

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40518 of 2022

(Arising out of Order in F. No. GEN/ADJ/COMM/295/2022-ADJN. Dated 25.10.2022 passed by the Principal Commissioner of Customs (Air Cargo), Chennai-VII Commissionerate, New Custom House, Meenambakkam, Chennai – 600 016)

M/s. Sree Venkateshwara Bullion

: Appellant

No. 116/224, Tarus Tower, NSC Bose Road,
Sowcarpet, Chennai – 600 079

VERSUS

Principal Commissioner of Customs

: Respondent

Chennai-VII Commissionerate,
Air Port and Air Cargo Complex,
New Custom House, Meenambakkam,
Chennai – 600 027

APPEARANCE:

Shri B. Satish Sundar, Advocate for the Appellant

Shri Rudra Pratap Singh, Additional Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40965 / 2023

DATE OF HEARING: 09.10.2023

DATE OF DECISION: 31.10.2023

Order : [Per Hon'ble Mr. P. Dinesha]

It is the case of the appellant that they are in the business of local trade of gold and silver bullion, jewellery, etc., and that they are in the said business from the year 2020, in which Shri N.S. Balaji and his wife Smt. N.B. Anita are partners. For the purpose of conduct of the business in bullion and jewellery, the

appellant is registered with the G.S.T. authorities having Registration No. 33AEGFS0250QIZU and that they have been filing their returns with the G.S.T. authorities on local purchase and sale of bullion and jewellery without any default or let on their part.

1.2 It is the further case of the appellant that on 02.02.2022, officers of the DRI conducted search and seizure operations at the premises of the appellant and that the accounts in Tally were verified with the available stock, which were apparently found to be correct. The Officers had seized 3516 grams of crude gold bullion on the said date and the appellant had informed the Officers that the seized stock of 3516 grams of crude gold bullion were all duly accounted. Moreover, the appellant claims to have submitted copies of bills/invoices on 02.02.2022, i.e., on the date of search and seizure.

1.3 The appellant contends that they had purchased gold ornaments to the tune of 2011.300 grams at Rs.4260/- per gram from M/s. Shree Venkateshwara Jewellers of 82, NSC Bose Road, Sowcarpet, Chennai under Invoice No. SVJ/602/2021-22 dated 18.10.2021. The sale consideration including C.G.S.T. and S.G.S.T. amounting to Rs.88,34,007/- was paid through RTGS to the aforesaid seller and the same is

reflected in the G.S.T. returns filed by the appellant; that this jewellery was sent for melting to M/s. Kailash Melting and Testing having their shop at No. 20/40, Hanumantharayan Koil Street, Chennai – 600 003 and the quantity sent was 2009.300 grams. After melting and purification, M/s. Kailash Melting and Testing sent back the gold in crude bullion form to the extent of 1840.520 grams under their Invoice No. 56 dated 01.01.2022. The appellant also claims to have purchased different quantities of gold from various other shops under respective invoices.

2. In the light of the above pleadings, it appears that the appellant requested for release of the crude gold bullion seized from their office.

3. The appellant, having not obtained any order as to the release of the seized crude gold bullion as requested, appears to have approached the Hon'ble High Court by way of multiple Writ Petitions and the Hon'ble High Court vide its latest Order in W.P. No. 24141 of 2022 dated 30.09.2022, directed the lower authority to dispose of the request for release of goods by following the principles of natural justice, consequent to which the Principal Commissioner of Customs (Air Cargo), Chennai has passed the impugned order thereby again reiterating that the

seized gold could not be provisionally released and thereby rejecting their application.

4. The Learned Principal Commissioner has in the impugned order held that the gold seized from the appellant's premises was allegedly procured from importers who have diverted imported gold to the local market contrary to the conditions and restrictions placed on such imports by the Government of India, hence the seized goods have become 'prohibited goods' in terms of Section 2(33) of the Customs Act 1962, and since provisional release may defeat the purpose of absolute confiscation of the said goods, permissible as per section 125 of the Act *ibid.*, thereby permit prohibited goods to enter the domestic market, he rejected the request for provisional release of the seized gold.

5. It is against this rejection order that the appellant has filed the present appeal before this forum.

6. Heard Shri B. Satish Sundar, Ld. Advocate for the appellant and Shri Rudra Pratap Singh, Ld. Additional Commissioner for the Revenue.

7.1 The learned counsel for the appellant has stated that the seized crude gold has been duly accounted for and informed to the Department in periodic returns

filed by them. Section 110A permits the provisional release of 'any goods' which are seized.

7.2 He would further submit that in the present case, the adjudication proceedings are yet to be concluded and the same cannot be proceeded with in the light of the interim stay order on adjudication granted by the Order of the Hon'ble High Court in W.M.P. No.14565 of 2023 in W.P. No. 15038 of 2023 in the case of the appellant and hence, it is premature for the learned adjudicating authority to conclude that the seized gold was prohibited goods. Hence the impugned order is preconceived and arbitrary. He has referred to the Judgment of the Hon'ble High Court of New Delhi in *Additional Director General (Adjudication) vs Its My Name Pvt. Ltd. [2021 (375) E.L.T. 545 (Del.)]* to state that mere fact that imported goods, consequent on adjudication may, possibly, be held liable to confiscation at a later stage, cannot be a ground to refuse provisional release. He thus prayed that the impugned goods may be ordered to be released provisionally.

8. Shri Rudra Pratap Singh, Ld. Authorized Representative (Additional Commissioner) for the Revenue has vehemently opposed the release of the

gold provisionally and has reiterated the points given in the impugned order.

9. We have gone through the facts as pleaded by both sides. We take note of the contentions of the appellant that the gold is in crude form and does not bear foreign marking, and hence it is not yet proved to be of foreign provenance. The same has been seized as a part of investigation from the appellant's premises. Appellant claims to have provided proof of their licit origin and of having been properly recorded in their books of account and informed to the Department in their periodic returns, but these could only be considered during adjudication and hence, we refrain from expressing any views at this stage. But the matter has not been adjudicated even after a lapse of more than one and half years. Hence, the balance of convenience would be to ensure that the Department's interests are secured while the appellant is also allowed to continue with its business.

10. We find that the Hon'ble High Court of New Delhi in its judgment in *Its My Name (supra)* has held that the power and jurisdiction of the Tribunal hearing the appeal, is coequal with the powers exercised by the adjudicating authority. The Hon'ble High Court has held that a Bank Guarantee of an amount of around

30% of the value of the goods seized along with a Bond for the full value of the seized goods containing an auto renewal clause to be a sufficient safeguard for the interest of Revenue. However, the Hon'ble Supreme Court while disposing of the Special Leave Petition filed against the Hon'ble High Court judgment by Revenue, has upheld the same while enhancing the Bank Guarantee to about 50%.

11. We also feel that it would serve the interest of the Revenue and the appellant to follow the said terms and conditions while ordering release of the impugned goods provisionally as per Section 110A of the Customs Act 1962. We hence order the release of the seized goods, for which the appellant may furnish a bond, for the full value of the seized goods, along with a Bank Guarantee containing an auto renewal clause for an amount of 30% of the value of the seized goods subject to the condition that the premises of the appellant would be kept open for inspection by the Revenue, at all reasonable hours, and all utilization/sale of the gold/gold jewellery shall be duly accounted for. We direct that weekly account statements, in that regard, shall be furnished by the appellant, to the Revenue.

12. The impugned order is therefore set aside and the appeal is disposed of on the above terms.

(Order pronounced in the open court on **31.10.2023**)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd