

**THE HON'BLE SRI JUSTICE P.SAM KOSHY**  
**AND**  
**THE HONOURABLE SRI JUSTICE N. TUKARAMJI**  
**Writ Petition Nos.28523 and 28548 of 2023**

**COMMON ORDER** : (per the Hon'ble Sri Justice **P.SAM KOSHY**)

These are two writ petitions filed by the petitioners with common relief, and since the grounds raised in both these writ petitions being one and the same and the counsel representing either parties are also the same, for convenience we proceed to dispose of the writ petitions by way of this common order.

**2.** The present writ petitions are filed primarily seeking for a relief of issuance of a Writ in the nature of a *Mandamus* declaring the action on the part of the respondents in seizing the gold, weighing 2,000 gms. and 1793.500 gms. from the two petitioners on 12.08.2023, to be bad in law, arbitrary and illegal. It was further prayed that the respondents be directed to provisionally release the goods on payment of applicable duty under the Customs Act or under any other conditions as may be imposed by the High Court.

**3.** The petitioner in Writ Petition No.28548 of 2023 was carrying gold weighing 2,000 gms., and the petitioner in Writ Petition No.28523 of 2023 was carrying gold weighing 1793.500 gms.

4. The incident revolves around the action on the part of the officers of the Customs Department, the Area Intelligence Unit posted at the Rajiv Gandhi International Airport, Shamshabad, Hyderabad. It was on 12.08.2023 at around 00.20 hrs., the Customs Authorities intercepted the writ petitioners, viz., Shaik Arif, S/o.Shaik Ghouse Basha, aged around : 22 years claims to be a student and another petitioner, viz., Shaik Mohammed Sadiq, S/o.Shaik Adul Jaleel, aged around 21 years, also claims to be a student. Upon arrival of the two petitioners at the Hyderabad airport from Bangkok by Thai Airlines Flight No.TG-329 on 12.08.2023, on suspicion, the two petitioners were intercepted by the Customs Authorities suspecting them to be carrying goods in violation of the provisions of the Customs Act, 1962 **(for short, 'the Act')**. As per the version of the Customs Department, upon the petitioners being asked whether they were in possession of the dutiable goods or prohibited goods, the petitioners replied in the negative. The officers also asked the petitioners if they had any Indian Customs Declaration Form declaring as to whether they were carrying any restricted goods to which also the petitioners replied in the negative. However, in the course of frisking the petitioners, it was found that they were carrying 24K gold weighing 2,000 gms. and 1793.500 gms., respectively in their pocket of the trousers that they were wearing. The gold which the petitioners were carrying was worth

Rs.1,21,34,000 and Rs.1,08,82,165, respectively Considering the aforesaid bringing of gold by the two petitioners in utter violation of the Customs norms and rules, proceedings under the Customs have been initiated against the petitioners and it was only thereafter that the present writ petitions have been filed by the petitioners seeking for the relief as prayed for.

**5.** The contention of the learned counsel for the petitioners in the two writ petitions is that the said gold was purchased by the petitioners at Bangkok. He further contended that though the petitioners intended to declare the same whereas even before they could reach to the counter where submission of declaration forms are accepted, the petitioners were intercepted by the Officers of the Customs Department. According to them, as soon as the petitioners came out of the Aero bridge and before the petitioners could reach the arrival hall where the counter for declaration was located. The petitioners were intercepted, seized and taken into custody.

**6.** According to the learned counsel for the petitioners, since they had not reached the arrival hall or the counter where the declaration had to be made and before that itself they were apprehended at a much earlier stage, and they were deprived of submitting the declaration forms and the payment of the required customs duty.

Therefore, for this reason also the seizure proceedings and the order of seizure needs to be interdicted by this Court under Article 226 of the Constitution of India. Though the petitioners were not carrying any cash with them, according to the petitioners they had their own people waiting outside the Airport with the money required for being paid towards customs duty, but it was not allowed or followed.

**7.** According to the learned counsel for the petitioners, since they were prevented much before they could reach the counter provided for declaration of the forms, the entire action is bad. Subsequently, the petitioners received notices for disposal of the gold seized from them vide notice dated 24.08.2023, during which time both the petitioner were in judicial custody. Knowing well that the petitioners were in judicial custody, issuance of a notice becomes an empty formality and is thus in violation of principles of natural justice, and therefore, the said action requires to be set aside for the above grounds. The petitioners were subsequently released on bail by the order of the High Court only on 21.09.2023. After coming out of the jail, the petitioners have filed the instant writ petitions.

**8.** According to the learned counsel for the petitioners, the notices for disposal of the gold is contrary to law and are in violation of Section 150 of the Customs Act. It was also contended that the notice

for disposal of the gold even before confiscation proceedings is finalized is again in contravention and provisions to Section 126 of the Customs Act. The other ground that has been raised is that the entire proceedings drawn by the customs officials is without adherence to specific provision as is enumerated under Section 110(b) of the Customs Act. It was also the contention of the learned counsel for the petitioners that the adjudicating authority ought to have released the gold as there is an option of redemption under Section 125 of the Act, after payment of the requisite custom duties and the fine imposed on the same. This again has not been adhered to on this ground also the said action on the part of the respondents is liable to be quashed / set aside. He, therefore, prayed for declaring the action on the part of the respondents in seizing the gold to be bad in law and allow the writ petitions.

**9.** On the other hand, the learned Standing Counsel for the respondent-Department vehemently opposed the writ petitions on the ground that the petitioners are not entitled for any reliefs as has been sought for in the writ petitions. According to him, it is a sheer smuggling of gold into India by the petitioners and they are now trying to rake up the matter on lame and frivolous grounds. He further contended that the *modus operandi* by the two petitioners in the two

writ petitions were of identical nature. The manner in which the two petitioners tried to smuggle gold into India was also identical.

**10.** He further contended that during the course of frisking of the passengers, after all other formalities were completed, it was found that both the petitioners have been carrying two solid bar shaped objects covered with black colour adhesive tape, one placed in the front pocket and other placed in the back pocket of their trousers. Upon removing of the tape and after testing the same, it was found that the two petitioners were carrying two gold bars of quality 24K purity each, weighing 2,000 gms. and 1793.500 grams by the two petitioners , valued at Rs.1,21,34,000 and Rs.1,08,82,165/-.

**11.** According to the learned Standing Counsel, the petitioners herein did not have proper invoice in respect of the purchase of the gold bars. The petitioners even did not furnish the requisite declaration form of they carrying goods which were dutiable and which were not disclosed as per the case of the respondents. According to him, during the course of interrogation, the petitioners contended that they were handed over this consignment by some unknown persons at Bangkok and which was to be delivered to somebody at Hyderabad. Apart from the fact that the petitioners did not have the invoice and the necessary declaration form, the petitioners also did not have

sufficient money to pay the required duty for the gold bars, as is otherwise required under the provisions of the Customs Act. Since the petitioners were not able to provide any convincing reply to the queries put by the learned Standing Counsel for the respondent-Department and neither the petitioners were carrying any authentic document in respect of the purchase of the said gold and also for fact that the petitioners did not submit the declaration form of they carrying such quantity of gold, the authorities concerned were justified in seizing the gold and initiating appropriate prosecution case against the petitioners which cannot be found fault with.

**12.** As regards the contention of the learned counsel for the petitioners so far as the notice for disposal of the gold is concerned, it was the contention of the learned Standing Counsel for the respondent-Department, that under Section 110(1A) the Central Government has got all the powers to publish the notification of goods or clause of goods which shall, as soon as may be after its seizure under Sub-Section (1), be disposed of by the competent authority. As per the notification issued by the Central Government, *gold* is one such item in the said Schedule it can be disposed of immediately on its seizure. He further contended that ultimately if the petitioners succeed, they would be given the value of the gold which they had tried to bring in illegally into the country.

**13.** However, referring to the documents enclosed with the *panchnama* and other related documents, learned Standing Counsel for the respondent-Department contended that there was sufficient material available to reach to the conclusion that the two young petitioners herein were trying to smuggle into India with gold by keeping the gold in their pocket without proper documentation and without furnishing any declaration form in respect of their possessing of the gold. He further contended that a bare perusal of these documents itself would reveal that the entire procedure has commenced strictly in accordance with the provisions of law and that at no point of time have the respondents acted in a manner which is either contrary or in violation of the provisions of the Act.

**14.** Having heard the contentions put forth by the learned counsel on both sides and on a perusal of the records, some of the admitted factual matrix of the case is that the two petitioners herein travelled from Bangkok to Hyderabad in No.TG-329 on 12.08.2023, and upon reaching the Rajiv Gandhi International Airport, at Shamshabad, Hyderabad and upon interception, it was found that the two petitioners were carrying gold with them and that the gold was physically present in their front and back pockets of the trousers. The petitioners did not have the requisite voucher / invoice / bill by which the gold was purchased by the two petitioners. The two petitioners



also did not declare, in respect of their possessing gold, their willingness to pay the requisite customs duty payable on the said gold. The petitioners also did not go towards the 'Red Channel' counter where such declarations were supposed to be made, but tried to smuggle out the gold by directly travelling through the 'Green Channel' counter during which time they were intercepted and frisked by the respondent-Department and it was then the gold was recovered from the two petitioners. The petitioners also did not carry sufficient money for making payment towards customs duty.

**15.** With the aforesaid factual matrix of the case, we now proceed to appreciate the statutory provisions governing the field.

**16.** Section 110 of the Customs Act deals with seizure of goods, documents and other goods, which for ready reference is being reproduced as under, viz.,

***"110. Seizure of goods, documents and things.***

*(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:*

*Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.*

*[(1-A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.*

*(1-B) Where any goods, being goods specified under sub-section (1-A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of-*

- (a) certifying the correctness of the inventory so prepared; or*
- (b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or*
- (c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.*

*(1-C) Where an application is made under sub-section (1-B), the Magistrate shall, as soon as may be, allow the application.] [ Inserted by Act 80 of 1985, Section 8 (w.e.f. 27.12.1985).]*

*(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:[Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to*

*be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:*

*Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.] [Substituted by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.]*

*(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.*

*(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.”*

**17.** In terms of the provisions of Sub-Section (1A) of Section 110, the Central Government has issued a notification, viz., Notification No.31/1986, dated 05<sup>th</sup> February, 1986, drawing up a list of Schedule of goods of perishable or hazardous nature, depreciation in the value with the passage of time, constraints of storage space and valuable nature of the goods. In the said appendix of Schedule at Serial No.4A, it is mentioned that “gold in all forms including bullion, ingot, coin, ornament, crude jewelry”, can be disposed of immediately on its seizure.

**18.** As regards the burden of proof, in establishing that the goods seized are smuggled goods, the provision under the Customs Act

dealing with this aspect is Section 123, which for ready reference is being reproduced as under, viz.,

**“123. Burden of proof in certain cases.**

*- [(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-*

*(a) in a case where such seizure is made from the possession of any person,-*

*(i) on the person from whose possession the goods were seized; and*

*(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*

*(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.]*

*(2) This section shall apply to gold, [and manufactures thereof,] [ Substituted by Act 40 of 1989, Section 2, for " diamonds, manufacturer of gold or diamonds" .] watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.*

**19.** The above provision would clearly reflect that where any goods under this Section have been seized, under the reasonable belief of it being tried to be smuggled, the burden of proof that they are not

smuggled goods shall be on the person from whose possession the gold was seized.

**20.** From the pleadings and the records available, there does not seem to be any strong case made out by the learned counsel for the petitioners to doubt the action on the part of the respondents so far as arresting the petitioners on the ground that they were trying to smuggle the gold into India from Bangkok. The petitioners in the two writ petitions have, in very categorical terms, stated that they have purchased the gold *en route* to India. However that be so, the petitioners were required to carry the invoice / bill / receipt in respect of the price paid for the said gold. One needs to appreciate the fact that it is not a case where the petitioners tried to smuggle small quantity of gold. In one case, it was 2,000 gms. and in the other it was 1793.500 gms. Both the petitioners were carrying gold worth more than Rs.1 crore each as its cost price. The mode of payment made at the time of purchase was not disclosed. The petitioners did not carry / produce any authentic document in respect of the price of the gold. The petitioners did not even produce any declaration form in respect of they carrying any dutiable goods.

**21.** As regards the contention of the learned counsel for the petitioners that the right of the petitioners to seek re-export of the

articles imported under Section 80 of the Act, there can be no dispute or doubt on the aspect that the subject provision regarding re-export of Article/s under Section 80 of the Act would be only in the event if the person who has imported the goods, has made a declaration as is required under Section 77 of the Act. Thus, a declaration under Section 77 is a pre-requisite for allowing re-export under Section 50.

**22.** In the instant case, the declaration of the subject gold being brought into India was not available with the petitioners.

**23.** A Division Bench of the Allahabad High Court in the case of **Commissioner of Cus. (Preventive), Lucknow vs. Deepak Bajaj**<sup>1</sup>, while dealing with re-export of gold, held at paragraph Nos.11, 12 and 17 as under, viz.,

*“11. A simple reading of the aforesaid provision makes it abundantly clear that the benefit of Section 80 of the Act for return of the detained articles to the passenger at the time of leaving India would only be available to him if in respect of dutiable article or the import of which is prohibited a declaration is made by him under Section 77 of the Act. Therefore, making of declaration under Section 77 of the Act by the person whose baggage contains the dutiable articles or the import of which is prohibited is mandatory for the purposes of returning articles so contained therein.*

*12. Section 77 of the Act mandates the owner of the baggage to make declaration of its contents to the proper officer. The proper officer in relation to the duties performed under the Act is defined*

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<sup>1</sup> 2019 (365) E.L.T. 695 (All.)

*under Sub-Section (34) of Section 2 of the Act to mean the officer of the Customs who is assigned those functions by the Board or the Principal Commissioner of Customs or Commissioner of Customs. In other words, a declaration under Section 77 of the Act has to be made by the owner of the baggage before the Custom Officer.*

... ..

17. *In view of the aforesaid facts and circumstances, as the respondent was duly produced before the Customs Officer and his statement was recorded without any duress but still he failed to make any declaration under Section 77 of the Act. It is obvious that there is no declaration about the seized gold by him as required under Section 77 of the Act which is sine qua non for extending the benefit of Section 80 of the Act. The respondent therefore cannot plead and defend on the pretext that he was not given opportunity to make declaration as required under Section 77 of the Act.”*

**24.** Similar view has been taken by a Division Bench of the Delhi High Court in the case of **Jasvir Kaur vs. Union of India**<sup>2</sup>, wherein the Division Bench held at paragraph 9 as under, viz.,

“9. *We have no manner of doubt that re-export cannot be asked for as of right. If the Customs authorities have come to the conclusion, as they did in the present case, that the intention of bringing an article of high value is to dispose it of in India or is in an attempt to smuggle the same into India then the question of re-export cannot arise when that article is recovered from the passenger. The passenger cannot be given a chance to try his luck and smuggle Gold into the country and if caught he should be given permission to re-export. That is not the intention of Rule 3 or Rule 7 of the Tourist Baggage Rules. It is the genuine personal jewellery, which alone is permitted to be brought into the country and which. Must be re-*

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<sup>2</sup> 2009 (241) E.L.T. 521 (Del.)

*exported. Whenever the Customs authorities find that in the garb of personal items goods are sought to be smuggled or brought into the country without the authority of law then there is every right with the Government to confiscate the same. For good and valid reason re-export may be allowed but it cannot be claimed as of right.”*

**25.** The fact that the gold was being brought into the territory of India without proper documents and also in violation of the provisions of the Customs Act, there can be no doubt that the goods are liable for confiscation and it was for this reason the subject gold bars were seized.

**26.** As has been discussed earlier, Section 110 of the Act deals with seizure of goods, etc. Sub-Section (1-A) thereof empowers the Central Government to notify certain goods which need not be subjected to confiscation for the purpose of its disposal. A notification in this regard has also been issued by the Central Government viz., Notification No.31/1986, dated 05<sup>th</sup> February, 1986, wherein at Serial No.4A of the Schedule, it is mentioned that “gold in all forms including bullion, ingot, coin, ornament, crude jewelry” are goods which can be disposed of by the proper officer, in such a manner as the Central Government may, from time to time, determine. Since the “gold” is one such goods which is notified under Sub-Section (1A) of Section 110, the general provisions as is otherwise stipulated under Section 126 of the Customs Act will not be applicable in the instant case.



**27.** Further, a Division Bench of the Madras High Court in the case of **Malabar Diamond Gallery P. Ltd. vs. Addl. Dir. General, Directorate of Revenue Intelligence, Chennai**<sup>3</sup>, dealing with the term “prohibited goods”, held at paragraph No.41 as under,

*“41. In the light of the decisions and in the context of what is observed above, the expression, in section 2(33) of the Act, "prohibition under this Act" or any other law for the time being, has to be examined with the other provisions in the Customs Act, 1962. Section 2(39) of the Act, defines “Smuggling” in relation to any goods, which means, any act or omission which will render such goods liable to confiscation under section 111 or section 113. Chapter IV of the Act, deals with prohibition on importation and exportation of goods. Section 11 deals the power to prohibit importation or exportation of goods and the said Section is extracted hereunder:*

*(1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.*

*(2) The purposes referred to in sub-section (1) are the following:-*

*... ..*

*(c) prevention of smuggling;*

*... ..*

**28.** The Division Bench in the above case further held at paragraph Nos.74 to 78 as under, viz.,

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<sup>3</sup> 2016 (341) E.L.T. 65 (Mad.)

*“74. No sooner goods are brought from outside, into the territorial waters of the country, they become imported goods. At this juncture, it has to be seen, as to whether, such goods are legally or illegally imported, whether they fall within Section 11 of the Customs Act, 1962, which defines, an illegal import as, import of any goods in contravention of the provisions of the Customs Act, 1962 or any other law for the time being in force. Goods imported, contrary to the enumerated subject matters in chapters IV and IV-A of the Customs Act, 1962, which deal with prohibition on importation and exportation goods and detection of illegally imported goods prevention and disposal thereof, morefully described in Sections 11 and 11A of the Act, are also to be treated as prohibited. Goods imported from outside of the territory waters of the country, against any prohibition or restriction under the Customs Act, 1962 or any other law, time being in force, are to be treated as prohibited goods.*

*75. There is one thing to state that gold is not one of the enumerated prohibited goods and another, to state that goods are not permitted to be brought into the country, by smuggling, which, means any act or omission which would render such goods liable to confiscation under section 111 or section 113. There may not be total prohibition for import of goods, but if import is not done lawfully, in other words against any prohibition or restriction, which are inbuilt in the Customs Act, 1962 or any other law for the time being in force, then such goods should fall within the definition of Section 2(33) of the Act.*

*76. A conjoint reading Sections 2(33), 11 or 11A of the Act and other provisions in the Customs Act, 1962, and any other law, for the time being in force, would also make it clear that importation of goods, defined as illegal or prohibited or without complying with the conditions, or in violation of statutory provisions in the Customs Act, 1962 or any other law for the time being in force and in all cases, whether there is either total prohibition or restriction, in the light of the judgment of the Apex Court in Om Prakash Bhatia's case, such goods should fall within the definition of Prohibited goods. When*

*import is in contravention of statutory provisions, in terms of Sections 11 or 11A of the Customs Act, 1962 or any other law, for the time being in force and when such goods squarely fall within the definition illegal import, or the other provisions in the statute, dealing with prohibition/restriction, the same are to held as, "prohibited goods" and liable for confiscation.*

*77. As rightly contended by Mr.A.P.Srinivas, learned counsel for the respondents that under Section 123 of the Customs Act, 1962, if the importer fails to discharge the burden that the goods seized from him, were not smuggled, then there is a strong reason for the proper officer to seize such goods. Smuggling is nothing but importing goods clandestinely, without payment of duty and such goods would squarely fall within the definition of Prohibited goods, under Section 2(33) of the Act.*

*78. The expression, subject to the prohibition under the Customs Act, 1962 or any other law for the time being in force, in Section 2(33) of the Customs Act, has to be read and understood, in the light of what is stated in the entirety of the Act and other laws. Production of legal and valid documents for import, along with payment of duty, determined on the goods imported, are certainly conditions to be satisfied by an importer. If the conditions for import are not complied with, then such goods, cannot be permitted to be imported and thus, to be treated as prohibited from being imported.”*

**29.** In the light of the aforesaid categorical finding based upon recent judicial precedents, this Bench also does not have any doubt in holding that the contention of the learned counsel for the petitioners that the item “gold” is not a “prohibited good”, cannot be accepted, for the simple reason that there are certain conditions which have to be mandatorily and statutorily followed in the event of import being

made. Further, if such statutory and mandatory requirements are not complied with, the said goods when tried to be smuggled into the country would squarely falls within the definition of “prohibited goods” under Section 2(33) of the Customs Act.

**30.** Further, the manner in which the two petitioners had tried to bring the subject gold into India, put together the two consignments weighing roughly 3.8 kilograms. Further taking into consideration the stand that the two petitioners took in the course of the interrogation wherein they have specifically stated that the gold was not purchased by them and it was given to them by some unknown persons at Bangkok and to be handed over to some unknown person at Hyderabad after coming out of the airport, gives a clear picture of the intention of the petitioners to smuggle the gold into India from Bangkok.

**31.** In the aforesaid factual backdrop, we have no hesitation in reaching to the conclusion that the action initiated by the respondent-Department cannot be found fault with, nor can the same to be held as arbitrary or in contravention of the provisions of the Customs Act. Therefore, the Writ Petitions being devoid of merit deserve to be and are accordingly dismissed. No costs.

**32.** Consequently, miscellaneous applications pending if any in these Writ Petitions, shall stand closed.

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**P. SAM KOSHY, J**

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**N. TUKARAMJI, J**

Date: 28.06.2024  
B/o.  
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