CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85156 OF 2026

[Arising out of Order-in-Appeal No: MUM-CSTM-PAX-APP-487 to 849/2023-24 dated 21st September 2023 passed by the Commissioner of Customs (Appeals), Mumbai – III.]

Anirudh Verma
RE-8, Raghunathpur House Complex,
Near Avenue Nursing Home, VIP Road, Kolkata … ***Appellant***

versus

Commissioner of Customs (Preventive)
New Customs House, Ballard Estate, Mumbai - 400001 ***…Respondent***

APPEARANCE:

Shri Vineet Singh, Advocate for the appellant

Shri CS Vinod, 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: 85156/2026

DATE OF HEARING: 08/01/2026
DATE OF DECISION: 27/01/2026

PER: C J MATHEW

There can be no two opinions that, after amendment[1] of 129E of Customs Act, 1962, appeal is maintainable before the Commissioner of

[1] [Finance (No. 2) Act, 2014 dated 6th August 2014]

Customs (Appeals) or the Tribunal only upon deposit of prescribed percentage of duty and penalty or percentage of penalty, as the case may be. The decision[2] of the Hon'ble Supreme in *Chandra Sekhar Jha v. Union of India* leaves no room for doubt on the strict adherence thereto. But then, we do not have application of waiver of pre-deposit before us. Nor are we unmindful that indulgence of waiver sought by appellant, from compulsion of circumstance, is beyond the control of a creature of the statute to even consider. The decision of the Hon'ble High Court of Bombay in *Lalit Kuthia v. Commissioner of Customs (Appeals), Mumbai-III [2024:BHC-OS:20290]* has acknowledged extraordinary circumstances that may merit such dilution. But then, we do not have before us any application pleading such occurrence.

2. On the other hand, we have before us the principle espoused in *Rodex International v. Commissioner of Customs* in order[3] of Hon'ble High Court of Gujarat that goods are good substitute for money deposit. And that is the claim of the appellant in responding to objection on defect raised by Registry for not having deposited the amount stipulated in section 129E of Customs Act, 1962 towards disputed confiscation of gold bars valued at ₹ 3,17,16,000 under section 111 of Customs Act, 1962 and penalty of ₹ 16,00,00,000 each under section 112 and section 114AA of Customs Act, 1962. On perusal of the records, we take note

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[2] [order dated 28th February 2022 in civil appeal no. 1566 of 2022]
[3] [order dated 4th February 2016 in tax appeal no. 1163 of 2014]

that Commissioner of Customs (Appeals), before whom first challenge was preferred, had, by order[4], dismissed the challenge at the threshold for that very want.

3. Learned Counsel for appellant countered the objection with the submission that the appeal in question challenges the confiscation of seized gold belonging to appellant along with penalty and, therefore, there is no call to disaggregate the penalty for separate compliance with section 129E of Customs Act, 1962. It was further contended that seizure of goods that were not released to them, as yet, is no different from deposit of disputed duty during the course of investigations that gets appropriated. He submitted that the penalty imposed under section 112 of Customs Act, 1962 is not by transitive association with confiscated goods but direct ownership of the seized gold.

4. Learned Authorized Representative cited before us the inflexibility of section 129E of Customs Act, 1962 after amendment of 2014 that precludes any discretion available with the Tribunal for foregoing pre-deposit. He further argued that, with the gold having been absolutely confiscated, only penalty remained at stake and that confiscation, or fine in lieu thereof, is beyond the pale of pre-deposit provisions.

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[4] [Order-in-Appeal No: MUM-CSTM-PAX-APP-487 to 849/2023-24 dated 21st September 2023]

5. Normally, at this stage of notice of non-maintainability, we do not look to the facts but here we are compelled to in the light of facts narrated in support of maintainability. The investigation, following seizure of 12 kg of gold bars on 20th January 2016 from certain individuals allegedly travelling on domestic flight and traced to the appellant, naturally involved placing them on notice of onus under section 123 of Customs Act, 1962 which is where the appellant claims to have evidenced licit ownership. The penalties were imposed on the appellant in consequence and, instead of charging the goods to duty under section 125 (2) of Customs Act, 1962, these were absolutely confiscated, thereby, erasing the duty element that attaches, under section 125 of Customs Act, 1962, to redemption of confiscated goods.

6. Gold is not goods, at least as far as its allure to the customs administration is concerned. Other goods, of commercial import, may be confiscated, or held liable for confiscation, but never is there absolute deprivation of ownership. Hence, such goods, not vesting absolutely in the Central Government, are not contemplated for computation of pre-deposit in section 129E of Customs Act, 1962. Where the option of redemption is not granted, with attendant vesting of the goods in the Central Government, it is tantamount to duty liability equivalent to value thereof having been discharged. On that premise alone, the value of the goods has to deemed as deposited towards duty,

held as liable, and thus to be adjusted as pre-deposit to the extent specified in section 129E of Customs Act, 1962.

7. Gold was seized in the reasonable belief of having been smuggled and, instead of the customs having to furnish evidence, the onus reverses only to the extent of evincing licit procurement upon which customs officials resume obligation to evidence smuggling and, without having trace of further provenance, section 123 of Customs Act, 1962 is erased *vis-à-vis* the gold. For such gold to be held back, for whatever cause, from the purported owner is as good as deposit of customs duties pending investigation. Therefore, there is no reason to assign a different treatment to the goods in which the confiscatory appropriation is, of itself, in dispute. For the above reasons, the value of absolutely confiscated gold suffices for compliance with section 129E of Customs Act, 1962 and appeal is, consequently, maintainable.

8. As we have noted earlier, the impugned order did not dispose off the appeal on merits. In view of such circumstances, the merit of the order of the original authority cannot be determined here until the merit of appeal against order of original authority is decided by first appellate authority. On that limited ground in dispute, we take up the appeal itself, with consent of both sides, for disposal.

9. The issues raised in appeal were not considered on merit. The merit therein needs resolution. To enable that, we set aside the

impugned order and restore the appeal before Commissioner of Customs (Appeals) for disposal on merit. As the issue in dispute pertains to gold that is currently in a market which is buyer-driven, it would be appropriate to direct disposal within reasonable time from date of receipt of this order and, at any event, within six months.

10. Appeal is, thus, allowed by way of remand.

(Order pronounced in the open court on 27/01/2026)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*