

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86448 of 2014

(Arising out of Order-in-Original No. MUM-CUSTOM-PAX-014/12-13 dated 28.01.2014 passed by the Commissioner of Customs, Chhatrapati Shivaji Maharaj International (CSMI) Airport, Mumbai.

Jagruti G Shah

.... Appellant

C/o Shri Shrish H Shah,
1/2, Mangral Mansion,
6, Rustam Sidhwa Marg,
Fort, Mumbai – 400 001

Versus

Commissioner of Customs (CSMI) Airport

.... Respondent

AWAS Corporate Point,
Makwana Lane, Andheri Kurla Road,
Andheri (East), Mumbai – 400 059.

APPEARANCE:

Shri Prashant Patankar, Consultant for the Appellant

Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85777/2025

Date of Hearing: 08.01.2025

Date of Decision: 07.05.2025

Per: M.M. PARTHIBAN

This appeal has been filed by Mrs. Jagruti Girish(G) Shah, Mumbai (herein after, referred to as 'the appellant', for short), assailing Order-in-Original MUM-CUSTOM-PAX-014/12-13 dated 28.01.2014 (herein after, referred to as 'the impugned order') passed by the Commissioner of Customs, Chhatrapati Shivaji Maharaj International (CSMI) Airport, AWAS Corporate Point, Makwana Lane, Andheri Kurla Road, Andheri (East), Mumbai.

2.1 Briefly stated, the facts of the case are that the appellant herein, being a passenger, who had arrived from London to Mumbai CSMI Airport by Flight No. 9W117 on 18.01.2012 along with her family friend viz., Shri Malcom F Todywalla, had brought certain goods into the country. Both the passengers had approached the customs counters for declaration of

gold/silver coins, jewellery, promissory notes, silverware etc. brought in their baggage. Upon proper examination of the goods declared by the aforesaid passengers, and as the passengers did not possess any invoice for its purchase from any auction house, or acquisition from any private party, the customs authorities at the airport had detained part of the goods, while allowing clearance of silverware, gold jewellery, gold bars, gold coins on payment of applicable duty under Notification No.03/2012-Cutoms dated 16.01.2012, against three baggage receipts prepared by the department. However in respect of 144 gold coins, 1190 silver coins, 556 coins of other metals and 239 promissory notes, since these were in the nature of prohibited goods, in order to obtain No Objection Certificate (NOC) from Archaeological Survey of India (ASI), for appropriate valuation of goods and for further necessary action under the Customs statute, these goods were detained by the department, vide Detention Receipt A-39842 dated 18.01.2012.

2.2 After examination of the articles sent to ASI, it was reported by the Superintending Archaeologist (Customs), ASI Mumbai, by giving an opinion on the detained goods, that as the antiquities are valuable having composition of modern to punch mark coins, but since these are imported into our country, they cannot stop them and Customs Department may take action as per their legislation. Further, ASI Mumbai did not provide any report on valuation of the goods. Therefore, CSMI airport customs authorities had approached ASI Mumbai on 06.06.2012, once again for constituting a committee for valuation of such goods, consisting of 3 expert members including the Superintending Archaeologist, ASI Mumbai. However, considering the number of days required for such examination and huge cost involved for valuation of such goods at the rate of ₹ 200 per coin per member, the customs authorities addressed the issue of valuation on 02.07.2012 to the Indian Institute of Research in Numismatic Institute, Nashik. In reply to such a request, the said Institute had expressed their inability to undertake the valuation of goods, since they are only involved in research and education activities. The customs authorities subsequently in July, August 2012 had requested the Director General, ASI, New Delhi for undertaking the valuation of such goods, who had also expressed their inability to direct the local Superintendent, ASI Mumbai for undertaking such task of valuation. Finally, the department had referred the issue of valuation of these coins to a Registered Valuer of Jewellery and to a local antique shop viz., Oswal Antiques, Shop No.2,

