

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, CHENNAI**

REGIONAL BENCH – COURT NO. IV

Customs Appeal No.41076 of 2018

[Arising out of Order-in-Appeal No.AIRPORT. Cus.No.86/2017, dated 11.05.2017 passed by Commissioner of Customs (Appeals-I), Chennai]

M/s.Ahamed Gani Natchiar,
No.97A, Aequi Street,
Penang, Malaysia 10200

: Appellant

VERSUS

Commissioner of Customs,
No.60, Rajaji Salai,
Customs House,
Chennai – 600 001.

: Respondent

APPEARANCE:

Ms. Shabnam, Advocate for the Appellant

Ms. K. Komathi, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI C.J. MATHEW, MEMBER (TECHNICAL)
HON'BLE SHRI P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 40774 / 2020

DATE OF HEARING: 12.12.2019

DATA OF PRONOUNCEMENT: 08.06.2020 *cd*

Per Shri C.J. Mathew:

The appellant, Ahmed Gani Natchiar, a citizen and resident of Malaysia, is aggrieved by order-in-appeal no. 86/2017 dated 11th May, 2017 of Commissioner of Customs (Appeals-I), Chennai in which the order of the original authority, absolutely



confiscating 626 gms of gold jewellery, comprising of one gold chain and 10 gold bangles, valued at Rs.19,71,900/- under section 111(d) and 111(l) of Customs Act, 1962 and imposition of penalty of Rs.1,95,000/- under section 112(a) of Customs Act, 1962, has been upheld while dropping the penalty imposed by the original authority under section 114AA of Customs Act, 1962.

2. At the outset, the Learned Authorised Representative objected to the disposal of this appeal on the ground that the jurisdiction in a dispute relating to 'baggage' vested with the Government of India, in its revisionary authority, and was not under the appellate jurisdiction of the Tribunal.

3. In our opinion, this view is misplaced as 'baggage' undoubtedly vests with the original and appellate authorities designated under the Customs Act, 1962 to be followed by recourse to revisionary authority of the Government of India. 'Baggage' has been accorded a special treatment in Customs Act,



1962 as the goods, at the time of import, are owned by the passenger at the time of import and are, generally, of a personal nature not warranting intrusion of the taxing powers of the State reserved for commercial import and export. In addition, certain privileges of concession and applicability of a single rate irrespective of description, without subjecting the goods to ascertainment of rate of duty appropriate for each such article in First Schedule to Customs Tariff Act, 1975 are extended. As we note that such treatment and privileges are restricted to '*bona fide*' baggage, any other 'goods' that are 'baggage', in terms of common understanding as well as the definition, are required to comply with the procedures prescribed for import of 'goods' under the Customs Act, 1962. It is the failure of the passenger to comply with those prescriptions in relation to 'gold jewellery' that led to exclusion from 'baggage' and proceedings under section 124 of the Customs Act, 1962, for determination of rate of duty and for valuation, which are excluded from the purview of the revisionary jurisdiction of Government of India and, thereby, lies within the appellate structure that



embraces the Tribunal. Furthermore, the matter is before us following a decision of the Hon'ble High Court of Madras in which the Tribunal has been directed to dispose off the appeal without any delay. Before the Hon'ble High Court, Revenue did not appear to have expressed its reservations about the jurisdiction of the Tribunal and it is much too late in the day to raise this plea before the Tribunal.

4. Turning to the facts of the dispute, the appellant travelled from Kuala Lumpur by Malaysian Airlines flight no. MH 180 on 4th September 2016 and was intercepted with the impugned goods which has been certified by the assayer to be gold of '24 carat' purity. The goods were seized and, after waiver of show-cause notice by the appellant herein, offence was adjudicated upon with the consequence that was carried before Commissioner of Customs (Appeals), Chennai who issued the impugned order that is now under challenge before us. Before we proceed to the submission, we are constrained to note that the absolute confiscation of the gold jewellery has not been



preceded by a notice and the circumstances in which the appellant had waived the right to be issued with a show-cause notice is not available on record.

5. Learned Counsel for the appellant contends that the allegations upon which the impugned order has sustained that of the original authority is founded on erroneous facts and circumstances. She alleges that the charge of concealment of the said jewellery is incorrect as the usual habiliment of the passenger would not expose any article of jewellery worn on her person to public view. She contends that concealment, which is unusually a consequence of deliberate efforts to prevent visibility, has been wrongly alleged and that ineligibility of foreign nationals being entitled to import gold jewellery is also not tenable as the Baggage Rules do not discriminate on grounds of nationality or citizenship of travelling passengers. It is her contention that the proceedings have been vitiated by absence of any inculpatory statement obtained from the appellant and by relying entirely upon an assertion by the mahazar witnesses in that document without



affording an opportunity for the appellant to contest, or rebut, the facts and allegations. Contesting the report of the assayer, which is unreliable as '24 carat' gold jewellery cannot be manufactured as a durable article, she insists that failure to furnish the certificate is another reason to discard its evidentiary value. Her final contention is that section 125 of Customs Act, 1962 has been misdirected in the present instance because it is only on prohibited goods, and, that too, not mandatorily, can the denial of redemption be fastened. She places reliance on the decision of the Hon'ble High Court of Gujarat in *Ambalal Moraji Soni v. Union of India & Other* [AIR 1972 Guj 126], the decision of Hon'ble High Court of Kerala in *Vigneswaran Sethuraman v. Union of India* [2014 (308) ELT 394 (Ker)] and the decision of Hon'ble High Court of Telengana in *Ahmed Abdul Farees v. Union of India* [2019 SCC on line TS 1346].

6. Learned Authorised Representative contends that the impugned order leaves no room for doubt that the appellant had not declared the gold jewellery and



had attempted to depart from the customs area of the airport without making any effort to ascertain, and comply, with the statutory obligation to declare the goods and discharge duty liability. She also further pointed out that absolute confiscation was justified as the appellant was unable to furnish any evidence of legal ownership of the goods.

7. We find that the issue in dispute pertains to the eligibility of the appellant to bring gold ornaments into India. The appellant claims that she is a regular visitor with family connections here and that she had, in the present instance, responded to an invitation to attend a wedding for which it is customary to wear jewellery. It is further claimed that the appellant is an illiterate and is a senior citizen and the confusion of the legality, or permissibility, entertained by her was taken advantage of to obtain her consent for waiver of show-cause notice without comprehending the consequences. It is submitted that even if the permissible limit for importation of jewellery had been exceeded, it was unlawful to deny the option to redeem the goods on



payment of fine after confiscation. On ascertainment of the records which are flimsy and bereft of any investigation and the existence of the mahazar alone as proof of the incident, we are constrained to note that concealment has not been established. Furthermore, there is no statement of anyone that could warrant the conclusion of deliberate intent to smuggle gold in any form. It is also seen that the proceedings have been based on the erroneous presumptions of the imported jewellery having been gold of '24 carat' purity which is practically not possible.

8. There is nothing on record to establish that the import of gold jewellery is prohibited either under the Customs Act, 1962 or under any other law for the time being in force. Under section 33 of the Foreign Trade, Development and Regulation Act, 1992, it is only such goods, to which an order under section 32 of the same Act has been issued by the Central Government, that can be deemed to be prohibited goods under section 11 of Customs Act, 1962. No such order is on record. Therefore, we are unable to concur with the first



appellate authority that the jewellery imported by the appellant is prohibited. Consequently, the confiscation under section 111(d) of Customs Act, 1962 fails.

9. On perusal of the Rules pertaining to importation of jewellery, as baggage by an arriving passenger, it is seen that the quantity in the present dispute is far in excess of that allowed free of duty on import into India. Therefore, the passenger has failed to comply with declaration requirements and confiscation under section 111(l) of Customs Act, 1962 is not misplaced.

10. The appellant is a citizen of Malaysia and intends to return to her country of domicile. She was unable to carry into, and wear the gold jewellery in, India and it is her request that she should be allowed to carry it back with her on the return trip to Malaysia. In view of these circumstances and this plea, while holding that the goods are liable for confiscation under section 111(l) of Customs Act, 1962, we desist from endorsing the conformation. Accordingly, we set aside



the confiscation effected under section 111(l) of the Customs Act, 1962.

11. As the goods were liable for confiscation, the liability to penalty under section 112(a) of the Customs Act, 1962 is not unwarranted. Considering the circumstances, we are of the opinion that the imposition of penalty of Rs.1,00,000/- would suffice to meet the ends of justice. We also hold that the impugned goods are not liable to duty as the same has not been cleared for home consumption. Accordingly, the appellant is directed to retrieve the gold jewellery and export it out of the country upon complying with the penalty imposed under this order. The appeal is, accordingly, disposed off.

(pronounced in open court on 08.06.2020) *di*

Sd

(P. DINESHA)
MEMBER (JUDICIAL)

Sd

(C.J. MATHEW)
MEMBER (TECHNICAL)

ksr
13-12-2019

