

OD-12

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CUSTA/24/2025
IA NO: GA/1/2025, GA/2/2025
COMMISSIONER OF CUSTOMS (AIRPORT & ACC), KOLKATA
VS
SHRI DILIP KUMAR PAL

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
A N D
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 2nd July, 2025

Mr. Bhaskar Prasad Banerjee, Adv.
...for appellant
Mr. Avra Mazumder, Adv.(VC)
...for respondent.

The Court : This appeal has been filed by the revenue under Section 130 of the Customs Act, 1962 (the Act) challenging the Final Order No. 77261 of 2024, dated 24.10.2024, passed by the Customs Excise And Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (Tribunal).

The revenue has raised the following substantial questions of law for consideration :

- i) Whether the Learned Tribunal erred in law and acted without jurisdiction in deciding the Final Order No. 77261 of 2024, dated 24.10.2024 and not deciding the miscellaneous application on merits vide Miscellaneous

Order No. 75325 of 2025, dated 22.04.2025 taken out by the appellant, when as per the proviso to Section 129A(1) of the Customs Act, 1962, no appeal shall lie to the Learned Tribunal in respect of any order passed by the Commissioner (Appeals) relating to any goods imported or exported as baggage, and that the Learned Tribunal did not have jurisdiction to decide any appeal in respect of any such order passed by the Commissioner (Appeals) since the instant case deals with smuggling of gold by a passenger secreted inside his body and falls under the purview of baggage as per Rule 3(b) of the Baggage Rules, 2016 ?

- ii) Whether the Learned Tribunal erred in not appreciating that the Appellant sought to rectify the mistake apparent from record in the Tribunal order dated 24.10.2024 wherein the Tribunal in clear contravention of the law had returned a finding that the gold smuggled by the Respondent, was not a prohibited item and that the said gold can be released on payment of duty, redemption, fine and penalty, when the import of Gold is regulated and controlled in terms of Section 5 of the Foreign Exchange Management Act, 1999 read with the Foreign Exchange Management (Current Account Transaction) Rules, 2000, and that the importation of Gold in any form is regulated by the RBI and regulated as per paragraph C.11 of the Master Direction on Import of Goods and Services issued by the Reserve Bank of India under the FEMA read with Section 9A of the Foreign Trade (Development and Regulation) Act, 1992 allows the government to impose quantitative restrictions on

imports, and Section 11(2) (f) read with Section 11(3) of the Customs Act, 1962 allows the government to impose restrictions inter alia on the import of gold ?

- iii) Whether the Learned Tribunal erred in law and fact and erred in not appreciating that the Respondent did not declare the gold as per the Customs Baggage Declaration Regulations, 2013 read with the Baggage Rules, 2016, and also did not fulfil the basic eligibility criteria for the import of gold as a passenger in terms of Notification No. 50/2017-Customs dated 30.06.2017 specifically Sl. No. 356 read with Condition No. 41 therein and the said smuggled gold was prohibited goods in terms of Section 2(33) of the Customs Act, 1962 and such goods cannot be released by the Customs department ?
- iv) Whether the Learned Tribunal acted without jurisdiction and against the provisions of law in entertaining the appeal of the Respondent and passing the order dated 24.10.2024 on the ground of inherent lack of jurisdiction as per the proviso to Section 129A(1) of the Customs Act, 1962 and also on merits by which the appeal of the Respondent has been allowed by the Learned Tribunal ?
- v) Whether the Learned Tribunal erred in law and fact that Appellant vide the rectification application only sought to rectify the patent error of jurisdiction apparent on record from the Learned Tribunal's order dated 24.10.2024 questioning the jurisdiction of the Learned Tribunal in deciding the appeal when the statute specifically bars the Learned

Tribunal from entertaining such appeal relating to baggage as per Rule 3(b) of the Baggage Rules, 2016?

- vi) Whether the Learned Tribunal erred in law and acted without jurisdiction in not following the earlier decisions of the Learned Tribunal in the cases of Customs Appeal No. 76103 of 2023 culminating in Final Order No. 75052 of 2025 dated 14.01.2025 and Customs Appeal No. 75229 of 2021 culminating in Final Order No. 77173 of 2024 dated 22.10.2024 and other judgments wherein the Hon'ble Supreme Court of India in the case of Om Prakash Bhatia v. Commissioner of Customs reported at (2003) 6 SCC 161, has held that if the conditions prescribed for import or export of goods are not complied with, then such goods would be considered to be prohibited goods and in the case of Sheikh Mohd. Omer v. Collector of Customs, Calcutta reported at (1970) 2 SCC 728, has clearly laid down that any type of prohibition, which may be complete or partial, and even a restriction on import, is to an extent, a prohibition and in this instant case, restriction imposed on import of gold through passenger baggage is a prohibition and thus the seized goods are prohibited goods?
- vii) Whether the impugned orders dated 24.10.2024 and 22.04.2025 are non-est and not maintainable in the eyes of law as the order dated 24.10.2024 has merged with the order dated 22.04.2025, and the order dated 24.10.2024 was passed without jurisdiction by the Tribunal and the order dated 22.04.2025 in the rectification application did not appreciate that the order dated 24.10.2024 was completely without

jurisdiction as it contravened the proviso to Section 129A(1) of the Customs Act, 1962 read with Rule 3(b) of the Baggage Rules, 2016?

There is a delay of 31 days in filing the appeal. We have perused the affidavit filed in support of the condone delay application and we find that sufficient cause has been shown by the Department for not preferring the appeal within the period of limitation. Therefore, the delay in filing the appeal is condoned. The application, GA/1/2025, is allowed.

The learned Tribunal by the impugned order has allowed the respondent's appeal and directed the release of gold which was confiscated from the respondent who had carried the gold by concealing the same in the shoes and shocks and by imposing a redemption fine of Rs. 2 Lakhs and also reducing the penalty which was imposed on the respondent. Further, the learned Tribunal has ordered that if gold has been sold, the sale proceeds of the gold shall be refunded to the respondent after a deduction of redemption fine and penalty and in such case no duty is payable by the appellant.

The Department filed an application under Section 129B(2) of the Act for rectification of the mistake by contending that the appeal was not maintainable before the Tribunal and in this regard, referred to certain notifications and also the decisions of the coordinate Bench of the Tribunal which had accepted such submission and refused to entertain an appeal. This miscellaneous application has been dismissed by the learned Tribunal. Thus, the question which to be decided would be whether the Tribunal could have dismissed the

miscellaneous application filed under Section 129B(2) of the Act as the Department has raised issue regarding the jurisdiction of the Tribunal. Apart from that, other question to be decided is whether the gold which was found concealed in the personal effects of the respondent would be an act of smuggling as defined in Section 2(39) of the Act which defines smuggling in relation to any goods to mean an act of omission which would render such goods liable to confiscation under Section 111 or under Section 113 of the Act.

Therefore, we find substantial questions of law are required to be decided in this appeal. Accordingly, the appeal is admitted on the above substantial questions of law.

Till the appeal is heard and decided, the order dated 24th October, 2024 passed by the Tribunal shall remain stayed.

The stay application IA No: GA/2/2025 stands disposed of.

Though the stay application is formally disposed of, since all the necessary documents are available in the stay application, the same be retained with the records and be treated as an informal paper book and filing of informal paper book is dispensed with.

(T.S. SIVAGNANAM, C.J.)

(CHAITALI CHATTERJEE (DAS), J.)