

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75594 of 2020

(Arising out of Order-In-Appeal No. KOL/CUS(PREV)/SILIGURI/AKR/624/2020 dated 24/09/2020 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s. Shri Biplab Karmakar

(Jhuripara, P. O.-Dinhata, Coochbehar, 736135)

Appellant

VERSUS

Commr. of Customs (Preventive), Kolkata

(15/1, Strand Road, Customs House, Kolkata-700001)

Respondent

APPEARANCE :

Mr. H. K. Pandey, Advocate for the Appellant

Mr. Tariq Suliaman, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.75489/2025

Date of Hearing : 12 February 2025

Date of Pronouncement : 28.02.2025

PER R. MURALIDHAR:

This appeal has its genesis on 23.11.2001 when gold bars and jewellery were seized from the appellant who was returning to his home in a mini bus. After this, the case has had a chequered history, which in brief is as under :

1.1 The local Police officers apprehended the appellant with gold bars and gold ornaments and seized 7 pcs of gold bars with a weight of 816.480 grams valued at Rs.3,64,000 and 86.290 grams of gold jewellery valued at Rs.28724.

1.2 The case was subsequently handed over to the Customs Department in custody on 23.11.2001. The Customs Officer recorded his statement wherein he stated to have purchased the gold from the three persons in India and that the gold ornaments were given to him by his customers for polishing.

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1.3 After due process, the Adjudicating authority passed the Order in Original No.254/Cus/Jt.Comm(P)/WB/2003 dated 24.10.2003 and ordered for absolute confiscation of the seized gold and imposed penalty of Rs.1,00,000.

1.4 Being aggrieved an appeal was filed before the Commissioner (Appeals), who vide OIA No.Pre/Cus-86/2004 dated 28.05.2004, took the view that the burden to proof towards the gold being smuggled would be on the Revenue and not on the appellant and remanded the matter to the Adjudicating authority.

1.5 Being aggrieved by this OIA, both the present appellant as well as the Revenue filed their Appeals before the Tribunal.

1.6 The Tribunal after going through the reason towards filing of the appeals, vide Final Order No.S-646/ 749/KOL/1004 dated 29.10.2004 remanded the matter to the Adjudicating authority to take up the issue on de novo basis.

1.7 The Jt Commissioner of Customs took up the de-novo proceedings in 2017 and vide Order in Original No.13/JC/Cus/SLG/2018-19 dated 13.07.2018, he dropped the proceedings in respect of gold ornaments / jewelry. But he confiscated absolutely the gold bars and imposed penalty of Rs.75,000.

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1.8 Being aggrieved, the appellant filed an Appeal before the Commissioner (Appeals) on 06.09.2018. The Commissioner (Appeals) Vide OIA No.KOL/CUS(PREV)/SILIGURI/AKR/624/2020 dated 24.09.2020, upheld that order passed by the Adjudicating authority and dismissed the appeal filed by the appellant

1.9 Being aggrieved, the appellant has filed the present appeal before the Tribunal

2. The Ld Counsel representing the appellant submits the Grounds of Appeal maybe taken as reiterated and makes the following further submissions :

2.1 The preliminary objection is about the Adjudication proceedings taking much more time than what has been prescribed under statute. The following points require particular consideration on this issue :

- (a) Show cause Notice (SCN) was issued on 17.05.2002
- (b) Adjudication order No. 254/Cus/Jt.Com(.P)/WB/2003 dt. 24.10.2003
- (c) OIA No. Prev/Cus-86/2004 dated 28.05.2004
- (d) CESTAT Final Order No.S-646/A-749/Kol/2004 dated **29.10.2004** – remanded the matter to the Adjudicating authority to take up the de-novo adjudication.
- (e) The Personal Hearing was granted on **8.5.2017** in the de-novo proceedings, which was attended by the appellant, wherein he has made written submissions. [Para 1 of Page 10 of the de-novo Order]

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- (f) One more Personal Hearing was conducted on **22.12.2017**, due to the change in the Adjudicating authority. This PH was attended by Sri Samir Karmakar who submitted written submissions [as noted in Page 11 of the de novo Order]
- (g) De novo Adjudication Order No.13/JC/Cus/CCP/SLG/2018-19 dated 13.07.2018 passed.
- (h) Appeal No.S5-1153/CUS/(PREV)/SILIGURI/CCP/**2018** filed before the Commissioner Appeals filed on 06.09.2018
- (i) OIA No.KOL/CUS/CCP/(PREV)/SILIGURI/AKR/624/2020 dated **24.09.2020**

2.2 The Ld. Advocate for the Appellant submitted that the Adjudication order is passed after **17 years** from the date of seizure. There was a **delay of 13 years** from the date of order passed by the Hon'ble Cestat.

2.3 He placed reliance on the Hon'ble Principal Bench in **EXCISE APPEAL NO. 52178 OF 2022**, which allowed 210 nos. of appeal observing that *the adjudication has taken place beyond the period stipulated in sub-section (11) of section 11A of the Central Excise Act and there is no plausible explanation as to why it was not possible for the Adjudicating Authority to complete the adjudication process within the stipulated time. Thus, the impugned orders that have been assailed in all the 210 Excise Appeals would have been set aside.*

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- 2.4 In passing the said order, the Hon'ble Tribunal relied upon, amongst other, the Hon'ble **Delhi High Court's order in the Customs matter of Sundar System Pvt. Ltd. Vs Union of India**. *The mention of the word where it is not possible to do so, in our opinion, does not enable the department to defer the determination of the notice for an indeterminate period of time. The Legislature in its wisdom has provided a specific period for the authority to discharge its functions. The indifference of the concerned officer to complete the adjudication within the time period as mandated, cannot be condoned to the detriment of the assessee.* He would submit that in the present case there is an inordinate delay in passing the adjudication order without any plausible explanation which is sufficient to make it a nullity.
- 2.5 As can be seen from the above date-wise details given above, there is nothing to indicate that the delay in taking up the de novo adjudication process or the order to be passed was in any way due to any delay caused by the appellant. The very first Personal Hearing was granted after about 13 years from the date of the Tribunal's order. This PH was attended by the appellant and has made written submissions as has been recorded in the de novo Order in Original.
- 2.6 The de novo Order in Original does not bring in any details as to what caused such a huge delay.
- 2.7 In view of the above submissions, it is prayed that the present appeal may be allowed on account of the delayed passing of the de novo adjudication order as has been held in the cited case law.

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2.8 Even the Commissioner (Appeals), who is required to pass the Order in Appeal within Six months, **has taken more than two years** to pass the order. The Appeal was filed on 06.09.2018 and the OIA was passed on 20.09.2020. From Para 17 of the OIA, it can be seen that the Personal Hearing was granted by him on 28.08.2020, that is nearly **after 2 years** and the same was attended by the Advocate Sri H K Padey on behalf of the appellant. There is nothing to show from the OIA that the appellant was in anyway responsible for this delay in passing the order. The OIA also does not bring in any material to show as to why the Commissioner (Appeals) could not complete the appeal proceedings within One year as specified under Section Section 35A (4A), wherein it is specified that *"where it is possible to do so, the Commissioner (Appeals) should hear and decide every appeal within a period of six months from the date on which it is filed."*

2.9 The ratio laid down in the cited case law is equally applicable for the orders passed by the Commissioner (Appeals) since even in this case the OIA has not been passed on a timely manner.

3. Therefore, it is prayed that even on this ground, the impugned OIA may be set aside and the present appeal may be allowed.

4. Without prejudice to the above submissions, the Ld Advocate submits that the appellant in his statement dated 23.11.2001 has clearly stated that he was running a gold shop by name Gopal Jewellers and gave the details of purchase of gold biscuits from three persons,

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namely Jaidul of Dhapra, Alam of Natkabari and Rafiqul of Kurashahat at the cost of Rs.52800. This is stated in the Para 4 of the de novo Order in Original. The fact that these persons are the residents of these areas is duly certified by the Gram Panchayat along with Election Card Number details [Page 58 to 64 of the Appeal book]. The licit possession of the gold was doubted on assumptions and presumptions without the Dept making any effort to ascertain the fact from these persons. Their statements were never recorded.

5. It is an admitted fact that the appellant also was carrying gold ornaments to the extent of 86.230 grams, which was seized and after prolonged litigation was released vide de novo OIO dated 13.07.2018, which was seized on 23.11.2001, that is after more than 17 years. The presence of ornaments would also show that the appellant are carrying on the business of jewellery making.
6. Admittedly, the gold bars and gold jewellery were seized near Ghughumari Bridge, in Cooch Behar District. This place cannot be said to be border area of Bangla Desh or any other foreign country. Therefore, the onus under Section 123 of the Customs Act 1962 has not been discharged by the Department.
7. The Ld Advocate points that even the first Commissioner (Appeals) while setting aside the order-in original dated 24.10.2003 has pointed out that Section 123 of the Act is not applicable in the given

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circumstances and the Department has failed to discharge the onus to prove smuggled nature of the gold.

8. It is a fact to reckon with that import of gold is not prohibited in India and after abolition of the Gold (Control) Act there is no restriction regarding keeping or dealing with in gold. The seizure is made by the Customs Officer without forming any reasonable belief that the gold was smuggled as the Appellant was not coming from any foreign country. He placed reliance on the case law reported in relied upon 2001(127) E.L.T. 415 (Tr. Bomb). . Since the seizure was made much inside the Indian Territory and not on any International border or port or airport, the onus to prove that it was smuggled lies with the Revenue, which it has failed to discharge.
9. The Ld. D.R. reiterated the findings of the lower authorities. He stated that in de novo adjudication the Adjudicating Authority has released the gold ornaments and also reduced the penalty from 1 Lakh to Rupees 75 Thousand. The marking on seized gold itself shows that it was of foreign origin and in the admitted position, chemical examination of sample was required to be undertaken in such cases.
10. Heard both sides and perused the appeal papers.
11. The appellant has made claim about the delayed passing of the Order in Original [de novo stage] by the Adjudicating authority and delayed passing of the Order in Appeal by the Commissioner (Appeals).

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12. It would be important to go through the relevant portions of the statute pertaining to the impugned order [OIA], which is extracted below :

Section 128A.

Procedure in appeal. -

(4A) The Commissioner (Appeals) shall, where it is possible to do so, hear and decide every appeal within a period of six months from the date on which it is filed.

The Customs Manual :

Chapter 31

Appeal, Review and Settlement of Cases

2. Appeal to Commissioner (Appeal):

2.4 The procedure for filing of appeal before Commissioner (Appeal) is that the appeal is required to be filed in a Form No. CA-1 [under Section 128 of the said Act] and Form CA-2 [under Section 129D(4) of the said Act], as prescribed under rule 3 and rule 4, respectively, of the Customs (Appeals) Rules, 1982. Once (Appeal) is filed, The Commissioner (Appeal) shall give opportunity to the appellant to be heard. Commissioner (Appeal), on being shown sufficient cause, can give adjournment from hearing upto 3 times. The Commissioner (Appeal), may allow any grounds of appeal not specified in the appeal filed, provided he is satisfied that omission thereof was not willful or unreasonable. The Commissioner (Appeal), wherever possible, would decide the appeal within 6 month from the date of filing of appeal, by issue an order in writing, and shall communicate such order to the appellant, the adjudicating authority, the jurisdictional Chief Commissioner and Commissioner. The relevant provisions are contained in Sections 128 and 128A of the said Act and the Customs (Appeals) Rules, 1982.

13. I find that both under the Section 128A (4A) of the Customs Act 1962 as well as under the Customs Manual, it is specified that within the

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time-frame given to the Commissioner (Appeals), he '*shall*' and '*would*' decide the appeal within 6 months. This is subject to the clause '*wherever possible*'. It is to be noted that the word '*may*' is not used in both the places. This shows that the Commissioner (Appeals) is required to follow the time-frame given to him for passing the OIA.

14. The time-frame given towards the Adjudication of Orders, was before the Principal Bench CESTAT New Delhi and Delhi High Court. The relevant portions of these orders are extracted below :

Kopertek Metals Pvt. Ltd. Vs Commissioner of CGST

**(West) - FINAL ORDER NO. 59511-59720/2024 dated
25.11.2024**

7. Sub-section (11) of section 11A, was thrice amended, and is reproduced, as it stood during the relevant period:

From 28.04.15 to 13.05.2015

11A(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10)
–

- (a) within six months from the date of notice where it is possible to do so, in respect of cases falling under sub-section (1);
- (b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (4) or sub-section (5).

From 14.05.2015 to 13.05.2016

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11A(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10)

–

- (a) within six months from the date of notice where it is possible to do so, in respect of cases falling under sub-section (1);
- (b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (4).

From 14.05.2016 upto 29.03.2018

11A(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10)

–

- (a) within six months from the date of notice where it is possible to do so, in respect of cases falling under sub-section (1);
- (b) within two years from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (4).

9. The show cause notice in this appeal was issued on 28.04.2015 by the Principal Additional Director General. It was adjudicated on 14.06.2022 by the Adjudicating Authority. As the notice was issued on 28.04.2015, it would be governed by the provisions of sub-section (11) of section 11A, as it stood during the period from 28.04.2015 to 13.05.2015. Sub-section (11) of section 11A, as it stood during this period, provided that the Central Excise Officer shall determine the amount of duty within six months from the date of notice, where it was possible to do so, in respect of cases falling under sub-section (1). However, in respect of cases falling under sub-section (4) or sub-section (5), the Central Excise Officer shall determine the amount of duty within one year from the date of notice, where it is possible to do so. The show

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cause notice in this appeal was issued under sub-section (4) of section 11A. Thus, the Central Excise Officer had to determine the amount of duty within one year from the date of notice, where it was possible to do so.

11. What is important to note is that the show cause notice that was issued on 28.04.2015 was required to be adjudicated latest by 27.04.2016;

12. It was incumbent upon the Adjudicating Authority to determine the amount of duty within one year from 28.04.2015, where it was possible to do so. The discussion and findings in the impugned order start from paragraph 117 but no reason has been given in the impugned order by the Adjudicating Authority for not being able to determine the duty within the stipulated period of one year from the date of issuance of the show cause notice.

20. It would be seen from the aforesaid judgment of the Delhi High Court in **Swatch Group** that the High Court made it amply clear that the incorporation of words like “where it is possible to do so” merely give a certain degree of flexibility to the department where there are circumstances or insurmountable exigencies which make it impracticable or not possible for the authorities to adjudicate, and in such cases the authorities can deviate from the time limit provided in the Statute. The High Court further held that when the legislature has specifically provided flexibility only to the extent that it was not practicable/possible to adjudicate within the stipulated time, the period can be extended only

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on satisfaction of such circumstances. The Delhi High Court specifically observed that the phrase “where it is possible to do so” would only mean wherever it is not practicable/possible to do a certain act, the period can be extended but the same cannot provide endless time limit to the department without any plausible justification.

25. It transpires from the aforesaid decisions that:

- (i) The phrases “ *as far as possible*” and “*as far as practicable*” are more or less inter-changeable along with the word “*feasible*”;
- (ii) Only when circumstances or insurmountable exigencies make it impracticable or not possible for the adjudication to take place within the stipulated period that the authorities may deviate from the time limit prescribed under the Statute;
- (iii) The mandate of the legislature that the show cause notice should be adjudicated within six months or one year, as the case may be, only provides flexibility for extension of the period when it is not practicable or possible to adjudicate it within the said time limit. The time limit period cannot be extended endlessly without any plausible justification;
- (iv) The indifference of the Adjudicating Authority to complete the adjudicating process within the statutory time limit cannot be condoned to the detriment of the assessee or detrimental to the interest of the

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exchequer;

(v) There is a definite purpose and intention of the legislature to prescribe such time limit. The legislature has clearly intended to avoid uncertainty, which otherwise can emerge; and

(vi) *Even if no time limit is prescribed for adjudication of a show cause notice, then too the adjudication has to be done within a reasonable period.* However, what would be a reasonable period would depend upon the nature of the Statute, rights and liabilities thereunder and other relevant factors.

27. The show cause notice, in the present case, was issued on 28.04.2015. It called upon the noticees to show cause within thirty days from the date of receipt of notice, failing which it was specifically provided that the matter would be adjudicated ex parte without any further communication. It is seen that the period one year from 28.04.2015 expired on 27.04.2016. Even if cause was not shown by the noticees to the said notice, the Adjudicating Authority should have proceeded to decide the matter ex parte, but what is seen is that the Adjudicating Authority even let this statutory time limit of one year pass without even adhering to the stipulation contained in the show cause notice that the matter would be decided ex parte even if no cause is shown within thirty days. It appears that it is only on 07.09.2016 i.e. almost after a period of five months after the expiry of one year that the first hearing was fixed by the Adjudicating Authority on 07.09.2016.

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42. The aforesaid discussion would lead to the inevitable conclusion that the impugned order would have to be set aside only for the reason that the adjudication was not completed within the time limit prescribed under sub-section (11) of section 11A of the Central Excise Act.

VOS Technologies India Pvt Ltd Vs The Principal Addl**Director General – Judgement dated 10.12.2024.**

85. The position which thus emerges from the aforesaid discussion and a review of the legal precedents is that the respondents are bound and obliged in law to endeavour to conclude adjudication with due expedition. Matters which have the potential of casting financial liabilities or penal consequences cannot be kept pending for years and decades together. A statute enabling an authority to conclude proceedings within a stipulated period of time “*where it is possible to do so*” cannot be countenanced as a license to keep matters unresolved for years. The flexibility which the statute confers is not liable to be construed as sanctioning lethargy or indolence. Ultimately it is incumbent upon the authority to establish that it was genuinely hindered and impeded in resolving the dispute with reasonable speed and dispatch. A statutory authority when faced with such a challenge would be obligated to prove that it was either impracticable to proceed or it was constricted by factors beyond its control which prevented it from moving with reasonable expedition. This principle would apply equally to cases falling either under the Customs Act, the 1994 Act or the CGST Act.

15. In the present case, it is seen at para 12 above that both Section 128A(4A) and the Customs Manual [Chapter 31], gives the time frame of six months to the Commissioner (Appeals) to pass the Order in Appeal.

16. It would also be important to compare the language used under the unamended Section 11A (11) of the Central Excise Act 1944, Section 28(9)

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of the Customs Act 1962 with the language used at Section 128A (4A) of the Customs Act 1962

Central Excise Act 1944 :

Section 11A(11) The Central Excise Officer *shall* determine the amount of duty of excise under sub-section (10) –

(a) within six months from the date of notice *where it is possible to do so*, in respect of cases falling under sub-section (1);

(b) within one year from the date of notice, *where it is possible to do so*, in respect of cases falling under sub-section (4) or sub-section (5).

Customs Act 1962 :

Section 28 (9) :The proper officer *shall* determine the amount of duty or interest under sub-section (8),—

(a) within six months from the date of notice, *where it is possible to do so* in respect of cases falling under clause (a) of sub- section (1);

(b) within one year from the date of notice, *where it is possible to do so* in respect of cases falling under sub-section (4).

Customs Act 1962

Section 128A(4A) The Commissioner (Appeals) *shall, where it is possible to do so*, hear and decide every appeal within a period of six months from the date on which it is filed.

The Customs Manual :

Chapter 31

Appeal, Review and Settlement of Cases

2. Appeal to Commissioner (Appeal):

2.4 The procedure for filing of appeal before Commissioner (Appeal) is that the appeal is required to be filed in a Form No. CA-1 [under Section 128 of the said Act] and Form CA-2 [under Section 129D(4) of the said Act], as prescribed under rule 3

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and rule 4, respectively, of the Customs (Appeals) Rules, 1982. Once (Appeal) is filed, The Commissioner (Appeal) shall give opportunity to the appellant to be heard. Commissioner (Appeal), on being shown sufficient cause, can give adjournment from hearing upto 3 times. The Commissioner (Appeal), may allow any grounds of appeal not specified in the appeal filed, provided he is satisfied that omission thereof was not willful or unreasonable. The Commissioner (Appeal), wherever possible, would decide the appeal within 6 month from the date of filing of appeal, by issue an order in writing, and shall communicate such order to the appellant, the adjudicating authority, the jurisdictional Chief Commissioner and Commissioner. The relevant provisions are contained in Sections 128 and 128A of the said Act and the Customs (Appeals) Rules, 1982.

17. I find that in all the three Section provisions, the words used are "Shall" and "Where it is possible to do so" and in the Manual "wherever possible". The importance and significance of these words have been extensively dealt by the Delhi High Court in the case of **Swatch India**. At the cost of repetition, it may be useful to go through the relevant portion, which is extracted below :

32. The unamended Section 28(9) of the Customs Act, specifically provides that the proper officer 'shall' determine the amount of duty within six months or within one year, as the case may be, from the date of notice. It only provides certain degree of inbuilt flexibility by incorporating the words 'where it is possible to do so'.

33. The phrases "as far as possible" and "as far as practicable" appear in other statutes as well came up for consideration before the Apex Court in C.N. Paramasivam and Another v. Sunrise Plaza: (2013) 9 SCC 460/[2013] 30 taxmann.com 320 (SC). It is observed that the words "possible" and "practicable" are more or less interchangeable along with the other words such as feasible, performable etc. The incorporation of such words gives certain degree of flexibility to the Department such as if some circumstances or insurmountable exigencies arise, which makes the recourse unpracticable or not possible, the authorities can deviate from what was required to be done in terms of the statute. When the challenge is laid to the act of the authorities deviating from the rule, the onus shifts on the authority to prove that it was not practicable or possible to follow the rule. The

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same is to be adjudicated on the facts and circumstances of each case."

18. In the **Kopertek Metals Pvt Ltd.**, decided by the Principal Bench – Delhi Tribunal, it has been held that non adjudication of the order, with no reason being given to the effect that the order could not be passed within specified time limit due to circumstance beyond control, would be fatal to the legality of the order. In **VOS judgement**, cited supra, the Delhi High Court has also held so and has noted that the delay is required to be viewed from the facts of the case. As per these decisions, when the reason for delay is not explained by way of plausible reasons in the Order in question, it fails to prove that "*it was not possible to pass the order*" within the time-frame.

19. In the present case, it has taken nearly Two years for the Commissioner (Appeals) to even take up the Personal Hearing proceedings on 28.08.2020 for the Appeal filed on 06.09.2018. The appellant has attended the same. Hence, there is no delay on their part. After this, the OIA was passed on 24.09.2020. No reason whatsoever has been given as to what necessitated the Commissioner (Appeals) to wait for nearly two years to grant the Personal Hearing and as to why the OIA could not be passed within the time frame of Six Months. I find that the OIA has been passed after 2 years as against the time-frame of Six months given under Section 128A(4A).

20. Based on the comparison of the statutory provisions discussed at **Para 12 and the decisions of the Swatch India – Delhi High Court, Kopertak Metals – CESTAT Delhi, VOS – Delhi High Court**, and interpretation of the directions contained in the Customs Manual, I find that the ratio laid down in the discussed decisions is squarely applicable even in respect of the OIAs to be passed by the Commissioner (Appeals).

21. Therefore, relying the statutory provisions applicable for the OIAs to be passed by the Commissioner (Appeals), applying the ratio of the cited

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case laws of **Kopertek Metals Pvt Ltd and VOS judgement**, I hold that the OIA passed by the Commissioner (Appeals) is required to be set aside

for non-adherence of the time frame under Section 128A (4A). I do so and allow the appeal on this ground itself.

22. The appellant has also argued to the effect that the de novo Adjudication Order in Original has been passed after about 14 years from the date of the Tribunal's order dated 29.10.2004. They have submitted that the ratio of the above case laws would be applicable for this order. I find that the Show Cause Notice has been issued and proceedings were taken up in terms of Section 110,111 and 119 of the Customs Act 1962. It is not a case of demand of Customs Duty in terms of Section 28, wherein the Adjudicating authority has been given the time-frame to complete the proceedings. In respect of Section 110,111 and 119 demands, there is no such provision. However, it is seen from the extract of **Kopertek Metals Pvt Ltd.**, order that it has been held that when no time-frame is given, still the proceedings cannot be kept pending for any number of years, without adducing proper reason to do so. In this case it is on record that the de novo proceedings were taken up only in 2017 for the Final Order passed by the Tribunal in 2004. Therefore, the case law of Kopertek could still be applied. However, since I have already decided the issue on account of delayed passing of the Order in Appeal, I do not consider it necessary to go into the delay in passing the de novo Order in Original.

23. Since extensive arguments have been made on merits of the case, I have also considered the same. I find that ownership of the gold was being claimed by the Appellant right from the beginning when the first statement was recorded. He also named the persons from whom he had procured the gold. The very fact that these persons are residents of the area gets proven from the Election Records and Gram Panchayat Certificates brought in by the appellant. I do not see that any serious efforts have been made to trace these persons and to record their statements. Admittedly the seizure was made inside Indian Territory. The appellant has also stated that he is

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carrying on business under the name of Gopal Jewellers. If proper effort was made to ascertain the veracity of facts stated by the appellant, the Revenue's case would have been in much better footing. Therefore, I find that the initial onus to prove its smuggled nature cast upon the Revenue, has not been discharged by the Revenue as also noted by the first Commissioner (Appeals) while he remanded the matter to the Adjudicating Authority.

24. One glaring visible error on the part of the Revenue is seizure of gold ornaments. The quantity seized is to the tune of 86.230 grams. From the Jewelry, it cannot be ascertained that the same is of foreign origin or not. Admittedly no chemical examination was undertaken either for the gold bars or for the ornaments. But still the appellant was made to run from pillar to post for the next more than 13 years, having to approach CESTAT and having to wait for the adjudication of the de novo proceedings for release of the gold ornaments. The very fact that the Dept did not file any appeal on the gold jewelry released to the appellant shows that it is an admitted error on the part of the Revenue.

25. Another factor to be considered is the fact that the items have been seized in Cooch Behar district which is far away from the bordering area of Bangladesh. Therefore, in spite of the foreign markings in the gold bars, without verifying the claim of the appellant about their purchase from three persons and making a sweeping statement that the licit purchase claim by the appellant is an 'after thought', does not carry the case of the Revenue any further, when the appellant has made these claims on the date of seizure itself.

26. In view of the foregoing observations, I find that the impugned Order is not sustainable even on merits. Accordingly, I set aside the impugned order and allow the appeal.

27. The Appeal stands allowed both on account of delayed issuing of Order in Appeal by the Commissioner (Appeals) as well as on account of merits.

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28. The appellant would be eligible for consequential relief, if any, as per law.

(Pronounced in the open court on 28.02.2025)

**Sd/-
(R. Muralidhar)
Member (Judicial)**

Pooja