



2026:DHC:5045-DB



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

Date of decision: 23rd March, 2026

+ **W.P.(C) 14614/2022 & CM APPL. 44783/2022**

HITESH MIGLANI

S/ O MR. HARISH MIGLANI

R/O C-4, KALKAJI

DELHI

.....PETITIONER

Through: Ms. Jyoti Mendiratta and Ms.
Ananya Basudha, Advocates

Versus

1. **UNION OF INDIA,**
THROUGH THE SECRETARY,
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
14, HUDCO VISHALA BUILDING
B WING, BHIKAJI CAMA PLACE
NEW DELHI 110066

.....RESPONDENT NO. 1

2. **COMMISSIONER OF CUSTOMS (APPEALS),**
NEW CUSTOM HOUSE
NEAR IGI AIRPORT, NEW DELHI- 110037

.....RESPONDENT NO. 2

3. **ADDITIONAL COMMISSIONER OF CUSTOMS,**
IGI AIRPORT, TERMINAL-3,
NEW DELHI

.....RESPONDENT NO.3

Through: Mr. Harpreet Singh, Senior
Standing Counsel with Ms.



Suhani Mathur and Mr. Jatin
Kumar Gaur, Advocates

CORAM:
HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

NITIN WASUDEO SAMBRE, J.

1. Heard learned counsel for the respective parties.
2. The petitioner, who claims to be the owner/importer of Silver jewellery, has preferred this petition seeking directions to the respondents to release the seized silver jewellery on payment of redemption fine and appropriate duty in terms of the statutory mandate under Section 125 of the Customs Act, 1962 (hereinafter referred to as "*Act of 1962*" or "*Customs Act*").
3. The prayer in the petition is confined only to the aforesaid extent, as the arguments about the sustainability of the order dated 22nd June, 2021 passed by Government of India, Ministry of Finance (Department of Revenue), on its merits, are not canvassed.
4. The facts necessary for deciding the present petition are as under:-
 - a. On 20th May, 2016, noticee nos.1 and 2 as named in the Show Cause Notice dated 1st July, 2016, were apprehended while they were attempting to cross the green channel.
 - b. During enquiry, both the said noticees revealed the name of the



petitioner, who was waiting outside the airport. Upon interrogation, the petitioner disclosed the names of noticee nos. 3 to 5, who were travelling on different flights, as well as of noticee no. 7 as another associate, who was also present outside the airport with him. Accordingly, noticee nos. 1 to 5 and 7 were scanned and checked, which led to the seizure of the goods on 21st May, 2016 under Section 110 of the Act of 1962, by drawing a *panchanama*.

- c. The purity of the seized silver jewellery from the abovementioned noticees was found to be 80% and the gross weight thereof was 98.849 kgs, which at the relevant time was valued at Rs. 31,55,260/-. Accordingly, having regard to the purity and taking the net weight of the silver jewellery to be 95 kgs, the value was determined at Rs. 29,06,522/-.
- d. Based on the above, a supplementary *panchanama* was drawn on 23rd May, 2016, which led to the issuance of Show Cause Notice dated 1st July, 2016 by respondent no. 3 to all the noticees.
- e. None of the noticees chose to file reply to the said Show Cause Notice, however, the petitioner on the basis of authorization in his favour from all the noticees, appeared for personal hearing and tendered apology stating that he was willing to pay the penalty and applicable duty levied on the aforesaid detained goods for their release.
- f. In view of the provisions of Section 111 of the Act of 1962, respondent no. 3 - the Additional Commissioner of Customs *vide*



order dated 7th March, 2017, directed absolute confiscation of the Silver jewellery and denied the option to redeem the same on payment of redemption fine. However, the electronic items valued at Rs. 2,20,53,542/- were ordered to be redeemed on payment of a redemption fine of Rs. 30,00,000/-. A penalty of Rs. 45,00,000/- under Sections 112 and 114AA of the Act of 1962 was imposed on the petitioner. Further, a penalty of Rs. 1,50,000/- each was imposed on noticee nos. 1 to 5, and a penalty of Rs. 1,00,000/- was imposed on noticee no. 7.

- g. Pursuant to the Order-in-Original, the petitioner paid the redemption fine and got the electronic items released.
 - h. Feeling aggrieved by the denial of the option of redemption in respect of the Silver jewellery, the petitioner preferred an appeal before respondent no. 2 – the Commissioner of Customs (Appeals), who *vide* order dated 23rd March, 2018, dismissed the same by observing that the silver articles are “*prohibited goods*” within the meaning of Section 2(33) of the Act of 1962.
 - i. Thereafter, feeling aggrieved by the order of respondent no. 2, the petitioner preferred a revision application before the Department of Revenue under Section 129 DD of the Act of 1962, which was also dismissed on 22nd June, 2021. As such this petition.
5. According to learned counsel for the petitioner, the petitioner is an importer of Silver jewellery and Silver is not a prohibited item within the meaning of Section 2(33) of the Act of 1962. It is contended that



there is no material on record to infer that silver was a prohibited item at the relevant time when the same was detained. He would further claim that once the respondents were unable to substantiate their contention that silver was a prohibited item on the date when the goods in question were sought to be imported in the country, there was no reason for denying the petitioner the option of redemption under Section 125 of the Customs Act.

6. In addition, learned counsel for the petitioner contends that no reasons whatsoever is recorded in support of the contentions that silver was a prohibited item and the same cannot be permitted to be imported in view of the mandate provided under Section 11 of the Act of 1962, which confers power to prohibit importation or exportation of goods.

7. In order to substantiate this contention, he has submitted that as per the Export-Import Policy of India prevailing in the year 2016, Chapter 71 of the ITC (HS) Classification, Schedule I, categorized silver jewellery as free at the time of the subject import. Thus, according to him, it cannot be disputed that under the Foreign Trade (Development and Regulation) Act, 1992, the petitioner could have imported silver jewellery. That being so, he would claim that once the silver jewellery can be imported in the country, there was no statutory embargo to treat silver as a banned or prohibited item for the purposes of exercising powers under Section 125 of the Customs Act for providing option of redemption in favour of the petitioner.

8. Learned counsel for the petitioner would further urge that the respondents in exercise of powers under Section 3 of the Foreign Trade



(Development and Regulation) Act, 1992, issued Notification No. 36 dated 18th December, 2019, whereby the import policy in respect of silver and gold, in any form, was amended and restrictions were imposed on the import of silver. He would claim that such restriction imposed by virtue of a notification issued under Section 3 of the Foreign Trade (Development and Regulation) Act, 1992, is prospective in nature and cannot be made applicable to the facts of the present case, as the goods in question were detained as far back as in the year 2016. As such, he would urge that the decision of the respondents in denying the option of redemption is *ex facie* illegal. He would, therefore, claim that the respondents ought to have appreciated that, at the relevant time, silver imported by the petitioner was in free category and same was, by amendment through a notification, was restricted *qua* the import in year 2019.

9. Drawing support from the judgment of Apex Court in the matter of *Asian Food Industries v. Commissioner of Customs*, 2006 (204) ELT 8 (SC), it is urged that the meaning of word 'prohibition' has to be construed in regard to context in which it is used. According to him, the word 'prohibition, 'restriction' and 'regulation' are meant to be applied differently. Further, respondents have erred in recording a finding that the silver goods which were detained, pursuant to the import carried out by the petitioner, becomes prohibited if same are brought in contravention of such restrictions. As such, the contention is that silver was freely importable in year 2016, in jewellery or other form, and cannot be termed as 'prohibited' item under the Foreign Trade Policy as was existing. He would further claim that the petitioner is willing to



pay redemption fine, penalty and dues as shall be imposed.

10. As against above, learned counsel for the respondents opposed the prayer of the petitioner. It is claimed by the respondents that what was permitted to be imported was silver jewellery and not silver in the form in which it was seized. According to them, there are concurrent findings against the petitioner, wherein the request for redemption, as statutorily provided under Section 125 of the Act of 1962 was denied.

11. In the aforesaid background, it is urged that this Court should be very cautious in exercising jurisdiction in favour of the petitioner, particularly, under Article 226 of the Constitution of India. It is further contended that the impugned orders have been passed after due application of mind by the respective authorities, as the remedy of redemption under Section 125 of the Act of 1962 was granted *qua* the electronic goods, which were valued at eight times more than the value of silver at the relevant time.

12. Learned counsel would further urge that Court is required to be equally sensitive to the very conduct of the petitioner as in a clandestine manner, the petitioner has sought to import silver illegally in the country.

13. Learned counsel for the respondents have further sought to rely upon the statements of the petitioner recorded under Section 108 of the Customs Act, 1962 on 20th May, 2016 as well as 12th June, 2016. He would claim that the petitioner, during the course of personal hearing has accepted that he has imported the silver illegally. According to the respondents, the issues were duly framed by the first Adjudicating



Authority while exercising discretion under Section 125 of the Act of 1962. It is further urged that the combined quantity of goods brought by all the noticees in their baggage, as seized by the respondents and admitted by the petitioner, was substantial in volume and was rightly categorized as “commercial goods.” It is claimed that as violation of Section 77 of the Customs Act was noticed, the goods were lawfully detained and a Show Cause Notice was rightly issued.

14. It is further urged that silver was allowed to be imported freely in baggage, whereas the same, in bullion form or in jewellery form is permitted to be carried by passengers subject to the fulfilment of certain conditions. According to him, Rule 3(1)(h) of the Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993 provides that silver is a prohibited item. According to them, the petitioner has neither satisfied nor fulfilled the definition of an “eligible passenger” as provided in Condition No. 35 of Notification No. 12/2012 dated 17th March, 2012. As such, it is his contention that the goods were rightly absolutely confiscated, and that the discretion was exercised in a reasonable manner, thereby considering the very object of the statute and the relevant provisions. That being so, dismissal of the petition is sought.

15. We have considered the rival claims.

16. The fact remains that the petitioner was served with Show Cause Notice dated 1st July, 2016. In the said Show Cause Notice, the petitioner was styled as noticee no.6 and the specific allegations against him in the Show Cause Notice reads thus:-



“2.6 Shri Hitesh Miglani tendered his voluntarily statement (RUD-13) before the Air Customs Superintendent (Preventive) wherein he inter-alia stated that on 20/05/2016 he was waiting in the visiting hall of Arrival area of T3 Terminal of IGI Airport as two of his paxes were coming from Hongkong along with electronic items in commercial quantity; that two people came to him and introduced themselves as Customs Officers; that he was asked whether he knew the two paxes arrived from Hongkong, to which he answered in the affirmative; that the photographs of the said two paxes alongwith some other persons were found on his mobile phone; that Some incriminating audio clips were also found on his mobile; that he confirmed that he was in touch with the handler of the carrier i.e; Mr. Vikas and some other persons; that he informed that three more passengers were coming by flight no.- CX 697 dated 20.05.2016 and there was one more person i.e; Mr. Randeep Tulli, who was his brother-in-law, waiting outside the Terminal for them; that the photographs of the three passengers who were to arrive by CX697 were also found stored on his mobile; that Mr. Randeep Tulli was brought inside the airport; that he was searched under the strength of Notice issued under Section 102 of The Customs Act, 1962; that during search of the two paxes, commercial quantities of electronic items were recovered as mentioned in the panchnama dated 21/05/2016; that three more paxes were also coming from Hong Kong along with commercial electronic items; that the said three paxes were intercepted at the green channel and their baggages were searched under the strength of Notice issued under Section 102 of The Customs Act, 1962; that as a result of personal search and baggage search of the three paxes, commercial quantity of electronic items were further recovered from them as detailed in the panchnama dated 21.05.2016; that all the said recovered items belonged to him and the same were brought by the pax-1, pax-2, pax-3, pax-4 and pax-5 on his direction; that he had promised to pay Rs. 5000/- to each pax for the said work while Shri Vikash, the supplier in Hongkong promised them to pay return ticket fare for brining the said electronic items for him; that Shri Vikash was a supplier of electronic items in Hong Kong; that Shri Vikash was his partner cum financier; that Shri Vikash supplied the electronic item from Hong



Kong and he received and sold the same in India; that the amount against the sale was collected by him or his representatives; that they distributed the profit margin fifty-fifty; that previously also he had got 2-3 of such consignments cleared successfully with one or two passengers; that on previous visits, the carrier could clear the electronic items through green channel by intermingling with the group of other passengers; that he agreed with the facts j contents as well as the manner of the proceedings recorded in the said Panchnama dated 21.05.2016; that he was well aware of the Customs procedure for passenger clearance at Airport in India and also was aware that there was customs duty on import of electronic items in India; that he intentionally asked them not to go to red channel and to come out through the green channel as he wanted to save Customs Duty leviable on all these products; that he admitted his mistake of omission on his part by doing such work to evade Customs Duty; that he did not have any dispute with regard to the description, quantity, weight, purity and value of the goods assessed by the Customs department.

3.3 Shri Hitesh Miglani once again tendered his voluntarily statement (RUD-16) on 12.06.2016 before the Air Customs Superintendent (Preventive) wherein he agreed with his earlier statement dated 21.05.2016 and proceedings of Panchnama dated 21.05.2016 (RUD-17). Further, when confronted with some evidences relating to the market price of the electronics items, he admitted that the prices indicated by him during his statement dated 21-05-2016 were not correct. He thereafter provided the Hong Kong price at which the said recovered electronic items were purchased by him and his partner based in Hong Kong. The rates of electronics items at Hong Kong, based on the invoices supplied by him, was as under:-

<i>Sl. No</i>	<i>Items</i>	<i>Total Quantity</i>	<i>Unit Price in HKD</i>	<i>Total Value In HKD</i>	<i>Total Value in Notification no.77/2016-Customs (NT) dtd 19th May, 2016: one</i>



					<i>HKD=8.75 Rupees</i>
1.	<i>Memory Card</i>	243180	9.5	2310210	20214337
2.	<i>Z3 Black Berry</i>	65	503	32695	286081
3.	<i>hTC marked mobile</i>	8	850	6800	59500
4.	<i>I pad</i>	16	2240	35840	313600
5.	<i>I phone 4S</i>	51	590	30090	263287
6.	<i>I Phone 5</i>	16	850	13600	119000
7.	<i>I Phone 5S</i>	26	1050	27300	238875
8.	<i>Camera lenses</i>	1000	3.5	3500	30625
9.	<i>CCTV (PCB)</i>	2280	16.5	37620	329175
10.	<i>DVR Chord</i>	2	0	0	0
11	<i>Pen Drive 32 GB</i>	650	35	22750	199062
<i>Total Value</i>					2,20,53,542/-

17. The petitioner, though has not submitted any reply to the Show Cause Notice, attended the hearing and admitted his mistake.

18. The same led to the seizure of the silver and other articles and accordingly, the impugned order dated 7th March, 2017 came to be passed, whereby the silver was absolutely confiscated without giving an option of redemption, whereas the other electronic goods were permitted to be redeemed.

19. While the petitioner is not aggrieved by the order of confiscation, his contention is that, on the date when the goods were imported, there was no statutory embargo to infer that it was a “prohibited good” within the meaning of Section 2(33) of the Customs Act. Therefore, the goods ought to have been redeemable upon payment of an appropriate redemption fine.



20. In the Order-in-Original, so as to infer that silver is a “prohibited” item, reliance has been placed by respondent no. 3 on the provisions of the Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993, the Baggage Rules, 2016, and the Foreign Trade (Development and Regulation) Act, 1992. The relevant observations of the authority who passed the Order-in-Original read as follows:

“8.3 I now proceed to consider the second question framed by me with reference to silver articles first. Silver is not allowed to be imported by a passenger subject to fulfillment of certain conditions. The Noticees do not fulfill the conditions set out in the proviso to Rule 3(1) (h) of the Foreign Trade (Exemption from Application of Rules in certain cases) Rules, 1993. The Noticees also did not fulfill the definition of “eligible passenger” as given in condition 35 of the Notification 12/2012 dated 17.3.12 as amended, as much as the quantity of Silver exceeds only vary slightly more than 10 Kg. This coupled with that he did not have foreign currency in his possession, when the Silver was sufficient to pay the Customs Duty and hence it seems there was no interest on Customs Duty also. Thus the neither the act of import nor the intent behind it seem to be bonafide.

.....

8.5 In terms of provisions of Section 7 of Foreign Trade (Development and Regulation) Act, 1992, no person shall make import except under an Import Export Code Number. However, Rule 3(1)(h) of the Foreign Trade (Exemption from Application of Rules in certain cases) Rules, 1993 provides exemption to the import of the goods by the person as passenger baggage in the Baggage Rules is regulated by para 2.20 of the Foreign Trade policy which allows a passenger import of only bona fide household



goods and personal effects in his baggage to the extent allowed by Baggage Rule s2016. As such, any silver in such form cannot be construed to be bona fide household goods and personal effects of the passenger and is further excluded from Baggage Rules by inclusion in Annexure I, thus would not qualify as an item allowed imported as passenger baggage unless specifically allowed and would constitute prohibited goods in terms of the above mentioned provisions of the Foreign Trade (Development and Regulation) Act, 1992. In terms of Section 2(33) of the Customs Act, 1962, 'prohibited goods' means any goods the import or export of which is subject to any prohibition under this Act or any other law in force for the time being. Thus the second question framed by me also stands answered in affirmative."

21. Respondent no. 3, for the purpose of declaring silver to be a "prohibited" item, has drawn support from the aforesaid provisions merely by referring to them; however, how the item becomes "prohibited" has not been discussed at all in the order passed by respondent no. 3. Rather, respondent no. 3 has proceeded to record that it is not inclined to offer redemption in respect of the seized silver jewellery articles for the reasons that the same was being tried to be cleared from Green Channel without declaring the same before the Custom Authorities. The said authority, in order to substantiate its findings, has further recorded that the Government of India is attempting to discourage the import of gold and silver in commercial quantities so as to safeguard national economic interests.

22. In the appeal, the respondent no.2 has endorsed the very same views by observing that the goods were sought to be smuggled in



violation of provisions of Section 77 of the Customs Act. In such an eventuality, as there was no declaration to the Custom Authorities, the petitioner's goods cannot be termed as *bona fide* baggage in terms of Section 77 of the Customs Act read with clause 2.20 of the Foreign Trade Policy 2009-14 and in such an eventuality, the petitioner was held not to qualify as a passenger carrying baggage so as to avail the exemption under Rule 3(1)(h) of the Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993.

23. Apart from the above, though reliance has been placed on Notification No. 12/2012 dated 17th March, 2012 Serial no.322, condition no.35, the same is not at all discussed in detail so as to how it creates an embargo on the petitioner's right to claim redemption. At this stage, a reference could be made to the said serial no.322 and the corresponding condition no. 35, the same reads as under:

<i>S. No.</i>	<i>Chapter or Heading or sub-heading or tariff item</i>	<i>Description of goods</i>	<i>Standard rate</i>	<i>Additional duty rate</i>	<i>Condition No.</i>
322.	71 or 98	<i>Silver, in any form Including ornaments, excluding ornaments studded with stones or pearls, imported eligible passenger</i>	6%	Nil	35

Condition no. 35:

“If,-

1. (a) the duty is paid in convertible foreign currency; (b) the quantity of import does not exceed ten kilograms of gold and



one hundred kilograms of silver per eligible passenger; and

2. the gold or silver is,-

(a) carried by the eligible passenger at the time of his arrival in India, or

(b) imported by him within fifteen days of his arrival in India, or

(c) is taken delivery of from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions 1 ;

provided such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold or silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.

Explanation.- For the purposes of this notification, “eligible passenger” means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.”

24. The revisional authority, while dealing with the question of law as to whether Silver jewellery is “prohibited” or not, placed reliance on the judgment passed by the Apex Court in ***Sheikh Mohd. Omer vs. Collector of Customs, Calcutta & Ors.*** [1971 AIR SC 293]. According



to the revisional authority, a restriction is a form of prohibition and therefore, the silver brought by the petitioner in the form of jewellery is not permitted to be imported freely as baggage. As such, the claim of the petitioner was rejected.

25. From the foregoing, in our opinion, the following principal issues arise for consideration:

- i. Whether the imported subject silver goods are liable for confiscation under Section 111 of the Customs Act, 1962?*
- ii. Whether the subject goods fall under the category of “prohibited goods” as defined under Section 2(33) of the Customs Act, making them liable for absolute confiscation and thereby rendering the goods ineligible for redemption under Section 125 of the Customs Act.*
- iii. Whether the absolute confiscation was justified or whether redemption under Section 125 was mandatory.*

26. It is not in dispute that the petitioner has accepted the procedural irregularity in the import of the goods and has conveyed his willingness to pay the customs duty and redemption fine, as may be leviable.

27. The sole question that falls for consideration is whether the seized silver jewellery can be regarded as “prohibited goods” and, consequently, whether the authorities were justified in denying the option of redemption under Section 125 of the Customs Act.

28. It is pertinent to extract the relevant observation from the Order-in-Original dated 7th March, 2017, the Order-in-Appeal dated 23rd March, 2018, and the Impugned Revisional Order dated 22nd June, 2021, which state the reasons for the absolute confiscation of the subject goods.



“Order-in-Original dated 07.03.2017

9.2. Further, it appears that silver stands out on a different pedestal than other goods. It is prohibited no doubt and thus liable for confiscation. To release it, it must comply with statutory conditions. More over the circumstances of the case also need to be factored in, especially the form in which the goods was attempted to be smuggled. A guilty mind in this case is evident from the circumstances that had the Pax would not have been subjected to detailed Customs check it would have escaped detection. It means that they intentionally tried to smuggle the silver articles of jewellery and took all steps to conceal them and tried for swift exit from Green Channel instead of Red Channel. Goods so brought are prohibitory goods, as there is dear violation of statutory provisions for normal import of such goods.

9.3. To decide whether such redemption is to be granted, I observe that Sec 11 of the Customs Act 1962 vests the power to notify any goods as prohibited. The criteria/ purpose for the same are also detailed therein namely 11(2)(a) to 11(2)(v). I observe that the silver goods appeared to be imported to add to the country's silver and other misc. items in circulation and hence would be detrimental to the stated policy of the government. It is a well established view that when a statute or policy does not contain the express definition of an act i.e. absolutely prohibitory or otherwise, in such situation, the objects and terms of the statute and relevant government policy along with nature and character of act, should be taken into consideration and it is pertinent to enquire whether putting the offender in strict liability will assist in the enforcement of the regulations or otherwise. I find that in most of the referred cases where gold, silver or other items have been allowed to be released on payment of redemption fine, the plea has been taken regarding the



liberalized policy of the government. The same may be true at that point of time. But at present as discussed above, government is trying to discourage the import of Gold and Silver in commercial quantity to safeguard the national economic interest and in such circumstances, when attempts are being made to smuggle the above seized goods in a large scale to derail the Indian economy, if the seized smuggled goods are ordered to be released on payment of fine, such order will not be in conformity with the government policy and it will not assist in the enforcement of the regulations. The object and end of the policy will be frustrated. The public interest will irreparably suffer if release of such smuggled goods in current situation is permitted. In view of above and above stated case laws, I am not inclined to offer any redemption to the seized silver jewellery articles especially for the reason that the same was being tried to be cleared from Green Channel without declaring the same before Customs Authorities.”

Order-in-Appeal dated 23.03.2018, Page No. 89, 90

“The impugned goods in the instant case have been concluded to be non-bonafide baggage and as prohibited goods by the adjudicating authority. The same was being attempted to be removed from the customs area and would have been successful had the customs officers not intercepted the passengers on the basis of a specific information and apprehended them, followed by further investigation. The very fact that the passengers walked through the customs green channel without declaring the impugned goods to the customs officers at red channel and without filling anything in the Disembarkation Slip, prove beyond doubt that there was an intention to evade customs duty on the impugned goods and this evidently constitutes mens rea and actus rea on their part. I also find that by such



act and intent the passengers have lost the privilege of 'eligible passenger' and all the benefits derived there from. The passengers did not fulfill the condition of Notification No. 12/2012 dated 17.3.2012, Sl. No. 322, condition no. 35 as amended, for import of Silver Jewellery freely in baggage. The Recovery of the said Silver Jewellery was only possible after diversion of the passengers by the Customs Officers for detailed-examination. Under these circumstances, the confiscation of silver jewellery and the electronic goods stands justified. Also, the silver jewellery was correctly absolutely confiscated under Section 111 of the Customs Act, 1962.

It is a fact that the five passengers were neither eligible passengers as defined in the Notification No. 12/2012-Cus discussed supra nor fulfilled other prescribed conditions of the said Notification for import of silver jewellery in commercial quantity.

The Appellant, had admitted the recovery of said goods from the passengers, who worked as carriers for him and accepted that the said goods belonged to him. The Appellant admitted his mistake for not properly importing the goods in commercial quantity and stated that he was responsible for any duty, penalty leviable by the Department; The Appellant did not dispute the description, quantity, weight, purity and value of the said gold. Therefore, the mens rea of the Appellant to evade payment of duty stands proved. It would not, therefore, be very difficult to establish that the goods so brought were prohibitory in nature, by the very way these were sought to be smuggled in with the help of others. I do not find any infirmity in the impugned order passed by the adjudicating authority with regard to the absolute confiscation of the impugned misc. silver jewellery.”



Impugned Revisional Order dated 22.06.2021

“7.1. The question of law raised by the Applicant is that the import of silver jewellery is not ‘prohibited’. Hon'ble Supreme Court in the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293} has held that for the purpose of Section 111(d) of the Customs Act, 1962, the term “any prohibition” means every prohibition. In other words all types of prohibition. Restriction is one type of prohibition”. The Additional Commissioner, in paras 8.3 to 8.5 of the O-I-O dated 07.03.2017, has brought out that the silver jewellery is not allowed to be imported freely in baggage. It is permitted to be imported by a passenger subject to fulfillment of certain conditions. In the case of M/s Om Prakash Bhatia Vs. Commissioner of Customs, Delhi {2003(155)ELT423(SC)}, the Hon'ble Supreme Court has held that “if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods”.

7.2. The original authority has correctly brought out that in this case the conditions subject to which silver jewellery could have been legally imported have not been fulfilled. Thus, following the ratio of the aforesaid judgments of the Apex Court, there is no doubt that the subject goods are 'prohibited goods'.

8. The original adjudicating authority has denied the release of impugned goods on redemption fine under Section 125 of Customs Act, 1962, which has been assailed in the instant Revision Application. The Government observes that, in terms of Section 125 of the Customs Act, 1962, the option to release seized 'prohibited goods', on redemption fine, is discretionary, as held by the Hon'ble Supreme Court in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T.



306 (S.C.)]. *In the case of Commissioner of Customs (Air), Chennai-I Vs P. Sinnasamy {2016(344)ELT1154 (Mad.)}, the Hon'ble Madras High Court has, relying upon several judgments of the Apex Court, held that "non-consideration or non-application of mind to the relevant factors, renders exercise of discretion manifestly erroneous and it causes for judicial interference." Further, "When discretion is exercised under Section 125 of the Customs Act 1962...the twin test to be satisfied is "relevance and reason" In the present case, the original authority has refused to grant redemption in the background of attempted smuggling by concealment with intent to evade Customs Duty. It has also been observed by the original authority that objects of public policy, restricting import of silver, shall be frustrated if the redemption was permitted. Thus, the Order of the original authority, upheld by the Commissioner (Appeals) being a reasoned Order based on relevant considerations, does not merit interference."*

29. The respondents' contentions are acceptable inasmuch as the goods were imported in contravention of Section 7 of the Foreign Trade (Development and Regulation) Act, 1992 ('FTA, 1992'), which mandates that no import can be made except under an Importer-exporter code number. The consequences of contravention of Section 7 are provided in Section 11 of the FTA, 1992, which states that the contravention of any provision of this Act, subject to such conditions and requirements as may be prescribed, shall render the goods liable to confiscation by the Adjudication Authority. Further, it states that the goods may be released by the Authority in such manner, and subject to such conditions, as may be prescribed, on payment of the redemption charges equivalent to the market value of the goods or conveyance, as



the case may be.

30. The interplay of Section 7 and Section 11 of FTA, 1992, leads to the legal conclusion that the goods imported in contravention of Section 7 of the FTA, 1992 rendered such goods liable to confiscation upon which same can be released on payment of the redemption charges, subject to the prescribed conditions.

31. It is acceptable that the subject goods were not eligible for exemption under Rule 3(1)(h) of the Foreign Trade (Exemption from Application of Rules in Certain cases) Order, 1993 (*'FTO, 1993'*) which provides exemption to the person as passenger baggage to the extent admissible under the Baggage Rules. This simply connotes that the subject goods did not fulfill the condition as set out in Rule 3(1)(h) which means that the subject goods were not eligible for exemption from the Foreign Trade (Regulation) Rules, 1993 (*'FTR, 1993'*).

32. Section 11 of the FTR, 1993 mandates that on the importation of any goods, whether dutiable or not, the owner of such goods shall state the value, quality, and description of such goods to the best of his knowledge and belief. Section 17 of the FTR, 1993, provides that any contravention of any condition would make the goods liable for confiscation and that the same may be permitted for redemption upon payment of the redemption charges.

33. Hence, the interplay of the aforesaid provisions also leads to this limited conclusion that the subject goods were liable for confiscation and the same may be permitted for redemption upon payment of the charges as shall be leviable in accordance with law.



34. It is urged by the respondents that what was permitted to be imported was silver jewellery and not silver in the form in which it was seized. From the perusal of the evidence on record, specifically the Appraisal Report dated 23rd May, 2016, the description of subject goods has been ascertained as “*Jewellery seized vide panchnama dated 21.05.2016*”. This contention of the respondents that the seized goods were not in the form of jewellery is thus untenable in view of the Appraisal Report dated 21st May, 2016. Even assuming that the subject seized goods were not in the form of jewellery, the ITC HS Import policy applicable during the relevant period, which would be the ITC HS 2012 Import Policy (Schedule-I) in Chapter 71, categorized Silver, in unwrought or in semi-manufactured forms or in powder form, as freely importable subject to RBI guidelines. Further, articles of silver jewellery were categorized as freely importable and were not subject to any guidelines.

35. Chapter 11 of the Foreign Trade Policy enumerates the definition of “Free”, as appearing in the context of the import/export policy, for items as goods which do not need any ‘Authorisation’/ License or permission for being imported into the country or exported out.

36. In the present case, the respondents have not presented any notification issued under Section 11 of the Customs Act or any provision under the FTA, 1992 declaring silver jewellery to be a prohibited item. Reliance has been placed on the Notification No. 36 dated 18th December, 2019, whereby the import policy in respect of silver, in any form, was amended and restrictions were imposed on the



import of silver. The import policy of silver, in any form, was thereby changed from “Free” to “Restricted”. The Revised Policy Condition mandated that the import of silver would be allowed only through nominated agencies as notified by RBI and DGFT. It is to be noted that no such restriction was in place before the aforesaid Notification, *i.e.*, prior to year 2019 and silver could be freely imported subject to RBI conditions. The Notification cannot be said to be applicable retrospectively, in absence of express provision to that effect. Thus, the same is not applicable to the subject goods which were seized much prior to the date of the Notification.

37. Even under the subsequent policy regime, silver was not categorized as a prohibited item. The distinction is material, since restricted goods remain importable subject to conditions or licences, whereas prohibited goods are goods whose import is altogether barred. Silver has never been shown to fall in the latter category.

38. The provisions relating to free clearance under the Baggage Rules, 2016 do not alter this position. Rules 3, 4 and 6 prescribe the categories of articles that may be cleared without payment of customs duty under the general baggage allowance and transfer-of-residence concessions. Each of these provisions expressly excludes articles listed in Annexure I, which includes silver except in the form of ornaments. Upon a bare perusal of the Appraisal Report, it can be noted that the subject silver goods were in the form of jewellery, which would ordinarily fall within the ambit of ornaments. However, the subject goods do not fulfill the requirement under Rule 3 as the value of the goods was above fifty thousand rupees.



39. It can be answered in the affirmative that the subject silver goods are excluded from the bona fide import as illustrated in the Baggage Rules, 2016, thus, the subject silver goods would not qualify as an item allowed import as passenger baggage, but the same would not automatically make such goods prohibited. Non-qualification from import as passenger baggage under Baggage Rules, 2016 merely means that such goods would not be eligible for clearance free of duty, which makes such goods “dutiabale”, not “prohibited”.

40. The respondents in the present case vide the Order-in-Original, the Order-in-Appeal and the Impugned Revisional Order reiterated that silver is not allowed to be imported freely in baggage. Further, it was held that the import of the subject goods was not in fulfilment of the conditions set out under various provisions of law, such as Section 7 of the FTA, 1992 and Rule 3(1)(h) of the FTO, 1993. It was also found that the Noticees did not fulfil the definition of “eligible passenger” as given in Condition 35 of the Notification No. 12/2012 dated 17th March, 2012.

41. The respondents placed reliance on *Commissioner of Customs (AIR) Chennai-I v. Samynathan Murugesan*, 2009 (247) E.L.T. (Mad.), wherein the imported gold was held to be prohibited goods, as the respondent was not considered an eligible passenger as per the Exemption Notification no. 31/2003.

42. It is to be noted that Notification No. 12/2012 is an exemption notification granting concessional customs duty on specified goods, including silver, subject to fulfillment of certain conditions. It does not



impose any prohibition on the import of silver goods, and the conditions mentioned therein along with the definition of “eligible passenger” are limited to the scope of claiming the concessional duty so mentioned. Thus, it is not a prohibitory notification.

43. Consequently, silver cannot be counted within the duty-free allowances available to passengers and must be declared and cleared on payment of the applicable customs duty. The exclusion of silver from the scope of free clearance only means that no duty exemption is available under the Baggage Rules. It does not amount to a statutory prohibition on import. Accordingly, silver was a freely importable commodity, subject to declaration and payment of the prescribed duty, and its non-eligibility for duty-free clearance cannot by itself render it “prohibited goods” within the meaning of Section 2(33) of the Customs Act.

44. The subject goods in the present case were not subject to any prohibition under the Customs Act or any other law. Even if the contention of the Respondents is accepted that the silver was not in the form of jewellery, it would still be freely importable subject to the RBI guidelines. In the Impugned Orders, no such RBI guidelines have been referred to.

45. It has been observed in the Order-in-Original that the government, in order to safeguard the national economic interest, is trying to discourage the import of Gold and Silver, in commercial quantity, and that the release of such goods would not assist in the enforcement of the regulations. Section 11 of the Act empowers the



Central Government to prohibit either absolutely or subject to such conditions as may be specified in the notification, the import or export of goods of any specified description. To justify the observations made in all the three orders *viz.* Order-in-Original, order passed by the Appellate Authority and also the order of Revisional Authority, it was expected of them to rely on the provision of policy or the parent statute or any regulation to justify their observation that silver was a prohibited item. Rather, it is from the contention of the petitioner, particularly, from the notification of 2019, it is established that it was not a prohibited item.

46. It is a settled legal position that a statutory body must act within the framework of the statute and cannot travel beyond the statute. In the case of *Shridhar C. Shetty (Deceased) Through Legal Representatives v. Additional Collector and Competent Authority and Others*, (2020) 9 SCC 537, the court held:

“19. -----
But the competent authority being a creature of the statute under Section 2(d) of the Act, cannot act beyond its statutory jurisdiction and the exercise of its powers shall remain circumscribed by the provisions of the Act.
-----”

47. The respondent authorities are statutory authorities constituted under the Customs Act, 1962. Being creatures of the statute, they are bound to exercise only such powers as are expressly conferred upon them by the Act and cannot travel beyond the statutory framework.

48. The respondents placed reliance on the case of *Om Prakash Bhatia v. Commissioner of Customs, Delhi*, 2003 (155) ELT (SC),



wherein it has been held that if there is any prohibition of import or export of goods under the Customs Act, 1962 or any other law for the time being in force, the goods would be considered to be prohibited goods. This prohibition would also operate on such goods, the import or export of which is subject to certain prescribed conditions, if the conditions are not fulfilled. The fact remains that silver at the time was freely importable and was not subject to any restrictions or any prescribed condition whatsoever, except for the statutory mandates discussed above, non-compliance of which has been limited to confiscation. The ratio in the matter of *Om Prakash* (cited supra) will be hardly applicable to the case in hand as is claimed by the respondents, particularly, when they are unable to demonstrate before this Court that there exists a statutory restriction or otherwise on the import of silver goods, on the date when the same were detained.

49. For a determination of whether the subject goods are prohibited goods, we need to consider whether the goods fall under the definition of Section 2(33), which states that any prohibition under the Customs Act, or any other law for the time being would render the goods prohibited. In view of above, we have no hesitation to hold that the subject goods were not prohibited under the Customs Act or the law as was existing in 2016 particularly when the respondents have failed to demonstrate that the goods were prohibited on the date of its import from any of the statutory provision. The second part of the definition includes goods that were subject to any conditions or regulations and the breach of the same resulted in such goods being covered under the ambit of prohibited goods.



50. It has already been established that as per the ITC HS Policy, 2012, silver goods were not “restricted” or “prohibited”. They were freely importable at the time and were simply subject to RBI guidelines. It was only subsequently, in 2019, that the import policy relating to silver was amended to permit the import of silver only through nominated agencies notified by the RBI and DGFT. In the Impugned Orders, no such RBI guidelines have been referred to.

51. Section 125(1) of the Customs Act draws a clear distinction between “prohibited goods” and “goods other than prohibited goods”. In the case of prohibited goods, the adjudicating authority may, in its discretion, grant an option to redeem the goods on payment of fine. In the case of goods other than prohibited goods, the statute mandates that such an option of redemption shall be given. Thus, once it is found that the goods are not “prohibited goods” within the meaning of Section 2(33), the grant of redemption is not discretionary but obligatory.

52. It can be thus concluded from the observations above that the non-compliance with the aforementioned sections merely made the goods ineligible for free clearance of duty and liable to confiscation. The Impugned Orders do not state, in any manner, how the goods become liable to absolute confiscation with no option of redemption. The correlation established between the said sections in the Impugned Orders to hold that the goods were prohibited goods and liable for absolute confiscation seems to be insufficient.

53. The respondents have placed reliance on the case of *Sheikh Mohd. Omer* to contend that “any prohibition” means all types of prohibition, and thus restriction is one type of prohibition, which has been brought out by the Order-in-Original that the silver jewellery is



not allowed to be imported freely in baggage and therefore, was a prohibited item. This contention has been dealt with above, wherein it has been observed that the subject silver goods were erroneously treated as not being freely importable. The said contention is contrary to the applicable ITC HS Import Policy, 2012, which clearly stipulated that silver was freely importable, subject only to RBI guidelines. Thus, there was no express prohibition or restriction applicable, hence the holding in Sheikh Mohd. Omer is not applicable in the present case.

54. Thus, the subject silver goods cannot be termed as “prohibited goods” and the discretion to allow redemption does not lie with the Adjudicating authority. The petitioner is entitled to the statutory option of redemption under Section 125 upon payment of redemption fine, duty, and other charges as may be determined in accordance with law.

55. In relation to the matter of penalty imposed *vide* the Order-in-Original, the reason of imposing a high penalty on the petitioner has been stated to be in consideration of the *mens rea*, *i.e.*, the intent of smuggling and evasion of duty and the *actus reus* of crossing the Green Channel and non-declaration of the seized goods. The Petitioner was ordered to pay a penalty of Rs. 45,00,000/- under Section 112 and 114AA of the Customs Act, 1962. The penalty had been imposed in respect of the contraband totally valued at Rs. 2,49,60,094/-. The imposition of penalty was upheld in the Appellate Order and the Impugned Revisional Order.

56. The contravention of the provisions of the Act stands established and the imposition of penalty cannot be faulted altogether. Once this Court is of the view that the goods which were detained in the case in hand are not prohibited under the import policy, we have no hesitation



to hold that subject goods are liable for redemption.

57. The Act, particularly, Section 125, provides for redemption and such procedure for redemption pre-supposes hearing to be granted.

58. As such, we permit the petitioner to appear before the respondent on 15th June, 2026 and the respondents are directed to decide the redemption fine that has to be imposed in exercise of the power under Section 125, as the impugned orders are not providing relief to that extent in favour of the petitioner.

59. The respondents are directed to decide the said redemption fine, in accordance with the provisions of Section 125, within a period of six weeks from the date of appearance of the petitioner.

60. Such redemption fine imposed by the respondent once communicated in writing to the petitioner, the petitioner must pay the same within the statutory period prescribed, *i.e.*, one hundred and twenty days from the date of option, along with outstanding duty and penalty.

61. The exercise of powers by this Court under Article 226 in the matter of granting benefit of redemption is having regard to the reasons recorded in the foregoing para *viz.* silver at the relevant time was not a prohibited item to mean that its import was not completely and blanketly banned. Once we have held that it was not a banned item, same can be subjected to reasonable restriction, *i.e.*, the payment of redemption fine.

62. The subject silver goods, did not fall under the category of 'prohibited goods' or 'restricted goods', at the time of their import. The subject goods were freely importable at the time, and only subsequently, in 2019, *vide* Notification No. 36 dated 18th December,



2019, the status of import of silver was amended from ‘free’ to ‘restricted’. In accordance with the reasons recorded herein, the subject silver goods cannot be said to be ‘prohibited goods’, and the same could not have been made liable for absolute confiscation. In the case of “*goods other than prohibited goods*”, it is obligatory to grant the option of redemption to the petitioner and the authority could not have exercised its discretion for the same.

63. The writ petition, as such, stands allowed in above terms.

64. In response to the Court’s query, the petitioner has volunteered that he shall deposit a cost of Rs. 25,00,000/- in this Court, particularly, having regard to his conduct as reflected in the factual matrix. Let the aforesaid cost be deposited in this Court, in any case, by 15th July, 2026.

65. For the purpose of apportionment of said cost, we direct the Registry to place this matter before the Court once the cost is deposited.

66. Pending application, if any, also stand disposed of.

67. A copy of this Judgment be uploaded on the website of this Court.

**NITIN WASUDEO SAMBRE
(JUDGE)**

**AJAY DIGPAUL
(JUDGE)**

MARCH 23, 2026/ay/pr/gs