CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 85063 of 2026

(Arising out of Order-in-Appeal MUM-CUSTM-PREV-APP-327/20258-26 dated 11.07.2025 passed by Commissioner of Customs (Appeals), Mumbai-III.)

Shri Vishwajit Deshmukh **....Appellant**
Proprietor of M/s JD Bullion,
Room No.3, SNK Plaza Building
Khau Gali, Mumbadevi
Mumbai-400 003.

VERSUS

Commissioner of Customs (Prev.), Mumbai **....Respondent**
New Custom House, Ballard Estate,
Mumbai–400 001.

APPEARANCE**:**

Shri Ashwini Kumar a/w Shri Shubham Waphase, Advocates for the Appellant
Shri L. B. D'Coasta, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86048/2026

Date of hearing: 30.04.2026
Date of decision: 20.08.2026

PER : BENCH

This appeal has been filed by Shri Vishwajit Deshmukh, Proprietor of M/s JD Bullion, at Room No.3, SNK Plaza Building, Khau Gali, Mumbadevi, Mumbai – 400 003 and having correspondence address at Room No. 10, 3rd Floor, Atul Raigarh Society, Kalachowki, Abhyadya Nagar, Mumbai-400 033 (herein after, referred to as 'the appellant'), assailing Order-in-Appeal No. MUM-CUSTM-PREV-APP-327/20258-26 dated 11.07.2025 (herein after, referred to as 'the impugned order') which was passed by the Commissioner of Customs (Appeals), Mumbai-III, Mumbai – 400 059.

2.1 Briefly stated, the facts of the case are that the appellant herein, had received gold for melting in their shop at the above address, in order to convert gold brought in raw or any form, by melting/refining gold of 24 Karat purity and for the said job, he charges certain amount as commission. He has taken over this business from his father after initially joining him in

2021 and presently he is looking after the entire business in the shop, with the assistance of Shri Prajyot Patil, Manager and Shri Pravin Dhaokale, Helper and Teaser.

2.2 Directorate of Revenue Intelligence (DRI) had developed specific intelligence that a syndicate is actively involved in smuggling of gold into India from Nepal by bringing the smuggled gold illegally into the country by various routes; and the same is brought to Mumbai from Patna by several carriers for monetary consideration. Furthermore, specific intelligence was also gathered by DRI that few identified passengers viz., Shri Musab Hassan Elmahi Elhassan, permanent resident of Sudan holding Passport No. P04829419; Shri Musab Mahmoud Sayed Nory, permanent resident of Sudan holding Passport No. P07178886; and Mrs. Ehsan Ali Adam Mohamed, permanent resident of Sudan holding Passport No. P08843979 are carrying the smuggled gold in their baggage for delivery to Mumbai. The said S/Shri Musab Hassan Elmahi Elhassan and Musab Mahmoud Sayed Nory, would be arriving Mumbai on the morning of 20.02.2023 by Train No.13201 Patna-Mumbai LTT Janta Express and they are travelling in Berth Nos.26 & 27 of Coach A1 having their PNR 6115806502.

2.3 On the basis of above specific intelligence, DRI officers have kept a vigil at Lokmanya Tilak Railway Terminus, Mumbai and were stationed at the place where the A-1 coach of the Patna-Mumbai LTT Janta Express train was announced to arrive at platform No.5. Upon arrival of the said Train at 10.41 Hrs. on 20.02.2023, both S/Shri Musab Hassan Elmahi Elhassan and Musab Mahmoud Sayed Nory carrying on a backpack each, were identified by DRI officers, when alighted from the train. Both the said passengers had denied to have been carrying smuggled gold or any concealment in their backpack/ baggage; in order to verify the existence of any contraband item on the basis of specific intelligence, and since the railway terminal was busy public place not providing sufficient facility for conducting such examination, they were examined at the nearest office accommodation. On examination of the backpack/baggage of both the aforesaid passengers, it was found to contain tailor-made waistcoat having heavy material concealed inside it. Upon further examination of the said waist-coat by opening the same, it was found to contain 10 pockets in the inner wearable side, and each pocket was found to contain 2 similar looking packages, each wrapped with silver-coloured tape containing the paste-type heavy material. On questioning by DRI, both the passengers had denied to be having any document for legitimate

possession of the said goods; and thus, the same were examined by Government approved valuer Shri Manish Kumar A. Kalyanji Soni, who certified it to be the 24 'Caratage' (CT/KT) purity of gold – (i) Gross weight 21310 grams; Net weight of 19510 grams for the smuggled goods carried by Shri Musab Hassan Elmahi Elhassan; and (ii) Gross weight 21050 grams; Net weight of 19250 grams for the smuggled goods carried by Shri Musab Mahmoud Sayed Nory; both having total value of Rs.22,63,58,400/-. Detailed inventory of 20 packages of the back-pack carried by S/Shri Musab Hassan Elmahi Elhassan and Musab Mahmoud Sayed Nory was recorded by DRI under panchanama proceedings dated 20.02.2023 and the inventory of 24CT purity gold along with its packages being liable for confiscation under Section 111 of the Customs Act, 1962 was seized vide Seizure Memo dated 20.02.2023 (DIN-202302 DDZ90000515031).

2.4 Upon further enquiry with the said passengers it was revealed that such smuggled gold in paste form is to be delivered to one person named Shri Saif Sayeed Khan at Colaba, Mumbai operating foreign exchange business in the name of M/s Al-Amin Forex Services Private Limited situated at N.F. Road, Near Leopold Café', Colaba, Mumbai. The said premises was also searched under panchanama proceedings dated 20.02.2023, and it was found that Shri Saif Sayeed Khan along with his brother Shri Shamsher Sayeed Khan had been operating from the aforesaid premises; they had no license to operate foreign exchange services presently, as their license expired in November, 2022, but they continued to undertake such business. Thus, the unaccounted currency kept inside one of the drawers was seized vide Seizure Memo dated 20.02.2023 (DIN-202302DDZ9000000C59D). During the time of such proceedings, one another person Mrs. Ehsan Ali Adam Mohamed, resident of Sudan having Passport No. P08843979, entered into the said premises with a yellow-coloured handbag. As she could not provide satisfactory answer about the purpose of her visit to the said premises and in order to verify existence of any contraband item on the basis of specific intelligence, her handbag was searched by DRI officers. It was found that a oval-shaped packing wrapped in black tape was concealed in her handbag; upon opening the package, it was found that gold in wax form was concealed in the said oval-shaped packing. The said goods were examined by Government approved valuer Shri Manish Kumar A. Kalyanji Soni, who certified it to be 24 'Carat' (CT/KT) purity of gold of Gross weight 252 grams; Net weight of 235 grams having value of Rs.13,72,400/-. The

said gold along with packages were also seized as it is liable for confiscation under Section 111(d) ibid vide Seizure Memo dated 20.02.2023 (DIN-202302 DD90000219661). Upon further inquiry by DRI officers, Mrs. Ehsan Ali Adam Mohamed, had sated that she had sold smuggled gold to Shri Saif Sayeed Khan and his brother Shri Shamsher Sayeed Khan, previously on multiple occasions. Further, as Shri Saif Sayeed Khan was also operating from one another premises at No.17, Akbar House, First floor, NF Road, Colaba, Mumbai, the said premises was also searched under separate panchanama proceedings dated 20.02.2023. During such proceedings, various bags were found in the cupboards of the said premises. Upon opening of those bags, it was found that various pouches of different sizes, containing yellow metal in various forms viz., melted, capsule form, raw jewellery form etc. were found; further, foreign currencies of various countries, foreign currency coins, Indian currency were also found to be kept inside various plastic boxes. These goods in 23 pouches were examined by Government approved valuer Shri Manish Kumar A. Kalyanji Soni, who certified it to be the 24 'Carat' (CT/KT) purity of gold of total Gross weight 14980.25 grams; Net weight of 14753.35 grams of value Rs.8,50,64,428/-; inventory of foreign currency viz., US dollars, UK pounds, Euro, Australian dollars, Canadian dollars, Dirhams, Oman Rial, Quatar Rial, Mauritius rupee, Saudi Riyal, Singapore dollars, South African Rand, Thai Bhat, Yen, Yuan and Indian currency were also provided separately. As Shri Saif Sayeed Khan could not provide any satisfactory answer for the possession of such gold and as he was not having any valid documents for possession of gold, foreign currency & Indian currency and was also not having any valid license, DRI had a reasonable belief that these were smuggled gold, illegally held foreign currencies and the Indian currency were sale proceedings of smuggled gold being liable for confiscation under Section 111 of the Customs Act, 1962 along with its packages and the same were seized vide Seizure Memo dated 20.02.2023 (DIN 202302 DDZ9000000AAF7).

