarassery, Kozhikode 673573, under Section 114AA of the Customs Act, 1962.

> 7. The amount of Rs.13,64,851/- and Rs.82,788/- paid by M/s. MMTC Ltd., II Floor, Jos Trust Building, Ernakulam – 682 035 is ordered to be appropriated towards Customs duty and interest respectively, payable in respect of Bill of Entry No.4636653 dated 14.02.2014, as per the provisions of Para 4(xv) of Board's Circular No.34/2013-Cus dated 04.09.2013.

Aggrieved by the said order, appellant filed the present appeal.

3.1. At the outset, the learned advocate for the appellant has submitted that the appellant has purchased 5kgs. of gold from M/s. MMTC Ltd. for making jewellery and export of the same as per '20:80 Import of Gold Scheme' vide Circular No.34/2013-Cus. Dated 04.09.2013. He has submitted that under the said Scheme, for every consignment of gold imported by the specified agencies at least 20% of the quantity shall be for supply as duty free gold to the exporters for making jewellery for export and remaining would be cleared on payment of duty in accordance with RBI Circular dated 14.08.2013. As per the said Scheme, they had registered with the jurisdictional Deputy / Assistant Commissioner who issued a certificate to their unit. He has submitted that the duty free gold received from MMTC is required to be converted into jewellery and be exported within 90 days as per the Foreign Trade Policy. He has further submitted that the said gold was used in making 244 bangles in pursuance to an order received from one overseas party M/s. Ceetees Silver Gallery. LLC, Dubai, UAE for supply of 22ct hollow pipe bangles filled with enamel or wax. He has submitted that accordingly 22ct gold bangles of 244 nos. were manufactured and cleared for export against Shipping Bill No.1515330 dated 11.03.2014 which was intercepted and examined by the Customs. He has further submitted that only mistake which the appellant have committed was by not mentioning the exact quantity of gold and the quantity of enamel separately in the shipping bill, which resulted in to seizure of the consignment of

244 nos. Gold bangles by the Customs authorities. He has submitted that the balance quantity of the gold which was seized from his residence on the presumption that it would not be exported is illegal and contrary to the said Scheme. He has submitted that under the said Scheme read with Exim Policy, 90 days are allowed to export the gold purchased by converting into jewellery.; therefore, seizure before completion of 90 days is illegal. Further, explaining that the balance quantity of 1036.84 gms not found by the Customs, he has submitted that while making the jewellery, about 200 gms were lost and the labourers / workers who hailed from Kolkata entrusted with the job of manufacturing of gold jewellery had stolen around 800 gms, leading to the said shortage of gold. He has submitted that necessary complaint was filed with the Kasaba Police Station, Kozhikode City.

3.2. It is his contention that under the said '20:80 Import of Gold Scheme', it is the agency who imports the gold is required to pay customs duty in case the proof of export is not submitted. In this case, after being approached by the Customs Department, M/s. MMTC Ltd. Has paid duty amounting to Rs.13,64,851/- with interest of Rs.82,788/- on the said 5 kgs. Gold. Therefore, any other action by the Department is not in accordance with the '20:80 Import of Gold Scheme' under the said Circular No.34/2013-Cus dated 04.09.2013. Further, he has submitted that confiscation of 244 nos. of gold bangles which are not prohibited goods and denial of redemption on payment of fine is contrary to the settled principles of law. Also, he has submitted that imposition of penalty on the appellant aggregating to Rs.143.00 lakhs under different provisions of Customs Act, 1962 is unsustainable in law when the provisions of the Scheme has been complied with by way of discharging the applicable duty on the 5 kgs. Of gold with interest. In support of his submission, he has referred to the following judgements.

i. Keshavlal Khemchand and Sons Pvt. Ltd. Vs. CC, Cochin [2025(392) ELT 705 (ker.)]
ii. Ciabro Alemao Vs. CC, Goa [2018(362) ELT 465 (Bom.)]
iii. Navayuga Engineering Co. Ltd. Vs. UOI [2024(390) E|LT 3 (SC)]
iv. CC, Bangalore Vs. Covergys India Services Pvt. Ltd. [2013(298) ELT 94 (Tri. Bang.)]
Judgments