Chandra Mahal, St. Paul Street, Hindmata, Dadar, Mumbai. It was reported by the registered valuer Mr. Shripalkumar N. Desai, in his report dated 26.12.2013, that upon examination of gold coins of 1229.294 grams and the silver coins of 5352.044 grams, based on its content, he gave its values as Rs.35,64,952/- and Rs.2,40,840/-, respectively; as regards other coins, since he does not have adequate experience, he stated that market value of these coins are not ascertainable considering it's a rare and antique nature. He further stated that valuation of such coins could be done by an experienced coin dealer. Accordingly, the department had approached M/s Oswal Antiques, who had reported by their letter dated 31.12.2013, that they had taken best offers to evaluate all the material and the total value of these items were reported to be Rs.45.60 lakhs, on the basis of its antiquity, rarity, grade, popularity, demand and current market prices of material.

2.3 Based on the report from ASI Mumbai, the Department interpreted that the imported coins which are detained by Customs, as 'antique coins' classifiable under Customs Tariff Item (CTI) 9706 0000, the import of which is subject to the condition stipulated in the Exim policy vide Notification No. 97(RE-2008)/2004-2009 dated 17.03.2009, which state that 'the importer must abide by the rules/laws relating to export of such item of the country from where the imports are sought to be made'. Accordingly, customs authorities at CSMI airport sought from the appellant passenger vide their office letter dated 04.04.2012, to furnish a European Union License for Export of Coins of archaeological importance from UK to India. Since, the appellant could not produce any such license and for non-compliance of the Exim policy condition, the Department had issued Show Cause Notice (SCN) dated 14.01.2013 proposing for confiscation of gold/silver coins, coins of other metals, promissory notes, being liable for confiscation under sections 111(d), 111(l) and 111(m) of the Customs Act, 1962 and for imposition of penalty under section 112(a) and (b) *ibid* and 114AA *ibid*.

2.4 The aforesaid SCN dated 14.01.2013 was adjudicated by the learned Commissioner of Customs in absolute confiscation of 144 gold coins, 1190 silver coins, 556 coins of other metals, 239 promissory notes under Section 111(d), 111(l), 111(m) *ibid*, as proposed in the said SCN and in imposing personal penalty of ₹ 45 lakhs under section 112(a) *ibid* and penalty of ₹ 5 lakhs under section 114AA *ibid* by issue of Order-in-Original

dated 28.01.2014, which is impugned herein. Feeling aggrieved with the impugned order, the appellant has filed this appeal before the Tribunal.

3.1 The Learned Consultant appearing for the appellant submitted that besides the disputed goods i.e., 144 gold coins, 1190 silver coins, 556 coins of other metals, 239 promissory notes, which were detained by the customs authorities, the appellant had paid customs duty of Rs.1,52,904/- towards 1060 grams of gold coins/jewellery; Rs.41,125/- towards gold bars of 752 grams; Rs.65,234/- towards silver cutlery and wares vide challan Nos. 061687, 061688, 010416 all dated 18.01.2012. Further, the appellant along with his fellow passenger upon arrival at CSMI airport, to customs gold/silver counter for declaration of their baggage for the purpose of customs clearance. This fact also appears that paragraph 1 of the SCN dated 14.01.2013. Hence, learned Consultant claimed that the appellant had no intention to mis-declare his baggage before the customs authorities.

3.2 Learned Consultant has also submitted that import of goods by a passenger is classifiable under chapter heading 9803 in view of the Note 1 to Chapter 98. Therefore, he stated that the classification of impugned goods adopted by the Department under CTH 9706 as 'antiques' is incorrect and the EXIM policy restriction under notification No.97(RE-2008)/2004-2009 dated 17.03.2009 does not apply to their case, in order to hold that the detained goods are prohibited for absolute confiscation of the same and for imposition of penalty on the appellant.

3.3 It was further submitted by the learned Consultant that the department has proceeded on the premise that the imported gold/silver coins require an export licence from UK Customs/HM Revenue authorities, which is incorrect, as during the time of departure from London/UK, the UK customs authorities did not raise any objection to the appellants carrying the said goods out of UK and allowed the appellant to leave their country (UK) with the said goods, which establishes that the appellants action of taking the goods out of UK did not involve any violation, and was in accordance with the laws of UK. He further submitted that the procedures and guidelines for exporters of works of art and other cultural goods out of UK, published in 'UK Export Licensing for Cultural Goods' provide that export license from UK was not required for 'non-archaeological cultural goods' where the value of individual item was less than the specified threshold limit of GBP 40,530/-. Therefore, he submitted

that disputed goods detained by the customs authorities are well within the threshold limit prescribed by the UK government. He further stated that the appellant had brought the disputed goods, which were collected by his family the last 30 years in UK, mainly collected from coin dealers and in open market. He has also submitted 210 photographs of coins of gold, silver and other metal and promissory notes to say that these were collected over a period of time and it is not possible to obtain invoices for these items.

3.4 Learned Consultant also stated that the appellant had requested for allowing the fellow passenger Mr Malcom Todywalla, as a witness to submit the evidence of their conduct in declaration of the goods brought in their baggage and to establish the factual position; further he had also made a request for cross examination of the assessing officer of customs, who had in a selective manner ordered for detention of part of the coins, customs officer posted at the counter of Red Channel on the day of Arrival of the appellant. These requests have not been acceded to by the learned Commissioner of Customs, and in the absence of opportunity being given to the appellant for establishing the facts, he claimed that the impugned order relying on the evidence of statements, detention receipt etc., is not sustainable. In support of their stand he relied upon the decision of the Tribunal in the case of *Krishnaram Dyeing & Finishing Works Vs. CCE & C, Surat* [2007 (209) E.L.T. 410 (Tri. – Mumbai)] and the judgement of the Apex Court in the case of *Hindustan Steel Vs. State of Orissa* - 1978 (2) E.L.T. 1159 (S.C.). Therefore, he prayed that the appeal filed by the appellant may be allowed.

4. On the other hand, the Learned Authorised Representative (AR) appearing for the Revenue has contended that the appellants could not make proper declaration before the customs officer, which necessitated detailed examination and inventory of the goods covered in the baggage. Since, some of the coins and other materials were found to be of antique in nature, these were detained for further action by the customs authorities. Learned AR stated that the detained goods which were exported from UK are governed by the Council Regulation (EC) No.116/2009 dated 18.12.2008, and in the impugned goods are covered by the threshold value of 15000 Euro at the time of export as reflected in paragraph B of Annexure-I. Further, such goods are covered by the DGFT notification dated 17.03.2009, and in the absence of any specific license from HRMC/UK Customs, the goods are liable for confiscation. He further

stated that the threshold limit of £65,000 is not applicable to the present case as these goods were of more than hundred years old and not 50 years. In view of the blatant violation of Exim policy, he submitted that the impugned order confiscating the goods and imposition of penalty on the appellant is sustainable, and therefore he requested that the appeal filed by the appellant is liable to be dismissed.

5. We have heard both sides and perused the case records and additional paper books submitted in this case by both sides.

6.1 The issue involved herein is to decide, whether the confiscation of the impugned goods consisting of 144 gold coins, 1190 silver coins, 556 coins of other metals, 239 promissory notes under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962 and imposition of penalties on the appellant under Section 112(a) and 114AA *ibid*, by the learned adjudicating authority is sustainable or not? While dealing with this issue, we are also called up to examine the issue raised by the appellant that the classification of impugned goods brought in by him is correctly classifiable under Customs Tariff Item (CTH) 9803, as claimed by him as baggage; or, is it classifiable under Customs Tariff Heading (CTI) 9706 0000 as determined by the learned Commissioner of Customs in the impugned order.

6.2 In order to address the above issues, we would like to refer the relevant legal provisions contained in the Customs Act, 1962; the Customs Tariff Act, 1975 and rules framed thereunder, for consideration and proper appreciation of correct legal position in the context of the present dispute.

Customs Act, 1962

CHAPTER XI

SPECIAL PROVISIONS REGARDING BAGGAGE, GOODS IMPORTED OR EXPORTED BY POST, COURIER AND STORES

Baggage

"Declaration by owner of baggage.

Section 77. *The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.*

Determination of rate of duty and tariff valuation in respect of baggage.

Section 78. *The rate of duty and tariff valuation, if any, applicable to baggage shall be the rate and valuation in force on the date on which a declaration is made in respect of such baggage under section 77.*

Bona fide baggage exempted from duty.

Section 79. *(1) The proper officer may, subject to any rules made under sub-section (2), pass free of duty—*

(a) any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;

(b) any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir;

Provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.

Temporary detention of baggage.

80. Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name."

Customs Tariff Act, 1975

First Schedule

SECTION XXI

WORKS OF ART, COLLECTORS' PIECES AND ANTIQUES

CHAPTER 97

Works of art, collectors' pieces and antiques

NOTES :

xxx

xxx

xxx

xxx

Chapter Heading	Description of goods
(1)	(2)
9706 00 00	ANTIQUES OF AN AGE EXCEEDING ONE HUNDRED YEARS

&

CHAPTER 98

Project imports; laboratory chemicals; passengers' baggage, personal importations by air or post; ship stores

NOTES :

1. This Chapter is to be taken to apply to all goods which satisfy the conditions prescribed therein, even though they may be covered by a more specific heading elsewhere in this Schedule.

xxx

xxx

xxx

xxx

Chapter Heading	Description of goods
(1)	(2)
9803 00 00	ALL DUTIABLE ARTICLES, IMPORTED BY A PASSENGER OR A MEMBER OF A CREW IN HIS BAGGAGE

6.3 From plain reading of the above legal provisions, it transpires that all goods/dutiable articles brought into the country, by a passenger shall be

dealt in as per the provisions of Chapter XI of the Customs Act, 1962. In terms of the extant rules made thereunder, which was in force at the relevant time of dispute i.e., Baggage Rules, 1998, provided restrictions relating to import of jewellery, in respect of a passenger residing abroad for more than one year, on return to India, by allowing duty free clearance in his bona fide baggage of jewellery upto a weight, of twenty grams with a value cap of fifty thousand rupees, if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees if brought by a lady passenger. Further, any passenger of Indian origin or a passenger holding valid passport, issued under the Passports Act, 1967, who is coming into India after a period of not less than 6 months of stay abroad, was allowed to bring into the country, not exceeding 10 Kg. of gold, subject to certain prescribed conditions that the duty shall be paid in convertible foreign currency etc. in terms of the notification(s) in force at the relevant point of time. Similarly, import not exceeding 100 Kg. of Silver, was also allowed on the basis of similar conditions/restrictions imposed for payment of duty in convertible foreign currency etc. through separate notification.

6.4 In terms of the procedures/practice followed in customs clearance of passengers arriving at international airports and as prescribed under the CBEC's Customs Manual, the Airlines bringing passengers from abroad generally provide the 'Customs Baggage Declaration Form' to the passengers in the aircraft itself (prior to doing away with paper declaration for every passenger, and limiting such requirement only for passengers carrying dutiable or prohibited goods only/*ATITHI* online application for customs declaration made in advance). Accordingly, all passengers who come to India and have anything to declare or are carrying dutiable or prohibited goods must fill up the same clearly mentioning the quantity and value of goods brought. On landing, the passenger takes delivery of baggage, if any, from the conveyer belt and approaches the Customs where the passenger exercises the option of seeking clearance through the Green Channel or through the Red Channel. The Green Channel or Walk Through Channel applies to passengers who have nothing to declare and are carrying dutiable goods within the prescribed free allowance. On the basis of their Oral Declaration/Declaration on Customs Baggage Declaration Form, such passengers cross the Green Channel without any question being asked by Customs and exit the airport after handing over the Customs Baggage Declaration Form to the Customs Officer/Sepoy at the exit. However, the Red Channel is meant for passengers who have something to

