

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**MUMBAI**  
**WEST ZONAL BENCH**

**Customs Appeal No. 85796 of 2022**

(Arising out of Order-in-Appeal No. CUSTM-PAX-APP-1372/2021-22  
dated 28.12.2021 passed by the Commissioner of Customs  
(Appeals), Mumbai Zone III)

**M/s Himalya Jewellers**

**.....Appellant**

7-2-394/399 Shop no.G2 Gorex Sadan,  
Ashok Nagar, Panna Complex Plot Mkt,  
Secunderabad, Telangana

*VERSUS*

**Commissioner of Customs, Mumbai  
(Preventive)**

**.....Respondent**

NCH, Ballard Estate, Mumbai

**APPEARANCE:**

Shri G B Yadav, Advocate for the appellant  
Shri L B D'Costa\ (AR) for the respondent

**CORAM:**

**HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)**

**FINAL ORDER No: 86789/2025**

DATE OF HEARING : 12.06.2025

DATE OF DECISION : 13.11.2025

This appeal has been filed challenging the Order-in-appeal dated 28.12.2021 whereby the learned Commissioner (Appeals) while allowing the appeal filed by the Department modified the Order-in-Original dated 3.3.2020 passed by Deputy Commissioner of Customs, Mumbai.

2. The issue for consideration herein is whether the appellant can be treated as the *de facto* importer of 101.880 gms of 4 gold pieces seized by the department from a delivery van?

3. The relevant facts briefly stated, are that a consignment of 101.880 gms of 4 gold pieces was seized from a delivery van on 31.3.2019 as the same was found to be without any valid duty paying or title documents. Subsequently the said seized consignment was claimed by the appellant herein claiming ownership by producing voucher No. 0038-2018-19 dated 29.3.2019 issued to them by M/s. Vishal Gold, their job worker and invoices Nos. 001/Feb/2018-19 dtd. 25.2.2019, 002/Feb/2018-19 dtd. 28.2.2019, 001/Mar/2018-19 dtd. 10.3.2019 & 002/Mar/2018-19 dtd. 20.3.2019 being invoices in respect of Gold purchased from M/s. Bhawani Jewellers & M/s. Sri Jai Santoshi Mata Jewellers. In absence of any documentary or other evidence indicating legal procurement or discharge of applicable customs duty, the department entertained a belief that the aforesaid gold pieces had been clandestinely imported into India. Accordingly a show cause notice dated 24.9.2019 with corrigendum dated 30.9.2019 was issued to the appellant proposing as under:-

- i) They should be held as the de-factor "importer"
- ii) Seized Gold Bars should be classified under Tariff Item no. 7108 12 00 liable to customs duties @ 17.163% Advalorem
- iii) Assessment value should be determined as Rs.3,34,675/- as per the report given by Government approved valuer.
- iv) Customs duty should be determined as Rs.57,440/- and demanded under Section 28(4) of Customs Act, 1962 along with interest under Section 28AA ibid.
- v) Seized Gold pieces should be held liable for confiscation u/s 111(d)- non-compliance of RBI Regulations, (f)- non-mention in import manifest, 111(j) removal without

payment of customs duty & without permission of proper officer, 111(1)- non- Mention in the bill of entry.

- vi) Penalties should be imposed u/s 112(b), 114A & 114AA of the Customs Act, 1962."

4. Upon adjudication vide Order-in-Original dated 3.3.2020 the Adjudicating Authority concluded that the appellant was not *de facto* importer. The following order was passed:-