4. *Per contra*, learned AR for the Revenue has reiterated the findings of the learned Commissioner. She has submitted that from the statement recorded, it revealed that the appellant had made every attempt to export by misdeclaring the quantity of gold and tried to benefit himself while exporting 244 nos. of gold bangles declaring the gold content of the said bangles as 5268.600 gms of 916 purity. The declared FOB value of the gold was Rs.1,32,31,019.92. The said export was declared to be made against 5000 gms of gold purchased from MMTC under '20:80 Import of Gold Scheme'. In his statement dated 11.03.2014, the appellant has categorically admitted that the quantity of gold in the shipping bill was misdeclared so as to avail the benefit of the Customs duty; hence, the learned Commissioner has rightly directed confiscation of the gold bangles under Section 113(i) of CA, 1962 and also the quantity of gold which has been used in making ornament weighing 1607.820 gms found in the residence of the appellant liable for confiscation under Section 111(o) of CA, 1962. Also, she has submitted that imposition of penalty under various provisions of CA, 1962 is justified insofar as the appellant has intentionally / knowingly misdeclared the quantity and value of the gold in the Shipping Bill No.1515330 dt. 11.03.2014.

5. Heard both sides and perused the records.

6. Undisputedly, the appellant has purchased 5kgs of gold under '20:80 Import of Gold Scheme' as per Circular No.34/2013-Cus dated 04.09.2013 from one of the notified agencies viz. M/s. MMTC Ltd. as an exporter so as to convert the said gold into jewellery and export. It is stated by the appellant that, first time, they made a 300 gms of gold jewellery and while making export for the second time, declaring the quantity of gold meant for export i.e. 5268.600 gms in the form of gold bangles, the Department, after examination, found the gold content to be 2733.34 gms and balance be filled with enamel. Also, the Department after conducting search of their premises recovered 1607.820 of 22ct gold jewellery which was presumed to have been made for local clearance and not to be exported. The 244 nos. of gold bangles and jewellery found in their residence were placed under seizure. The 5 kgs of gold which were procured by the appellant from MMTC Ltd. who imported the same without payment of duty against Bill of Entry No.4636653 dated 14.02.2014, on failure to report export of the said quantity of gold after converting into jewellery; after the seizure, MMTC Ltd., as per the said Scheme, paid the applicable duty of Rs.13,64,851/- with interest of Rs.82,788/- which is not in dispute.

7. The entire allegation of the Department centers around non-export of the jewellery made from 5 kgs of duty free gold purchased by the appellant from MMTC Ltd. as per the said '20:80 Import of Gold Scheme'. On going through the Scheme, we find that as per the procedure prescribed under the Scheme vide Circular No.34/2013-Cus, under Clause 4(iii), for every consignment of gold imported, at least 20% shall be for supply to the exporters only and remaining can be cleared on payment of duty in accordance with RBI circular dated 14.08.2013.

Further, as per clause 4(xi) of the Scheme, the exporter is required to follow the procedure getting registered with the Customs Department and furnish an undertaking to the Deputy / Assistant Commissioner without bank guarantee to follow the conditions of the notification under which they receive duty free gold and export the jewellery made therefrom within the period prescribed under the Foreign Trade Policy. As per clause 4(xiv) of the said Scheme, the proof of export shall be furnished by the exporter in accordance with para 4A.8(a) of the Handbook of Policy V.1 to the nominated agency as a proof of having exported the jewellery made from the duty free gold released within the prescribed period. The nominated agency is required to furnish self-certified copy of the same to the Customs office where the gold was bonded. The consequence of non-export of the jewellery out of the duty free gold has been laid down under Clause 4(xv) of the said Scheme, which reads as follows:-

> 4(xv). wherever such proof of export is not produced within the period prescribed in the Foreign Trade Policy, the Nominated Agency shall (without waiting for its recovery from the exporter) deposit the amount of duty calculated at the effective rate leviable on the quantity of precious metal not exported, within 7 days of expiry of the period within which the jewellery manufactured out of the said quantity of gold was supposed to be exported. The Nominated Agencies will settle their claim with the exporter at their own level. The Nominated Agencies shall also report the cases of failure to export the jewellery made out of gold released to the exporter, to the Commissioner of Customs in whose jurisdiction the gold was originally warehoused;

8. Thus, reading the said Scheme as a whole, we find that it is a liberalized scheme for import of gold and 20% of the quantity so imported for export of gold jewellery and the consequences for not making the export out of the duty free gold is prescribed under clause 4(xv). In other words, if jewellery using the duty free gold is not exported within 90 days, then the

importer (Nominated Agency) is required to discharge the effective rate of duty leviable on the quantity of gold not exported. We find that in the present case, after the detection of misdeclaration in the shipping bill of the quantity of gold, on being approached by the Customs Department, M/s. MMTC Ltd., the nominated agency has discharged the duty payable on the 5kgs of gold imported duty free with interest, a fact not disputed in the impugned order. Thus, the liability of duty on the quantity of imported gold of 5kgs with interest has been realized by the Customs Department since the condition of export of jewellery using the said the gold has not been complied with.

9. However, the misdeclaration by the appellant in filing the shipping bill declaring the quantity of gold as 5268.600 gms where in fact the content of the gold was 2733.34 gms, cannot be condoned. Such act of misdeclaration falls within the provisions of Section 113(i) of the Customs Act, 1962 which reads as follows:-

> **SECTION 113. Confiscation of goods attempted to be improperly exported, etc. -** The following export goods shall be liable to confiscation :-
>
> (a) To (h) … …
>
> (i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;

10. Therefore, the direction of confiscation of the 244 nos. of gold bangles under Section 113(i) of Customs Act, 1962 by the learned Commissioner, valued at Rs.72,19,571/- in the impugned order cannot be faulted with. However, the confiscation of 22ct gold ornaments weighing 1607.820 gms valued at Rs.42,46,735/- recovered from the premises of the appellant under Section 111(o) of the Customs Act, 1962 cannot

be sustained inasmuch as Section 111(o) (extracted below) is not attracted in the present case. Also, the same is not applicable to liberalized import of gold and export of jewellery manufactured using the said gold procured under '20:80 Import of Gold Scheme' under Circular No.34/2013-Cus. dt. 04.09.2013.

> **111. Confiscation of improperly imported goods, etc**.—The following goods brought from a place outside India shall be liable to confiscation:—
> … …
> … …
> (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

11. The gold which has been imported but not used for export after making jewellery which has not been used but at best would be subjected to duty but cannot be considered as prohibited goods. Therefore, confiscation of the gold ornament under Section 111(o) is bad in law. Also, 1036.84 gms of gold valued at Rs.27,38,605/- which has not been recovered from the appellant cannot be confiscated under Section 111(o) of the Customs Act, 1962.

12 Besides directing confiscation, the learned Commissioner has also imposed penalty under various provisions of the Customs Act, 1962 including Sections 112(b), 114 and 114AA of the Customs Act, 1962. On going through the said provisions, we find that penalty under Section 114 of the Customs Act, 1962 can only be directed in the present case since the appellant made an attempt to export the 244 nos. of gold bangles misdeclaring the same as containing 5268.600 gms of gold when it contained only 2733.34 gms of gold and balance is enamel. Considering the overall facts and circumstances and the principles of law laid down by various High Courts relating to

imposition of fine and penalty, absolute confiscation of the goods which are not prohibited, without an opportunity to redeem on payment of fine, is not attracted in this case. We are of the view that the appellant be allowed to redeem the 244 nos. of gold bangles confiscated on payment of fine of 10% of the value (Rs.72,19,571/-) of the goods i.e. 7,20,000/- (Rupees seven lakhs and twenty thousand only); and penalty is reduced to Rs.1,00,000/- (Rupees one lakh only) under Section 114 of the Customs Act, 1962. All other confiscations and penalties are set aside. Appeal is partly allowed.

(Order pronounced in Open Court on 20.02.2026)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja…