

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

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 52026 OF 2024

(Arising out of Order-in-Original No. F. No. CUS/APR/ASS/794/2024-GR.3/4/6-O/o Pr
COMMR-CUS-ACC(I)-DELHI dated 01.05.2024 passed by the Commissioner of Customs,
Air Cargo Complex (Import), New Customs House Near IGI Airport, New Delhi)

M/s. Shree Gold Art Pvt. Ltd.

4708, Gali No. 48, Reghar Pura,
Karol Bagh, New Delhi - 110005

.....Appellant

VERSUS

Commissioner of Customs

Air Cargo Complex, New Delhi

.....Respondent

APPEARANCE:

Ms. Nisha Bineesh, Advocate for the Appellant

Shri Rajesh Singh, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 13.02.2025

DATE OF DECISION: 17.03.2025

FINAL ORDER NO. 50401/2025

JUSTICE DILIP GUPTA:

M/s. Shree Gold Art Pvt. Ltd.¹ has sought quashing of the order dated 01.05.2024 passed by the Commissioner of Customs, Air Cargo Complex (Import), New Delhi² by which the request of the appellant for provisional release of 53kgs of gold seized by the Directorate of Revenue Intelligence³, Noida Regional Unit through a seizure memo dated 22.12.2020 has been rejected.

2. The appellant is engaged in manufacturing, trading and export of gold jewellery. It had been importing gold under Advance Authorization to

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1. the appellant
 2. the Commissioner
 3. DRI

manufacture gold jewellery and export it. In this connection, an Advance Authorization License dated 19.02.2019 was issued by the Directorate General of Foreign Trade⁴ to the appellant for import of gold bars in terms of Foreign Trade Policy 2015-2020 and to export gold jewellery after undertaking the process of manufacturing. In pursuance of the said Advance Authorization, the appellant imported 53kgs of duty free gold bars through two Bills of Entry, both dated 13.08.2020. One Bill of Entry No. 8461348 was for import of 31kgs of gold and the other Bill of Entry No. 8461516 was for import of 22kgs of gold. The export obligation period in respect of the gold bars imported under the aforesaid Advance Authorization was 120 days from the date of clearance of the import consignment by the customs authority. According to the appellant, in view of the COVID pandemic, extension in deadlines were given as a result of which the aforesaid period of 120 days stood extended till 31.12.2021 without composition fee. The export obligation period could, however, be extended further on payment of composition fee, as provided for under paragraph 4.42(d) of the Handbook of Procedure of Foreign Trade Policy.

3. It transpires from the records that the Officers of DRI conducted a search at the premises of the appellant on 13.08.2020 on the allegation of diversion of duty free gold imported by the appellant. The search continued till 14.08.2020 at the declared premises of the appellant as also other premises belonging to the Director of the appellant as well as the premises of other related person.

4. According to the appellant, 53kgs of gold that was imported by the appellant through the two Bills of Entry dated 13.08.2020 were cleared by the customs in the late hours of 13.08.2020 and thereafter the same were

4. **DGFT**

kept by the Principal Officer of the appellant after clearance and could not be brought inside the declared premises because of the search that was going on. After the search was over, the said gold bars were brought into the declared premises.

5. The appellant contends that the Director of the appellant appeared in the office of the DRI on being called on 17.08.2020 and on the basis of the disclosure made by him that said 53kg gold was kept in a chest 40/4914, Regarpura, Karol Bagh, New Delhi, search proceedings were conducted by DRI Officers of the said premises on 17.08.2020 and 53kgs of gold was found in the chest.

6. The said 53kgs of gold imported by the appellant through the two Bills of Entry dated 13.08.2020 were placed under seizure by the Officers of DRI through a seizure memo dated 22.12.2020 on the allegation that the same was kept outside the declared premises on 13.08.2020 with intention of diversion. Possession of 53kg gold was taken from the appellant by the DRI Officers on 28.12.2020 under a panchanama and was deposited in the customs godown.

7. The appellant filed Writ Petition No. 1166 of 2021 before the Delhi High Court seeking a direction for release of the seized gold and for re-validation/extension of the Advance Authorization issued to the appellant.

8. During the pendency of the Writ Petition, a show cause notice dated 11.08.2021 was issued to the appellant proposing confiscation of the said 53kgs of gold seized through seizure memo dated 22.12.2020 under section 111(o) of the Customs Act, 1962⁵.

