

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87030 OF 2024

[Arising out of Order-in-Appeal No: MUM-CUSTM-PAX-APP-637/2024-25 dated 16th August 2024 passed by the Commissioner of Customs (Appeals), Mumbai – III]

Vicky Ramchand Asrani

Hakikatrai Bhavan, H No1098, R.No.6-7,
OT Section, Ulhasnagar - 421002

... Appellant

versus

Commissioner of Customs

CSMI Airport, Andheri (E), Mumbai - 400099

...Respondent

APPEARANCE:

Shri Prakash Shah and Ms Aishwarya Kantawala, Advocates for the appellant

Shri Deepak Sharma, Assistant Commissioner (AR) for the respondent

CORAM:

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

FINAL ORDER NO: 87527/2024

DATE OF HEARING:	25/09/2024
DATE OF DECISION:	19/12/2024

PER: C J MATHEW

Shri Vicky Ramchand Asrani is aggrieved at being deprived of
the jewellery on his person by customs officials at Chhatrapati Shivaji

Maharaj International Airport (CSMIA), Mumbai upon his return from Abu Dhabi, United Arab Emirates on 25th May 2023 after a short visit and, to further rub salt, the order¹ of Commissioner of Customs (Appeals), Mumbai-III, under challenge now, merely endorsed the permanent deprivation by the adjudicating authority. The empowerment to confiscate under section 111(d), 111(l) and 111(m) of Customs Act, 1962 was brought to bear on '24 karat crude gold chain', valued at ₹ 5,41,450, that appellant, admittedly, procured at Abu Dhabi with hopes of making a profit on its sale at some time or the other.

2. Shri Deepak Sharma, Learned Authorized Representative, is no less aggrieved that the appellant has deprived the Government of India, in revision jurisdiction under section 129DD of Customs Act, 1962, of considering the challenge to 'absolute confiscation' of 'prohibited goods' that the two lower authorities held to be in accord with legislated intent of section 125 of Customs Act, 1962. On behalf of the appellant, it was submitted that they were only concerned with fair disposal of appeal and pleaded only that the relief sought by them should not be allowed to fall between two stools merely from both authorities declining to take the trouble of deciding on their respective, and mutually exclusive, jurisdictions.

3. Strictly speaking, it should not matter a whit to either side in a

¹ [order-in-appeal no. MUM-CUSTM-PAX-APP-637/2024-25 dated 16th August 2024]

dispute as to the authority that gets to dispose off a grievance; both are, for such purpose, vested with responsibility to respond by applying known law to established facts. It is for the aggrieved person to choose from available remedies and to bear the consequence – including that of lack of jurisdiction; it is for the other side to advise caution on that in score. In ultimate analysis, prejudice from disposal – on merit as well as jurisdiction – is that of the appellant and that proceedings in revision close with no further statutory remedy therefrom must weigh heavily with any appellant as also the restricted options, *viz.*, of annulling or of modifying, as far as the impugned order is concerned, in revision by the Central Government which does not extend to confirming and consequent exclusion of doctrine of merger in proceedings; likewise, there is no scope for referring back to first appellate authority. Unlike appellate jurisdiction, revision may be initiated not just by sides that were before the first appellate authority but also by the Central Government itself bespeaking anti-thesis of neutrality in dispute resolution. Legislative intent in couching the boundaries thus, and dissimilar with the broader remit of the Tribunal, may have much to do with relative significance of matters that may be channeled so. Had the appellant herein opted for disposal by revision, it is unlikely, in absence of adversarial presentation in those proceedings, that objection to exercise of jurisdiction may have been raised. It is, thus, that an institution specifically created to be co-terminus with the scheme, and

intended as co-existing for operation, of the Tribunal, has gone beyond obligatory caution to challenge the very competence of the Tribunal to decide this appeal within the framework of section 129B(1) of Customs Act, 1962.

4. Learned Authorized Representative placed the facts and circumstances of the seizure in the context of letter of the law for urging that impugned goods are ‘baggage’ besides relying on the decision of the Hon’ble High Court of Madras in *Principal Commissioner of Customs v. Ahmed Gatchi Natchair* [2020 (10) TMI 100] and of the Tribunal in *Dr Suneet Soni v. Commissioner (Appeals)* [2024 (4) TMI 483 – CESTAT] in support of his urging that the appeal be dismissed for lack of jurisdiction.

5. We, therefore, first take up the sore point of maintainability as foundation for a decision on merits in the appeal. A brief perusal of evolution of the scheme of appellate remedy would not be out of place at this stage before we look to the rival submissions. The Customs Act, 1962, as legislated into statute, provided for appeals thus

‘(1) Any person aggrieved by any decision or order passed under this Act may, within three months from the date of the communication to him of such decision or order-

(a) where the decision or order has been passed by a Collector of Customs, appeal to the Board;

- (b) *where the decision or order has been passed by an officer of customs lower in rank than a Collector of Customs, appeal to the Appellate Collector of Customs:*

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months. allow it to be presented within a further period of three months.....'

in section 128 therein and, in addition to revision by the Central Board of Excise & Customs (CBEC)² under section 130 of Customs Act, 1962 on its own motion or on application of any aggrieved person, also provided for

'(1) The Central Government may on the application of any person aggrieved by

- (a) any order passed under section 128, or*
- (b) any order passed under section 130 otherwise than on the application of any aggrieved person, or*
- (c) any order passed on the application of any aggrieved person under section 130 where the order is of the nature referred to in either of the provisos to sub-section (1) of that section*

annul or modify such order.

(2) An application under sub-section (1) shall be made within six months from the date of the communication to the applicant of the order against which the application is being made.....'

² [also referred to as 'Board']

in section 131 of Customs Act, 1962. There was, thus, no appeal beyond that before Board or Collector, as the case may be, leaving just empowerment of revision of such orders by the Central Government in the normal stream. And that, except for now only in matters arising from decisions of Commissioner of Customs (Appeals), is, broadly, the process obtaining today for revision by Central Government in section 129DD of Customs Act, 1962.

6. With the enactment of Finance Act, 1980, substituting section 129 of Customs Act, 1962 to establish the Tribunal³, a clear appellate hierarchy came to be established in chapter XV of Customs Act, 1962. The new appellate structure, expanded horizontally for transfer of remedial jurisdiction of the Board to the Tribunal, was vertically extended to the Supreme Court at the apex either directly, in disputes that, among other issues, also involved ‘rate of duty’ or ‘value’ being the two limbs of assessment under section 17 of Customs Act, 1962 that extends to ‘hindsight assessment’ afforded by section 28 of Customs Act, 1962, or indirectly through High Courts in every other dispute. Thus, it was that the Tribunal, except in relation to assessment which involves both fact and law, was acknowledged as the ‘final fact finding authority’ with appeals lying through the normal channel of High

³ [(Customs Excise Gold (Control) Appellate Tribunal (CEGAT) as it then was)]

Courts and Supreme Court for merit review on ‘substantial point of law’ involved in disputes and directly to the Supreme Court for merit review of assessment. As it then was, the revision jurisdiction was erased entirely, and not just that of the Board, to bring all decisions of Collectors of Customs – adjudicatory and appellate – within this unitary stream of dispute resolution. Legislative sanction for neutral appellate mechanism had been enabled by the incorporation of Article 323B in the Constitution by the Forty Second Amendment which, *inter alia*, included

‘levy, assessment, collection and enforcement of any tax’ and
‘foreign exchange, import and export across customs frontiers’

among the subjects for handling by tribunal, or hierarchy of tribunals, with or without excluding courts from the appellate scheme. That enablement, however, did not provision for exclusion of any part of the relevant subject from the relevant tribunal.

7. And yet, just two years into the operation of the Tribunal, section 43 of Finance Act, 1984 inserted the *proviso supra* to exclude jurisdiction of the Tribunal and to restore revision, which, though, was restricted to orders of Collector (Appeals) relating only to (a) any goods imported or exported as baggage, (b) shortlanding under section 116 of Customs Act, 1962, and (c) payment of drawback, emanating from adjudication at the level of Assistant Collector of Customs Act, 1962,

with the Central Government by insertion of section 129DD of Customs Act, 1962. In effect, this was not conferment of appellate jurisdiction but alienation of appellate function of the Central Board of Excise & Customs (CBEC) and the broader sweep of revision powers of the Central Government initially and, on reconsideration, was restored to the latter in the specified circumstances. Nothing changed except the manner and structure through which appellate remedy was enabled and, yet, must have been conceptually revolutionary enough for revisit of the specified exclusions *supra* as not warranting the rigours of an autonomous and formal mechanism or as even of such easy simplicity as to be concluded by an ‘interested institution’ without appreciable prejudice to the injured party. Significantly enough, the exclusions retained in the revisionary jurisdiction of the Central Government are, like before, bereft of further appellate remedy. That exclusion of jurisdiction of the Tribunal, and, indeed, exclusion of those disputes from appellate hierarchy itself, cannot but have been intended to conform to Article 323B of the Constitution also. We may, indeed, conjecture that perception of blurred jurisdictional framework, which prompted detailed scrutiny of preliminary objection on maintainability, turns on superficial comprehension of both the legislated alienation as well as the historical setting of the re-empowered revision authority.

8. That blurring may be attributed to two factors: the circumscribing, by expressions deployed, in two of the three exclusions

and non-inclusion of several ‘special treatment’ modes of assessment, as well as other orders of Commissioner of Customs (Appeals), in revision jurisdiction the Central Government. Specifically, we refer to ‘import by post’ and ‘stores’ – both classed along with ‘baggage’ in the scheme of the statute for special treatment as well as among the tariff headings in chapter 98 of First Schedule to Customs Tariff Act, 1975 - which, in common with ‘baggage’, are presented for assessment in much the same manner as that envisaged for treatment prescribed in section 19 of Customs Act, 1962 but, yet, excluded therefrom. Again, there is distinction in manner of assessment between ‘import by post’ and ‘stores’ – which involves the twin aspects of assessment, i.e., classification and valuation, and ‘baggage’ – involving only classification – with the latter as well as only first of the former excluded from assessment envisaged for goods and, yet, it is only ‘baggage’ which was legislatively determined as warranting revisionary jurisdiction. Thus, it is not the special treatment in assessment or the generality of description for rate of duty that offers the underlying logic for the specially carved out exclusion. And could not be, too, for the constitutional foundation does not permit erasure of jurisdiction of the Tribunal from levy, assessment, collection and enforcement of tax or consequence attending upon crystallizing of the taxable event. Doubtlessly, some aspect of baggage, as do the other two exclusions, is exception from the constitutionally mandated

inalienability. It would, thus, be of value to scrutinize the other two.

9. The reasons for restoration of appeals pertaining to ‘payment of drawback’ and ‘shortlanding penalty’ in the revision jurisdiction may throw some light on the thread of legislative intent in lateral substitution of the Tribunal for appellate remedies initially and the exclusion shortly thereafter. The barebones of a taxing statute are the enunciation of ‘taxable event’, manifested as the ‘charging provision’, and the ‘taxable measure’, manifested as the ‘valuation provision’, with consequent assessment, enabled by ‘assessment provision’, and ‘refund provision’, for return of duty collected without authority of law, thrown in to complete the circle; all else is machinery provisioning to ensure that processes are geared to directing ‘goods’ to appropriate custom station for collection of appropriate duties at the appropriate time and to deter attempts at evading duty or escaping from prohibitions on import of export. In the midst of all this, are three externalities: customs brokers, payment of drawback and shortlanding penalty. The first was, by law, left to the design of Central Board of Excise & Customs (CBEC) for establishment of an appellate mechanism and, not unnaturally, with Commissioner of Customs as the decider of fate of licence, it was considered best left untouched in newly created jurisdiction of the Tribunal. That the last is a fiscal detriment attending upon statutorily deemed fiction of smuggling which, in the absence of goods and knowledge of its whereabouts, cannot be proceeded under section 111

of Customs Act, 1962 and is logically not unimpeachable for transfer to revision jurisdiction. Inherent therein is the presumption that goods loaded on a conveyance but not landed at the manifested destination has been smuggled into the country and, hence, liable to penalty under section 116 of Customs Act, 1962 despite goods not conforming to 'imported' for clearance under section 47 of Customs Act, 1962 after being subjected to assessment. Naturally, the essence of 'taxing', viz., assessment, is not an issue here and, therefore, no reason to burden the normal appellate mechanism with remedial jurisdiction.

10. Refund has all the appearances of candidature for similar exclusion; the sole authority for grant of refund is below the level of Commissioner and, therefore, must, if opted for, be remedied through Commissioner (Appeals) in the first instance. However, refunds involve ascertainment of assessment for conformity with authorizing law and, as a reverse tax, involves 'rate of duty' and 'valuation' which, if left to the Central Government, may, with its consequential adoption as precedent, well disrupt the purpose of the legislated mechanism. Hence, its non-inclusion in the exclusions. Drawback, *per contra* and though reimbursement of duties in one form or other, is not refund for two reasons, viz., the claim is not based on collection of duty without authority of law and is claimed, invariably, by person who had not discharged the duty being reimbursed thereby. Indeed, drawback predates customs laws. Drawback was enabled for the first time in the

first modern decolonization that ushered in the era of ‘nation state’ in the declining years of the age of empire. It was the Continental Congress, charged with enactment of the Constitution of the then yet to be established United States of America, that legislated drawback as a precursor to erection of the customs frontiers of the new nation. This contractual obligation of the State to exporters, statutorily ensconced, found its way into the customs laws of countries since then in acknowledgement of territorial bounds and not to be denied save when goods have not left the country or the elements of sale in the course of international trade was incomplete. Thus it is that the expression deployed in *proviso* to section 129A of Customs Act, 1962 is ‘payment of drawback’ and not ‘sanction of drawback’ laying the boundaries of the revision retained after the incorporation of the new appellate regime. Thus it is that, largely, drawback is paid under rule 15 of Customs and Central Excise Duties Drawback Rules, 2017 in accordance with the schedule of rates prepared, and notified, by the Central Government under the authority of rule 3 therein. Thus it is also that the payment of drawback and recovery is governed by these Rules and withholding drawback, other than in circumstances *supra*, can only be in consequence of re-determination of value which is revisit of clearance accorded under section 51 of Customs Act, 1962 and by calling into question the assessment under section 17 of Customs Act with consequence afforded by section 113 and section 114 of Customs

Act, 1962. Such revisit of shipping bills is beyond the scope of revision by Central Government and, hence, outside the purview of exclusions in *proviso* to section 129A of Customs Act, 1962.

11. With this backdrop, we turn our attention to the submissions of Learned Authorized Representative on the issue of jurisdiction. ‘Baggage’ lacks elaborate definition in section 2 of Customs Act, 1962 and that lack can hardly be made up by reference to the common use of the expression – as that accompanying ‘journeying person’ – owing to the special provisioning made for ‘baggage’ in chapter XI of Customs Act, 1962. The letter of the law has its own place in legislative schema but when contextual distinguishment of jurisdiction is sought to be based on law that does not define, the spirit of the law governing a transposed mechanism cannot be ignored. Learned Authorized Representative presupposes that rules pertaining to baggage were breached but has omitted to take into consideration that, in reacting to the breach, the consequences traversed beyond the framework of rules pertaining to baggage. The dispute is no longer about Rules because ‘prohibition’ has been invoked to keep the valuable article away from its owner and recourse to suggested remedy would rescind appellate remedy before the Hon’ble Supreme Court. In *re Ahmed Gatchi Natchair* [2020 (10) TMI 100], the Hon’ble High Court of Madras was concerned with a matter in which plea for re-export of gold was allowed by the Tribunal on the finding that the impugned proceedings were

bereft of evidence of goods being prohibited for import by person intending to return to country of residence. In the impugned proceedings, there is no challenge to liability for confiscation for non-declaration by person intending to remain in India and, consequently, not with reference to section 80 of Customs Act, 1962 which was pleaded for in the cited decision. In *re Dr Suneet Soni*, the goods involved was 'currency' with no foraying by lower authorities to assess those for liability to duty and the question of jurisdiction was decided solely on the treatment of 'baggage' accorded to 'currency' insofar as absolute confiscation was concerned. Here, though that relief has been sought, the dispute was premised on treatment accorded for 'assessment' by customs authorities and consequence thereof.

12. The remedial streams, with one extending from beyond adjudication and first appeal or directly from adjudication, as the case maybe, through the High Courts, or in specified cases directly, to the Supreme Court are dealt with through the Tribunal while the other, like a spur, branches from appellate authority below the Tribunal to the Government of India away from adversarial representation. The latter specifically originates from adjudication below the level of Commissioner but it is not that every decision emanating therefrom strays from the mainline, to continue the railway analogy, for there are some within the exclusive jurisdiction of Deputy/Assistant Commissioner, such as sanction of refund, that, yet, travel only through

the Tribunal; it is obviously not the origin of adjudication that determines shunting to the spur and nor has it aught to do with monetary ceiling of adjudicatory competence. This dichotomy was not always so for between 1962 and 1984, remedy lay with one or the other and may well have attained its present status more as convenience or even from inconvenience. Monetary threshold in the revision jurisdiction being limited notwithstanding, the single delegate of Government of India was located at New Delhi for long and it was only recently that one more location – hardly mitigating – came into operation. That these would have ‘bottlenecked’ the larger issues of assessment may have influenced the redesign. The cause may be irrelevant to the consequence now agitated for which the law, as it stands, should guide.

13. Until provisioning for the Customs Excise Gold (Control) Appellate Tribunal (CEGAT), as it then was, through Finance Act, 1980 - by recasting section 128 to section 131 of Customs Act, 1962 - appeals from adjudication below that of Collector of Customs lay with Appellate Collector of Customs and that of Collector of Customs (as these were then designated) with the Central Board of Excise & Customs (CBEC) to be superimposed with revision jurisdiction over both in the Government of India. It was only with reluctance, as amplified by then Hon’ble Finance Minister in his Budget address of 1980 to the Lok Sabha thus

‘I have a major declaim of policy to announce. For the past

couple of decades, there has been persistent public demand for the setting up of an independent Appellate Tribunal for customs and central excise matters, somewhat similar to the set-up on the Direct Taxes side. This demand has recently been endorsed by the Estimates Committee of Parliament. Government has, in the past, not been in favour of such a system, as it was felt that it would not be appropriate in the case of indirect taxes, and that the present departmental machinery was in fact adopting an objective approach. I think time has come when we should gracefully accept the common view, which is based on the dictum that justice should not only be done but should also seem to be done. It is in this spirit that provision has been made in the Finance Bill for setting up an Appellate Tribunal to hear appeals in respect of customs, central excise and gold control matters. This Tribunal will be independent of the executive machinery charged with the responsibility of day-to-day administration of revenue laws. I have no doubt that this measure will meet with the whole-hearted approval of Parliament and of trade and industry.'

which was, as near as it ever could be, an acknowledgement that the existing system did not present appearance of being independent to the tax paying community even if the Government was convinced about its own objectivity in adversarial entanglements with tax-payers and, thus so, even as the other tax burden – direct taxes – has statutorily, and long before the prevailing enactment, accepted the efficacy of an appellate structure untouched. With this announcement, the appellate remedy was not only freed from the executive clutch but extended to incorporate the constitutional courts in the scheme of dispute resolution. The Central Board of Excise & Customs (CBEC) was divested off its empowerment

to dispose appeals and both founts of adjudicatory determination were subject to appellate oversight, directly and once removed, of the Tribunal assuring not only true separation of tax administration from dispute resolution but also ensuring that the optics of justice delivery bespoke maturation. And yet, within a short span of existence of the Tribunal, legislation, and without much disturbance of the design - by restricting it to three verticals of tax administration, viz., baggage, drawback and short-landing, presupposing common thread beyond that of routing through Commissioner of Customs (Appeals) - was enacted to revive the revision jurisdiction of Government of India. Obviously, there was compelling logic that overwhelmed 'common grace' and 'manifest independence' sufficiently to regress, even if minimally, for restoration of ousted empowerment. To be sure, marginal revenue impact strikes as plausible reason.

14. Additionally, that revival in 1984 must be concatenated into the scheme envisaged by this major reform of 1980; for the first time, right of appeal in tax disputes to the higher courts, and the highest court, was accepted as institutionalizing good governance and uniformity with certainty – essentials of responsible tax regime – was sought by reserving 'rate of duty' and 'value' – the twin handmaids of assessment – to jurisdiction of the Tribunal and Supreme Court thereafter. The revision jurisdiction was enacted as final and the specific circumstances of this exclusive jurisdiction must, necessarily, be devoid in disputes

reserved for revision by Government of India. That both payment of drawback and penalty for short-landing do not lapse into assessment is evident in our elaboration *supra*. While assessment, under section 17 of Customs Act, 1962, may pave the way for reduced payout of drawback, it is not the latter that is cause for re-assessment of export goods; indeed, all shipments of exports, even if not subjected to duty, are to be assessed as a pre-requisite for clearance under section 51 of Customs Act, 1962 and it surely is not provisioned in law that some assessments will adopt the course of revision while others will follow appellate recourse. Likewise, where confiscation under section 113 of Customs Act, 1962 is a consequence of re-determined assessment, the notice envisaged under section 124 of Customs Act, 1962 may well be adjudicated by Commissioner of Customs and it surely is not provisioned in law that some consequential prejudice to drawback will adopt the course of revision while others will follow appellate recourse. The disbarment of merit review of decisions in revision adumbrates the lack of jurisdiction, even in drawback, in the Central Government to visit, or re-visit, assessment that, even if not involving 'rate of duty', screens 'valuation' of export goods. The disputes triggered, other than by assessment to tax or appraisal of goods under section 17 of Customs Act, 1962, in exports, and which, thereby, do not vest right of appeal to the Hon'ble Supreme Court, are amenable to be disposed off without substantial arguments on drawback claimed but not paid and

appropriate for revision jurisdiction. It may, thus, be posited that escape from merit review by the highest court in the land that is the final authority in matters of ‘rate of duty’ and ‘value’, and contrary to the objectives of appellate reform in Customs Act, 1962, marks the divide separating appellate jurisdiction of the Tribunal – as subject to appellate superintendence of the Hon’ble Supreme Court - from the revision jurisdiction of the Central Government.

15. Both ‘shortlanding’, as it stands, and ‘payment of drawback’, as constrained, are excluded from coverage intended by Article 323B of Constitution for establishing the Tribunal and vesting inalienable jurisdiction which was re-visited for excluding that which was alienable as elaborated *supra*. Baggage, however, is not devoid, though even if not under section 17 of Customs Act, 1962 of assessment and, yet, is one of the ‘alienable trio’ and the very same principle should offer guidance in a demarcation deliberately intended by law. The proposition of Learned Authorized Representative would find approval with us if the alternative⁴, and exclusive, provision for assessment, in section 77 to section 81 of Customs Act, 1962, fitted the facts and circumstances herein. For evaluation of that, visit of the special provisions is inevitable.

16. From a duty, or assessment perspective, ‘baggage’ is goods that

⁴ [chapter XI of Customs Act, 1962]

have no seller – of relevance in determination of ‘value’ for customs purpose – and, thereby, deprived, from already being in ownership of passenger, of individual identity for classification in terms of the General Rules for Interpretation of the Schedule appended to Customs Tariff Act, 1975. ‘Baggage’ enters a customs jurisdiction because the owner enters the jurisdiction - before, after or at the same time – and, thus, compromises the taxable event to some extent with specific enunciation in section 78 of Customs Act, 1962 as the immediate consequence. It is in furtherance of these deviations from ordinary import of goods that Customs Act, 1962 provides for ‘zero rating’ of baggage in section 79 of Customs Act, 1962 which, for tax policy reasons, is not ‘open ended’ but left to be capped by subordinate legislation and, even then, by omnibus inclusion in chapter 98 of First Schedule to Customs Tariff Act, 1975, is, irrespective of fitment elsewhere individually, clubbed together for assessment. Going a step further, section 81 of Customs Act, 1962 enables rules of assessment in pursuance of which appropriate mechanism, including eligibility, has been notified with cap of value generally and, by weight or value, for specific articles. Thus, the special assessment is limited to ‘baggage’ and to the extent of being in excess of the cap but which, nevertheless, does not extend either to the valuation scheme under section 14 of Customs Act, 1962 or, for that matter, placement among the many enumerations in the First Schedule to Customs Tariff Act, 1962. This

customized assessment does not involve determination of ‘rate of duty’ or ‘valuation’, even if duty is levied and articles, if not declared but, nonetheless, finding fitment as baggage may be confiscated without seeking coverage of section 111(d) or section 111(l) of Customs Act, 1962. Consequently, revisionary jurisdiction is barred upon recourse to ‘rate of duty’ and ‘value’ in relation to one or more articles brought by a passenger that is segregated for separate action under Customs Act, 1962. Though not in the present dispute, the characteristics of the article may even bring it within the adjudicatory framework of Commissioner of Customs; surely, Learned Authorized Representative would be hard put to suggest that absence of such distinguishment in the present instance suffices to challenge the competence of the Tribunal to dispose off the appeal.

17. We may, thus, hold that ‘assessment’ is the primary determinant for clearance of goods under customs law and, consequently, inalienable from the appellate jurisdiction of the Tribunal. Even the excluded jurisdiction, under *proviso* to section 129A of Customs Act, 1962, other than ‘shortlanding’, operates only to the extent of not being a consequence of assessment or re-assessment, where ‘payment of drawback’ is concerned, under section 17 or section 18 of Customs Act, 1962 and, even if assessment is concerned, as in ‘baggage’, only to the extent that the original authority has ordered by recourse to empowerment in Rules framed under the aegis of section 81 of Customs

Act, 1962. Any other interpretation of the amendment effected to Customs Act, 1962 in 1984 for restoration of revision jurisdiction would be contrary to Article 323B of the Constitution besides being arbitrary denial of right to appeal before the highest court of the land.

18. Now we can turn to the appeal itself for disposal on merit. The first appellate authority has upheld the confiscation, without option of redemption, of the gold jewelry and imposed penalty of ₹ 1,00,000 on the appellant. Oddly, the digression onto competence at the instance of Learned Authorized Representative is in the face of the backdrop narrative in the impugned order, viz.,

‘2.1 As goods were not found to be bona fide baggage of the appellant, action was initiated against the appellant and charges were orally communicated to the appellant in respect of the impugned goods....’

and the ‘doctrine’ of competence surely is contingent on trichotomy of ‘bona fide baggage’, ‘baggage other than bona fide’ and ‘other than baggage’; imports are either ‘goods’ or ‘baggage’ and if not the latter, it cannot fail to be the former.

19. The sole relief sought by appellant was to be given the option to redeem. The appellant pleaded for the relief as the notice issued to him was purportedly for having attempted to bring into the country without payment of duty and no other ground had been adduced before commencement of the process culminating in absolute confiscation of

‘gold chain’, weighing 100 grams and valued at ₹ 5,41,450, that had been carried by him on arrival from Abu Dhabi on 25th May 2023. The first appellate authority discarded the plea with the finding that such claim was untenable given the circumstances in which the appellant had waived the right to be issued with show cause notice. It is abundantly clear from section 124 of Customs Act, 1962 that notice is a mandatory pre-requisite and that it may, at best, be substituted, at the instance of noticee, to be oral instead of in writing. The action proposed by the original authority, and fidelity thereto, is now relegated to conjecture.

20. The first appellate authority affirmed the finding of the original authority that the passenger had failed to declare the gold ornament that was carried by him and that, being in crude form, was not ‘jewelry’ permitted to be carried in person. In addition, the original authority had held that the passenger had contravened the Foreign Trade Policy (FTP) by carrying ‘gold jewelry’, which was not ‘bona fide baggage’, on arrival from abroad and that he did not qualify as eligible, by length of stay abroad, either for bringing in on payment of duty or even to the extent of 20 grams, and of value of ₹ 50,000, without payment of duty. It was further held by the original authority that recourse to non-declaration was available only to passenger who are not carrying dutiable goods and not beyond that permitted without payment of duty. That, however, did not restrain the first appellate authority from taking

recourse to restriction imposed by the Reserve Bank of India (RBI)⁵ on import of gold only by 'specified agency' which, too, added padding for being prohibited to be imported. And having done so, affirmed the discretionary empowerment vested by section 125 of Customs Act, 1962 in the confiscating authority to deny redemption of goods.

21. We entertain no doubt that the appellant was ineligible to import gold jewelry as baggage of person arriving in India from abroad. The appellant had not denied his intent to evade duty that was leviable from the lack of eligibility. The confiscation of goods for non-declaration under section 77 of Customs Act, 1962, implicit in passage through 'green channel' and, thereby, empowered by section 111(l) and section 111(m) of Customs Act, 1962, is not to be faulted. There is nothing on record, other than an original finding at the first appellate stage, to suggest that a passenger may not carry 'gold jewelry' in excess of entitlement of 'duty free' import as long as duty liability is borne. That finding in the impugned order is without reference to any notice issued to the appellant herein; the substance of the finding, too, does not carry the authority of careful consideration of the nature and contents of the stipulation of the Reserve Bank of India (RBI). Learned Authorized Representative has drawn our attention to para 2.27 (d) of Foreign Trade Policy (FTP) on bar of carriage of 'prohibited', 'restricted' or 'canalized' items in baggage of passenger which has been cited as

⁵ [circular no. 25 dated 14th August 2013 – RBI/2013-14/187, AP (DIR Series)]

authority, owing to impugned goods being classifiable against tariff item 7108 1300 of First Schedule to Customs Tariff Act, 1975, to suggest that the lower authorities had not erred in not having exercised discretion to permit redemption of goods under section 125 of Customs Act, 1962.

22. This proposition of Learned Authorized Representative does not impress as the contextual reference to ‘passenger baggage’ is not intended to circumscribe ‘baggage’ that may be carried by a passenger but to adjure that the generality of ‘baggage’ cannot, at any stretch, subsume such goods within it to escape being subjected to policy restrictions in the course of clearance and that, while the privilege of customs exemption or concession may not be denied, the licencing requirements must be adhered to. The tariff does not determine licencing restrictions but deployment of the same code system enables easy cross referencing; here, if the goods, indeed, are ‘semi-manufactured’, the goods may be restricted for import. There is, however, no evidence to suggest that this suspicion was, at any time, subjected to scrutiny by expert ascertainment; indeed, no effort was on display to establish conformity of goods with the description corresponding to tariff item 7108 1300 of First Schedule to Customs Tariff Act, 1975. The proposition for confiscation on the ground of being prohibited does not sustain.

23. As a nation, we are subject to rule of law. As a State, the

exchequer does not survive on confiscatory proceeds. Gold and articles made of gold are goods and not vested in the government. Illicit import of articles of gold must be deterred but not by alienation of possession from its owner. The cause for restricting import of ‘semi wrought’ gold is monetarily measurable and that would have sufficed as consequence of wrongful import. There was, thus, no justification for absolute confiscation of the impugned goods – either from being restricted or despite being restricted.

24. We, therefore, find it appropriate to set aside the absolute confiscation to permit the gold jewelry to be redeemed on payment of fine of ₹ 50,000 and for penalty to be reduced to ₹ 50,000. Appeal is, accordingly, disposed off.

(Order pronounced in the open court on 19/12/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)