



2025:DHC:4227-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 345/2025 & CM APPLs. 31402-31404/2025

ABDUL SATTAR

....Appellant

Through: Dr. Ashutosh, Advocate with Mr. Dalip Singh and Ms. Komal Sharma, Advocates.

versus

COMMISSIONER OF CUSTOMS AIRPORT AND GENERAL

....Respondent

Through: Mr. Akshay Amrit Anshu, Senior Standing Counsel with Ms. Drishti Saraf and Ms. Pragya Upadhyay, Advocates.

Date of Decision: 21st May, 2025

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGEMENT

TUSHAR RAO GEDELA, J : (ORAL)

CM APPLs. 31403-31404/2025 (Condonation of delay in filing & re-filing the appeal)

1. Cause shown is sufficient. Accordingly, the applications are allowed. Delay of 3 days and 7 days in filing and re-filing the appeal is condoned.

2. The applications stand disposed of.

LPA 345/2025 & CM APPL.31402/2025

3. Present Letters Patent Appeal has been filed assailing the judgment dated 11.02.2025 passed by the learned Single Judge in the writ petition bearing W.P.(C) 11604/2019 filed by the appellant seeking a direction to



the respondent to comply with its own order dated 17.05.2018, in terms of which the appellant was 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.

4. The facts, in a nutshell, are that the appellant 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. The same were confiscated by the respondent under the provisions of Section 110 of the Customs Act, 1962.

5. Pursuant to adjudication by the competent authority as well as appellate authority, a penalty was imposed on the appellant *vide* orders dated 30.06.2014 and 01.09.2015, which was challenged by the appellant and by an order dated 10.04.2018, the appellant was allowed to get the confiscated gold redeemed within 30 days upon payment of the redemption fine of Rs.7,50,000/- and a penalty of Rs.4,00,000/-. Accordingly, the appellant deposited the amount of the redemption fine as well as the penalty including the customs duty at the rate of 36.05% on the seized gold, amounting to Rs.18,58,130/- with the respondent. However, the gold was not released to the appellant, which led to the filing of the underlying writ petition.

6. During the pendency of the underlying writ petition, it was stated by the respondent that the seized gold was not traceable, hence an inquiry was initiated in this behalf and a complaint was filed with the CBI. Subsequently, by an order dated 24.02.2023 passed in the underlying writ



petition, the learned Single Judge 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. Thereafter, on 21.03.2023, learned Single Judge directed that the appellant is entitled for return of the gold or the equivalent amount of 755.50 grams of gold, as on the date of the return of the said amount. In compliance with such directions, a payment in the sum of Rs.14,63,618/- was made to the appellant by the respondent. However, the appellant contended that as per his calculation, he is entitled to an additional sum of Rs.3,14,255/- from the respondent in lieu of excess custom duty paid by him.

7. *Vide* impugned judgement dated 11.02.2025, learned Single Judge disposed of the underlying writ petition noting that the prayers in the petition stood satisfied in view of the fact that the payment for the seized gold was already received by the appellant. However, a liberty was granted to the appellant to take appropriate steps in accordance with law for recovery of the additional amounts due to him, if any. Aggrieved thereof, the present appeal has been filed.

8. Dr. Ashutosh, learned counsel for the appellant submits that the learned Single Judge has committed a manifest error in not considering the prayer of the appellant that the appellant ought to have been required to pay the custom duty as on the date of arrival in the year 2013 in terms of Section 78 of the Customs Act. However, the respondent department, while ignoring the said provision, charged the duty applicable not on the date of appellant's arrival, rather on the date of refund of gold's value. Since the appellant was directed to pay the custom duty as on the date of release, he ended up paying excess amount. According to learned counsel,



the appellant ended up paying a higher amount on account of the custom duty than the value of the gold itself. He states that according to the calculation of the appellant, the appellant is entitled to an additional sum of Rs.3,14,255/- from the respondent in lieu of the excess customs duty paid. Learned counsel relies upon the judgment of a Coordinate Bench of this Court in W.P.(C) 1807/2025 captioned ***Gor Sharian vs. The Commissioner of Customs***, dated 14.02.2025 in support of the aforesaid submission.

9. That apart, learned counsel also submits that the prayer to direct an independent agency to investigate/enquire into the case for the illegalities committed in the matter has also not been considered by the learned Single Judge. He states that despite directions by this Court in the order dated 24.02.2023 directing the respondent to file a comprehensive status report on the action taken against the errant officers, the same has neither been complied with nor the updated status of such investigations has been informed to the Court.

10. After having heard the learned counsel for the appellant and perusing the records of the case, we find absolutely no reason to interfere with the impugned judgment passed by the learned Single Judge. The learned Single Judge in the impugned judgment on the issue of as to on which date the custom duty should be reckoned has given a proper finding on the basis of Instruction no.22/2022-Customs, particularly para 3.1.1 of the said instruction. It would be apposite to extract the relevant paragraphs of the impugned judgment hereunder:-

“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)** 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 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.2712021-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.2712021 dated 03.12.2021, the tariff value and the average market price per 10 gm (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.”

11. From the above analysis and observations made by the learned Single Judge, it is clear that the grievances of the appellant were properly appreciated and after applying the provisions of the Instruction



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no.22/2022-Customs, findings were rendered which we find satisfactory. Thus, on account of the first grievance of the appellant, we find no reasons to differ with the findings rendered by the learned Single Judge and the submission of the appellant are rejected.

12. So far as the argument or grievance in respect of the inquiry or investigation as directed *vide* order dated 24.02.2023 having not been complied with or the investigations initiated not having concluded is concerned, neither the learned Single Judge nor this Court in appellate proceeding can monitor or pass any directions in respect of investigations being conducted by the CBI. Clearly, that is not the scope or jurisdiction of the writ Court or the appellate Court exercising extraordinary civil jurisdiction. Thus, the same is untenable and rejected.

13. In fact, a perusal of the impugned judgment clearly indicates that both the prayers as sought by the appellant in the underlying writ petition stand satisfied. We also find that the learned Single Judge has also granted liberty to the appellant to take appropriate steps in accordance with law for recovery of the additional amount due to him, if any. In view of such liberty too, no interference is warranted by this Court.

14. The appeal being absolutely bereft of merits is dismissed with pending applications.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MAY 21, 2025/kct/rl