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

Date of Decision: 4th April, 2025

+ **W.P.(C) 4327/2025**

SAJAD AHMED KAKPetitioner

Through: Mr. D.S. Chadha, Advocate.

versus

COMMISSIONER OF CUSTOMS NEW DELHIRespondent

Through: Mr. Aakarsh Srivastava, Senior
Standing Counsel.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE MANOJ JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 20037/2025 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

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3. This petition has been filed under Article 226 of the Constitution of India by the Petitioner – Sajad Ahmed Kak seeking issuance of appropriate directions to the Respondent-Department to either return the gold to the Petitioner or refund the value of the said gold in terms of the Order-in-Appeal No.CC(A)/CUSTOMS/ D-1/ AIR/ 2020-21 dated 17th June, 2020 passed by the Respondent-Department.

4. This petition has a long drawn history. The Petitioner had travelled from Bangkok to Delhi on 10th March, 2014 and he was carrying three gold



bars weighing about 457.95 grams. The Petitioner was intercepted at IGI Airport, Terminal-3, New Delhi, and the gold was detained vide detention receipt bearing No. 19397 issued on 10th March, 2014.

5. A show cause notice dated 1st September, 2014 bearing C.NO.VIII(AP)/ 10/P&I/579-B/2013 was issued to the Petitioner with respect to such detention and a reply to the show cause notice was also submitted by the Petitioner.

6. Accordingly, the order in original dated 30th January, 2015 was passed by the Adjudicating Authority. In terms of the said order, absolute confiscation of the gold bars was directed. The relevant portion of the said order dated 30th January 2015, is extracted below :-

“(i) I order absolute confiscation of items namely the seized three gold bar weighing 457.95 grams and value is 12,29,413/- (Rupees Twelve Lakhs twenty nine thousand four hundred thirteen only) under section 111(d), 111 (i), 111(j), 111(1) and 111 (m) of the Customs Act, 1962.

(ii) I also impose a penalty of Rs.4,00,000/- (Rupees Four Lakhs only) on the noticee under Section 112 and 114AA of the Customs Act, 1962.

(iii) I deny free allowance of Rs. 35,000 /- to Mr. Sajad Ahmad in respect of the seized goods.”

7. This order was challenged by the Petitioner and an Order-in-Appeal was passed, permitting redemption of the goods vide order dated 4th March, 2016. The same is extracted below :-

“In view of the above, I hold that the goods can be redeemed upon payment of redemption fine of Rs. 3,50,000/- under Section 125 of the Act *ibid*. However,



penalty imposed upon the appellant under Section 112 & 114AA of the Customs Act, 1962 is not interfered with. This fine along with penalty will meet the end justice and would deter the appellant from like mis-adventures in future. Further, the appellant is also liable to pay the Customs Duties as applicable. The adjudicating authority is hereby directed to convey the specific duty amount to the appellant within 15 days of receipt of this order.”

8. As per the above order, the Petitioner was permitted to redeem the goods with a fine of Rs. 3,50,000/- and the Adjudicating Authority was to convey the specific duty amount to be paid by the Appellant within 15 days. Unfortunately, the said amount was not conveyed to the Petitioner. Despite repeated letters written by the Petitioner, the same was left unattended. It is also submitted by the Petitioner that in the meantime, the gold was also disposed of by the Respondent-Department without intimation to the Petitioner.

9. The Petitioner then applied for refund in view of the said disposal of gold. Refund order being order No. 08/2017-18 was passed on 24th July, 2017 by the Assistant Commissioner (Refund), rejecting the application for refund. In the appeal against the said order, the matter was remanded afresh to be decided by the Adjudicating Authority. The said order dated 17th June, 2020 is relevant and is set out below :-

“5. Discussion and findings :-

5.1 I have carefully considered the contents of the impugned Order, written & oral submissions made by the Appellant. The issue to be decided is whether the Appellant is eligible for the refund of sale proceeds of the confiscated goods?



5.2 I find that the Adjudication order for confiscating the seized goods was issued on 02.02.2015 and Commissioner (Appeals) vide Order-in-Appeal no. CC(A)Cus/D-1/Airport/125/2016 dated 03.03.2016 had given an option to redeem the confiscated goods on payment of redemption fine of Rs. 3,50,000/- under section 125 of the Customs Act, 1962 along with the applicable customs duty, penalty, other duties, cess and charges as applicable. In terms of Section 125(3) of the Customs Act, 1962, the option for redemption becomes void if not exercised within 120 days. However it is noted that the Appellant had sought redemption in terms of order of Commissioner (Appeal) dated 03.03.2016 on 14.03.2016 itself. He has been following up with his letters dated 30.05.2016 & 08.08.2016. The Adjudicating Authority has also noted that the Appellant had been visiting Airport in this regard.

5.3 I find that the refund claim has been rejected on the ground that the Appellant had applied for refund after the expiry of eligible period of one year and therefore the refund is not tenable in terms of Section 27 of the Customs Act, 1962. However, it is noted that the refund claim of the Appellant is not covered by Section 27 of the Customs Act 1962 as it is not refund of any duty but pertains to refund of sale proceeds of confiscated goods, in respect of which an appeal was pending. Once the option for redemption has been exercised, the confiscated goods are required to be returned to the claimant and accordingly if the confiscated goods have been disposed, the sale proceeds need to be refunded after necessary adjustments.

5.4 In view of the above observation, the matter needs to be re-examined by the original adjudication authority. It is also noted that rejection of refund claim has done without following principles of natural justice.



Order

In light of discussions and findings as above, the impugned order No. 08/2017-18 dated 04.07.2017 is set aside and matter remanded to original adjudicating authority in terms of Section 128A(3)(b)(i) of the Customs Act, 1962 for passing fresh order keeping in view the above observations.”

10. As per the above Order-in-Appeal dated 17th June, 2020, the Commissioner of Customs (Appeal) noted that there was a follow up by the Petitioner but the refund was not granted. In view thereof, the order rejecting the refund dated 24th July, 2017 was set aside and the matter was remanded afresh to the original Adjudicating Authority.

11. The entire journey of 10 years has still not culminated in either redemption or refund being issued to the Petitioner. Clearly, the Customs Authorities ought to have initially given effect to the order of Commissioner (Appeals) and accordingly should have determined the duty and allowed the Petitioner to avail release of the gold, which did not happen.

12. Thereafter, as per the Petitioner, the gold has also been disposed of without any intimation to him. If this position is correct, the disposal would be contrary to law.

13. Moreover, the final Order-in-Appeal has also remanded the matter to the original Adjudicating Authority. This order was passed on 17th June, 2020 and till date, the Adjudicating Authority has not passed any orders, despite repeated letters dated 21st June, 2022 and 28th September, 2024 sent by the Petitioner.

14. Gold prices have also increased considerably during this period.



Considering this position, the Court is inclined to direct the Adjudicating Authority, Assistant/Deputy Commissioner (Refunds) to pass the refund order within a period of one month from today. While passing the refund order, the following aspects shall be examined :-

- (i) whether the Petitioner was given any intimation prior to disposal of the gold or not;
- (ii) what was the amount recovered from the disposal;
- (iii) whether the Petitioner would be entitled to any interest in accordance with law.

15. The order shall be passed after considering all these aspects.

16. None of the other reliefs are being adjudicated in the present petition.

17. If the order is not passed within one month, the Petitioner is free to seek revival of the present petition.

18. In respect to the above stated directions, the personal hearing notice shall be communicated to the Petitioner by the Adjudicating Authority, Assistant/Deputy Commissioner (Refunds) through his Counsel and accordingly, the Petitioner shall ensure his presence.

19. The present petition is disposed of in the above terms. Pending application(s), if any, also stand disposed of.

20. List for reporting compliance on 15th July, 2025.

**PRATHIBA M. SINGH
JUDGE**

**MANOJ JAIN
JUDGE**

APRIL 4, 2025/nd/ss