9. The Writ Petition filed by the appellant came to be decided by the Delhi High Court on 22.12.2023. The Delhi High Court prima facie found

5. the Customs Act

merit in the submission advanced on behalf of the appellant that since 53kgs of gold bars were found at the declared premises they could not have been seized and the bars could not be brought inside the premises on 13.08.2020 since a search was being conducted. The Delhi High Court also noticed that the gold bars were brought immediately to the premises after the search was over. The Delhi High Court, however, gave liberty to the appellant to move an application for provisional release of gold under section 110(A) of the Customs Act. The relevant portions of the judgment of the Delhi High Court are reproduced below:

"33. **There is prima facie some merit in the arguments advanced by the learned counsel for the petitioner that 53 kg gold bars, at the time of detention, were found in the declared premises and, thus, could not have been seized. The said gold was cleared from customs in late hours of 13.08.2020. The said gold was safely kept by the principal officers of the petitioner company. The gold could not be brought inside the declared premises because a search was being conducted during the relevant time on 13.08.2020/14.08.2020. However, it was brought inside immediately thereafter.** At this stage, it is not relevant to consider whether the petitioner would ultimately succeed. The arguments raised require adjudication of facts. *****

51. The Gold, in relation to which the petitioner is seeking re-validation/extension of the period of export is lying seized with the respondents pending adjudication of the Show Cause Notice dated 11.08.2021. **The petitioner would be at liberty to apply for any such extension/revalidation of the Advance Authorisation licence after the adjudication of the Show Cause Notice dated 11.08.2021. As and when any such application is filed, the DGFT shall consider the same in**

accordance with law, keeping in mind the peculiar facts of the case, as the petitioner is contesting Respondent no. 2's power to seize the gold and has been effectively prevented from exporting the same. The DGFT shall also consider the petitioner's request for waiver or relaxation of the composition fee.

52. The petitioner is also at liberty to file an application for provisional release of gold under Section 110(A) of the Customs Act.

53. In view of the above, this Court does not consider it apposite to pass any direction for quashing of the Seizure Order dated 28.12.2020, whereby the gold was seized. The issue whether the gold which had been cleared by the Proper Officer, and imported under the Advance Authorisation Scheme, is liable for confiscation under Section 111 of the Customs Act; and whether the gold which at the time of detention was admittedly found at the declared premises could have been seized exercising powers under Section 110 of the Customs Act, in our opinion, should be dealt by the Adjudicating Authority at the first instance. The petitioner is also at liberty to raise all other grounds, as may be advised, before the Adjudicating Authority.

54. The writ petition, along with pending application(s), is disposed of in the aforesaid terms."

(emphasis supplied)

10. Pursuant to the aforesaid judgment of the Delhi High Court, the appellant filed an application dated 22.01.2024 before the Principal Commissioner of Customs for provisional release of 53kgs of gold. This application was followed by an application dated 26.02.2024. As no order was passed, the appellant filed Writ Petition No. 4862 of 2024 before the Delhi High Court with a prayer that the respondents may be directed to provisionally release 53kg gold seized on 22.12.2020. This Writ Petition was disposed on 03.04.2024, in view of the statement made by the

learned counsel appearing for the department that the question of provisional release shall be taken by the competent authority within a period of four weeks, by directing the appropriate authority to decide the request for provisional release of the seized gold in accordance with law within a maximum period of four weeks.

11. An order dated 01.05.2024 was then passed by the Commissioner rejecting the application filed by the appellant for provisional release of gold. The Commissioner placed much emphasis on the fact that 53kgs of gold was not found during the search of the premises on 13.08.2020 and 14.08.2020 and concluded that this was done to save duty on import of gold. The Commissioner also placed emphasis on the fact that during the search of the premises fully mechanized facility for manufacture of jewellery was not found in the premises even though under the Advance Authorization Scheme, fully mechanized facility was necessary. The relevant portions of the order passed by the Commissioner are reproduced below:

"2. I have gone through the facts of the case-

(i) DRI, Noida Regional Unit (DRI-NRU) had carried out investigation into the illegal diversion of gold imports under Advance authorization Scheme by three firms including M/s. Shree Gold art Pvt. Ltd. (SGAPL). These firms were running their operations from two premises namely 40/4910 & 40/4914, Regharpura Karol Bagh, New Delhi. Shri Manindra Samanta and his wife are directors in SGAPL.

(ii) **During search conducted on 13.08.2020, Shri Manindra Samanta submitted the stock position of 344.121 kg gold imported under Advance authorization by SGAPL as Work In Progress (WIP) & issued to various persons as per "issue vouchers". 53 kgs gold was not found during search of the above said premises on 13.08.2020 and again on 14.08.2020. Even the search of premises 59/25, new Rohtak Road on 14.08.2020 did not yield any gold.**

(iii) The issue vouchers were found to be issued in the name of relatives of Shri Manindra Samanta or

employees such as sweepers or caretakers of the premises. This has been admitted by Shri Manindra Samanta and Shri Alok Pradhan in their statement on 18.08.2020 and 22.10.2020 respectively. The address shown in these vouchers were also the same as of the firm as mentioned above where on conducting search on 13.08.2020 and 14.08.2020, no gold was found.

(iv) Shri Manindra Samanta has admitted in his statement that he used to import gold on behalf of Sheikh Samsuddin Samsi of Dubai for handing over to the persons in India nominated by Mr Samsi and export obligation fulfilment was done as per arrangement with Shri Samsi besides getting remuneration of Rs 20 per gram. Out of 420.16 kg of gold imported by SGAPL, 367.16 kg was found short after deducting 53 kg of gold found on 17.08.2020.

(v) Job workers were also not found at the declared premises.

(vi) All the above shows an elaborate scheme of diversion of gold imported under Advance Authorization without payment of duty and was not used for fulfillment of export obligation as mandated under Advance Authorization Scheme.

(vii) Gold import is restricted as per import policy of DGFT and can only be imported by specified nominated agencies or the banks nominated by RBI. However, it is allowed under Advance Authorization with actual user condition for export obligation fulfillment.

(viii) As mentioned above, SGAPL appears to have misused Advance Authorization Scheme & even 53 kg of gold imported by them was not found at the declared premises on 13.08.2020 & 14.08.2020. All this appears to have been done to bypass the import policy for import of gold as mandated by DGFT and for saving the duty on import of gold.

(ix) From the copies of the documents regarding companies received from the office of Additional Director General of Foreign Trade, CLA, New Delhi, it was found out that these companies had applied for import of Gold under Advance Authorisation Scheme for manufacture of Gold Jewellery /articles by a fully mechanized process, gold medallions and coins. Whereas during the search of premises, DRI Noida did not find any fully mechanized facility for manufacture of jewellery/articles nor any facility for manufacture of gold medallion and coins which points to the fact that Advance Authorisations were obtained on the basis of false declarations.

3. In view of the above facts, I hereby reject the request of the importer for provisional release of 53 kgs of gold seized by DRI, Noida Regional Unit vide seizure Memo dated 22.12.2020"

(emphasis supplied)

12. It is this order dated 01.05.2024 passed by the Commissioner that has been assailed in this appeal.

13. Learned counsel for the appellant submitted that the Commissioner committed an error in rejecting the application filed by the appellant for provisional release of the gold. Learned counsel submitted that 53kgs of gold imported through two Bills of Entry, both dated 13.08.2020, were cleared in the late hours of 13.08.2020 and could not be taken to the premises on 13.08.2020 because of the search that was being conducted by the Officers of DRI and this search continued upto 14.08.2020. Learned counsel also pointed out that when search of the premises was carried out by the Officers of DRI on 17.08.2020, 53kgs of gold was found in the chest and this fact was also noted by the Delhi High Court in the judgment dated 22.12.2023 passed in the Writ Petition No. 1166 of 2021 filed by the appellant. Learned counsel also pointed out that during the search it was noticed that there was a machine in the premises but the Commissioner observed that the Officers did not find any fully mechanized facility for manufacturing of jewellery. Learned counsel submitted that under the Advance Authorization the appellant had to manufacture jewellery from the gold within a period of 120 days from the date of clearance of the import but as the gold was seized within three days of the import, the appellant was prevented from manufacturing jewellery from the gold that was imported. Learned counsel also pointed out that only on the basis of

conjectures and surmises a finding has been recorded that the appellant intended to bypass the policy for saving duty on the import of gold. Learned counsel also pointed out that the Commissioner denied provisional release by treating the goods as prohibited goods, but the show cause notice did not contain such a proposition.

14. Shri Rajesh Singh, learned authorized representative appearing for the department, however, supported the impugned order. Learned authorized representative submitted that the show cause notice issued to the appellant is still pending adjudication and, therefore, provisional release should not be granted at this stage. Learned authorized representative also submitted that the Commissioner was justified in observing that the intention of the appellant was to violate the conditions of Advance Authorization. Learned authorized representative also submitted that in the absence of any extension/renewal of the Advance Authorization, no relief can be granted to the appellant.

15. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

16. The records indicate that the appellant was granted an Advance Authorization dated 19.02.2019 under which any jewellery/articles manufactured by a fully mechanized process and unstudded for 53102.940gms could be exported under the Advance Authorization. The appellant imported 53kgs of gold through two Bills of Entry, both dated 13.08.2020. The said 53kgs of gold imported by the appellant were cleared by the customs in the late hours of 13.08.2020. The export obligation period in respect of the gold bars imported by the appellant was 120 days from the date of clearance of the import consignment.

17. The Officers of DRI had conducted a search at the premises of the appellant on 13.08.2020 on the allegation of diversion of duty free gold imported by the appellant and the search continued till 14.08.2020. The panchanama dated 13/14.08.2020 does not record the presence of 53kgs of gold. According to the appellant, the said 53kgs of gold that were imported through the two Bills of Entry dated 13.08.2020 could not be brought to the premises because of the search that was going on and it is only after the search was over that the said gold bars were brought into the declared premises. The appellant, therefore, contends that when the search was again conducted on 17.08.2020, 53kgs of gold were found in a chest. This 53kgs of gold imported by the appellant were placed under seizure by the Officers of DRI through a seizure memo dated 22.12.2020 on the allegation that the same was kept outside the declared premises on 13.08.2020 with intention to divert the same.

18. The Commissioner, by order dated 01.05.2024, rejected the application filed by the appellant for provisional release of gold. The Commissioner observed that since 53kgs of gold was not found in the premises on 13.08.2020 and 14.08.2020 when the search was carried out, it appeared that the appellant intended to bypass the import policy and save duty on the import of gold. The Commissioner also noted that under the Advanced Authorization Scheme manufacture of gold jewellery/articles has to be undertaken by a fully mechanized process, but during the search of premises fully mechanized facility for manufacture of jewellery/article was not found by the Officers of DRI.

19. The reason why gold that was imported and cleared in the late hours on 13.08.2020 could not be brought to the declared premises was explained by the appellant. The Writ Petition filed by the appellant was

decided by the Delhi High Court on 22.12.2023. The Delhi High Court found prima facie merit in the contention advanced on behalf of the appellant that 53kgs of gold bars at the time of detention were found in the declared premises and, thus, could not have been seized. The Delhi High Court also noted that the gold was cleared from customs in the late hours of 13.08.2020 and, therefore, could not be brought inside the declared premises because of the search being conducted on 13.08.2020 and 14.08.2020 and the gold was subsequently brought inside immediately thereafter. A conclusion, therefore, could not have been drawn by the Commissioner that the intention of the appellant was to divert the gold since it was not found in the premises when the search was carried out on 13.08.2020 and 14.08.2020.

20. Under the Advance Authorization, the export obligation was required to be fulfilled within 120 days from the date of clearance. The gold was detained by the authorities on 17.08.2020. It is for this reason that the appellant contended that the obligation could not be fulfilled and it had sought extension of the date for fulfillment of the export obligation. In regard to the prayer made by the appellant for extension of the Advance Authorization License, the Delhi High Court observed that the appellant would be at liberty to apply for extension/re-validation after the adjudication of the show cause notice dated 11.08.2021.

21. The contention of the learned authorized representative appearing for the department that in the absence of the any extension/renewal of the Advance Authorization, the seized goods cannot be provisionally released, cannot be accepted. The appellant had filed a Writ Petition in the Delhi High Court not only for release of the seized gold but also for extension of the Advance Authorization and the Delhi High Court, in its

judgment dated 22.12.2023, made it clear that the appellant would be at liberty to apply for extension/re-validation of the Advance Authorization License after the show cause notice dated 11.08.2021 was adjudicated. The Delhi High Court also made it clear that as and when such application is filed, the Directorate General of Foreign Trade shall consider the same in accordance with law keeping in mind the peculiar facts of the case as the appellant was prevented from exporting the jewellery because the gold had been seized.

22. The finding recorded by the Commissioner that the premises did not have a fully mechanized machine for manufacture of jewellery is not based on any evidence. The panchanama dated 13/14.08.2020 clearly mentions that two machines for manufacture of jewellery were available on the fifth floor. The Commissioner assumed that these two machines were not fully mechanized. It was imperative for the Commissioner to have obtained a report about the two machines found on the fifth floor before recording a finding whether they were mechanized or not.

23. In this view of the matter, the impugned order dated 01.05.2024 passed by the Commissioner cannot not be sustained and is set aside. The appeal is, accordingly, allowed. The application filed by the appellant for provisional release of the gold that was seized deserves to be allowed and is allowed.

(Order Pronounced on **17.03.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)