IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 70206 of 2013

(Arising out of Order-in-Original No. KOL/CUS/AIRPORT/ADMN-27/2012 dated 14.11.2012 (issued on 23.11.2012) passed by the Commissioner of Customs (Airport & Admn.), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Aftab Ahmed **: Appellant**
S/o. Late Saleh Ahmed,
12, Dent Mission Road,
Khidirpur, Kolkata – 700 023

VERSUS

Commissioner of Customs (Airport & Admn.) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

WITH

Customs Appeal No. 70207 of 2013

(Arising out of Order-in-Original No. KOL/CUS/AIRPORT/ADMN-27/2012 dated 14.11.2012 (issued on 23.11.2012) passed by the Commissioner of Customs (Airport & Admn.), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Md. Asifuddin **: Appellant**
S/o. Md. Ghayasuddin,
11/C, Carnal Biswas Road,
P.O.: Ballygunge, Kolkata – 700 019

VERSUS

Commissioner of Customs (Airport & Admn.) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

WITH

Customs Appeal No. 70208 of 2013

(Arising out of Order-in-Original No. KOL/CUS/AIRPORT/ADMN-27/2012 dated 14.11.2012 (issued on 23.11.2012) passed by the Commissioner of Customs (Airport & Admn.), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Afaque Alam **: Appellant**
S/o. Syed Alam,
3/B, Rajab Ali Lane,
Khidirpur, Kolkata – 700 023

VERSUS

Commissioner of Customs (Airport & Admn.) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

WITH

Customs Appeal No. 70209 of 2013

(Arising out of Order-in-Original No. KOL/CUS/AIRPORT/ADMN-27/2012 dated 14.11.2012 (issued on 23.11.2012) passed by the Commissioner of Customs (Airport & Admn.), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Meraj Ahmed **: Appellant**
Proprietor of M/s. Mahalaxmi Air Cargo Enterprises,
11, Kalutala Street,
Kolkata – 700 073

VERSUS

Commissioner of Customs (Airport & Admn.) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

AND

Customs Appeal No. 70210 of 2013

(Arising out of Order-in-Original No. KOL/CUS/AIRPORT/ADMN-27/2012 dated 14.11.2012 (issued on 23.11.2012) passed by the Commissioner of Customs (Airport & Admn.), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Arshad **: Appellant**
S/o. Mohammad Mozammer,
40, Ekbalpur Lane,
Kolkata – 700 023

VERSUS

Commissioner of Customs (Airport & Admn.) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Nilotpal Chowdhury, Advocate for the Appellant(s)

Shri Sourabh Chakravorty, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75847-75851 / 2024

DATE OF HEARING: 01.05.2024

DATE OF DECISION: 03.05.2024

ORDER : [PER SHRI ASHOK JINDAL]

All the appellants are in appeal against the impugned order challenging the valuation of the goods in question, quantum of redemption fine and penalty imposed on them.

2. The facts of the case are that on the basis of intelligence gathered, four persons, namely, Aftab Ahmed, Afaque Alam, Md. Asifuddin and Arshad (appellants herein) were apprehended by the Officers of the Directorate of Revenue Intelligence (DRI), Kolkata as they were proceeding towards the exit of the arrival area of the Netaji Subhash Chandra Bose International Airport, Kolkata after passing through the green channel. All of them had arrived from Bangkok on 25.02.2011 by Flight No. TG 0313. After enquiry as to whether they were carrying any dutiable goods, all of them fumbled and did not answer properly. Upon repeated questioning, all of them ultimately admitted that they were carrying dutiable goods, which they had not declared to the Customs authorities.

3. On demand, all the above four passengers/appellants handed over the counter-foils of boarding pass, nine baggage claim tags of Flight No. TG 0313 for nine luggage bags having a collective weight of 180 kg. and counter-foils of immigration form required to behanded over at the Customs exit gate. Thereafter, the Officers escorted all the passengers along with their baggage to the Customs room in the arrival hall for proper examination of their baggage.

3.1. On examination, it was found that they were carrying altogether in their hand baggage 5 Kg. grey metal powder suspected to be Iridium (packed in 500 gms. in see-through plastic packets), 5 Kg. grey metal powder suspected to be Ruthenium (packed in 1 kgs. in see-through plastic packets mark with words "Ru”), 35400 pcs. 2 GB Micro SD Memory card (packed in 30 brown colour packet wrapped in cellophane tape), 88.5 Kg. stone beads, 'Chaton' (packed in sealed plastic pouches) and six branded watches of foreign origin. Inventory of the goods recovered from the hand baggage of the above mentioned four passengers was prepared in presence of independent witnesses and the said passengers. The total value of the above mentioned goods was found to be Rs. 2,29,93,000/- (Rupees Two Crore Twenty Nine Lakhs Ninety Three Thousand). Some incriminating documents were recovered from the hand baggage of Mohammed Asifuddin and Afaque Alam. Those incriminating documents were also seized under the provisions of Customs Act on the reasons to believe that those would be relevant to and useful for the purpose of further investigation.

3.2. Then the 9 cartons which were the checked-in baggage of Aftab Alam (pooled with Mohd. Asifiuddin) and Ashraf (pooled with Afaque Alam) were examined and on opening the cartons, it was found that all the said cartons contained ‘Chaton' packed in sealed plastic pouches. The total weight of those stone beads, ‘Chaton' was found to be 218 Kg., valued at Rs.8.72 lacs (approx). Detailed inventory was prepared according to baggage tag no. of passengers concerned in presence of independent witnesses and the above mentioned four passengers.

3.3. The goods so recovered from the hand baggage and the checked in baggage were seized under Section 110 of the Customs Act, 1962 on the reasons to believe that the said goods were liable for confiscation under Section 111 of the Act as the goods were found in commercial quantity and all the four passengers were carrying the goods in their baggage and had opted for green channel without declaring the goods before the Customs authorities and without payment of appropriate Customs duty thereof.

4. Thereafter, all the four persons were examined and their Statements were recorded under Section 108 of the Customs Act, 1962.

5. Aftab Ahmed (appellant in Customs Appeal No. 70206 of 2013) in his Statement dated 25.02.2011 stated that he used to earn money by way of carrying goods from Hong Kong or Bangkok to Kolkata and he used to go to Hong Kong twice or thrice in a month. He had been engaged in this sort of business for last six to seven years. On earlier occasions, while returning back from Hong Kong, he brought readymade garments, mobile accessories, different electronics items etc. from Hong Kong. He was introduced to some agents in Hong Kong through some of his friends. Those agents informed him over telephone to go to Hong Kong. Then accordingly he used to purchase air tickets and fly to Hong Kong where he stayed in guest houses in Hong Kong like China Town Guest House, Disneyland Guest House, Kamal Guest House, etc. After reaching Hong Kong, he used to call those agents and accordingly goods were provided by those agents for carrying the same to India. After landing in India, he used to send those goods to the persons as instructed by the Hong Kong

agents through air courier like Blue Dart, Jet Airways, etc. The agents gave him only the names or code names of the recipients and their mobile numbers. Sometimes, he had also sent the goods through couriers like M/s. Mahalaxmi Courier whose office was located in Burrabazar and Khiddirpore area. The agents in Hong Kong used to give them the air fare and the cost for the food and lodging in Hong Kong. The agents also gave them service charge for carrying the goods. He used to get Rs.8000/- per trip for carrying clothes or mobile accessories. For carrying Chaton i.e. stone beads, he used to get Rs. 10,000/- per trip.

5.1. In reply to a specific question the said Aftab Ahmed stated that he carried Chatons in his last three trips only. The Chatons have been given to him by one Sikander in Hong Kong. He was directed to deliver the Chatons to one "FD" there. After coming out from the airport, Sikander used to call him and gave the name and the mobile no. of the person to whom he had to dispatch the goods. On the last two occasions, he had two different mobile nos. of "FD" which he could not remember. He also stated that he sent the goods in last two occasions via M/s. Mahalaxmi Courier. This time he received call from Sikander on 20.02.2011 to go to Hong Kong and accordingly went to Hong Kong on 22.02.2011. He stayed at the 10th Floor, D Block, Chung Kling Mansion with some of his friends. He intended to return to India on 23.02.2011, but could not return as the goods were not ready. He started his journey from Hong Kong on 24.02.2011 and reached Kolkata at about 00:40 hours on 25.02.2011 via Bangkok in Thai Airways flight No. TG 313. He had two hand luggages with him - one was a black side bag and the other was a pink polythene bag. He carried 11400 pieces of microSD 2 GB Memory Chips, 3 kg. Metal Powder, 8 kg., Chatons, 4 watches with him which were kept inside the hand luggage he was carrying. There were also five checked in baggage in his name which also included the baggage of his co-passenger Md. Asifuddin. In the checked in baggages there were 90 Kgs. Chatons. At the time of coming out through green channel in the arrival hall of Kolkata Airport the officers of DRI intercepted him. He was asked to come to the office of AIU. There, the Officers checked his luggage and informed him that the watches he was carrying were worth of Rs. 37.5 lakh and the metal polish were actually high valued Iridium/Ruthenium powder valued at Rs. 40 lakhs and thereafter seized the goods along with the Chatons. He stated that he had no idea that the goods which he was carrying were of such high value.

5.2. He also stated that neither did he purchase the goods and nor those goods were owned by him; Sikander gave these goods to him to deliver in India. He did not know to whom he had to deliver the goods as he had been intercepted inside the Airport and till that time, Sikander did not inform him as to the name of person to whom those goods had to be delivered. He categorically stated he was merely the carrier of the said goods.

5.3. In reply to another specific query, he stated that though he was well aware of the facts that he had to pay duty of the goods he was carrying but he was coming out through green channel as it was his responsibility to take out the goods without paying duty for the owner of the goods and for that, he was being paid.

6. Afaque Alam (appellant in Customs Appeal No. 70208 of 2013) who is a resident of Kolkata, in his Statement dated 25.02.2011, stated that he was the only earning member of his family consisting of his wife, one child, his parents and two sisters. He further stated that he did not have any bank account in his name. His nick name was 'Pattu' and he was known as Pattu in his locality. He used to earn money by way of carrying goods from Hong Kong to Kolkata and he used to go to Hong Kong twice or thrice in a month. He has been engaged in this sort of business for the last ten years. Usually, he brought Readymade Garments, mobile accessories, different electronics items, etc., from Hong Kong. He generally collected those goods from one Haji Bhai in Hong Kong and stayed in guest houses in Hong Kong like Royal Inn Guest House, Disneyland Guest House, etc. After reaching Hong Kong, he used to call his agents in Hong Kong and accordingly goods were supplied by those agents for transportation to India. After reaching India, he used to send those goods to the persons as instructed by the Hong Kong agents through air courier like M/s. Mahalaxmi Courier at Burrabazar. The agents at Hong Kong used to provide them only the name or code name and mobile number of the recipients. He also used to receive service charges for carrying the goods. He used to receive Rs. 8000/- per trip for carrying clothes or mobile accessories; for carrying Chaton i.e. stone beads, they used to receive Rs. 10000/- per trip.

6.1. In reply to a specific question he stated that he was carrying Chatons in the last three trips. The Chatons were given to him by one Haji Bhai. He was directed to deliver those Chatons to one Fawad alias

"FD" of New Delhi. He had no further details of Fawad including his mobile number. He had sent those goods through Mahalaxmi Courier and through Air Cargo Courier, Kolkata. This time, he went to Hong Kong on 22.02.2011 and he met there with Haji Bhai. Haji Bhai supplied him the Chatons and considerable quantity of metal powder for transportation to India. Haji Bhai had offered Rs. 15000/- for this assignment in addition to the expenses of journey. Haji Bhai had also informed him that he would contact him later and would provide him the name of the recipients. He had started from Hong Kong on 24.02.2011 by flight number TG 607 to Bangkok and boarded flight number TG 313 destined to Kolkata and reached Kolkata about 00:45 Hours on 25.02.2011. He had two hand luggages with him - one black side bag and the white-pink polythene bag. There were 2 kgs. of metal powder, and certain quantity of Chatons with him in the hand luggage. There were also four checked-in baggages in his name which also included the baggage of his co-passenger Arshad. The checked-in baggages consisted 90 kg. of Chatons. While he was coming out through green channel in the arrival hall of Kolkata Airport, he was intercepted by DRI officers and was taken to the office of AIU. There, he was informed that the metal powders are of high value and the goods were seized along with the cartons. He stated that he had no idea about the value of the goods carried by him. Haji Bhai had given him the goods for delivery in India but he was not aware as to whom he was to deliver those goods and also the owner of the goods. He was not informed about the name of the owner of the goods till his interception by DRI. He was aware that the goods carried by him were dutiable but he was coming out of the green channel to avoid payment of duty and he was paid specifically for this job.

7. In his statement dated 25.02.2011 recorded under Section 108 of the Customs Act, 1962, Md. Asifuddin, stated that he was living at his residence at Kolkata for the last 19 years with his wife, one child and parents. His brother also used to stay in his residence with his wife and their two children. He used to earn his living by way of transportation of goods from Hong Kong or Bangkok to Kolkata and he used to go to Hong Kong once or twice in a month. He had been engaged in this sort of business for last six to seven years. He was drawn into this business by his friend. On earlier occasions while returning back from Hong Kong, he brought Readymade Garments, mobile accessories, different electronics items, etc., from Hong Kong. He was introduced to some agents in Hong Kong by some of his friends. Those agents informed him over telephone to go to Hong Kong. Then accordingly he used to purchase air tickets and fly to Hong Kong and stayed in guest houses in Hong Kong like China Town Guest House, Disneyland Guest House, Kamal Guest House, etc. After reaching Hong Kong, he used to call those agents and accordingly goods were provided by those agents for transportation to India. After reaching India he used to send those goods to the persons as instructed by the Hong Kong agents through air courier like Blue Dart, Jet Airways, etc. The agents gave them only the name or code name of the recipients and their mobile numbers. Sometimes, they also sent the goods through couriers like M/s. Mahalaxmi Courier whose office was in Burrabazar and Khiddirpore area. The agents in Hong Kong used to give them the Air fare

and fooding, the lodging cost in Hong Kong. They also gave them service charge for carrying the goods. He used to get Rs.8000/- per trip for carrying clothes or mobile accessories. For carrying chaton le stone beads, he usually got Rs. 10,000/- per trip. In reply to specific question he stated that he started carrying Chatons in last three trips. The Chatons had been given to him by one Sikander in Hongkong. He was directed to deliver the Chatons to one "FD" here. After coming out from the airport, Sikander used to call him and provide the name and the mobile no, of the person to whom he had to dispatch the goods. On the last two occasions he had two different mobile no. of FD, which he could not remember. He also stated that he sent the goods in last two occasions via M/s. Mahalaxmi Courier.

7.1. This time he received call from Sikander on 20.02.2011 to go to Hong Kong and accordingly went to Hong Kong on 22.02.2011, where he stayed with some of his friends. He intended to return to India on 23.2.2011, but could not return as the goods were not ready. He started his journey from Hong Kong on 24.02.2011 and reached Kolkata at about 00:40 hrs on 25.02.2011 via Bangkok in Thai Airways flight no. TG-313. He had two hand luggages with him, one a black side bag and other a pink polythene bag. He carried 12000 pieces of MicroSD 2GB memory chip, 3 kgs. metal powder, 20 kgs. of Chaton and two watches with him which were kept in the hand luggage he was carrying. At the time of coming out through green channel in the arrival hall of Kolkata airport he was intercepted by officers of DRI and was taken to the office of AIU. There they checked his luggage and told him that the watches he was carrying was worth

Rs. 5.75 lakhs and the metal polish were actually high value Iridium / Ruthenium power valued at Rs. 35 lacs. They seized the goods along with cartons. He had no idea that the goods which he was carrying was of such value. He also stated that neither did he purchase the goods nor those goods were owned by him. Sikander gave those goods to him for delivery in India. He did not know to whom he would have to deliver those goods as he had been intercepted inside the airport and till that time Sikander did not inform him the name of the person whom those had to be delivered. He categorically stated that he was merely carrier of the said goods.

7.2. In reply to specific query, he *inter alia* stated that though he was well aware of the fact that he had to pay duty for the goods he was carrying, he was coming out through green channel as it was his responsibility to take out the goods without paying the duty for the owner of the goods and for that he was being paid.

8. Further, the Statement of Arshad was recorded on the same day who stated that he used to earn his livelihood by way of transportation of goods from Hong Kong or Bangkok to Kolkata and he used to go to Hong Kong twice or thrice in a month. He had been engaged in this sort of business for last three to four years. Earlier he was working in a shop in Fancy Market on temporary basis. He was drawn into this business by his friends. On earlier occasions while returning back from Hong Kong, he brought Readymade Garments, mobile accessories, different electronic items etc. from Hong Kong. He was introduced to some agents in Hong Kong through some of his friends of Khiddirpore. Those agents

informed him over telephone to go to Hong Kong. Then accordingly he used to purchase air tickets and fly to Hong Kong and stayed in guest houses in Hong Kong like China Town Guest House. After reaching Hong Kong he used to call those agents and accordingly goods were supplied by those agents for carrying to India. After reaching India he used to send those goods to the persons as instructed by the Hong Kong agents through couriers like M/s. Mahalaxmi Courier whose office was in Burrabazar and Khiddirpore area. The agents gave them only the name or code name of the recipients and their mobile numbers. The agents in Hong Kong used to give them the Air fare and cost for fooding and lodging in Hong Kong. They also gave him service charge for carrying the goods. He used to get Rs.8000/- per trip for carrying clothes or mobile accessories. For carrying Chatons le. stone beads, he used to get Rs. 10,000/- per trip.

8.1. In reply to specific question he stated that he started carrying Chatons in last two trips. The chatons were given to him by one Sikander in Hong Kong. He was directed to deliver the Chatons to one "FD" there. After coming out from the airport, Sikander used to call him and give the name and the mobile no, of the person to whom he had to deliver the goods, On the last two occasions he had two different mobile no. of FD which he could not remember. He also stated that he sent the goods on the last two occasions via Mahalaxmi courier.

8.2. He has further stated that this time, he received the call from Sikander on 20.02.2011 to go to Hong

Kong and accordingly went to Hong Kong on 22.02.2011. He intended to return to India on 23.02.2011, but could not return as the goods were not ready. He started his journey from Hong Kong on 24.02.2011 and reached Kolkata at about 00”40 hrs of 25.02.2011 via Bangkok in Thai Airways flight no. TG-313. He had two hand luggages with him - one black side bag and the other a bi-coloured (pink and white) polythene bag. He had 6.5 Kgs. of stone beads (1770 gross) marked as ‘SS 13’, 4 Kgs stone bead (1500 gross in each) marked as ‘SS Emerald’, 12000 memory cards (each 2 GB) and 2 Packets (each contained 1 Kg.) grey coloured powdered substances in his black side-bag and 2 packets, each 5 Kgs, stone bead (1500 gross in each) marked as ‘SS Rose’ in bicoloured (pink and white) poly-packet. At the time of coming out through green channel in the arrival hall of Kolkata airport he was intercepted by the officers of DRI and was taken to the office of AIU. There the officers have checked his luggage and told him that the powdered substances which he was carrying were actually high value Ruthenium powder worth Rs. 12-14 lakhs and the memory cards were valued at about Rs. 18-20 lacs. The officers seized the goods along with cartons. He had no idea that the goods which he was carrying was of such values. He also stated that neither did he purchase the goods and nor those goods owned by him. Sikander gave these goods to him for delivery in India. He did not know to whom he had to deliver those goods as he had been intercepted inside the airport and till that time Sikander did not inform him the name of the person to whom those goods were to be delivered. He categorically stated that he was merely a carrier of the said goods.

8.3. In reply to specific query, he stated that though he was well aware of the fact that he had to pay duty for the goods he was carrying but he was coming out through green channel as it was his responsibility to take out the goods without paying the duty for the owner of the goods and for that he was being paid.

9. Thereafter, representative samples were drawn from the seized metal powder believed to be Iridium and Ruthenium and sent to Saha Institute of Nuclear Physics, Salt Lake, Kolkata to ascertain the actual chemical identity of the samples drawn. It was certified that test of the samples responded positive to Iridium and Ruthenium.

10. None of the appellants disclosed the name of the recipient of the goods, but they stated that the goods were supplied through M/s. Mahalaxmi Courier of Burrabazar and Khidderpore. Accordingly, the Officers went to M/s. Mahalaxmi Courier, whose proprietor was identified as Meraj Ahmed (appellant in respect of Customs Appeal No. 70209 of 2013) and his Statement was recorded on 27.06.2011. He stated that his organization was engaged in booking of goods from Kolkata for ultimate destination to New Delhi and Mumbai. He stated that generally, the names and addresses of the senders or recipients are not written by them. These are mentioned only when the goods are to be delivered at the doorstep of the recipients. He was shown the photographs of the above mentioned persons, but he did not identify any one of them and stated that he had never booked any goods from any of these four persons. He submitted the challan book for booking made to Delhi and Mumbai for the period from 09.02.2011 to 28.03.2011. He further stated that there was another courier in the

name of Mahalaxmi Courier functioning at Burrabazar area and the address of the said courier company was not known to him.

10.1. On thorough enquiry, no other Courier Company named 'Mahalaxmi Courier' with office at Burrabazar and Khidirpore area could be located except the one owned by Meraj Ahmed.

11. From the Statement tendered of Meraj Ahmed and the challan books of the said courier company, it was noticed that they do not write any details of senders of goods or recipients of goods in their respective challans. It was also seen that the practice followed by them in booking the goods was similar to the mode of booking as stated by the four apprehended persons. On being asked to explain, it was replied that as they used to take booking and effect delivery from their respective offices, the sender's or recipient's address was not written down.

11.1 Accordingly, since the explanation did not justify their action in not mentioning the address of the senders or recipients, therefore, for those omissions and commissions, it was alleged that Meraj Ahmed was actively engaged in carrying out smuggling activities and aided and abetted the smuggling activities of the other four co-appellants.

12. Based on these facts, a Show Cause Notice was issued to all the five appellants herein and the matter was adjudicated by the Ld. Commissioner vide the impugned order wherein the value of the goods were ascertained. The goods were allowed to be redeemed on payment of applicable Customs duty and redemption fine of Rs.50,00,000/-; a penalty of Rs.5,00,000/- was also imposed on all the four

passengers who were apprehended and a penalty of Rs.5,00,000/- was imposed on Meraj Ahmed, owner of M/s. Mahalaxmi Air Cargo Enterprise.

13. Aggrieved from the said order, the appellants are before us.

14. The Ld. Counsel appearing on behalf of the appellants does not dispute the facts of the case. He only disputed the method of valuation of the goods in question, submitting that the value has not been ascertained as per the NIDB data. Therefore, he prayed that the matter may be remanded back to the adjudicating authority to ascertain the correct value of the goods seized and accordingly redemption fine and penalties be imposed on the appellants.

15. On the other hand, the Ld. Authorized Representative for the Revenue supported the impugned order and drew our attention to the impugned order wherein the ld. adjudicating authority has ascertained the value of the goods by giving remarks thereof. He submitted that the impugned order is to be upheld.

16. Heard the parties and considered their submissions.

17. On going through the records placed before us and the arguments advanced by both the sides, we find that it is a fact admitted by the appellants that all the four passengers who were intercepted at the Airport were carrying the goods in question and were engaged in the activity of smuggling of the said goods into India without payment of any Customs duties thereon. Further, we observe that Meraj Ahmed was engaged in the activity of transportation of these

smuggled goods, as evidenced from the records placed before us.

17.1. We also find that the ld. adjudicating authority has arrived at the valuation with reference made to metal bulletin issued by the Director General of Valuation, C.B.E.C., NIDB data, various purchase invoices and website details as per www.eBullionGuide.com. For better appreciation of the facts, the valuation as arrived at by the ld. adjudicating authority in the impugned order is extracted hereunder: -

Comments In respect of submissions made by the notices in respect of SCN issued under DRI F. No. 12/KOL/2011(P) dt. 23.08.2011

Sl. No.	Name of the Item	Value as per SCN (in Rs)/Kg	Value as submitted by the notices (in Rs.)/kg	Value as per metal bulletin	Value as per Import export data (Ass. Value)	Remarks
1	Iridium	1750000/-	1551191/-	USD 1075/Troy Ounce =Rs.15.88 lac/kg	In the range of Rs. 11.99 lacs to Rs. 15.88 lacs per kg.	The seizure value of Iridium has been given as Rs. 17.5 lakh per Kg whereas the DOV value is Rs. 15.51 lakh per Kg. Considering the BCD @ 10% and handling charges and prifit element @ another 10%, the market value comes about Rs. 18.5 lakh per Kg.
2	Glass chaton	4000/-	In the range of Rs. 1075.65 to Rs. 3187.56			Price of Chatonsvary hugely depending upon their quality and specification. The seized chatons being of very high quality will naturally have very high value. The highest assessable value chatons during the material period as per DOV data as submitted the noticees themselves was Rs. 3187.56 per KG. the BCD and the CVD were 10% each. Considering these duty elements and the notional profit margin @ 10%, the market price would come more than Rs. 4000.00 per Kg. Thus, it may be seen that the seizure value of chatons also has been given correctly.
3	Memoory Card (2GB)	Rs. 157/- to Rs. 158/- per pc.	Rs. 65.15 per pc.			From the documents submitted by the notices, it is seen that value of Memory cards (2GB), referred by them does not pertain to the material period. The seizure was on 25.02.2011 whereas the value referred by them was the assessable value of 2GB memory cards prevalent on 11.01.2012. However, from the document submitted by them it is seen that on 07.12.2011, the assessable value of 2GB memory cards were Rs. 160.87.
4	Watches of different premium brands	The notices have submitted a copy of 'Purchase Invoice' dated 18.02.11				In order to dispute the seizure value of the seized branded watches the notices have submitted a copy of 'Purchase Invoice'. In this regard it is stated that at the time of seizure the noticees, despite being repeatedly asked, could not produce any purchase bill or invoice for the contraband goods they were carrying. On being asked, in this regard, they stated that they did not have any document with them; they were mere carriers; they did not have any idea about the value of the goods they were carrying with them in their baggage. Now, after a long interval they have submitted a copy of what is

(page 20 of the impugned order)

						stated to be a Purchase Invoice. The so called purchase Invoice produced even after issuance of SCN appears to have been arranged by the notices in order to bring down the price of the seized goods so that the amount of penalty becomes less.
5	Ruthenium	600000/- and 650000/-	259362/-	USD 180/Troy Ounce = Rs 2.65 lac/kg	In the range of Rs. 2.82 lacs to Rs 3.38 lacs per kg	The value of this smuggled goods has been arrived at by adding duty quantum, overhead and profit margin for this very rare and precious smuggled item.

(page 21 of the impugned order)

17.2. On going through the valuation adopted by the ld. adjudicating authority in the impugned order, we find that the valuation adopted by the ld. adjudicating authority is through proper analysis of the best value available of the goods seized except Ruthenium wherein in the 'Remarks' column it has been stated by the ld. adjudicating authority that "*the value of this smuggled goods has been arrived at by adding duty quantum, overhead and profit margin for this very rare and precious smuggled item*."

17.3. We are not in agreement with the said observation made by the ld. adjudicating authority in the impugned order. As the quantum of duty along with overheads and profit margin cannot be taken as the 'value' of the said goods, in these circumstances, the value of the said goods has to be taken as Rs.3,00,000/- (Rupees Three Lakhs) per kg., which is in the range arrived at by the ld. adjudicating authority i.e., Rs.2.82 lakhs to Rs.3.38 lakhs per kg. Accordingly, the duty has to be re-quantified which is payable by the appellants.

18. In the facts and circumstances of the case, we also find that redemption fine imposed on the appellants for release of the seized goods is justified. The penalties imposed are also found to be justified. In view of this, we do not find any merit on these grounds in the appeals filed by the appellants. Accordingly, the appeals in respect of quantum of

redemption fine and imposition of penalties are dismissed.

19. The ld. Adjudicating authority is directed to re-calculate the duty payable by the appellants, as discussed hereinabove, if they so desire to get release of the goods.

20. The appeals are disposed of on the above terms.

(Order pronounced in the open court on **03.05.2024**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd