IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75110 of 2020

(Arising out of Order-in-Appeal No. 17/Cus(A)/GHY/2020 dated 28.02.2020 passed by Commissioner (Appeals), CGST, Central Excise & Customs, Guwahati.)

Commissioner of Customs (Prev.) Shillong,
(NER, 110, M.G. Road, Shillong, Meghalaya-793001)

..Appellant

VERSUS

MD. Ahassan Ullah,
(S/O, Mohammad Umar Ali, R/o 72-A, Green park Colony,
Madina Street, Indore, Madhya Pradesh-452002)

.. ...**Respondent**

APPERANCE :
Shri Faiz Ahmed, Authorized Representative for the Appellant
None, for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

Final Order No. 75622/2026

DATE OF HEARING : 20.05.2026
DATE OF DECISION : 20.05.2026

PER R. Muralidhar:

This appeal has been filed by the Revenue being aggrieved by the OIA passed by the Commissioner (Appeals) wherein he has set aside the demand confirmed by the Adjudicating Authority. No one has appeared on behalf of the respondent. Finding that the issue is in a short compass, the appeal itself was taken up for disposal with the consent of the Learned AR.

2. The Learned AR submits that this is a case wherein on 1st May, 2018, the CISF security staff of Imphal International Airport detected one gold neck chain worn by the appellant and the same was

subsequently confiscated by the Department. Proceedings were initiated since the appellant could not produce the proper documents at the time of seizure. After following the due process, the adjudicating authority confiscated the gold absolutely and Penalty of Rs.1 lakh was imposed on the appellant.

3. Being aggrieved with the order, the appellant filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) has held that no proper evidence has been brought in by the Revenue to show that the gold jewellery found in the person of the appellant was that of foreign origin gold. He also found that the appellant has provided the details of purchases made by him from Sri Balaji Jewellers Indore along with the GST Tax invoice.

4. He also has given a finding that the lab report showed the certified purity of the seized gold to be 99.5% whereas the foreign gold origin would have the purity of 99.99%. Considering these aspects, the Commissioner (Appeals) has set aside the adjudication order. Being aggrieved, the Department has filed the present appeal.

5. The Learned AR submits that the Commissioner (Appeals) has erred in ignoring the fact that the appellant could not produce any proper document at the time when the search was conducted.

6. The so-called invoice was submitted by the appellant after about five months from the date of seizure of the goods. The gold chain said

to be worn by the appellant weighed more than 300 grams, which is not the proper jewellery which is made to be worn in the neck. In view of these submissions, he prays that the appeal may be allowed by setting aside the impugned OIA.

7. I have gone through the factual details of the case as has been put up by the Department in the Order-in-Original and in the OIA. I find that the seizure was affected on 1st May, 2018 by CSF officials at Imphal International Airport. The gold in question was a gold neck chain which was being worn by the appellant. The appellant did not carry any documentary evidence towards the purchase of this gold. Subsequently, the appellant has produced one Invoice issued by Sri Balaji Jewellers Indore under Tax Invoice Number GST-11 dated 16.04.2018. Thus he claimed that he has discharged his liability under Section 123 of Customs Act 1962.

8. In the OIA, the Commissioner (Appeals) has given a very detailed finding on the case made out by the Revenue and the defence put up by the appellant. The relevant findings of the Commissioner (Appeals) in the OIA are reproduced below:-

> *9. It is evident from para 10 of the impugned O-in-O that as categorically required by the Respondent Authority, the Customs Officers of Indore verified the residential address and other aspects of financial profile of the appellant on 20.06.2018 and submitted a report accordingly. <u>I am of the view that besides inquiring into the aspects of financial profile of the appellant, specific inquiry about the source of the said gold</u>*

chain should have been undertaken and the appellant should have been thoroughly examined in this regard to ascertain if he was in possession of any purchase document in respect of the said gold chain. It is on record that on 12.10.2018 the appellant had submitted a tax invoice dated 16.04.2018 claiming his bona fide purchase of the said gold chain from a jewellery shop at Indore before the issuance of the Show Cause Notice on 24.10.2018.

10. I find that the adjudicating authority did not take in to consideration the said purchase invoice dated 16.04.2018 and observed that the same as unauthentic and afterthought but without recording any findings as to why the said purchase invoice was unauthentic and afterthought. I also find that no inquiry at the end of sellers, ie. Shri Balaji Jewellers, who are manifestly a GST registrant about its legitimacy or otherwise has been conducted by the department. Submission of the purchase invoice by the appellant after five months from the date of seizure cannot be a valid ground to confiscate the seized goods in absence of any contrary evidence. Moreover, by virtue of Section 123 of Customs Act, 1962, logical doubt of smuggled nature of gold may be adequate for the purpose of exercising power of seizure of gold under Section 110 (1) of the Act ibid, but the same is not enough for confiscation under Section 111(b) and/or 111 (d) of the Act ibid all the more so when purchase document of licit acquisition of the said gold chain produce appellant was not substantiated to be false or fake.

11. The appellant stated that failure to produce document of purchase and acquisition of the said used gold chain on the spot at the time of seizure cannot be the basis for conclusion that the same was contraband in nature in the absence of any other cogent evidence all the more so when the seizure of the said gold chain was not made anywhere near the international border and the same was not concealed by the appellant. In this regard I observe that it is an undisputed facts that the appellant was intercepted by the C.I.S.F personnel at Imphal Airport which is far away from the international border. Further, it is evident from the case records that the seized *goods were not concealed. Hence, I find that legal force on the above contention of the appellant. I find that the appellant cited the judgement of the Hon'ble Tribunal in the case of M/s LUXMI ENTERPRISERS -v- Collector of Central Excise, 1989 (41) E.LT. 139 (Tribunal), wherein it is held that the Gold ornaments seized during transit from dealer, covered by purchase vouchers and issue vouchers and duly accounted for,not liable to confiscation merely due to non-production of records by dealer immediately on seizure, before authorities. Ongoing through the above observation of the Hon'ble Tribunal, I find that the ratio of the referred case law is squarely applicable in the instant case.*

12. I observe that it is evident from the impugned order that the said used gold chain does not bear any foreign markings or inscriptions and there are also no evidence adduced to prove that the same is of foreign origin and smuggled. I further observe that purity of gold of foreign origin never below 99.99% whereas, as per Revenue Laboratory Report, purity of the said gold chain is certified to be 99.5 fineness i.e. much below the purity or form in which gold is imported or smuggled from a foreign country. This fact suggests that the said used gold chain is not of that purity or form in which the same is imported or smuggled from a foreign country.

14. Furthermore, during the course of appeal proceedings the appellant has produced a copy of the recent Order-in-Original No. COM/CUS/ADDL.COMMR/47/2019 dated 25.04.2019 passed by the same adjudicating Authority, arising out of the Show Cause Notice C.No. VIII (10) 217/CUS/SH/2018/2716 (A) dated 25.10.2018 in seizure case No. 01/CL/CUS/CPF/DIB/2018-19 dated 02.05.2018 involving gold ornaments weighing 562.437 gms. including one chain of 327.340 gms, booked by the Dibrugarh Customs Preventive Force (initially seized by the CISF at Airport on 02.05.2018) having taken over the same from the CISF personnel of Mohanbari Airport, Dibrugarh, wherein it was alleged that some of the said gold ornaments were appeared to be rough and not in completely finished form and also not in normal size. The *adjudicating authority while ordering release of the said gold ornaments on the basis of supporting documents submitted by the party, at a later date, recorded his observation that absence of supporting documents of the gold ornaments at the time of detection by the CISF personnel cannot be the basis of conclusion that they were of foreign origin and illegally imported in absence of any recorded tangible contra evidence by the investigation."*

10. I find that the Commissioner (Appeals) has taken up a thorough analysis of the case on hand and has come to a conclusion that no case has been made out against the present respondent.

11. I do not see any reason to interfere with the detailed and considered order passed by the Commissioner (Appeals). Accordingly, I dismiss the appeal filed by the Revenue.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

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