- i) M/s. Himalaya Jewellers were not held to be the "de-facto importers"
- ii) Seized 101.880 gms of 4 gold pieces were held classifiable under Tariff Item no. 7108 1200, liable to customs duty @ 17.163% ad valorem.
- iii) Smuggled nature of the seized 101.880 gms of 4 Gold pieces stands conclusively established (Para 41.4 of the OIO)
- iv) Assessable Value was determined as Rs.3,34,675/-
- v) Demand of Customs duty of Rs.57,440/- & Interest were set aside as M/s. Himalaya Jewellers were not found to be the "importer" defined under Section 2(26) of the Customs Act, 1962, chargeable to duty.
- vi) Seized 101.880 gms of 4 gold pieces were held liable for confiscation under Section 111(d)-non-compliance of RBI regulations, 111(f)-non-mention in import manifest, 111(j)- clearance without permission from proper officer and 111(1) non-filing of Bill of Entry, of the Customs Act, 1962
- vii) Redemption Fine of Rs.15000/- was imposed to be payable with customs duty of Rs.57,440/-
- viii) No penalties were imposed under Section 112, 114A or 114AA of the Customs Act, 1962.

5. The appellant accepted the said order and did not file any appeal. However the department, being aggrieved, filed Appeal before the learned Commissioner (Appeals), who vide impugned order 28.12.2021 allowed the appeal filed by the department by

holding the appellant as *importer* u/s. 2(26) of the Customs Act, 1962 and accordingly modified the Order-in-Original.

6. I have carefully heard learned counsel for the appellant and learned Authorised Representative appearing on behalf of Revenue and have also perused the case records including the synopsis/written submissions placed on record. The term 'imported goods' has been defined u/s. 2(25) *ibid* as any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption. The entire issue herein hinges upon interpretation of the term '*importer*' as defined in Sec.2 (26) *ibid* which is reads as under:-

*"2(26). - importer, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes [any owner, beneficial owner]or any person holding himself out to be the importer."*

7. The language of the aforesaid provision is plain and unambiguous. The said definition, when read harmoniously with Section 2(25) [*definition of imported goods*] clearly restricts its scope to the period between importation and its clearance for home consumption. Any person, in whichever capacity, whether owner or beneficial owner or the importer dealing with those goods during that period only can be regarded as an importer. To put it differently "importer" is a person who is having ownership or effective control or lien over the imported goods during the period of importation but only upto the stage of *clearance*. Any person dealing with those goods subsequent to

its clearance for home consumption, falls outside the ambit of the aforesaid provision. I am unable to find any evidence on record to even suggest that the appellant had any role, interest or any control over the seized goods during its alleged importation or prior to its clearance as mandated by Section 2(26) *ibid*, therefore they are out of purview of *importer* and there is no question of any *de facto importer* as well. On the contrary, the documents produced by the appellant establish their ownership subsequent to its clearance. Therefore the appellant is not liable to pay any customs duty u/s. 28 *ibid* nor any interest on it.

8. So far as absolute confiscation of the gold pieces herein are concerned as held by the Commissioner (Appeals), I am of the view that the gold is not a prohibited item but merely restricted in nature. Judicial precedents have consistently held that gold, even when liable for confiscation, is not subject to absolute confiscation. Therefore, the finding recorded by the learned Commissioner for absolutely confiscating the gold is not sustainable. Though Confiscation as held by the Adjudicating Authority is as per law with an option for redemption on payment of redemption fine of Rs.15,000/- as nothing has been brought on record to establish that the appellant was the actual importer or instrumental in alleged illegal importing of the gold. It is settled that once the owner of the confiscated goods exercises option to redeem, he has to suffer the customs duty leviable thereon which has been determined as Rs.57,440/- on the assessable value of Rs.3,34,675/- of the seized 101.880 gms.

The appellant is neither the importer nor it has been established that they knew or had reason to believe that the gold is liable for confiscation u/s. 111 ibid therefore penalty u/s. 112(b)(i) ibid is not sustainable. Admittedly the appellant had accepted the Order-in-Original (supra) by not challenging the same further.

9. Before parting, I find it appropriate to record my appreciation for the well-reasoned Order-in-Original dated 3.3.2020 passed by the Adjudicating Authority.

10. In view of the discussions made hereinabove, the impugned order is set aside and the Order-in-Original dated 3.3.2020 passed by the Adjudicating Authority is restored. The appeal is disposed of accordingly.

(Pronounced in open Court on 13.11.2025)

**(Ajay Sharma)**  
**Member (Judicial)**

//SR