declare or are carrying goods in excess of the duty free allowance. The passenger appearing before the Channel, then hands over Customs Baggage Declaration Form to the officer on duty at this Red Channel. In case the Form is incomplete the Customs Officer helps record the Oral Declaration (O.D) of the passenger and thereafter countersigns/ stamps the same, after taking the passenger's signature. In order to identify the frequent "short visit" passengers the Customs Officer also scrutinizes the passport/ other travel documents of the passengers. The declaration of goods and their values is generally accepted and duty assessed. On payment of applicable duty the passenger is allowed clearance.

6.5 Further, any passenger found mis declaring the quantity, description or value of dutiable goods at the "Red Channel" is liable to strict penal action including arrest/prosecution apart from seizure/confiscation of the offending goods depending upon gravity of violation detected. In case the passenger brings any goods in baggage that are essentially for trade/ commerce and not for personal use, or imports goods in commercial quantity, these goods become liable to confiscation and the passenger is also liable to strict penal action. Only bonafide baggage items for personal use or use by members of his family are allowed to be imported as baggage. In case of frequent "short visit" passengers and repeat offenders, the Customs officers would impose higher levels of fines and penalties and for deterrent effect even consider prosecution in a Court of law.

6.6 It is also possible that there may be certain occasions when the passenger is not in a position to clear his baggage for any reason e.g. inability to pay the Customs duty demanded. In such a situation, the passenger may request the Customs to detain his baggage either for re-export at the time of his departure from India or for clearance subsequently on payment of duty. The detained baggage in such case, would be examined and its full details inventoried before being taken in the custody of Customs.

6.7 It is on record, at the very first paragraph of the SCN dated 14.01.2013, that the appellant along with another passenger approached the customs gold/silver counter – Red Channel for declaration of their baggage for the purpose of customs clearance. Further, challan Nos. 061687, 061688, 010416 all dated 18.01.2012, have been prepared by the Air Customs Officers of Batch-III posted on duty, on 18.01.2012 in respect of the appellant holding passport number 704774567, as indicated therein,

for payment of customs duty applicable on goods brought in as baggage, over and above the duty free allowance. This factual position as reflected on the face of the customs documents-Detention Receipt, Baggage Receipts indicate that the departmental officers have undertaken detailed inventory of goods brought in by the appellant passenger. There is no remark in the detention receipt or there exists any other document such as panchanama, mahazar to independently state that the appellant passenger did not declare the items brought in by him before the customs authorities. Further, it is also not established by the Department that the items brought in by the appellant passenger is for commercial transaction, or the goods were in commercial quantity to state that such goods were not bonafide baggage.

7. It is also a fact on record, that the disputed goods, which were confiscated in the impugned order, were coins of the old era made of gold/silver or other metal, and since it looked like antiques, the same were detained at the request of the appellant passenger for obtaining the NOC and to determine its value from Archaeological Survey of India, to enable clearance as per rule. This is evident as seen from the Detention Receipt No. A-39842 drawn by Air Customs Officer (ACO), Batch-III and countersigned by Air Customs Supdt. (ACS) and AC/DC of Customs on duty on 18.01.2012. The detained goods were also sealed with Customs Seal No. 120 and warehoused by the Customs officer under APS No. M.III/3199/2012 dated 18.01.2012. Further, it is also evident from the various correspondence which the Customs Department at CSMI airport had with ASI and other authorities, that the impugned goods were not certified as antique and the opinion given by Superintending Archaeologist, ASI, Mumbai is that the issue of clearance of impugned goods has to be decided by the customs Department. The extract of the opinion given by ASI and as mentioned in the SCN, is as follows:

"No doubt the antiquities are valuable having composition of modern to punch mark coins, but since these are imported to our country, we cannot stop them. Therefore, Customs Department may take action as per their legislation

*Sd./ 23.02.2012
Superintending Archaeologist (Customs)
Archaeological Survey of India
Sion East, Fort, Mumbai – 400 022."*

8.1 It is evident from the SCN dated 14.01.2013, that despite there being no credible evidence to suggest that the detained goods are of antique coins, and that the valuation of goods have not been established as on the

date of issue of SCN on 14.01.2013, the Department proposed for classification of the impugned goods as antique under CTH 9706 0000, whereby the appellant is required to comply with import policy condition in terms of Notification No. 97(RE-2008)/2004-2009 dated 17.03.2009. Accordingly, the Department insisted that the appellant should have abided by the rules/ laws relating to export of such item of the country from where the imports of certain be made. On the above basis, learned Commissioner in the impugned order has given a finding that the appellant has contravened the policy condition, inasmuch as the appellant does not have any export license/ permission from the UK/EU customs authorities abroad, and proceeded for confiscation of the same under Section 111(d) *ibid*.

8.2 The relevant condition prescribed in the Notification No. 97(RE-2008)/2004-2009 dated 17.03.2009 is extracted and given below

*"TO BE PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY
PART-II, SECTION-3, SUB SECTION (ii)*

*GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE*

*NOTIFICATION NO. 97(RE-2008) / 2004-2009
NEW DELHI, DATED 17th March, 2009*

S.O. (E) In exercise of powers conferred under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 read with paragraph 2.1 of the Foreign Trade Policy, 2004-09, the Central Government hereby makes the following amendments in the ITC(HS) Classifications of Export and Import Items, 2004-09.

1. *Import Policy for the following items will be amended as follows:*

<i>Exim Code</i>	<i>Item description</i>	<i>Policy</i>	<i>Policy conditions</i>
9706 00 00	Antiques of an age exceeding hundred years, antiquarian books	Free	The importer must abide by the rules/laws relating to export of such item, of the country from where imports are sought to be made.

2. *This issues in public interest.*

*Sd/-
(R. S. Gujral)
DIRECTOR GENERAL OF FOREIGN TRADE
AND EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVT. OF INDIA*

(Issued from File No. 01/89/180/Misc-1/AM03/PC-2 A)"

On plain reading of the above notification, it transpires that items of description which fulfils the condition that it is an 'antique, of an age exceeding hundred years, antiquarian books' and falling under ITC (HS)/CTI 9706 0000, are allowed for import as "FREE" in terms of the extant Foreign Trade Policy. However, the policy condition attached to import of such items are that the importer must abide by the relevant rules/laws relating to export of such items of the country from where the imports are sought to be made. It also transpires that above policy condition is applicable at the time of export from the relevant country of export for import into India.

8.3 In the present case, the facts indicate that the coins of gold/silver or other material and promissory notes were brought in by the appellant as passenger as his personal accompanied baggage. Therefore, it is logical to conclude that when the passenger had carried the impugned goods from the airport of departure abroad, it is presumed that these have been duly subjected to various legal requirements of the country of export at UK, including the requirement of licensing for export or taking out of that country. It is also on record that the learned Consultant for the appellant, had held correspondence with HM Revenue and Customs, and it was informed by the Customs, International Trade and Excise (CITEX), through e-mail dated 21.02.2013 sent by one Mr Robert White that 'HRMC imposes no restrictions on the export of gold and silver coins to India'. Further, in the guidance to Exporters of Archaeological Objects (including numismatic items) submitted by the learned Consultant for the appellant as part of the appeal paper book as well as by the learned AR, it is indicated that the collections of historical, numismatic interest of more than hundred years old requires a European Union license; and in respect of those articles of more than 50 years old for export from UK to any destination requires UK license. Further, exemption from such licensing has also been provided upto threshold values prescribed for various articles, and for the articles of more than 50 years old, it was £65,000.

8.4 On careful reading of the legal provisions under Chapter XI of the Customs Act, 1962, and in the absence of any evidence to state that the accompanying goods of the appellant passenger is a non-bonafide of baggage, the conditions relating to its import as provided in Chapter 98 of the First Schedule to the Customs Tariff Act, 1975 shall alone apply. Accordingly, the imported goods as 'baggage' would be subject to the

Baggage Rules, 1998, as amended, and the relevant notifications issued by the Ministry of Finance from time to time.

8.5 In order to apply the import policy conditions relating to Chapter 97, firstly, it has to be firstly proved that the impugned goods are 'antique'. The facts on record and the evidence as placed in the form of opinion given by the ASI Mumbai, does not certify the impugned goods as 'antique'. Further, the detailed description of the impugned goods given by M/s Oswal Antiques, in their report dated 31.12.2013 for valuation of goods state that these are '*gold coins of Gupta, Sassanian, Sultanate, Mughal, Princely States and Tokens of various types & weight*'; '*fractional coins of Silver alloy, aluminium, copper & cupro-nickel of Republic of India/British India*'; '*Red colour album containing currency notes of British and Republic India*'; '*khaki/brown box containing silver coins of various rulers and denominations of Mughal Era*' etc. These goods do not *per se* indicate that these are of 'antique' in nature. From the aforesaid details, it transpires that the impugned goods are collection of coins of gold/silver/other material which has been collected and systematically preserved in the form of albums, envelopes designed to display items of numismatic value, held by a collector of numismatic materials (numismatist). Therefore, we are of the considered view, that the impugned goods are in the nature of personal baggage, and not of the nature of commercial goods. Further, in the absence of any specific and independent evidence or proof, to state that the impugned goods are 'antique', we find that the action of the learned Commissioner of customs in treating the goods as 'antique' and applying the import policy condition, does not stand the scrutiny of law. Further, there is neither any material to state that the appellant passenger had violated the legal requirements at the airport of departure, nor proceedings were initiated or objection raised by HRMC/Customs authorities abroad, in respect of their bringing into India such coins of gold/silver/other material. Hence, we are of the considered view that the action taken by the learned Commissioner in confiscation of the goods, treating the same as 'prohibited goods' under Section 111(d) *ibid* does not stand the scrutiny of law. Further, it is a fact on record that the complete description of the goods have been inventoried by the customs officers at the time of preparing baggage receipt, detention receipt, upon reporting by the appellant passenger on arrival. Hence, there is no ground to state that there was misdeclaration in respect of quantity, description of the goods. Furthermore, the value of goods were not arrived at by the Department

even at the time of issue of SCN on 14.01.2013, and the valuation was done later on 26/31.12.2013, by registered valuer of jewellery/antique shop. Therefore, the conclusion arrived at by the learned Commissioner in confiscation of goods under Section 111(l), 111(m) *ibid*, as involving misdeclaration, details not corresponding to the baggage declaration made under section 77 *ibid*, does not stand the scrutiny of law.

8.6 We also find that CBIC Circular No.74/95-Customs dated 27.06.1995 issued in respect of import of gold/silver coins, state that eligible passengers may be allowed to import gold/silver in any form, including coins (whether current, non-current or commemorative). The extract of the said circular is given below:

*"Circular No. 74/95-Cus., dated 27-6-1995
F. No. 495/29/93-Cus. VI
Government of India
Ministry of Finance
(Department of Revenue)
New Delhi*

*Subject : Gold/Silver Imports Scheme - Clarification regarding
importability of gold/ silver coins - Regarding.*

The undersigned is directed to refer to Ministry's letter of even number, dated 31st August, 1994, on the above subject, and to say that the Department of Economic Affairs have now informed that they have re-examined the matter in consultation with the Reserve Bank of India. It has been informed by the Reserve Bank of India that there would be no restriction under FERA on import of foreign coins (whether current or non-current) made of gold or any other metal. The same holds good in respect of commemorative coins also.

2. In view of the present clarification given by the Reserve Bank of India, Ministry's earlier instructions vide letter of even number, dated 31st August, 1994 stand modified and the eligible passengers may be allowed to import gold/silver in any form, including coins (whether current, non-current or commemorative) but excluding jewellery studded with stones or pearls subject to fulfilment of other conditions mentioned in the Notification Nos. 171/94-Cus. or 172/94-Cus. both, dated 30-9-1994, as the case may be. Field formations under Jurisdiction may be suitably informed."

The above circular does not restrict importation of gold/silver coins, and therefore the finding given by the adjudicating authority that the same is irrelevant and not worth of consideration, is incorrect, as the circulars are issued by the CBIC in exercise of the powers under Section 151A of the Customs Act, 1962 for uniformity in application of customs statute.

8.7 It is submitted by the learned Consultant for the appellant that the adjudicating authority had not examined the witnesses, and offered an opportunity for cross examination, as per the provisions of Section 138B of

the Customs Act, 1962. In this context, we find that the Hon'ble Delhi High Court, in the case of *J&K Cigarette v. Collector of Customs* - 2009 (242) E.L.T. 189 = 2011 (22) S.T.R. 225 (Del.), while dealing with Section 9D(1) of the Central Excise Act, 1944 (*Pari materia* to Section 138B of the Customs Act, 1962) have held that the procedure as prescribed in the statute is required to be followed for proving the truth of the statement. The said decision of the Hon'ble Delhi High Court has also been relied upon by the Hon'ble Punjab & Haryana High Court, in the case of *G-Tech Industries v. Union of India* - 2016 (339) E.L.T. 209 (P & H). Similar view was taken by the Tribunal in the case of *Junaïd Kudia Vs. Commissioner of Customs, Mumbai Import-II* - (2024) 16 Centax 503 (Tri.-Bom), for dropping of the adjudged demands, which was also upheld by the Hon'ble Supreme Court by dismissing the *Civil Appeal Diary No. 4161 of 2024* filed by the department vide judgement dated 04.03.2024 - (2024) 16 Centax 504 (S.C.). We find force in the submissions of the learned Consultant for the appellant that the adjudicating authority has not followed the procedures prescribed under section 138B of the Act of 1962. We are also of the view that when the Adjudicating authority had not conducted cross-examination, he is required to record specific reasons for denial of such opportunity to the appellant, otherwise it would amount to denial of principles of natural justice. Hence, on this ground also the confiscation of goods and imposition of penalty cannot be sustained.

9. We also find that the considering that the cause for confiscation of impugned goods under section 111(d), 111(l) and 111(m) of Customs Act, 1962 having been negated in our above discussion in preceding paragraphs, the imposition of penalty on the appellant herein under section 112(a) and 114AA of Customs Act, 1962 does not survive.

10. In view of the foregoing discussions and analysis, and on the basis of the judgement of the Hon'ble Supreme Court and the decisions of the Tribunal as discussed above, we are of the considered view that the impugned order dated 28.01.2014 treating the impugned goods as 'antiques' and confiscating the same under Section 111(d), 111(l) and 111(m) of Customs Act, 1962 does not stand the scrutiny of law and therefore it is liable to be set aside. Accordingly, we set aside the impugned order dated 28.01.2014, to the extent it had absolutely confiscated the impugned goods, and imposed penalties on the appellant. Since, the impugned goods are 'baggage' and customs clearance of such baggage is subjected to Baggage Rules in force and specified conditions of applicable

notifications in force, we are abundantly making it clear to the parties on both sides, that before the impugned goods are allowed for clearance upon release from customs control, appellant shall pay applicable duties of customs, if any, subject to restrictions on the total quantity of gold/silver which are allowed under Notifications issued by the Government from time to time. Further, we are also making it clear that if the impugned goods are opted by the appellant passenger for its export back to the country from where it was brought in, then the customs authorities at CSMI airport shall duly record the details of export of impugned goods, in the form of Export Certificate which is used for high value items or any other document, for the limited purpose of official record, that the appellant had duly complied with applicable legal requirements, as per law.

11. In the result, by setting aside the impugned order dated 28.01.2014, we allow the appeal filed by the appellant-importer in their favour with consequential relief, as per law.

(Order pronounced in open court on 07.05.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha