

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75921 of 2025

(Arising out of Order-in-Original No. KOL/CUS/A&A/Pr.COMMISSIONER/ADJN/20/2024 dated 01.07.2024 passed by the Principal Commissioner of Customs (Airport & A.C.C.), Custom House, 15/1, Strand Road, Kolkata – 700 001, West Bengal)

M/s. Noor Jewel Impex

: Appellant

5/1, Periana Maistry Street,
Periamet, Chennai – 600 003

VERSUS

Commissioner of Customs (Airport & A.C.C.)

: Respondent

2nd Floor, Custom House,
15/1, Strand Road, Kolkata – 700 001

WITH

Customs Appeal No. 75914 of 2025

(Arising out of Order-in-Original No. KOL/CUS/A&A/Pr.COMMISSIONER/ADJN/20/2024 dated 01.07.2024 passed by the Principal Commissioner of Customs (Airport & A.C.C.), Custom House, 15/1, Strand Road, Kolkata – 700 001, West Bengal)

Mohammed Kaiser

: Appellant

Working Partner of M/s. Pure Zara Jewellery LLC, Dubai 64,
Lusker Street, Alandur, Chennai, Tamil Nadu – 600 016

VERSUS

Commissioner of Customs (Airport & A.C.C.)

: Respondent

2nd Floor, Custom House,
15/1, Strand Road, Kolkata – 700 001

WITH

Customs Appeal No. 75966 of 2025

(Arising out of Order-in-Original No. KOL/CUS/A&A/Pr.COMMISSIONER/ADJN/20/2024 dated 01.07.2024 passed by the Principal Commissioner of Customs (Airport & A.C.C.), Custom House, 15/1, Strand Road, Kolkata – 700 001, West Bengal)

J.N. Shabeer Ahamed

: Appellant

Operation Manager of M/s. Noor Jewel Impex,
22, Masoodi Street, Pattur, Mangadu, Chennai – 600 122

VERSUS

Commissioner of Customs (Airport & A.C.C.)

: Respondent

2nd Floor, Custom House,
15/1, Strand Road, Kolkata – 700 001

Appeal No(s).: C/75914,75921,75966,
75977,76336/2025-DB

WITH

Customs Appeal No. 75977 of 2025

(Arising out of Order-in-Original No. KOL/CUS/A&A/Pr.COMMISSIONER/ADJN/20/2024 dated 01.07.2024 passed by the Principal Commissioner of Customs (Airport & A.C.C.), Custom House, 15/1, Strand Road, Kolkata – 700 001, West Bengal)

Mohammed Azhar

: Appellant

Partner of M/s. Noor Jewel Impex,
Flat No. AG/53, Shanthi Colony, 3rd Street,
Anna Nagar, Chennai – 600 040

VERSUS

Commissioner of Customs (Airport & A.C.C.)

: Respondent

2nd Floor, Custom House,
15/1, Strand Road, Kolkata – 700 001

AND

Customs Appeal No. 76336 of 2025

(Arising out of Order-in-Original No. KOL/CUS/A&A/Pr.COMMISSIONER/ADJN/20/2024 dated 01.07.2024 passed by the Principal Commissioner of Customs (Airport & A.C.C.), Custom House, 15/1, Strand Road, Kolkata – 700 001, West Bengal)

SK. Pintu

: Appellant

31/7, A.K. Mukherjee Road,
P.O.: Noapara, P.S.: Baranagar, Kolkata – 700 090

VERSUS

Commissioner of Customs (Airport & A.C.C.)

: Respondent

2nd Floor, Custom House,
15/1, Strand Road, Kolkata – 700 001

APPEARANCE:

Shri Aditya Dutta, Advocate,
For the Appellant(s)

Shri Tariq Sulaiman, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75833-75837 / 2026

DATE OF HEARING: 24.06.2026

DATE OF DECISION: 03.07.2026

Appeal No(s): C/75914,75921,75966,
75977,76336/2025-DB

ORDER: [PER SHRI ASHOK JINDAL]

The present batch of appeals arises out of Order-in-Original No. KOL/CUS/A&A/Pr. Commissioner/ADJN/20/2024 dated 01.07.2024 passed by the Principal Commissioner of Customs, Airport & Air Cargo Complex, Kolkata. The dispute pertains to alleged diversion of substantial quantities of foreign-origin gold imported duty-free under the Advance Authorisation Scheme into the domestic market in violation of the post-import conditions prescribed under the Foreign Trade Policy, 2015-20, the Hand Book of Procedures, 2015-20 and Customs Notification No. 18/2015-Cus dated 01.04.2015, as amended.

2. The lead appellant, M/s. Noor Jewel Impex (hereinafter referred to as "NJI"), is a partnership firm having its Head Office at Chennai and a branch office at Kolkata. The firm is engaged in the business of importing duty-free gold under Advance Authorisations issued by the Directorate General of Foreign Trade (DGFT) for manufacture and export of plain gold jewellery of 21/22 carat as well as studded gold jewellery. Since NJI admittedly did not possess its own manufacturing facility, it carried out the manufacturing activity through supporting manufacturers/job workers whose names were endorsed in the Advance Authorisation, and, according to the appellants, in certain instances, owing to business exigencies and production commitments, certain additional supporting manufacturers/job workers were engaged before their formal inclusion in the licence.

3. The present proceedings relate to Advance Authorisation No. 0410166578 dated 03.03.2020 issued by the DGFT, Chennai, whereby NJI was permitted to import 10,00,000 grams of gold of 0.995/0.9999 fineness duty-free under the "Actual User" condition in terms of the Foreign Trade Policy and Customs Notification No. 18/2015-Cus dated 01.04.2015. Pursuant thereto, during the period from 16.03.2020 to 07.07.2021, NJI imported 7,69,000 grams of gold bars through 46 Bills of Entry from M/s. Pakeeza Impex FZCO and M/s. Pure Zara Jewellery LLC, Dubai, for manufacture and subsequent export of jewellery to the said overseas entities. According to the appellants, the imported gold was distributed amongst seven supporting manufacturers mentioned in the Advance Authorisation and four other additional supporting manufacturers/job workers engaged for manufacturing activities, whose names could not be immediately enlisted in the AA.

4. The dispute commenced on 08.07.2021, when officers of the Directorate of Revenue Intelligence (DRI) visited the premises of M/s. Sequel Logistics Pvt. Ltd. situated at the Air Cargo Complex, NSCBI Airport, Kolkata, through whom NJI regularly dispatched consignments. The DRI thereafter conducted simultaneous searches at the business premises of NJI at Chennai and Kolkata as well as at the premises of several supporting manufacturers and job workers. These searches culminated in the seizure of 2,68,416.448 grams of primary gold (24 carat) and 4,083.900 grams of finished gold jewellery (22 carat), which, according to the Department, were liable to confiscation for alleged violation of the Actual User

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conditions governing duty-free imports under the Advance Authorisation Scheme.

5. After completion of investigation and recording statements of the principal noticees, namely Mohamed Azhar, Mohammed Kaiser, J.N. Shabeer Ahamed and Sk. Pintu, the Department formed the view that NJI had diverted duty-free imported gold in contravention of the conditions of the Advance Authorisation Scheme and the applicable provisions of the Foreign Trade Policy. Broadly, the investigation culminated in the following allegations, which collectively formed the basis for proposing confiscation of 2,68,416.448 grams of primary gold:

Sl. No.	Allegation	Quantity
(i)	Diversion of imported gold to job workers who were not declared as Supporting Manufacturers in the Advance Authorisation	1,67,000.000 grams
(ii)	Proposed diversion of gold to an unrelated entity, namely M/s. Nabi Enterprises Pvt. Ltd., under cover of a challan prepared in the name of supporting manufacturer M/s. Dipika Jana	10,000.000 grams
(iii)	Diversion of gold by Supporting Manufacturer M/s. Manoj Enterprises to unauthorised job workers	6,999.180 grams
(iv)	Imported gold allegedly not shown to have been distributed either to Supporting Manufacturers or any authorised job workers	12,000.000 grams
(v)	Shortage detected during reconciliation between primary gold distributed and jewellery received back from Supporting Manufacturers	10,708.825 grams
(vi)	Quantity allegedly not received by Supporting Manufacturers namely Sk. Riyajul, Manoj Enterprises and Dipika Jana, based on their statements	42,000.000 grams
(vii)	Primary gold content allegedly representing non-existing stock of finished jewellery detected during stock verification	19,708.443 grams

6. Based upon the aforesaid allegations, the Revenue alleged that NJI had violated the Actual User condition under the Advance Authorisation Scheme by diverting duty-free imported gold to unauthorised job workers, by utilising non-supporting manufacturers without prior endorsement in the licence, by maintaining incorrect records relating to movement and utilisation of imported gold, and by attempting to export gold jewellery through mis-declaration. Consequently, Show Cause Notice No. 12/2022-23 dated 03.07.2022 came to be issued proposing, inter alia, confiscation of 2,68,416.448 grams of primary gold under Section 111(o) of the Customs Act, confiscation of 4,083.900 grams of gold jewellery under Section 113(h), recovery of customs duty along with interest, and imposition of penalties upon NJI and the connected noticees.

7. During the pendency of adjudication proceedings, NJI sought provisional release of the seized gold and jewellery. Initially, part of the seized jewellery was provisionally released by order dated 01.02.2022 to enable fulfilment of its export obligations. Thereafter, pursuant to directions issued by the Hon'ble Calcutta High Court in WPO No. 2382 of 2022, the adjudicating authority reconsidered the request and, by Provisional Release Order dated 09.09.2022, ordered provisional release of the seized gold and jewellery, except 1,796.740 grams of gold bullion, upon execution of bonds and furnishing of bank guarantees. Significantly, the said Provisional Release Order itself recorded that, except for the aforesaid quantity of 1,796.740 grams, the remaining seized gold had been imported by NJI under the impugned Advance Authorisation.

8. Thereafter, all the noticees/appellants filed detailed replies to the Show Cause Notice and participated in the adjudication proceedings by advancing oral and written submissions. It was, inter alia, contended that the imported duty-free gold had never been diverted into the domestic market; that the entire quantity remained duly accounted for and had been utilised in the manufacture of export jewellery; that no sale or disposal of the imported gold had ever taken place; that the alleged non-supporting manufacturers were merely job workers engaged on account of commercial exigencies and were subsequently regularised by their inclusion as supporting manufacturers in the Advance Authorisation by the DGFT; and that, save and except the quantity of 1,796.740 grams, the export obligation in respect of the imported gold had substantially been fulfilled.

9. The Ld. Principal Commissioner, however, by way of the impugned Order-in-Original dated 01.07.2024, held that the appellants had violated the Actual User condition embodied in Notification No. 18/2015-Cus. dated 01.04.2015 as well as the provisions of the Foreign Trade Policy by transferring duty-free imported gold to job workers who were not endorsed as supporting manufacturers at the relevant point of time. While observing that the imported gold had not been sold or otherwise disposed of in the domestic market and that the non-listed job workers had subsequently been regularised by the DGFT, the adjudicating authority nevertheless concluded that the initial transfer itself constituted violation of the statutory conditions attached to the Advance Authorisation. Consequently, the adjudicating

authority ordered confiscation of 2,66,619.708 grams of primary gold under Section 111(o) of the Customs Act, 1962 with an option to redeem the same on payment of redemption fine of Rs.50,00,000/-, ordered absolute confiscation of the remaining 1,796.740 grams of gold, confiscated 4,083.900 grams of gold jewellery under Section 113(h) of the Act with redemption fine of Rs.17,00,000/-, confirmed customs duty of Rs.12,48,302/- together with applicable interest in respect of the aforesaid quantity of 1,796.740 grams, imposed penalties upon M/s. Noor Jewel Impex and the remaining noticees under Sections 112(a)(i) and 114(iii) of the Customs Act, 1962, and further directed enforcement of the bonds and bank guarantees furnished for provisional release of the seized goods.

10. Against the said order, the appellants are before us.

11. During the course of arguments, the Ld. Counsel appearing on behalf of the appellants has made various submissions in support of their case, which are broadly summarized as under: -

(A) On Merit:

- (i) Seizure of 266619.708 grams of gold was effected on the ground of violation of 'Actual User Condition' as prescribed under the FTP by diverting the said gold imported under AA to non-supporting manufacturers who were not listed in our AA. The said seized gold was released to us on payment of redemption fine of Rs. 50,00,000/-.

- (ii) It is submitted that due to work pressure they had to divert a portion of imported gold for manufacture of jewellery to supporting manufacturers (though not listed in the AA). It is admitted that the same had been a fault on their part but to save the situation and timely export of gold jewellery towards fulfilment of export obligation they had to resort to this. It is mention worthy that subsequently all such non-supporting manufacturers/job workers were duly registered by DGFT under the impugned AA. Thus, it was at best a technical fault which was duly got regularised by the authorities concerned.
- (iii) Such an irregularity subsequently settled/regularised by DGFT has also has also been recognised by the learned adjudicator and the learned adjudicator at Page 151 of the Paper book last paragraph has opined to the effect:-
- "I also observe that it is an accepted legal position that substantial benefit should not be denied to the assessee simply on procedural discrepancies especially when the requirement is curable, which has been cured in the instant case. I opined that the essential character of the scheme was to export the Gold Jewellerywhich seems to have been complied with at this stage except for the 1796.74 grams of gold bullion."*
- (iv) However, the Ld. Adjudicator has made a contra decision on the above issue and has imposed redemption fine and penalty which shows that the Ld. Adjudicator has been vacillating in approach to give a firm decision in the matter

and has somehow pulled the trigger against the appellant.

- (v) Regarding absolute confiscation of 1796.740 grams of gold the reconciliation statement at Para 36.1.6 of the O/O clearly shows to the effect that this gold was part of the 769000 grams of gold imported by them on 07.07.2021 against AA Licence No. 0410166578 and after fulfilment of export obligation in respect of 767203.27 grams of gold this amount of 1796.740 grams of gold was left behind against which export obligation could not be completed by that time and because of seizure made by DRI officials on 10.07.2021 such quantity was subjected to absolute confiscation by the Ld. Adjudicator they could not fulfil the export obligation in respect of jewellery which ought to have been made for subsequent export towards fulfilment of export obligation as per the AA. It is mention-worthy that the time limit of export obligation of jewellery ought to have been manufactured out of such quantity of gold was not over. The same would have otherwise normally expired on 03.09.2021 [i.e. 18 months from the date of AA i.e. 03.03.2020] but because of advent of COVID-19 such prescribed time limit also did not apply in their case. In short, they could have exported the gold jewellery manufactured out of such detained [subsequently converted into absolute confiscation of the quantity] towards fulfilment of our export obligation.
- (vi) Notwithstanding, whatever has been submitted herein above the adjudicator has upheld the

confiscation of the said quantity of gold drawing an absurd conclusion in as much as the *explanation and the corroborating evidences pertaining to the bonafide nature of 1796.740 grams of gold are not enough & substantial to reach me to the conclusion in the merit of the Noticee that it was imported through the impugned license.* [Page 177 of paper book]

- (vii) It is submitted that such a conclusion has been arrived at by the learned adjudicator by stretching the argument excessively only to establish albeit vaguely that the impugned gold quantity was not imported against the said AA. In this respect, it is humbly submitted that the department could not adduce any iota of evidence to bring home the point that such quantity of gold was imported in a fraudulent manner.

(B) Regarding Confiscation of the 4083.900 grams of Gold Jewellery:

- (i) In the Export Invoice No. KOL/018/22 dated 08.07.2021 issued in the name of M/s. Pure Zara Jewellery LLC, Dubai the quantity of gold jewellery declared was mentioned as 26466.10 grams but on weighment of the gold jewellery by DRI it was found to be 31410.190 grams i.e. an excess quantity of 4083.900 grams was found. Such excess quantity was seized and subsequently confiscated by the Department with option to take release of the same on payment of redemption fine of Rs. 17,00,000/- but as they were bound to take release of the same for subsequent sale/export to M/s. Pure

Zara Jewellery LLC, Dubai as because they had already sent equivalent quantity of gold duty free for subsequent re-export to them after making jewellery out of such gold sent. In any situation, they had to re-export such equivalent quantity of gold jewellery to the said party in Dubai as per AA license. No mens-rea or extra profit motive had guided or compelled them to send such quantity of unaccounted gold jewellery to them as because this situation would not have given them any pecuniary or monetary benefit. This unforeseen situation did occur because of sheer mistake on the part of their office staff while packing the gold jewellery.

- (ii) In fact, the Ld. Adjudicator had made observation to the same effect [Page 179 of the Paper Book] in as much as he had accepted the reasoning provided by them against occurrence of such mistake and in fact he has admitted that 'there appears to be no pecuniary benefit to the AA holder and no mala-fide intent as they were neither found to exporting gold jewellery of either less quantity nor inferior quality and the Ld. Adjudicator has also made observation that the noticee after realising the mistake on the night itself during reconciliation would have asked the CHA for revision of the export documents but because of interception by the DRI officers they could not do so. However, surprisingly in the same breath the Ld. Adjudicator has observed that whatever be the circumstances they were found to be exporting a mis-declared consignment of gold jewellery of

a quantity of 4083.900 grams more than the declared quantity.

- (iii) In this very context, it is being asserted by them that they were exporting excess quantity of 4083.900 grams of gold jewellery is not true or correct in as much as they had the intention of getting such mistake rectified through their CHA but could not get the opportunity because of interception by the DRI officers during that crucial juncture of time. However, they cannot gainsay the mistake on their part of packing excess quantity of gold jewellery than was declared in the Export Invoice but ultimately neither any benefit would have accrued to them in case it was eventually exported nor did they get the chance of rectification of the mistake on our part.
- (iv) Considering the fact that mistake occurred due to carelessness's on the part of some of their employees but ultimately no illegality did occur, keeping aside any mens-rea on the sole ground that such action would not have brought them any sort of pecuniary benefit redemption fine may be set aside.

(C) On imposition of penalties u/s 114(iii) of CA, 1962 and Section 112(a)(i) of the CA, 1962:

- (i) Penalties were imposed under Section 114(iii) of CA, 1962 and Section 112(a)(i) of the CA, 1962 upon the appellant Noticees. At the outset, it is submitted that penalties under Section 112(a)(i) of CA, 1962 is attracted when there is omission or commission on the part of a person rendering the goods to be confiscated and

penalty under Section 114(iii) of CA, 1962 is attracted in cases where a person attempts to export goods improperly.

- (ii) Considering the entire chain of events right from the importation of gold bars under AA and the consequential export of finished gold jewellery thereof to the respective concerns from whom such importation of primary gold were made, it would be abundantly clear that there had been no attempt of the part of the appellant noticees to export gold in question improperly or no such alleged omission or commission on the part the appellants could be proven. Accordingly, Noticee wise activities as resorted to by them are narrated below to adjudge as to whether invocation of such Sections are at all warranted:-

(D) Penalty of Rs. 25,00,000/- u/s 112(a)(i) of the CA,1962 and penalty of Rs. 10,00,000/- u/s 114(iii) of the said Act were imposed upon M/s. Noor Jewel Impex.

- (i) Penalties under the said Sections have been imposed on the said Noticee firm merely on the basis of assumption and presumption in as much as a portion of the imported gold had been allocated to job workers, some of whom were not listed in AA (although such job workers got enlisted by DGFT within the prescribed time limit as narrated at Para 10 above) and also on the alleged ground of attempted illegal export. The discussions in the preceeding paragraphs make it clear that no such attempt of illegal export to Dubai (from where the gold was

imported) was made since there could not be any monetary gain from such export.

(E) Penalty of Rs. 10,00,000/- u/s 112(a)(i) of the CA,1962 and penalty of Rs. 5,00,000/- u/s 114(iii) of the said Act were imposed upon Md. Kaiser.

- (i) Md. Kaiser happens to be brother of Md. Azhar (Partner of M/s. Noor Jewel Impex). Allegations were made that he had approached some job workers engaged in manufacture of gold jewellery out of the gold imported from Dubai and he was instrumental in the scheme of diverting duty free gold into local market as conceptualised by Md. Azhar (Partner of M/s. Noor Jewel Impex), J.N. Shabeer Ahamed (Operation manager of Noor Jewel Impex) and Sk. Pintu (Employee of Noor Jewel Impex).
- (ii) The entire case of the Department has been based on certain procedural infractions like sending of imported gold to unlisted job workers. But the conclusions are solely based on presumptions and assumptions to the effect that such type of gold jewellery would be sold in the local market and the Department is silent as to how the export obligation could be fulfilled the appellant's who had imported duty free gold. In fact, no concrete evidence even not miniscule of evidence could be brought by the Department that there has been any mis match between the quantity of gold imported duty free and subsequent export gold jewellery because of any alleged diversion of gold jewellery manufactured out of the imported duty-free gold.

(F) Penalty of Rs. 10,00,000/- u/s 112(a)(i) of the CA,1962 and penalty of Rs. 5,00,000/- u/s 114(iii) of the said Act were imposed upon J.N. Shabeer Ahamed (Operation manager of Noor Jewel Impex).

- (i) J.N. Shabeer Ahamed has been the operation manager of Noor Jewel Impex. The Department had framed the allegation against him that he had submitted cooked accounts to establish that they had rightly utilised the imported gold in fulfilling their export obligation, however, the Departmental case against him without bringing home or establishing any concrete evidence as to his statements if at all cooked the same was how much cooked. Only such an allegation has been made superficially as the same is not backed by any concrete evidence documentary or otherwise.

(G) Penalty of Rs. 3,00,000/- u/s 112(a)(i) of the CA,1962 was imposed upon SK. Pintu (Employee of Noor Jewel Impex)

- (i) SK. Pintu was mentioned to be one of the most trusted employees of NJI. Allegation against him has been brought that he in connivance with J.N. Shabeer Ahamed had diverted gold bars imported duty free under AA to the local market. As per his statement he also admitted that many a times he under the instructions of Shabeer Ahamed had transferred sizable quantity of imported gold to jobbers not declared as supporting manufacturers in the AA.
- (ii) The entire seizure of the gold here in question has taken place at the airport and if SK. Pintu's statement is to be relied upon such

recovery/seizure would not have occurred at the Airport. Hence the said statement of SK. Pintu does not lead to any violation leading to imposition of penalty under the said Section on SK. Pintu.

- (iii) Notwithstanding what has been stated above, the aforementioned penalties have been imposed on the basis of statements recorded by the Customs officer while investigating and/framing charges under Customs Act on the above-mentioned respective persons or entities. But actually, no concrete or conclusive evidence could be brought by the Department and no material evidence supporting such charges have been brought by the Department. In fact, penalties have been imposed on the basis of certain assumption and presumption which did not culminate into the actual commission of offence under the Customs Act attracting penalty.

11.1. In light of the above submission, the Ld. Counsel for the appellants prayed that the Order-in-Original No. KOL/CUS/A&A/Pr. Commissioner/ADJN/20/2024 dated 01.07.2024 be set aside in full, granting consequential reliefs to the appellants, and also for releasing the Bond/Bank Guarantee with immediate effect.

12. On the other hand, the Ld. Authorized Representative of the Revenue appearing before us supported the impugned order.

13. Heard the parties and considered their submissions.

14. On going through the arguments advanced by both the sides, we find that the appellants have challenged the impugned order on the following grounds/issues: -

- (A) Seizure of 266619.708 grams of gold for alleged violation of 'Actual User Condition' as prescribed under the FTP and consequent confiscation of the said gold, allowed to be released on payment of redemption fine of Rs.50,00,000/-;
- (B) Seizure of 4083.900 grams of gold jewellery found in excess while exporting on the allegation that the same was attempted to be exported illegally and consequent confiscation of the said gold, allowed to be released in payment of redemption fine of Rs.17,00,000/-;
- (C) Absolute confiscation of 1796.740 grams of gold on the allegation that the said gold was not imported under the Advance Authorization but procured from unauthorized sources; and
- (D) Imposition of various penalties on the appellants under Sections 114(iii) and 112(a)(i) of the Customs Act, 1962.

Issue (A): Seizure of 266619.708 grams of gold for alleged violation of 'Actual User Condition' as prescribed under the FTP and consequent confiscation of the said gold, allowed to be released on payment of redemption fine of Rs.50,00,000/-

15. We find that the appellant-company, M/s. Noor Jewel Impex (NJI) has procured gold bars from Dubai against the Advance Authorization issued to them by

the DGFT. In terms of the said Advance Authorization, the appellant-importer was required to manufacture gold jewellery and the same was required to be re-exported within the time-limit prescribed in the Advance Authorization. The Advance Authorization was subject to fulfilment of 'Actual User Condition' as per Notification No. 18/2015-Cus. dated 0.04.2015, as amended, read with the Foreign Trade Policy, 2015-20. It is the case of the Revenue that the gold weighing 266619.708 grams imported under the Advance Authorization was diverted by the appellants to non-supporting manufacturers who were not listed in the above Advance Authorization.

15.1. It is a fact on record that in this case, the appellant-company is not the manufacturer of the gold jewellery, but got the jewellery manufactured through certain job workers / supporting manufacturers. Some of the supporting manufacturers were not enlisted in the said Advance Authorization due to shortage of time. Admittedly, such job workers or supporting manufacturers, who were not listed in their Advance Authorization, were engaged by them for manufacture of gold jewellery out of the imported gold, towards fulfilment of their export obligation under the said Advance Authorization.

15.2. It is also a fact that the appellants had also applied for necessary addition of these supporting manufacturers in their Advance Authorization and subsequently, the same has also been allowed/permitted by the DGFT. However, since the gold found with these supporting manufacturers were not entered in the Advance Authorization during the material period, the same was seized during the

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course of investigation by the DRI on 08.07.2021. As it is a fact on record that the above said supporting manufacturers, whose names were not enlisted in the Advance Authorization, were later found to have been entered in the Advance Authorization by the DGFT, in these circumstances, we are of the opinion that not entering the names of these supporting manufacturers in the Advance Authorization before sending the gold to them is only a procedural lapse, which can be cured. It is a fact on record that DGFT had later endorsed these supporting manufacturers also in the Advance Authorization and regularised the same. Therefore, in the facts and circumstances of the case, it cannot be held that the appellants had diverted the said gold to unauthorized entities in violation of the 'Actual User Condition'. Thus, we observe that seizure and subsequent confiscation of the gold sent to the supporting manufacturers, who were approved and regularized by DGFT later, is not warranted.

15.3. In this connection, we take note of the fact that the Id. adjudicating authority himself, in the impugned order, has observed as under: -

"I also observe that it is an accepted legal position that substantial benefit should not be denied to the assessee simply on procedural discrepancies especially when the requirement is curable, which has been cured in the instant case."

[Ref. page 116 under para 36.1.6. of the Order-in-Original No. KOL/CUS/A&A/Pr.COMMISSIONER/ADJN/20/2024 dated 01.07.2024]

16. In view of the above, we hold that seizure of the gold weighing 266619.708 grams is not in accordance with law. Consequently, the order of confiscation of the said gold is also not sustainable in law. Hence, the same are set aside. As a result, the redemption fine of Rs. 50,00,000/- imposed in lieu of such confiscation against the appellants also stands set aside.

Issue (B): Seizure of 4083.900 grams of gold jewellery found in excess while exporting on the allegation that the same was attempted to be exported illegally and consequent confiscation of the said gold, allowed to be released in payment of redemption fine of Rs.17,00,000/-

17. We further find that in the Export Invoice dated 08.07.2021, issued in the name of M/s. Pure Zara Jewellery LLC, Dubai, the quantity of gold jewellery that was declared was 26466.10 grams while during weighment of the gold jewellery by the DRI, the same was found as 31410.190 grams. Therefore, a quantity of 4083.900 grams of gold jewellery was found to be in excess. The above said quantity of gold weighing 4083.900 grams was seized and, later on, confiscated, allowing redemption thereof on payment of redemption fine of Rs.17,00,000/-.

17.1. The appellant has explained that it was only a clerical mistake on their part and also, that due to seizure effected by the DRI, the appellant was not able to cure the defect in their export documents. It has also been pointed out that by exporting more jewellery in quantity than what was declared, the appellants were not going to get any benefit and that in any situation, the appellant-company has to

re-export such quantity of gold jewellery which has been seized as per the Advance Authorization Licence. Considering the above circumstances, we are of the opinion that no mens rea can be attached to the appellants for such quantity of gold jewellery found in excess.

17.2. Furthermore, in this regard, we observe that in the impugned order, the Id. adjudicating authority has also recorded the following: -

"In this regard, I find that the reason provided by the Noticees appears to be plausible because exporting more than the declared quantity would not have benefitted the authorization holder. There appears to be no pecuniary benefit to the AA holder in the current scenario by exporting more than the declared quantity. Moreover, there appears to be no malafide intent as they were neither found to be exporting gold jewellery of either less quantity nor inferior quality thus there was no mensrea to evade government duty; in that case the explanation of Noticees that they had realized the mistake on the night itself during reconciliation and accordingly would have asked the CHA for revision of the export documents but could not do so owing to the interception by DRI seems to be plausible. Considering the prevailing circumstances of the case, it appears to be cogently explained, thus it perceives to be not untrue."

[Ref. page 116 under para 36.1.6.
of the Order-in-Original No.
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ADJN/20/2024 dated 01.07.2024]

18. As it is evident from the above that there was no mala fide intent on the part of the appellants for excess export of the gold jewellery weighing 4083.900 grams, which was merely a clerical mistake in their invoice, in these circumstances and in the absence of any *mens rea*, we hold that the said gold jewellery weighing 4083.900 grams cannot be held liable for confiscation. Therefore, the order of confiscation of the said quantity of gold jewellery is set aside and consequently, no redemption is imposable on the appellants in this regard.

Issue (C) Absolute confiscation of 1796.740 grams of gold on the allegation that the said gold was not imported under the Advance Authorization but procured from unauthorized sources.

19. We further find that during the course of investigation by the DRI, a quantity of 1796.740 grams of gold was seized on the allegation that the said gold, which was imported by them duty-free against Advance Authorization, has not been imported under the Advance Authorization but procured from unauthorized sources. Accordingly, it is the Revenue's case that the said gold weighing 1796.740 grams is liable for absolute confiscation.

19.1. We take note of the submission made by the appellants in this regard that the said gold weighing 1796.740 grams was part of the gold imported by them on 07.07.2021 against their Advance Authorization Licence and had in fact been given to the supporting manufacturers for manufacture of gold jewellery, with a view to fulfil their export obligations,

but could not be completed at the time due to the seizure effected by the DRI on 10.07.2021.

19.2. It is not in dispute the said quantity gold was seized from the premises of one of the supporting manufacturers. It is a fact that as per the said Advance Authorization, the appellant-importer was required to complete their export obligation in respect of the said gold by 03.09.2021 whereas the said gold was seized by the DRI on 10.07.2021, which is before the expiry of the time-limit prescribed for fulfilment of export obligation by the appellant in terms of the Advance Authorization issued to them on 03.03.2020. As it is on record that the gold in question had been seized during a period when the time-limit available for meeting the export obligation therefor had not yet expired, we are of the opinion that the gold in question weighing 1796.740 grams found, with the supporting manufacturer, was for manufacture of gold jewellery towards fulfilment of their export obligations and it cannot be said that the said gold was not imported under the impugned Advance Authorization Licence.

20. Consequently, we hold that the absolute confiscation of the gold weighing 1796.740 grams is not sustainable and the same is required to be released to the appellant, for fulfilment of their export obligations. The confiscated gold weighing 1796.740 grams should be released to the appellant within one month from the date of receipt of this order.

Issue(D): Imposition of various penalties on the appellants under Sections 114(iii) and 112(a)(i) of the Customs Act, 1962

21. As already observed hereinabove, the appellant, M/s. Noor Jewel Impex, have been engaged in proper

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purchase of gold against a valid Advance Authorization, imported duty-free, which was meant to be exported by conversion of the same into gold jewellery. It is also a fact that the appellants were having proper gold with them. As already observed hereinbefore, no mens rea has been established against the appellants in this case. The allegations of the Revenue are solely based on assumptions and presumptions as no evidence has been adduced to show that there has been any mismatch between the quantity of gold imported duty-free and subsequent export of gold jewellery, on account of the alleged diversion. Thus, no mala fides have been proved against the appellants. In fact, it has already been held by us that no confiscation of the gold or gold jewellery seized by the DRI during investigation is sustainable and also, that no redemption fine is imposable. In view of the above, we refrain from imposing any penalties on the appellants. Consequently, the penalties imposed on the appellants under Sections 114(iii) and 112(a)(i) of the Customs Act, 1962 are set aside.

22. In view of the above discussion, we set aside the impugned order and allow the appeals, with consequential reliefs, if any.

(Order pronounced in the open court on **03.07.2026**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd