



2025:DHC:1254



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 11.02.2025*+ **W.P.(C) 11604/2019 & CM APPL. 29667/2023****ABDUL SATTAR**

....Petitioner

Through: None.

versus

COMMISSIONER OF CUSTOMS

....Respondent

Through: Mr. Akshay Amritanshu, SSC with
Ms. Drishti Saraf & Ms. Pragya
Upadhyay, Advocates.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The grievance of the Petitioner as articulated in his prayers is set out below:

“a) a writ of mandamus and/or any other appropriate writ, order and/or direction in the nature thereof may kindly be issued thereby directing the respondent to comply with its own order dated 17.05.2018, in terms of which the petitioner has been allowed to get his gold weighing 755.50 grams released and, further, directing an independent agency to investigate/ enquire into the case for the illegalities committed in the matter; and, further; and/or

b) any other order as may be deemed fit and proper under the facts and circumstances of the case may also be passed in the matter.”

2. The Petitioner was apprehended at the international airport on 09.06.2013 by the Respondent and as a result of the search of his baggage, 755.50 grams of gold [in the form of 109 stapler pins] was recovered which were coated with silver grey colour and concealed in an unusual manner. These stapler pins were found to weigh 755.50 gms. of gold and were confiscated by the Respondent under the provisions of Section 110 of the Customs Act, 1962.



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3. As stated above, it is the case of the Respondent that the Petitioner was intercepted by the Customs Officer near the exit gate of the arrival hall and after the search of his baggage at the green channel, 755.50 grams of gold was recovered from him.

4. Pursuant to an adjudication, a penalty was imposed on the Petitioner. The Petitioner challenged the adjudication and by an order dated 10.04.2018, the Petitioner was allowed to get the confiscated gold redeemed within 30 days upon payment of the redemption fine and the penalty of Rs.4,00,000/-.

5. It is the case of the Petitioner that the Petitioner deposited the amount of the redemption fine in the sum of Rs.18,58,130/- with the Respondent and penalty including the customs duty at the rate of 36.05% on the seized gold. However, the gold was not released to the Petitioner, which has led to the filing of the present Petition.

6. It has further been stated by the Respondent that since the seized gold was not traceable, an inquiry was initiated in this behalf and that a complaint was filed with the CBI. Subsequently, by an order dated 24.02.2023, a Coordinate bench of this Court directed the Respondent to file a comprehensive status report on the action taken against the errant officers, which was filed by the Respondent on 17.03.2023.

7. On 21.03.2023, a Coordinate Bench of this Court directed that the Petitioner is entitled for return of the gold or its equivalent value as on the date of the return of the said amount.



8. Thereafter, in compliance with the directions of this Court, a payment in the sum of Rs.14,63,618/- was made to the Petitioner by the Respondent. This payment is not disputed by the Petitioner. However, the Petitioner states is that he is entitled to an additional sum of Rs.3,14,255/- from the Respondent.

9. Learned Counsel for the Petitioner seeks to rely upon a calculation chart which was filed by him on 21.09.2024 in this behalf, which is set out below:

S.No.	Particulars	
A.	Value of the gold	Rs.39,52,889/-
B.	Customs duty charged by the Customs Department @4% as per Refund order enclosed.	Rs.17,39,271/-
C.	As per law Customs duty to be Charged @ 36.05% i.e. on the date of Arrival of the pax evident from the Baggage receipt 071 dated 04.05.2018	Rs.14,25,016/-
D.	Excess customs duty charged by the Customs refund section	Rs.3,14,255/-

9.1 Learned Counsel for the Petitioner also submits that the value of the customs duty should be as of the date of seizure and not as of the date of payment.

10. Learned Counsel for the Respondent on the other hand submits that the prayers in the Petition already stand satisfied pursuant to the refund of the payment made by the Respondent on 27.06.2023. He further submits that by an order dated 21.03.2023, this Court had directed that the Petitioner is entitled for return of the value of the gold as on the date of return of the



amount paid in lieu thereof. It is contended that the valuation has been conducted pursuant to the passing of the order of refund dated 27.06.2023 passed by the Assistant Commission (Refund) of the Respondent.

10.1 In addition, learned Counsel for the Respondent contends that the gold was confiscated in 2013, however the Petitioner has received in 2023 an enhanced amount based on the value of the gold in 2023 given the directions passed by this Court. It is further submitted that the value of the gold from the date of seizure has been increased to almost two and a half times. He submits that the rate of gold was approximately Rs.260 per gram in 2013 while in 2023, it was Rs. 630 per gram – 2.5 times more.

10.2 Learned Counsel for the Respondent also seeks to rely upon an Instruction No.22/2022-Customs dated 06.09.2022 [hereinafter referred to as the “Instructions”] in this behalf to submit that the calculation has been done in accordance with these Instructions. Learned Counsel for the Respondent further submits that what the Petitioner in fact is asking is that the value of the gold be calculated on a particular date and the value of customs duty be calculated on another date, which is not permissible in law.

10.3 Learned Counsel for the Respondent also seeks to rely upon a judgment passed by the Division Bench of this Court in *Mohammad Zaid Salim v. Commissioner of Customs (Airport and General)*¹ wherein, after referring the aforesaid Instructions, the Court has given an observation that the Instructions lay down a fair and logical premise of the valuation of the gold article based on the tariff value of the gold as on the date of transfer of

¹ (2024) 133 GSTR 529



the gold.

11. It is apposite to extract Instruction No.22/2022-Customs, more specifically paragraph 3.1.1, which is set out below:

“3. The Board has examined the matter in consultation with RBI and SPMCIL. Accordingly, the following additional instructions are issued for disposal of gold in terms of Instruction No.27/2021-Customs dated 03.12.2021.

3.1. Determination of amount of sale proceeds of gold while refunding the amount in lieu of gold already disposed

*3.1.1. Henceforth, at the time of seizure, it may be ensured by the seizing Commissionerate/agency, that the seizure report has the details of purity of gold in terms of carat. **Further, at the time of handing over of gold to SPMCIL in terms of Instruction No.27/2021 dated 03.12.2021, the tariff value and the average market price per 10gm (based on the closing market price reported in three national economic dailies), shall be entered in the stock register (refer to Para 3.4.1 & Form 5 of Chapter 3 of Disposal Manual, 2019).***

3.1.2. Whenever seized gold has to be returned on account of any order from a judicial forum and the gold has already been disposed of, the amount to be refunded in lieu of such gold shall be calculated as given below:

i. If the seizure is made in the Customs area, calculation shall be based on the tariff value of gold on the date of transfer of such seized/confiscated gold to SPMCIL; and

ii. If the seizure is made at any place other than Customs area, calculation shall be based on the average market price of gold on the date of transfer of such seized/confiscated gold to SPMCIL.”

[Emphasis Supplied]

11.1 Clause 3.1.1 of the Instructions provide for the determination of the value of the gold at the time of seizure by recording the average market price per 10 gms. based on the price reported in three National Economic Dailies. Clause 3.1.2(i) of the Instructions states that where the seizure is



made in the customs area, the calculations shall be based on the value of gold on the date of such seizure.

12. Concededly and in terms of the orders passed by this Court, the Petitioner has received the value of confiscated gold. The grievance of the Petitioner is that, he has paid Rs. 3.14 lakhs approximately in excess in view of the difference in the value of customs duty. However, what the Petitioner has not taken into account is that the Petitioner has received an additional amount. Since, the difference in the rate of gold in these 10 years was approximately Rs. 370/- for 10 gms., the value for 755.50 gms. of gold would be approximately Rs. 2.8 lakhs. Given this fact, the contention that the Petitioner recovered 3.14 lakhs less is incorrect.

13. As stated above, the prayers in the present Petition stands satisfied in view of the fact that the payment for the seized gold has already been received by the Petitioner.

14. The Petition is disposed of in view of the foregoing terms. Pending Application shall stand closed.

15. The Petitioner is however granted liberty to take appropriate steps in accordance with law for recovery of the additional amounts due to him, if any.

16. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

FEBRUARY 11, 2025/ ha/r [Click here to check corrigendum, if any](#)