

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. II

Custom Appeal No. 50146 of 2020 (SM)

(Arising out of Order-in-Appeal No. CC(A)/CUS/Prev./NCH/88/2019 dated 31.10.2019 passed by the Commissioner of Customs (Appeals), New Delhi)

Muzaffar Ali Sheikh

R/o H. No. 83-A New Colony Soura,
Near Naribal Masjid Srinagar,
Jammu & Kashmir-190011.

Appellant

Versus

Commissioner of Customs, New Delhi

New Customs House, Near IGI Airport,
New Delhi-110037.

Respondent

Appearance

Shri S. Sunil, Advocate

- for the appellant

Shri Jasbir Singh, AR

- for the respondent

CORAM:HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

Date of Hearing: 23.12.2020

Date of Decision: 21.01.2021

Final Order No. 51025/2021

Anil Choudhary:

The appellant is a qualified MBA and lives in U.K. and is working there since November, 2008 for livelihood, the appellant is citizen of India, resident of Srinagar (J&K). The appellant arrived in India from U.K. on 23.09.2015 in

the morning and after Customs clearance, he came out of the airport at New Delhi. Thereafter, in day time, he went to the P.P. Jewellers, Karol Bagh, from where he took delivery of 2 gold bangles for which he had placed orders earlier and was issued sales invoice no.10278. On the same day, in the evening, he was in the process of boarding domestic flight to Srinagar at Terminal T-1D. As he was carrying two gold bangles and was also in possession of 151 gold coins, he was detained by the CISF at the airport and was handed over to the Air Intelligence Unit of Income Tax at the airport. The AIU officers recovered 151 yellow metal coins appearing to be gold along with 2 bangles of yellow metal appearing to be gold. Thereafter, the officers of Income Tax Department handed over the appellant along with gold coins, gold bangles and luggage to the officers of the Customs (Preventive), New Customs House, New Delhi, who brought him along with his goods and luggage to Room No.34, New Customs House, New Delhi. A Panchnama was drawn. The appellant informed that all the coins were of gold and he had brought them from London. The said items (coins) were received by him from his father-in-law as a gift at the time of his marriage, which was solemnized in October, 2011. He had taken the said 151

gold coins with him in November, 2011 to London for the purpose of obtaining loan against gold. These are the same coins, which are of Indian origin, which prevailed during British India period, which he had brought back with him. He also produced the original receipt no.10278 dated 23.09.2015 issued by P.P. Jewellers in respect of the two gold bangles. As per the said invoice, the gold bangles were of 45.22 gms. of total sale value of Rs.1,29,000/- including VAT.

2. Thereafter, the appellant was served notice under Section 102 of the Customs Act for personal search, for which he granted his consent. In his personal search, nothing incriminating was found. The officers returned the two gold bangles to the appellant immediately. On further inquiry, if the appellant had any documents for legal possession of 151 yellow metal coins, stated to be of gold by him, the appellant could not produce any documents. Thus, it appeared to the Revenue that the said 151 gold coins recovered from the possession of the appellant, have been illegally smuggled into the country and thus, were liable for confiscation under the Customs Act. The gold coins were resealed in plastic containers and the appellant was served summons for 24.09.2015 at

1100 hrs. on 24.09.2015. The appellant and Mr. Neeraj Gupta, Jewellery Appraiser appeared, who gave his appraisal report dated 24.09.2015, according to which, 151 coins of gold are of 916 fineness/purity, each weighing 8 gms. (total weight 1208 gms.) and valued at Rs.26.92,149/- (Tariff Value). Xerox copies of 151 gold coins were also taken and annexed to the Panchnama. The report of the Jewellery Appraiser, Mr. Neeraj Gupta is as follows:-

Sl. No .	Description of Item	Total Weight (In grams)	Value Appraised (Rs.)
	151 gold coins of 916 purity and each coin weighing eight (8)gms. Each coin has marking as given below: Side 1: picture of man facing towards left depicted in centre and "EDWARDVS VII D:G: BRITT: OMN: REX:F:D: IND: IMP:" marked on the circumference. Side 2 : picture of warrior with sword in his hand and riding a member of equine family. No. from 1902 to 1910 marked on coins and each coin having only one number.	1,208	26,92,149/-
	Total	1,208	26,92,149/-

3. Statement of the appellant was recorded under Section 108 of the Customs Act, 1962, wherein he, *inter alia*, stated that he was resident of 90, Rochfords

