CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 60781 of 2023

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-07/2023-24 dated 17.07.2023 passed by the Principal Commissioner (Appeals), CGST, Jammu]

Jasdeep Dulkoan **……Appellant**
K 3-2 Textile Colony Industrial
Area A, Ludhiana, Punjab-141003

VERSUS

Commissioner of Customs, Amritsar **……Respondent**
C.R Building, The mall, Amritsar, Punjab-143001

<u>APPEARANCE:</u>

Shri R.K Hasija, Advocate for the Appellant
Shri Aniram Meena and Shri Shantanu Kumar Meena, Authorized Representatives for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NO. 60609/2025

DATE OF HEARING: 03.06.2025
DATE OF DECISION: 03.06.2025

The present appeal is directed against the impugned order dated 17.07.2023 passed by the Principal Commissioner (Appeals), Jammu wherein the appeal filed by the appellant has been rejected being devoid of merit and the Order-in-Original passed by the Joint Commissioner was upheld.

2. Brief facts of the present case are that on 16.04.2021 on a specific information, rummaging of flight No 6E-8451 from Sharjah to Amritsar was conducted by the Customs officers. During rummaging one heavy object wrapped in black cloth was found on the back pocket of Seat No. 1E (I.e. front pocket of Seat No. 2E) of the said flight. On unwrapping/opening of the same, it was found to be an elbow sleeve which was further wrapped in another elbow sleeve. On opening of the second elbow sleeve, four Kadas and two chains, yelloish in colour, appearing to be gold were found. Then all the passengers sitting on the seats 1D, 1E, 1F, 2D, 2E and 2F were intercepted at the green channel of Customs. When enquired upon, two passengers namely Sh. Parvesh Joshi and Sh. Narinder Kumar Joshi sitting on seat 1F and 1E respectively, admitted about the ownership of these objects and stated vide statement dated 17.04.2021 that all the recovered objects i.e. 2 chains and 04kadas were of gold and that they had taken these objects off from their body along with the elbow sleeve and placed the same in back pocket of Seat No. 1E (i.e. front pocket of seat 2E) as they had observed a group of officers standing at the gate of the aircraft when the aircraft landed at Amritsar. Further, Noticee 1 & Noticee 2 did not bring along these objects with them as they were scared of being caught. Upon examining the said metallic objects by the Jeweller it was stated that all these recovered six yellowish coloured objects were of gold with 24 Carat purity and that the four gold kadas were having weight 1097.70 grams having market value of Rs. 53,40,311/- and two gold chains were having weight 750.30

grams having market value Rs. 36,50,210/-. Therefore, total Gold weighing 1848 grams with market value Rs. 89,90,521/- was recovered from both Noticee 1 and Noticee 2. On a reasonable belief that the said gold objects i.e. four gold kadas and two gold chains having weight 1848 grams with market value Rs. 89,90,521/- which were being smuggled into India by contravening the provisions of Customs Act, 1962, were liable for confiscation under Section 111 of the Customs Act, 1962, the same were seized under Section 110 of the Customs Act, 1962 vide Recovery-cum-Seizure Memo dated 17.04.2021. The packing material i.e. two black colour elbow sleeves used to conceal the gold objects and placed in the aircraft were also liable for confiscation under Section 118 and 119 of the Customs Act, 1962 and accordingly, the same were also seized under Section 110 of the Customs Act, 1962 vide Recovery-cum-Seizure Memo dated 17.04.2021.

3. Thereafter, statements of two passengers i.e Sh. Parvesh Joshi and Sh. Narinder Kumar Joshi were recorded and after the completion of the investigation, a show cause notice dated 05.10.2021 was issued to both the passengers who retracted from their statements and subsequently filed the Criminal Writ Petition CRM-M-34363-2021 under Article 226-227 of the Constitution of India in the nature of mandamus before the Hon'ble High Court of Punjab & Haryana, which was subsequently dismissed as withdrawn by giving an undertaking that they will cooperate with the investigation conducted by the Department. After following the due process, the Original Authority confiscated the entire gold

approximately weighing 1848 gm having market value of Rs.89,90,521/- and also imposed penalty of Rs.1 Lakh each on Sh. Parvesh Joshi and Sh. Narinder Kumar Joshi and also imposed penalty of Rs.10 Lakhs on the appellant under Sections 112(a) and 112(b) of the Customs Act, 1962. Aggrieved by the said order, the appellant filed appeal before the Commissioner who rejected the same. Hence, the present appeal.

4. Heard both sides and perused the material on record.

5. Learned Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts, the law and the binding judicial precedents. He further submits both the persons who are alleged to be carrier of the seized gold have retracted from their initial statements and claimed ownership of seized gold. He further submits that the appellant has never claimed the seized gold. He further submits that before the Hon’ble High court, initially the two carriers claimed the ownership of the gold but subsequently during the proceedings, they have stated that the gold belongs to the appellant and they were only the carriers who charged about Rs. 20,000/- for carrying the said gold to India. He further submits that the charge of abetment is a very serious charge and has to be proved beyond reasonable doubt whereas in the present case, the Department has not been able to prove the abetment on the part of the appellant. He further submits that the entire case is based on oral evidence and has not been corroborated by other evidence and

the Joint Commissioner has failed to follow the mandate of Section 138 and has not provided the opportunity of cross-examination to the appellant. He further submits that the facts of the case do not prove the offence which is liable to penalty under Sections 112(a) and 112(b) of the Customs Act, 1962. In support of his submission, he relied upon the following decisions:

- **Commissioner of Central Excise, Jalandhar Vs Max G.B. Ltd. – 2008 (221) ELT 491 (P&H).**
- **Aadil Majeed Banday Vs Commissioner of Customs, Amritsar – 2021 (378) ELT 540 (Tri. Chan.).**
- **Amrit Foods Vs Commissioner of Central Excise, U.P. – 2005 (190) ELT 433 (SC).**
- **Additional Collector of Customs, Calcutta Vs Sitaram Aggarwala – 1999 (110) ELT 185 (SC).**

6. On the other hand, learned AR reiterated the findings of the impugned order and submitted that their statements made before the Customs Officer under Section 108, both the passengers have clearly and unambiguously confessed that they are only carriers and the gold belongs to the appellant and they had charged Rs.20,000/- for bringing the said gold to India. He further submits that the carriers have given the mobile number of the appellant and the Department sought information about the communication between the appellant and the carriers and has brought on record the details of the communication which took place during the relevant time between the two which clearly shows that the seized gold belongs to the appellant and these two passengers were only carriers. He

further submits that the Department investigated about the financial position of these two carriers by obtaining the bank statements and income tax returns which clearly shows that they do not have the capacity to buy gold worth Rs.89 Lakhs. He further submits that cash memo which is produced on record by these two passengers also appears to be false because the quantity mentioned therein is half of the quantity which is involved in the present case. He also submits that it is not only the statement of these two carriers on the basis of which the impugned order has been passed rather the statement of these two carriers have been corroborated by independent evidence which clearly proves that the appellant was the mastermind in the entire process of smuggling and has rightly been penalized under Sections 112(a) and 112(b) of the Customs Act, 1962.

7. I have considered the submissions made by both sides and perused the material placed on record. In the submissions, the learned Counsel for the appellant has mainly referred the statements made by both the passengers i.e. Sh. Parvesh Joshi and Sh. Narinder Kumar Joshi which was subsequently been retracted by both of them. He further submits that the statements given by them cannot be relied upon as the same has been obtained under coercion and pressure and the same has been retracted subsequently. His further submission is that the appellant has no connection with the gold recovered from the Aircraft and that the mobile conversation between the appellant and Sh. Parvesh Joshi cannot be a conclusive proof that the seized gold belongs to the appellant. In this regard, I

find that though there is contradiction in the statements of two passengers viz. Sh. Parvesh Joshi and Shri Narinder Kumar Joshi but one thing is very clear that these two passengers who have stated in their statements regarding their monthly income amounting to Rs.25,000/- and their bank details recovered by the Department clearly shows that the seized gold cannot be purchased by them. Further, in the statement made by Sh. Parvesh Joshi, he has said nothing about the payment made to the seller and moreover, the invoice placed on record only shows the quantity recovered and payment made through cash whereas these two passengers never made any payment. It is pertinent to note that during the investigation, the appellant was called to appear by the Department but he never appeared which clearly proves that the specific allegation levelled against him by these two carriers that the gold belongs to the appellant. Further, I find that the entire expenses of the visit of these two carriers and their stay in the hotel was borne by the appellant as stated by these two carriers in their statements.

8. Further, the argument of the learned Counsel that these two passengers who have made statements before the Department were never allowed to be cross-examined by the appellant. This argument does not have force as the appellant has not appeared before the Customs Officer in spite of repeated summons to him. Further, the submissions of the learned Counsel for the appellant that the entire case has been made on the basis of oral statements of these two passengers and simply on the basis of these statements, penalty cannot be imposed on the appellant under Section 112(a) and

112(b) of the Customs Act, 1962. This submission also does not have any force. The Department has collected sufficient evidence in the form of call details between the appellant and these two carriers which clearly proves that the seized gold belongs to the appellant and he has only hired these two carriers to bring gold illegally for him. Further, it is pertinent to note that during the personal hearing before the Joint Commissioner on 12.05.2022, both the carriers and their Advocate Sh. Shivraj Singh appeared and stated that they are just carriers of the gold and they were to be paid Rs.20,000/- for the same and in fact, gold belongs to the appellant Sh. Jasdeep Dulkoan who pressurize them to file petition before the Hon'ble High Court to save himself but the said petition was later on withdrawn with an undertaking to cooperate with the Department. Further, I find that the appellant did not cooperate with the Department and did not appear in spite of summons issued to him which clearly proves that he is the mastermind in the whole smuggling of seized gold. I also find that the carriers i.e two passengers in spite of ample opportunities have failed to prove by any evidence, documentary or otherwise, the legitimate purchase of seized gold in the form of source of funds, general use to transfer the said funds to UAE for purchase of gold, income as declared in the income tax returns etc., even their bank statements do not prove their capacity to buy the seized gold.

9. In view of my discussion above and considering the totality of the circumstances and the evidence on record, I find that there is no infirmity in the impugned order passed by the Commissioner

(Appeals). Therefore, I upheld the same by dismissing the appeal of the appellant. Hence, the appeal is dismissed.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

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