

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 50220 OF 2021

(Arising out of Order-in-Original No. 36/2020 U.G./ Pr. Comm./ dated 11.09.2020 passed by the Principal Commissioner of Customs, Air Cargo Complex (Import), New Customs House, Near IGI Airport, New Delhi-110037)

M/s N.C. Jewellers,
1386/7, S B Sarafa Market,
Chandni Chowk, New Delhi-110006

.... Appellant

VERSUS

**Principal Commissioner of
Customs, ACC (Imports)**
New Customs House, IGI Airport,
New Delhi-110037

...Respondent

WITH

CUSTOMS APPEAL NO. 50465 OF 2021

(Arising out of Order-in-Original No. 44/2020/U.G. /Pr. Comm. dated 11.09.2020 passed by the Principal Commissioner of Customs, ACC (Imports), New Customs House, Near IGI Airport, New Delhi-11003)

M/s. Kay Ess Enterprises
1171, 3rd Floor, Kuchha Mahajani, Chandni Chowk,
Delhi-110006

.... Appellant

VERSUS

**Principal Commissioner of
Customs, ACC (Imports)**
New Customs House, IGI Airport,
New Delhi-110037

...Respondent

WITH

CUSTOMS APPEAL NO. 50466 OF 2021

(Arising out of Order-in-Original No. 47/2020/ U.G./ Pr. Comm./ dated 18.09.2020 passed by the Principal Commissioner of Customs, Air Cargo Complex (Import), New Customs House, Near IGI Airport, New Delhi-110037)

M/s RVJ Overseas (P) Ltd.
105(UGF), World Trade Centre,
Babar Road, Connaught Place,
New Delhi-110001

.... Appellant

Versus

**Principal Commissioner of
Customs, ACC (Imports)**
New Customs House, IGI Airport,
New Delhi-110037

...Respondent

WITH**CUSTOMS APPEAL NO. 50467 OF 2021**

(Arising out of Order-in-Original No. 37/2020/ U.G./ Pr. Comm./ dated 09.09.2020 passed by the Principal Commissioner of Customs, Air Cargo Complex (Import), New Customs House, Near IGI Airport, New Delhi-110037)

M/s Credence Commodities Exports

523, Nav Vayapar Bhavan 49,
D'mello Road Carnac Bunder,
Masjid East, Mumbai
Maharashtra-400009

.... Appellant**Versus****Principal Commissioner of
Customs, ACC (Imports)**

New Customs House, IGI Airport,
New Delhi-110037

...Respondent**WITH****CUSTOMS APPEAL NO. 50472 OF 2021**

(Arising out of Order-in-Original No. 48/2020/ U.G./ Pr. Comm./ dated 15.09.2020 passed by the Principal Commissioner of Customs, Air Cargo Complex (Import), New Customs House, Near IGI Airport, New Delhi-110037)

M/s S. K. Impex

1241, Gali Kacha Bagh,
Chandni Chowk, Delhi-110006

.... Appellant**Versus****Principal Commissioner of
Customs, ACC (Imports)**

New Customs House, IGI Airport,
New Delhi-110037

...Respondent**WITH****CUSTOMS APPEAL NO. 50473 OF 2021**

(Arising out of Order-in-Original No. 38/2020/ U.G./ Pr. Comm./ dated 09.09.2020 passed by the Principal Commissioner of Customs, Air Cargo Complex (Import), New Customs House, Near IGI Airport, New Delhi-110037)

M/s Ram Aabhoshan

13/61/6 Seo Ka Bazar, Fountain,
Agra, Uttar Pradesh-282003

.... Appellant**Versus****Principal Commissioner of
Customs, ACC (Imports)**

New Customs House, IGI Airport,
New Delhi-110037

...Respondent

WITH**CUSTOMS APPEAL NO. 50476 OF 2021**

(Arising out of Order-in-Original No. 40/2020/ U.G./ Pr. Comm./ dated 09.09.2020 passed by the Principal Commissioner of Customs, Air Cargo Complex (Import), New Customs House, Near IGI Airport, New Delhi-110037)

M/s Uma Strips Ltd.

X-64, Loha Mandi, Naraina,
New Delhi-110028

.... Appellant**Versus****Principal Commissioner of
Customs, ACC (Imports)**

New Customs House, IGI Airport,
New Delhi-110037

...Respondent**WITH****CUSTOMS APPEAL NO. 50638 OF 2021**

(Arising out of Order-in-Original No. 41/2020/ U.G./ Pr. Comm./ dated 09.09.2020 passed by the Principal Commissioner of Customs, Air Cargo Complex (Import), New Customs House, Near IGI Airport, New Delhi-110037)

M/s SMH Shipping Private Limited

106 Simran Plaza, 3rd & 4th Road,
Junction Khar West,
Mumbai, Maharashtra-400052

.... Appellant**Versus****Principal Commissioner of
Customs, ACC (Imports)**

New Customs House, IGI Airport,
New Delhi-110037

...Respondent**AND****CUSTOMS APPEAL NO. 50735 OF 2021**

(Arising out of Order-in-Original No. 45/2020/ U.G./ Pr. Comm./ dated 09.09.2020 passed by the Principal Commissioner of Customs, Air Cargo Complex (Import), New Customs House, Near IGI Airport, New Delhi-110037)

M/s N.P. Trading Co.

Office No. 207 Plot No. 26
Community Centre, Pitampura,
New Delhi-110034

.... Appellant**Versus****Principal Commissioner of
Customs, ACC (Imports)**

New Customs House, IGI Airport,
New Delhi-110037

...Respondent

APPEARANCE:

Shri Pradeep Jain, Advocate for the Appellants
Shri Sunil Kumar and Shri Nagender Yadav, Authorized
Representatives of the Department

**CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

**Date of Hearing: 01.06.2022
Date of Decision: 05.07.2022**

FINAL ORDER NO. 50573-50581/2022**JUSTICE DILIP GUPTA:**

Customs Appeal No. 50220 of 2021 has been filed by M/s. N C Jewellers to assail the order dated 07.09.2020 passed by the Principal Commissioner of Customs, ACC (Imports)¹ rejecting the classification of the goods claimed by the appellant to be under Customs Tariff Item² 7114 19 10 and classifying them under CTI 7118 90 00 of the Customs Tariff Act, 1975³. The Principal Commissioner also rejected the exemption claimed by the appellant under notification dated 31.12.2009, as amended by notification dated 31.12.2016 and ordered for recovery of differential duty with interest. The Principal Commissioner also held that the goods provisionally cleared were liable to confiscation under section 111(d) of the Customs Act, 1962⁴ but since the goods were not available and had already been cleared against Bond and Bank Guarantee, redemption fine with penalty under section 112 of the Customs Act was also imposed.

-
1. the Principal Commissioner
 2. CTI
 3. the Tariff Act
 4. the Customs Act

2. **Customs Appeal No's. 50465, 50466, 50467, 50472, 50473, 50476, 50638 and 50735 of 2021** have also been filed by M/s Kay Ess Enterprises, RVJ Overseas P Ltd., Credence Commodities Exports, S.K Impex, Ram Aabhoshan, Uma Strips Ltd., SMH Shipping Private Limited and N P Trading Co, respectively, to assail similar orders passed by the Principal Commissioner.

3. The details of the Bills of Entry and the demand made in the aforesaid nine appeals are as follows:

Customs Appeal No. 50220 of 2021

SN.	BoE No. and Date	Value(Rs.)	Total Differential Duty (Rs.)
Provisionally Assessed			
1.	2702159 dated 02.08.2017	2,83,17,479.00	30,04,201.00
Finally Assessed			
2.	2760101 dated 07.08.2017	2,69,20,363.00	28,55,981.00
Total Demand Details			
(A)	Grand Total	5,52,37,842.00	58,60,182.00
(B)	Redemption Fine		3,00,000.00
(C)	Penalty Imposed		5,00,000.00

Customs Appeal No. 50465 of 2021

SN.	BoE No. and Date	Value (Rs.)	Total Differential Duty (Rs.)
Provisionally Assessed			
1.	259418 dated 21.07.2017	2,65,12,832.00	28,12,746.00
Finally Assessed			
	NA	NA	NA
Total Demand Details			
(A)	Grand Total	2,65,12,832.00	28,12,746.00
(B)	Redemption Fine		28,00,000.00
(C)	Penalty Imposed		02,50,000.00

Customs Appeal No. 50466 of 2021

SN.	BoE No. and Date	Value (Rs.)	Total Differential Duty (Rs.)
Provisionally Assessed			
1.	2549419 dated 21.07.2017	2,65,12,832	28,12,746
2.	2623234 dated 27.07.2017	4,06,76,219	43,15,340

3.	2623646 dated 27.07.2017	5,68,00,313	60,25,945
4.	2688793 dated 02.08.2017	5,95,69,127	63,19,689
5.	2833805 dated 13.08.2017	8,06,24,015	85,53,402
6.	2911316 dated 19.08.2017	17,65,95,039	1,87,34,968
			4,67,62,090
Finally Assessed			
7.	2684599 dated 01.08.2017	5,46,49,653	57,97,781
8.	2713999 dated 03.08.2017	14,85,96,882	1,57,64,643
			2,15,62,425
Total Demand Details			
(A)	Grand Total		6,83,24,515
(B)	Redemption Fine		4,60,00,000
(C)	Penalty Imposed		68,00,000

Customs Appeal No. 50467 of 2021

SN.	BoE No. and Date	Value (Rs.)	Total Differential Duty (Rs.)
Provisionally Assessed			
1.	2680275 dated 01.08.2017	6,77,30,477.00	71,85,526.00
2.	2688794 dated 02.08.2017	13,49,40,362.00	1,43,15,823.00
3.	2715115 dated 03.08.2017	13,70,47,429.00	1,45,39,362.00
4.	2720593 dated 04.08.2017	99,49,499.00	10,55,542.00
5.	2734948 dated 05.08.2017	13,59,30,988.00	1,44,20,919.00
6.	2803093 dated 10.08.2017	13,61,38,458.00	1,44,42,929.00
Finally Assessed			
7.	2678668 dated 01.08.2017	6,82,02,263.00	72,35,578.00
8.	2818639 dated 11.08.2017	13,68,12,366.00	1,45,14,424.00
Total Demand Details			
(A)	Grand Total	82,67,51,842.00	8,77,10,103.00
(B)	Redemption Fine		6,60,00,000.00
(C)	Penalty Imposed		85,00,000.00

Customs Appeal No. 50472 of 2021

SN.	BoE No. and Date	Value (Rs.)	Total Differential Duty (Rs.)
Provisionally Assessed			
1.	2549417 dated 21.07.2017	2,65,12,832.00	28,12,746.00
2.	2639566 dated 28.07.2017	8,08,94,046.00	85,82,049.00
3.	2651823 dated 29.07.2017	6,73,70,317.00	71,47,317.00
4.	2701241 dated 02.08.2017	5,53,27,626.00	58,69,708.00
5.	2701242 dated 02.08.2017	5,37,51,102.00	57,02,454.00
Finally Assessed			

6.	2714754 dated 03.08.2017	6,87,73,887.00	72,96,222.00
7.	2787417 dated 09.08.2017	20,44,20,360.00	2,16,86,956.00
Total Demand Details			
(A)	Grand Total	25,81,71,462.00	2,73,89,410.00
(B)	Redemption Fine		3,00,00,000.00
(C)	Penalty Imposed		55,00,000.00

Customs Appeal No. 50473 of 2021

SN.	BoE No. and Date	Value (Rs.)	Total Differential Duty (Rs.)
Provisionally Assessed			
1.	2884717 dated 17.08.2017	6,59,49,160.00	69,96,546.00
Finally Assessed			
2.	2735360 dated 05.08.2017	6,72,65,636.00	71,36,211.00
3.	2953208 dated 23.08.2017	7,08,69,532.00	75,18,549.00
Total Demand Details			
(A)	Grand Total	20,40,84,328.00	2,16,51,306.00
(B)	Redemption Fine		70,00,000.00
(C)	Penalty Imposed		21,00,000.00

Customs Appeal No. 50476 of 2021

SN.	BoE No. and Date	Value (Rs.)	Total Differential Duty (Rs.)
Provisionally Assessed			
1.	2596439 dated 25.07.2017	4,01,17,565.00	42,56,072.00
2.	2629023 dated 28.07.2017	6,75,04,227.00	71,61,523.00
3.	2639873 dated 28.07.2017	8,08,94,046.00	85,82,049.00
4.	2822814 dated 11.08.2017	12,41,78,652.00	1,31,74,113.00
5.	2822897 dated 11.08.2017	8,64,80,917.00	91,74,761.00
6.	2853535 dated 15.08.2017	8,30,01,239.00	88,05,601.00
Finally Assessed			
7.	2830996 dated 12.08.2017	16,78,89,039.00	1,78,11,348.00
Total Demand Details			
(A)	Grand Total	65,00,65,685.00	6,89,65,467.00
(B)	Redemption Fine		NA
(C)	Penalty Imposed		6,80,000.00

Customs Appeal No. 50638 of 2021

SN.	BoE No. and Date	Value (Rs.)	Total Differential Duty (Rs.)
Provisionally Assessed			
1.	2705949 dated 03.08.2017	13,79,06,306.00	1,46,30,480.00
2.	2717226 dated 03.08.2017	13,70,99,657.00	1,45,44,903.00
3.	2803092 dated 10.08.2017	20,34,34,066.00	2,15,82,320.00
4.	2950507 dated 23.08.2017	14,08,18,042.00	1,49,39,386.00

5.	2966791 dated 24.08.2017	14,07,89,334.00	1,49,36,340.00
Finally Assessed			
2.	2958487 dated 24.08.2017	14,02,32,604.00	1,48,77,277.00
Total Demand Details			
(A)	Grand Total	90,02,80,009.00	9,55,10,706.00
(B)	Redemption Fine		8,00,00,000.00
(C)	Penalty Imposed		95,00,000.00

Customs Appeal No. 50735 of 2021

SN.	BoE No. and Date	Value (Rs.)	Total Differential Duty (Rs.)
Provisionally Assessed			
1.	2733842 dated 04.08.2017	30,72,893.00	1,43,38,044.00
Finally Assessed			
	NA	NA	NA
Total Demand Details			
(A)	Grand Total	30,72,893.00	1,43,38,044.00
(B)	Redemption Fine		1,40,00,000.00
(C)	Penalty Imposed		14,00,000.00

4. The appellants claim to have imported articles of gold which are round in shape and have images of gods, saints, temples or historical sites. These articles are struck in the form of a coin and according to the appellant are not or were not intended to be legal tender and infact were more akin to medals or medallions and were loosely or colloquially described as gold coins.

5. The appellants claimed classification of these imported goods as 'articles of gold' under CTI 7114 19 10 and these goods were cleared after availing exemption from payment of customs duty on the basis of the notification dated 31.12.2009 that extends the benefit of NIL Basic Customs Duty⁵ to all goods falling under Customs Tariff Headings⁶ 71021 to 711890 on production of Country of Origin Certificate. The aforesaid customs notification was issued in terms of the India-South Korea Comprehensive Economic Partnership Agreement.

5. BCD
6. CTH

6. However, show cause notices were issued to the appellants seeking to re-classify the imported goods and deny the exemption claimed by the appellant

7. The appellants filed detail replies to the show cause notices, but the demands were confirmed by the Principal Commissioner

8. The gist of the findings recorded by the Principal Commissioner are as follows:

- (i) The goods, being coins, are covered under CTH 7118 and entry in CTH 7114 is for residuary items;
- (ii) CTI 7118 10 00 covers coin (other than gold coin not being legal tender), while CTI 7118 90 00 covers coin other than coin of CTI 7118 10 00. Thus, CTI 7118 90 00 would cover gold coin, not being legal tender;
- (iii) HSN Explanatory Notes that define the scope and ambit of CTH 7118 do not explicitly exclude gold coins, not being legal tender;
- (iv) The Delhi High Court in **Khandwala Enterprise Pvt. Ltd. vs. Union of India**⁷, clarified that all gold coins are classifiable under CTI 7118 90 00;
- (v) The contention of the appellant that the subject goods are more akin to medals or medallions struck in the form of coin cannot be accepted;
- (vi) As the subject goods are classifiable under CTI 7118 90 00, it is clear that the import of gold coins are subject to RBI Guidelines;
- (vii) As the appellant is neither an authorized bank nor a nominated agency nor a status holder, it could not import the subject

7. 2020 (371) E.L.T. 50 (Del.)

goods and, therefore, the subject goods have been imported contrary to the prohibition imposed by DGFT (i.e. RBI Regulations); and

(viii) The Country of Origin Certificate issued to the appellant which mentions that the goods are classifiable under CTH 7114 cannot be considered to be a valid document.

9. Learned Counsel for the appellant pointed out that orders similar to the order dated 07.09.2020 passed by the Principal Commissioner in this appeal were assailed in **Customs Appeal No. 50192 of 2021**⁸ and by a detailed order dated 28.03.2022 the Tribunal held that the classification of imported articles of gold which are round in shape and have images of gods, saints, temples or historical sites which are struck in the form of a coin would be under CTI 7114 19 10.

10. A perusal of the decision dated 28.03.2022 passed by the Tribunal in **Abans Jewels** does indicate that the factual dispute is similar. Shri Sunil Kumar, the learned authorized representative appearing for the Department also does not dispute that the factual dispute in the present appeals are similar to that in the appeals decided by the Tribunal on 28.03.2022.

11. The relevant portions of the decision rendered by the Tribunal in **Abans Jewels** are reproduced below:-

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28. The appellant had described the goods in the Bills of Entry as “gold coin” (round) (other than legal tender). Thus, coins imported by the appellant are not legal tender and nothing has been brought on record by the Department to substantiate that the goods imported by the appellant

8. (M/s Abans Jewels Pvt. Ltd. v/s Principal Commissioner of Customs, ACC (Imports) New Customs House, IGI Airport, New Delhi, connected with three other appeals)

are legal tender. The description of the goods imported by the appellant would, therefore, not fall under CTI 7118 90 00.

29. The next issue that arises for consideration is as to whether the appellant is justified in classifying the goods under CTH 7114. CTH 7114 would cover articles of gold and the goods imported by the appellant are also articles of gold which are round in shape. Heading 71.14 of HSN provides that these goods are larger than articles of jewellery of heading 71.13 and they include articles for domestic or similar use like medals and medallions (other than those for personal adornment).

30. According to the appellant the imported articles of gold are round in shape and have images of gods, saints, temples or historical sites. These articles are struck in the form of a coin and are not or were not intended to be legal tender and infact are more akin to medals or medallions and were loosely described as gold coins. It is not in dispute that the appellant had described the goods in the Bills of Entry as gold coins which are not legal tender. These have not been struck by any National Issuing Authority and are not legal tender. The Explanatory Notes to heading 71.14 of HSN clarify the tariff text "other articles for domestic or similar use" as including medals and medallions. Medals and medallions referred to in the Explanatory Notes share similar characteristics of commemorative coins in so far as they are for decorative or ornamental use. The goods, therefore, deserve to be classified along with medal and medallions or decorative ornaments under CTI 7114 19 10.

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40. It needs to be noted that all the Bills of Entry involved in the four appeals are prior to 25.08.2017.

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43. There is, therefore, no manner of doubt that the goods imported by the appellant would fall under CTI 7114 19 10. "

12. Thus, in view of the aforesaid decision of the Tribunal in **Abans Jewels** it is not possible to sustain the order dated 11.09.2020 challenged in Customs Appeal No. 50220 of 2021, the order dated 11.09.2020 challenged in Customs Appeal No. 50465 of 2021, the order dated 18.09.2020 challenged in Customs Appeal No. 50466 of 2021, the order dated 09.09.2020 challenged in Customs Appeal No. 50467 of 2021, the order dated 15.09.2020 challenged in Customs Appeal No. 50472 of 2021, the order dated 09.09.2020 challenged in Customs Appeal No. 50473 of 2021, the order dated 09.09.2020 challenged in Customs Appeal No. 50476 of 2021, the order dated 09.09.2020 challenged in Customs Appeal No. 50638 of 2021, and the

order dated 09.09.2020 challenged in Customs Appeal No. 50735 of 2021. These orders passed by the Principal Commissioner are, accordingly, set aside and all the nine appeals are allowed.

(Order Pronounced on 05.07.2022)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

Rekha