Gardens, Slough, SL 2, XJ, United Kingdom and possessing Indian passport No.F9179966 dated 03.08.2006. He had gone to UK to pursue his MBA and got admission in University of Northampton, from where he has completed his MBA in November, 2008. Thereafter, he started working in UK as Supply Chain Administrator in TESCO till December, 2014. Thereafter, in December, 2014, he joined Telefonica O2 as Network Engineer, and since then, he is working in the said company. He further stated that he came to Delhi from London through Air India Flight AI- 112 on 23.09.2015 to celebrate Eid with his family at Srinagar and to take back his family to London. After completing the immigration formalities and collecting his baggage, he left the IGI Airport (Terminal 3) and went to Karol Bagh to collect the gold bangles from P.P. Jewellers. He collected the gold bangles after making the payment of balance amount Rs.29,000/-. The order for the bangles was placed earlier on 9.9.2015, on which day he had made advance payment of Rs.1 lakh. Thereafter, after some other shopping, he reached the IGI Domestic Airport Terminal-I at about 3 p.m. and got checked in his luggage. He was about to board the flight, the CISF personnel at security area, called him to identify his checked in baggage. When

he was asked to open his baggage, they found 151 coins of gold as well as two gold bangles. On finding the gold coins and bangles, the CISF stopped him from boarding the flight and informed the Customs Department and Income Tax Department. After the Income Tax officers completed their proceedings, they handed over the gold coins, gold bangles and luggage along with the appellant to the officers of Customs Preventive. He further stated that 151 gold coins, which he had received from his father-in-law - Shri Ali Mohammad Rather as a gift in marriage in 2011, and thereafter, he went to London in November, 2011 and took the said 151 gold coins with him to avail loan against gold. He had not declared the said gold coins at the time of his departure in November, 2011 nor he had made any declaration on his arrival in November, 2011 at London Airport. According to his knowledge, no duty is leviable on the gold coins in UK. Thereafter, when he was coming back to India, he brought the 151 gold coins with him. Further, he did not declare these gold coins to Indian customs under the impression that it is not required. After the Customs clearance, he had left the Airport. That his father-in-law was a resident of Wantpora, Srinagar, Kashmir, had died in April, 2012 i.e. after about 6 months of his marriage.

Thereafter, the appellant was released on furnishing of bail bond and again was summoned for submission of evidences/documents in respect of 151 gold coins recovered and seized under Panchnama dated 23/24.09.2015.

4. The appellant appeared on 30.09.2015 and submitted the following documents vide covering letter dated 30.09.2015:-

- (a) Marriage Certificate in original (order version) and
- (b) Its translation in English;
- (c) Affidavit of his mother-in-law (Ms. Hajra) and photocopy of her passport.
- (d) Property valuation documents of his mother-in-law by an approved Government valuer.
- (e) Chartered Accountant's certificate of his mother-in-law.

5. On perusal of the marriage certificate of the appellant dated 14.10.2011 with Ms. Fozia Muzaffar, the details of dower and other gifts were mentioned as follows:-

The amount of dower mutually agreed;	Rs.1,30,000/- INR in the form of Gold
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(Jewellery /coins)	
The portion of dower that has been disbursed.	Rs.1,30,000/- INR in the form of Gold (Jewellery /Coins)
The portion of dower willingly remitted by the bride	X
The portion of the dower yet to be disbursed by the bridegroom	X
Value of additional gifts or jewellery or value of coins at that time	Rs.7,55,000/- INR
Portion of additional gifts or jewellery or value of coins at that time pending with bridegroom.	X

6. As per the affidavit of Ms. Hajra, wife of late Ali Mohd. Rather, mother-in-law of the appellant, indicated that, '30 Edward Gold Coins' had been gifted by her to her daughter, Ms. Fouzia Muzaffar on her marriage.

7. From the aforementioned facts on record, it appeared to Revenue that as per the statement of the appellant, he had never filed any declaration about the gold coins to the Customs Authorities at the time of taking outside India or on return to India (destination). Admittedly, 151 gold coins were recovered from the appellant. As per the marriage certificate submitted by the appellant, which was in urdu language read with its English translation, which *inter alia*, states that the

marriage was solemnised between Mr. Muzaffar Ali Sheikh (appellant) and one Ms. Fozia Muzafar on 14.10.2011, "Rs.1,30,000/- INR in the form of gold (jewellery/coins) had been mutually agreed as dower and disbursed and further mentions that the value of additional gifts or jewellery or value of coins given at the time of marriage = Rs.7,55,000/- INR. It was stated by Ms. Hajra - Mother-in-law of the appellant in her affidavit that only 30 Edward Gold coins were gifted by her to her daughter on her marriage, but did not submit any document in support of her contention. It appeared to Revenue that none of the documents/evidences produced satisfy the possession of the 151 gold coins totally weighing 1208 gms. It further appeared to Revenue that the said 151 gold coins have been imported in India illegally, in contravention of the provisions of the Customs Act read with Foreign Trade Policy and Notification thereunder. Further, it appeared to Revenue that the appellant was liable for compliance with the law and should have possessed IEC No. etc. An eligible passenger may also import gold through baggage or through the nominated agencies, as permissible. It also appeared that seized gold coins were illegally imported in contravention of the Prohibition/ Restriction/ Regulations

imposed by the Government. Further, it appeared to Revenue that irregular import tantamounts to smuggling, as gold is restricted item. It also appeared that, in Marriage Certificate (Nikah Nama), there is mention of only mehar and gifts made to the bride by the bridegroom. Thus, it appeared to Revenue that the appellant has not properly explained licit possession of 151 gold coins and the explanation given is not tenable, and further, it appears a case of illegal import of gold coins. Further, it also appeared that as per Section 123 of the Act, the onus is on the appellant to prove the licit possession of the gold coins. Accordingly, show cause notice was issued on the appellant requiring to show cause why 151 gold coins totally weighing 1208 gms. valued at Rs.26,92,149/- seized from his personal possession under Panchnama dated 23/24.09.2015 should not be confiscated under Section 111(d) & (i) of the Customs Act, 1962.

8. The appellant contested the show cause notice by filing the reply denying the allegations, stating that the said gold coins in question are of Indian origin. As per the Appraisement Report, the coins belongs to British era of the period 1902 to 1910, pertaining to the King Edward VII, who reined during the period 1901 to 1910, and was

the emperor of India also. The gold coins in question were in circulation in India during the British Indian period and are commonly/readily available in India. The word "IND" appearing on the coins means India and IMP stands for Emperor i.e. Emperor of India. The inscription on the coins under seizure, which reads as:- "EDWARDS VII D:G:BRITT:OMN: REX: F: D: IND: IMP" carries the meaning "Edward the VII, by the Grace of God, of all the Britons, King, Defender of faith, Emperor of India".

9. It was further stated that the gold coins were of Indian origin of the British period and were lying with the families as their treasure and changing hands from generations to generations. The coins under seizure were given by the father-in-law and other relatives to the appellant and to his wife, are the family treasures for future generations. As the appellant had no intention to dispose off the gold coins in question, so he brought these back from London to keep them as family treasure. There is no restriction to take any items from India to any foreign country, except those goods/items which are prohibited in nature. The gold coins were neither prohibited nor restricted under the law. The gold coins in question pertains to India, as is evident from the word "IND" and "IMP", meaning "India" and "Emperor of India".

As the coins are of Indian origin, there is no presumption of smuggling and are not liable to seizure. The appellant also produced photos from his marriage album, wherein wife of the appellant is wearing gold coins, which supports the contention of the appellant, that he and his wife had received the gold coins as gift from his father-in-law and other relatives. Further, he contended that as the gold coins are of Indian origin, they are not liable to be seized and prayed to drop the proceedings.

10. It was further stated that the allegations of Revenue is based on assumption and presumptions. Admittedly, there is no foreign markings on the gold coins in question. Neither the authorised valuers' appraising report has certified that the coins are of foreign origin. The contention of the appellant are also supported by the material available on internet, as well as the historical evidences, during the British era period (gold coins each weighing 8 gms.) were 'Legal Tender' and in common circulation in India. King Edward VII was the emperor of India during the period 1902 to 1910 and his photo/bust depicted on the coins and inscription on the coins state him as the Emperor of India. Thus, the gold coins in question being in circulation under monetary system, which prevailed in India during the pre-independence

period are definitely of Indian origin. The gold coins were used in monetary/exchange system and thus, were part of the fiscal system prevailing in the country during the either period. Thus, the charge of smuggling (based on assumption) does not stand and is fit to be dropped. It was further urged that as required under Section 123 of the Customs Act, the appellant has discharged the onus *ipso facto*, as the gold coins in question are of Indian origin.

11. Further, it was contended that there was no duty leviable on gold coins, nor there was any declaration required at the time of arrival in UK. It was further urged that it is a case of 'town seizure' by CISF at the domestic terminal, and hence, rigours of the Customs Act are not attracted.

12. It is further contended that the provisions of Section 111 (d) and (i) applies only when the goods are imported and attempted to be imported and are prohibited goods or dutiable goods, which is not the case. Such facts are not obtaining in the facts of the present case. Further, it is contended that as per Entry No. 321 and 322 of Notification No.12/2012-Customs dated 17.03.2012, the same are not applicable as the coins in question are of purity of 916 (determined by the appraising officer in his

report), which is less than the prescribed limit of 99.5% purity. Since the coins are free items as per FT Policy, these cannot be termed as prohibited goods. The provisions of Section 2(33) defining prohibited goods' are not attracted as the gold coins are of Indian origin.

13. The Show Cause Notice was adjudicated vide Order-in-Original dated 30 March, 2017 holding that the appellant knowingly involved in illegal import and handling of gold coins and was in conscious possession and control of seized gold coins of foreign origin. He brought the seized gold coins from London into India illegally without declaring the same to Customs and failed to discharge the onus that the seized gold was not smuggled goods. Further observed that the appellant have committed acts of omission and commission. Accordingly, the seized gold coins were ordered to be confiscated under Section 111(d) and (i) of the Act read with Section 120 of the Act. Further penalty of Rs. 5 lakhs was imposed under Section 112 of the Act.

14. Being aggrieved, the appellant preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) was pleased to observe that the legal possession of the seized gold coins is not proved and hence upheld the invocation of Section 111(d) and (i)

observing that the impugned goods have been imported by way of smuggling and are prohibited goods. Hence absolute confiscation is justified. It was further observed that the appellant failed to prove that the coins were of Indian origin. Accordingly, the appeal was dismissed. Being aggrieved, the appellant is in appeal before this Tribunal.

15. Heard the parties.

16. Learned Counsel for the appellant urging the grounds of appeal submits that as the coins pertained to British India period of 1902 to 1910, depicting the bust of King Edward VII, who was the Emperor of India during the said period, as India was under the British rule. The letters inscribed on the circumference "IND" and "IMP" stand for 'India' and 'Emperor of India' respectively. Such coins were part of the monetary system and were legal tender under the Negotiable Instruments Act. Such coins are of Indian origin and lying with the citizens or people of India as the treasure and changing hand generation to generation. It is further urged that the allegation of foreign origin is based on conjecture and surmises of the Custom authority. As the authorised valuer has not certified the seized coins being of foreign origin. It is further urged that the Court below have erred in placing

selective reliance on the statement of the appellant. Admittedly, it is a case of town seizure. The appellant stated in his statement recorded under Section 108 at the time of seizure, that he had these coins in India with him and are of his family and he had taken these coins to U.K. in November, 2011 and he has brought back the same coins in September, 2015. Thus, the Court below have erred in relying on only half statement, and on that part of the statement which suits them, which is not permissible. The statement have to be read as the whole in evidence, and that part were in the appellant have stated that he had the coins available with him in India and he had taken to U.K. from India in November, 2011, cannot be ignored. If the whole statement is read together, there is admittedly no case of smuggling as the gold coins are of Indian origin which were legal tender during the British India period, had been taken to U.K. in 2011 and brought back in 2015. It is further urged that the presumption under Section 123 in favour of Revenue is not available in the facts of the present case. It is further urged that the appellant have led sufficient proof that he and his family are of good financial standing and were possessing gold coins and have also received gold coins at the time of his marriage in gifts. The whole case

of Revenue is based on the allegation, that the gold coins being of foreign origin, which is a mistake of fact and accordingly, the impugned order is fit to be set aside and the appeal allowed. It is further urged that the mother-in-law of the appellant have also stated on affidavit that their family had gifted gold coins to the appellant and her daughter at the time of marriage. It is further urged that the Court below have failed to appreciate that gold coins are classified in ITS(HS) at Sr. No. 7726 under Heading 71189000, and as per policy these are free items, there was no restriction for import or export. It is further urged that the provisions of Section 111(d) and (i) of the Act are not applicable in the facts and circumstances, there being no import of prohibited goods or dutiable goods. It is further urged that the provisions of Entry No. 321 and 322 of Notification No. 12/2012-Cus. are not applicable as the coins under seizure are of purity 916 (as determined by the jewellery appraiser) which is less than the prescribed limit of 99.5% purity. Thus, the coins are free items under Foreign Trade Policy and have been wrongly termed as prohibited goods by the Court below. Accordingly, learned Counsel prays for allowing the appeal with consequential benefits.

17. The learned Authorised Representative for Revenue relies on the impugned order.

18. Having considered the rival contentions, I find that admittedly the seized gold coins are of Indian origin even the approved valuer have not certified the seized gold coins as of foreign origin. Further, I find that the inscription on the coins evidently prove that the gold coins are of Indian origin, and were part of the monetary system and were in circulation during the British India period. Admittedly, King Edward VII, was the emperor of U.K. and India was under British Rule during the relevant period, and thus there is no anomaly as to the Indian origin of the gold coins. The allegation by Revenue that the gold coins are of foreign origin has got no basis, and is a wild guess work. The inscription on the gold coins ipso fact prove that the gold coins are of Indian origin. The impugned order is vitiated for placing selective reliance on the statement of appellant under Section 108. I further find that the presumption in favour of Revenue under Section 123 is not attracted in the facts and circumstances. Accordingly, I find that the impugned order is not sustainable and I set aside the same. The appeal is allowed. The appellant is entitled to consequential benefits.

19. The Revenue authority is directed to return the gold coins forthwith to the appellant or his Authorised Representative within 45 days from the date of receipt/service of the copy of this order.

(Pronounced in Court on 21.01.2021)

(Anil Choudhary)
Member (Judicial)

RM