CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20153 of 2021

[Arising out of Order-in-Appeal No. 63-64/2019 dated 24/04/2019
passed by the Commissioner of Customs, Bangalore (Appeals)]

Nizar Moulavi Abdul Khader
S/o Abdul Khader Moulavi, House No. 1/433
Kunikunnu, Thekkil Ferry
Kasaragod - 671 541
Kerala

Appellant(s)

VERSUS

Commissioner of Customs
Mangalore
New Customs House
Panambur
Mangalore – 575 010
Karnataka

Respondent(s)

<u>Appearance:</u>

Shri Sameer Kashimji, Advocate
C/11, 2nd Floor, Maximus Commercial
Complex, Opp: KMC Light House Hill Road,
Hampankatta, Mangaluru – 575 001
Karnataka

For the Appellant

Smt C.V. Savitha, Superintendent (AR) — For the Respondent

CORAM:
HON'BLE SHRI P. DINESHA, JUDICIAL MEMBER

Date of Hearing: 12/10/2021
Date of Decision: 28/10/2021

<u>Final Order No. 20811 / 2021</u>

Per : P. DINESHA

The assessee has filed this appeal before this forum against the common Orders-in-Appeal Nos. 63-64/2019 dated 24/04/2019. The Revenue has also preferred cross-objections, primarily contending that since the Baggage Rules, 2016 is involved, no appeal shall lie before the Tribunal under Section 129A but the assessee should file the review petition in terms of Section 129DD of the Central Excise Act, 1944.

2. Paragraph 4 of the Order-in-Original records a finding that the gold was found in the foot band worn for medical purpose on both the feet of the appellant, well hidden/covered with black socks, shoes put over them. This is claimed as having been found on the 'person of the appellant' but not found in the baggage, the appellant has filed appeal under Section 129A *ibid.*

3. Per contra, the Revenue contends that the appeal is not maintainable before this forum since there was an attempt to import gold through accompanied baggage in the concealed form and hence, it is the Section 129DD that applies, for which the only remedy available to the assessee is to prefer a review petition before the proper authority.

4. Baggage Rules, 2016 defines "personal effects" to mean things required for satisfying daily necessities but does not include jewellery. So, when the jewellery on a person is itself excluded, the gold that was not worn but hidden, gets automatically excluded. Further, Section 129A(1)(a) makes it clear that no appeal shall lie to the Tribunal in respect of any order which relates to any goods imported or exported as baggage. The gold which is imported here having been excluded by the definition of "personal effects" under Baggage Rules *ibid*, automatically falls within the ambit of baggage and hence, I agree that no appeal could be entertained by this forum. The appellant

can only invoke Section 129DD if he is so advised and accordingly, this appeal is held not maintainable.

5. Registry to return all original papers if any, filed by the appellant, upon the receipt of written request from the appellant or his authorized representative.

(Order pronounced in the Open Court on **28/10/2021**)

(P. DINESHA)
JUDICIAL MEMBER

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