2.5 Further, it was also gathered by DRI that Shri Shamsher Sayeed Khan used to deliver such smuggled gold to a person in Zaveri Bazaar who runs a shop by the name of 'Manish Gold' at the address 275-B, Mumba Devi Road, Near Mumba Devi Temple. During search of the said premises, Shri Manish Jain and Shri Prakash Ratanchand Jain, owners of the said premises were available; Shri Manish Jain admitted that he used to procure smuggled gold from various African nationals and get the same melted by sending it to the

melting facilities at Room No.3B, Building No.30/32, New Satta Galli, Kavi Nirav Lane, Mumba Devi, Mumbai and at Room No.3, SNK Plaza Building Khau Galli, Kavi Nirav Lane, Zaveri Bazar, Mumbai. Accordingly, the said premises were searched on 20.02.2023 under panchanama proceedings. The premises at Room No.3B, Building No.30/32, New Satta Galli, Kavi Nirav Lane, Mumba Devi was owned by one Shri Chandrakant Ghorpade and gold jewellery in two transparent self-sealing pouches belonging to Shri Manish Jain received for melting was found available and the same was brought to the shop of Shri Manish Jain and along with such goods, Indian currency found without any supporting documents and being sale proceeds of such smuggled gold, were seized under the provisions of the Customs Act, 1962. (DIN 202302 DDZ90000323689). Further, the premises situated at Room No.3, SNK Plaza Building Khau Galli, Kavi Nirav Lane, Zaveri Bazar, Mumbai was found to be owned by Shri Vishwajit Deshmukh (appellant herein) in the name of M/s J D Bullion. He had informed the DRI officers that they were in the business of melting/refining raw gold; search of the premises by DRI resulted in detection of raw gold in cut pieces and strips, small chunks belonging to Shri Manish Jain & Others; as well as Refined gold of 995CT belonging to J D Bullion, and since there was no supporting documents for legal possession of the same and on a reasonable belief that these were smuggled gold, these were seized vide Seizure Memo having reference No. DIN 202302 DDZ9000000D487.

2.6 Detailed investigation was conducted by DRI on the modus of smuggling gold from Nepal, into the country through LCS/ICP Jogbani, Bihar, by the smuggling syndicate involving a large network of individuals operating from different parts of the world. Further, evidences were also collected from investigation conducted by the DRI regional units located at Parna, Pune; and statements of passengers, who had carried smuggled gold; persons who had received such smuggled gold; persons involved in melting and certifying the same as 24 CT or purity of 0.999/99.9%; and various other persons involved in the conceiving the modus operandi, co-ordinating, monitoring and organizing the actual process smuggling gold were also recorded. On completion of the investigation, Show Cause Notice (SCN) dated 08.02.2024 was issued by DRI to nine noticees viz., (i) Shri Musab Hassan Elmahi Elhassan, permanent resident of Sudan holding Passport No. P04829419; (ii) Shri Musab Mahmoud Sayed Nory, permanent resident of Sudan holding Passport No. P07178886; (iii) & (iv) Shri Saif Sayeed Khan and his brother Shri Shamsher Sayeed Khan of M/s Al-Amin Forex Services Private Limited;

(v) Shri Manish Prakash Jain of M/s Manish Gold (vi) Shri Vishwajit Deshmukh of M/s J D Bullion (vii) Shri Ali Abdelgafar Ali Mala, holder of Sudan passport P05651182; (viii) Mrs. Ehsan Ali Adam Mohamed, permanent resident of Sudan holding Passport No. P078843979 and (ix) Shri Salah Mohammed aka Ahmed, resident of Khartoum, Sudan who is the mastermind and main supplier of foreign origin gold for smuggling through Dubai-Nepal-India route.

2.7 During adjudication proceedings of the said SCN dated 08.02.2024 conducted by the learned Additional Commissioner of Customs (Preventive), Rummaging and Intelligence Division, New Custom House, Mumbai as original adjudicating authority; out of nine noticees, only four noticees viz., Shri Saif Sayeed Khan, Shri Shamsher Sayeed Khan, both of M/s Al-Amin Forex Services Private Limited; Shri Manish Prakash Jain of M/s Manish Gold and Shri Vishwajit Deshmukh of M/s J D Bullion had given their reply to the SCN and appeared for personal hearing before him. All other five noticees, neither replied to the SCN, nor appeared for personal hearing before the authorities. Based on the submissions made by the said noticees and available records and all relevant material placed before him, he had passed an Order-in-Original dated 25.07.2024, in confirmation of all the proposals made in the SCN dated 08.02.2024. These included absolute confiscation of smuggled gold of 58958 grams/ 58.958 Kgs. from various noticees i.e. 19510 grams from noticee No.(i); 19250 grams from noticee No.(ii); 235 grams from noticee No. (viii); 14753.350 grams from noticees No. (iii) & (iv) and 3723.650 grams from noticee No. (vi)-the appellant herein, under Section 111 of the Customs Act, 1962; absolute confiscation of Indian currency of Rs.63,09,400/- and various foreign currencies listed in para 10 of original order under Section 121 ibid. Besides this, he had imposed penalties on various noticees under Section 112(a) & 112(b) ibid. Being aggrieved against the said order of the original authority, the appellant had filed an appeal before the Commissioner of Customs (Appeals). In deciding the appeal vide impugned order dated 11.07.2025, learned Commissioner of Customs (Appeals) by upholding the order of the original authority has rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order, the appellant has filed this appeal before the Tribunal.

3.1. Learned Counsel appearing for the appellant submitted their preliminary objection to the seizure of goods from the appellant is on the ground that SCN dated 08.02.2024 under Section 124 of the Customs Act,

1962 has been issued to the appellant with an extension of time for issue of SCN as provided under proviso to Section 110(2) ibid, but while extending the time limit, the appellant was not given any opportunity of being heard. Therefore, he stated that such exercise of power under proviso to Section 110(2) ibid becomes non-est in law, and consequently absolute confiscation of goods ordered by the original authority is liable to be set aside and the seized goods are returnable to them.

3.2 Learned Counsel submitted that use of the phrase 'smuggled gold' in the SCN shows that the investigating authorities are pre-judged against the appellant, even before sufficient opportunity was given to him and therefore it would vitiate the entire proceedings. He further stated that indiscriminate seizure of the goods by DRI indicates that there was no 'reasonable belief' for such seizure; since it was town seizure of goods, wherein purity of certain amount of Gold was less than 24KT, and the appellant is indulged in refining of Gold and he has explained the source of Gold, the provisions of Section 123 of the Customs Act, 1962 would not apply. Further, he also stated that there is no "foreign markings" in the gold seized from the appellant and thus he claimed that it has no link with smuggling of gold seized from passengers who alighted at Lokmanya Tilak Terminus Railway Station, and even for this there is no direct link that such gold was smuggled through Nepal. Furthermore, he stated that once the documentary evidence regarding bona fide possession is submitted, the onus to disprove the assertion against the appellant for the goods being smuggled lies upon with the Department. Thus, he claimed that the order of the original authority for confiscation of the goods and upholding the same in the impugned order is not sustainable.

3.3 Learned Counsel also stated that reliance placed by the original authority on Circular No. 25 dated 14.08.2013 [RBI/2013-14/187, AP (DIR Series)] for justifying that the goods are "prohibited", is inappropriate as such circular refers to instructions issued by RBI to the Designated Agencies and the nominated Banks, and about the manner in which distribution/ business of gold bullion is to be carried out. Therefore, he claimed that 'absolute confiscation' of gold from the appellant under Section 111(d) ibid is not justified.

3.4 Learned Counsel also stated that their submission to the effect that statement given by Shri Manish Jain was retracted, had been noted at Paragraph 26.4 of the order of the original authority and hence it cannot be

used to implicate the appellant. Further, since the statement of the co-accused is relied upon by the revenue without any corroboration, and there is denial of cross-examination, these would violate the principle of natural justice and hence he stated that the order of confiscation cannot be allowed to sustain.

3.5 He further submitted that there is no evidence to suggest that the appellant have imported the impugned Gold or has in any way abetted with illegal importation of Gold, and hence the constituent for imposition of penalties under Section 112(b) ibid is unjustified. Further, the quantum of penalty imposed by the adjudicating and confirmed by the first appellate authority are also unjustified and harsh. Therefore, he submitted that the impugned order is liable to be set aside.

3.6 In support of their stand, learned Counsel had relied upon following decisions of the Tribunal and judgements of Hon'ble Supreme Court, in the respective cases mentioned below:

(i) *Assistant Collector of Customs and Superintendent, Preventive Service Customs, Calcutta and Ors Vs Charan Das Malhotra [1983 (13) ELT 1477 (SC)]*

(ii) *Madurai Metal Industries Vs UOI [1991 (52) ELT 495 (Mad)]*

(iii) *Shanti Lal Mehta Vs UOI [1983 (14) ELT 1715 (Del)]*

(iv) *Om Prakash Shah, Director Vs Quillon Trade Commerce Pvt Ltd. Vs Commissioner of Customs, Kolkata [Customs Appeal No. 75293 of 2025 decided on 28.04.2025 (Tri-Kol)]*

(v) *Bharat Shantilal Shah Vs Principal Commissioner of Customs (Preventive), New Delhi [Order dated 08.12.2025 in Customs Appeal No. 51986 of 2024]*

(vi) *Kapil Deo Prasad Vs Commissioner of Customs (Prev), Patna [2002 (142) ELT 668 (Tri-Kolkata)]*

(vii) *Commissioner of Customs (Prev), Kolkata Vs Ashok Kumar Agarwal [2017 (348) ELT 555 (Tri-Kol)]*

(viii) *UOI Vs Imtiaz Iqbal Pothiawala [2019 (365) ELT 167 (Bom)]*

(ix) *Gourav Jain Vs Commissioner of Customs, Indore [Order dated 06.02.2026 in Customs Appeal No. 50647 of 2024 (Tri-Del)]*

(x) *Andaman Timber Industries Vs Commissioner of Customs, Kolkata-III [2015 (324) E.L.T. 641 (S.C.)]*

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs (Appeals) in the impugned order and submitted that issue of confiscation of impugned goods and the liability to penal consequences, has been examined in detail by the learned adjudicating authority and the learned Commissioner (Appeals). Hence, the appeal filed by the appellant is not sustainable.

5. We have heard both sides and perused the case records and additional paper books submitted in the form of synopsis and case law compilation filed in this case.

6. The issues involved in the present appeal for a decision before the Tribunal are as follows:

(i) Whether confiscation of gold having net weight of 3723.650 grams, valued at Rs. 2,12,85,535/- seized from premises of the appellant Shri. Vishwajit Deshmukh, as detailed in Table-12a, 12b & 12c of the SCN dated 08.02.2024, under Section 111(d) of the Customs Act, 1962 is sustainable or not;

(ii) Whether imposition of penalty of Rs. 25,00,000/- on the appellant under Section 112(a) & 112(b) of the Customs Act, 1962 is sustainable or not.

7. In order to address the above issues, we would like to refer the relevant legal provisions contained in the Customs Act, 1962 and other relevant laws:

*"**Section 2. Definitions.***
In this Act, unless the context otherwise requires,—
xxx xxx xxx xxx

(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;

Section 100. Power to search suspected persons entering or leaving India, etc.
(1) If the proper officer has reason to believe that any person to whom this section applies has secreted about his person, any goods liable to confiscation or any documents relating thereto, he may search that person.

(2) This section applies to the following persons, namely :—
(a) any person who has landed from or is about to board or is on board any vessel within the Indian customs waters;

(b) any person who has landed from or is about to board, or is on board a foreign-going aircraft;

(c) any person who has got out of, or is about to get into, or is in, a vehicle, which has arrived from, or is to proceed to any place outside India;

(d) any person not included in clause (a), (b) or (c) who has entered or is about to leave India;

(e) any person in a customs area

Section 101. Power to search suspected persons in certain other cases.

(1) Without prejudice to the provisions of section 100, if an officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs, has reason to believe that any person has secreted about his person any goods of the description specified in sub-section (2) which are liable to confiscation, or documents relating thereto, he may search that person.

(2) The goods referred to in sub-section (1) are the following :—

(a) gold;

(b) diamonds;

(c) manufactures of gold or diamonds;

(d) watches;

(e) any other class of goods which the Central Government may, by notification in the Official Gazette, specify.

Section 105. Power to search premises.

(1) If the Assistant Commissioner of Customs or Deputy Commissioner of Customs, or in any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things.

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Section 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 :

xxx xxx xxx xxx

(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.

Section 111. Confiscation of improperly imported goods, etc.

The following goods brought from a place outside India shall be liable to confiscation :—

xxx xxx xxx xxx

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

xxx xxx xxx xxx

Section 112. Penalty for improper importation of goods, etc.

Any person,—

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable,—

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [17][not exceeding the value of the goods or five thousand rupees, whichever is the greater;

xxx xxx xxx xxx"

Foreign Trade Policy
Chapter 2
General Provisions Relating to Imports and Exports

2.00 Objective The general provisions governing import and export of goods and services are dealt with in this chapter.

2.01 Policy regarding import /Exports of goods

(a) Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted', and STE items can be viewed under 'Regulatory Updates' at https://dgft.gov.in

(b) Further, there are some items which are 'Free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force.

xxx xxx xxx xxx

ITC(HS), 2022

Schedule 1 Import Policy

Section XIV, NATURAL OR CULTURED PEARLS, PRECIOUS OR SEMI-PRECIOUS STONES, PRECIOUS METALS, METALS CLAD WITH PRECIOUS METAL AND ARTICLES THEREOF; IMITATION JEWELLERY; COIN

Chapter 71 Natural Or Cultured Pearls, Precious Or Semi-Precious Stones, Precious Metals, Metals Clad With Precious Metal And Articles Thereof; Imitation Jewellery; Coin.

Main Notes

Sl.No.	Notes	Notification No.	Notification Date
01	Subject to Note 1 (a) to Section VI and except as provided below, all articles consisting wholly or partly: (a) of natural or cultured pearls or of precious of semi-precious stones (natural, synthetic or reconstructed); or (b) of precious metal or of metal clad with precious metal, are to be classified in this Chapter.		

XXX XXX XXX XXX

Product Description and Import Policy

HS Code		Description	Import Policy	Policy Condition	Notification No.	Notification Date
7108		Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form.				
71081100	-	Non-monetary : -- Powder	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).	49/2015-2020	05/01/2022
71081210	---	Containing 99.5 per cent. or more by weight of gold	Restricted	1. Import is allowed through: (i) Nominated agencies as notified by RBI (in case of banks) or nominated agencies notified DGFT (for other agencies) (ii) Qualified Jewellers (as notified by IFSCA) through India International Bullion Exchange (IIBX); 2. Valid India-UAE TRQ holders as notified by IFSCA can import gold through IIBX against the TRQ and can obtain physical delivery of the same through IFSCA registered vaults located in SEZs as per the guidelines prescribed by the IFSCA.	08/ 2025-26	19/05/2025
71081290	---	Other	Restricted	1. Import is allowed through: (i) Nominated agencies as notified by RBI (in case of banks) or nominated agencies notified DGFT (for other agencies) (ii) Qualified Jewellers (as notified by IFSCA) through India International Bullion Exchange (IIBX) ; 2. Valid India-UAE TRQ holders as notified by IFSCA can import gold through IIBX against the TRQ and can obtain physical delivery of the same through IFSCA registered vaults located in SEZs as per the guidelines prescribed by the IFSCA. 3. Gold Dore can be imported by refineries against an import license with Actual User (AU) condition.	08/ 2025-26	19/05/2025
71081310	---	Containing 99.5 per cent. or more by weight of gold	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies)	08/ 2025-26	19/05/2025
71081390	---	Other	Restricted	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies)	08/ 2025-26	19/05/2025
71082000	-	Monetary	Restricted			

8.1 From plain reading of the above legal provisions, it transpires that the phrases 'smuggling' and 'prohibited goods' have been defined under the Act of 1962, to mean any act of violation with respect to goods brought into the country (India), from a placed outside India, which are itemised under Sections 111 ibid and similarly with respect to goods which are attempted to be taken out of India from the country, as itemized under Section 113 ibid; and prohibition imposed under the Act of 1962 or under the provisions of Foreign Trade (Development & Regulation) Act, 1992 or any other law for the time being in force, respectively. Further, it also transpires that in cases where an officer of customs has reason to believe that if any person has secreted about his person any goods; or if any goods liable to confiscation, or any documents or things are secreted in any place, then such person or the premises may be searched by the duly authorized officer of customs for recovery of such goods, documents or things. Further, in cases where the goods liable for confiscation were found out upon such search, then the said goods would be liable for seizure under Section 110 *ibid* and subsequently during adjudication proceedings such goods may be confiscated in terms of Section 125 *ibid* upon providing specific findings about the specific violation in respect of the goods and offences, if any, committed by any person. Furthermore, on the basis of role played by a person in the act of omission or commission, which would render the goods liable for confiscation; or the specific manner in which he had dealt with such goods which are liable for confiscation, such person shall also be liable for penalty under Section 112 *ibid*.

8.2 In the present case, import policy prescribed as per the ITC (HS) of the Foreign Trade Policy for 'gold' in any form (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form, is "Restricted". Further, import of gold is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies). Gold in other unwrought form containing 99.5 per cent. or more by weight of gold, is allowed for qualified jewellers, for import through India International Bullion Exchange (IIBX). Such jewellers are notified by International Financial Services Centres Authority (IFSCA) established under the International Financial Services Centres Authority Act, 2019, located at GIFT City, Gandhinagar in Gujarat.

8.3 On perusal of the case records, it is amply clear that three noticees holding Sudanese Passport viz., Shri Musab Hassan Elmahi Elhassan,

permanent resident of Sudan holding Passport No. P04829419; Shri Musab Mahmoud Sayed Nory, permanent resident of Sudan holding Passport No. P07178886, were carrying the gold in their baggage for delivery to Mumbai; and Mrs. Ehsan Ali Adam Mohamed, permanent resident of Sudan holding Passport No. P078843979 was carrying gold in her baggage and while delivering the same to of M/s Al-Amin Forex Services Private Limited, Colaba, Mumbai. These persons were identified based on specific intelligence and upon search were found to have been concealing gold in their bags, being brought from outside India without any supporting documents and thus the said gold, being in the nature of smuggled gold were seized for further action by DRI on 20.02.2023. Further, such smuggled gold brought by various persons, who are involved in smuggling activity, were received by two noticees viz., Shri Saif Sayeed Khan and his brother Shri Shamsher Sayeed Khan of M/s Al-Amin Forex Services Private Limited, and upon search of their premises, DRI had also recovered unaccounted foreign currencies, gold in various forms without any supporting documents concealed in various bags, evidencing illicit nature of gold. On follow-up investigations with the gold melting facility for converting the smuggled gold into melted gold bars of 24KT/21KT with embossed emblem for certificate of quality of gold at the premises of two noticees viz., Shri Manish Prakash Jain of M/s Manish Gold and Shri Vishwajit Deshmukh of M/s J D Bullion, further gold was also recovered by DRI. The investigation conducted in respect of the activities under by other two noticees, one of whom i.e., Shri Salah Mohammed aka Ahmed, resident of Khartoum, Sudan, indicated that he had been working as master mind and main supplier of foreign origin gold for smuggling through Dubai-Nepal-India route and other one i.e., Shri Ali Abdelgafar Ali Mala, holder of Sudan passport P05651182, was organizing and providing manpower, logistics support facilities to various carriers for smuggling gold from Dubai to Mumbai, including the three passengers who are noticees No. (i), (ii) & (viii) in the present case. It is also evident from the records that all the noticees except the master mind had co-operated in the investigation proceedings. However, only four noticees viz., Shri Saif Sayeed Khan and his brother Shri Shamsher Sayeed Khan; Shri Manish Prakash Jain of M/s Manish Gold and Shri Vishwajit Deshmukh of M/s J D Bullion participated in the adjudication proceedings, providing their written submissions and made their additional submissions during the time of personal hearing given by the Original Authority. The other five noticees, neither in person nor though their authorized representative appeared for personal hearing and not even

submitted their reply to the show cause notice. Further, on absolute confiscation of seized gold and upon imposition of penalty on all the noticees by the original authority in the Order-in-Original dated 25.07.2024, only Shri Vishwajit Deshmukh, the appellant herein and another noticee Shri Manish Prakash Jain have filed separate appeals before the Commissioner of Customs (Appeals). The said appeals have been disposed of by the impugned order dated 11.07.2025 in the case of appellant herein and by another order No.MUM-CUSTM-PREV-APP-305-2025-26 dated 04.07.2025 in the case of Shri Manish Prakash Jain. It is also seen from the data available in website of the Tribunal (as on date), about the case details of appeals filed before the Tribunal, that other noticee Shri Manish Prakash Jain has also filed an appeal vide C/87615/2025 on 04.07.2025 as well as an early hearing application vide C/EH/85936/2026 on 29.05.2026, which is yet to be listed for hearing. Therefore, it emerges that as against the absolute confiscation of seized gold and imposition of penalty on all noticees, and its confirmation by the learned Commissioner of Customs (Appeals), only two noticees viz., Shri Vishwajit Deshmukh, the appellant herein and Shri Manish Prakash Jain are aggrieved against such orders of authorities below and have preferred their respective appeals before the Tribunal. Therefore, in respect of all other noticees the order of the original authority vide Order-in-Original dated 25.07.2024 have become final with respect to such noticees, inasmuch as there is no appeal preferred by them for having been aggrieved by such order.

9.1 Therefore, the disputed issues are required to be examined in the aforesaid context of the legal finality attained by the order dated 25.07.2024 with respect to such other noticees and the provisions of the Customs Act, 1962 and the relevant import policy prescribed under the ITC (HS) of the Foreign Trade Policy.

9.2 In the Order-in-Original dated 25.07.2024, the gold seized from the appellant was absolutely confiscated and penalty was imposed in the following terms:

> *"56. In the view of the above, I pass the following order:*
>
> *ORDER*
>
> *(vi) I order absolute confiscation of gold having a net weight of 871.120 grams valued at Rs. 50,50,971/- as detailed in Table-12b (supra), which*

belonged to Mr. Manish and was sent to Vishwajit Deshmukh for melting, under Section 111(d) of the Customs Act, 1962

(vii) I order absolute confiscation of gold having a net weight of 831.060 grams valued at Rs. 44,29,180/- seized from premises of Mr. Vishwajit Deshmukh, as detailed in Table-12a (supra), under Section 111(d) of the Customs Act, 1962.

(viii) I order absolute confiscation of gold having a net weight of 2021.470 grams valued at Rs. 1,18,05,384/- seized from premises of Mr. Vishwajit Deshmukh, as detailed in Table-12c (supra), under Section 111(d) of the Customs Act, 1962.

xxx xxx xxx xxx

(xxvi) I impose penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) on Mr. Vishwajit Deshmukh, under section 112(a) & (b) of the Customs Act, 1962 in relation to the seized gold having a net weight of 831.060 grams valued at Rs. 44,29,180/- as detailed in Table-12a, smuggled gold having a net weight of 871.120 grams valued at Rs. 50,50,971/- as detailed in Table-12b and the smuggled gold having a net weight of 2021.470 grams valued at Rs.1,18,05,384/- as detailed in Table-12.c."

9.3 In the impugned order dated 25.07.2024, the learned Commissioner of Customs (Appeals) has upheld the order of the original authority with respect to the appellant herein on the following grounds:

"27. On their ground that time limit violation under Section 110(2) this has been discussed and concluded in paras 40.7 and 40.12 in the impugned order and that need no further elaboration and the argument put forth by the appellant is not acceptable.

28. Seeking setting aside the impugned order on the grounds of the violation of principles of natural justice, which is not substantiated with any documentary evidence is not sustainable.

29. The appellant contend that the department failed to establish smuggling beyond reasonable doubt. It has been concluded in para 52 of the impugned order that the Gold is within the ambit of Section 123 of the Customs Act, 1962. The burden of proof that they have not been smuggled into India lies with the person from whose possession they have been recovered and seized. None of the noticees have produced any licit documents for the foreign marked gold bars/ melted pieces in support of their claim over the seized gold. The seized gold had marking level indicating that foreign origin. In some cases, the marking and serial numbers have been defaced by melting the same. However, no bills of entry or any other import documents have been submitted to prove the licit import of the gold. It is also noted in para 54 of the impugned order

"the investigation has established the smuggling of gold from Indo-Nepal border, the person involved and its modus operandi" and, therefore, the argument of insufficient evidence of smuggling is not acceptable.

30. In view of the involvement of the Appellant with absolutely confiscated gold having net weight of 871.120 grams valued at valued at Rs. 50,50,971/- as detailed in Table-12(b) of the impugned order, gold having net weight of 831.060 grams valued at Rs.44,29,180/- as detailed in Table-12(a) of the impugned order, gold having net weight of 2021.470 grams valued at Rs.1,18,05,384/- as detailed in Table-12(c) of the impugned order and the conclusion of the Adjudicating Authority that a syndicate was working in the whole illegal trading; they all were organized, well connected, known to one another and working for undue monetary consideration; there is something more in common, they all did the nefarious business in 'Cash' and that smuggling of gold into India affects the public economy and financial stability of the economy., the imposition of penalty of Rs.25,00,000/- under Section 112 (a) and (b) ibid under the facts and circumstances of the case cannot be termed as disproportionate.

31. In view of the above discussion and findings, there is no reason to interfere with the impugned order as it pertains to the present Appellant Mr Vishwas Deshmukh and accordingly, I pass the following order.

ORDER

I uphold the order and disallow the Appeal No.1799/2024 dated 01.10.2024. The appeal is accordingly disposed of."

10.1 The main contention urged on behalf of the appellant is that the entire case against him rests substantially on the statement of Shri Manish Jain, which statement was subsequently retracted, and that despite such retraction and despite the appellant's specific request, the persons whose statements were relied upon to implicate the appellant, including Shri Manish Jain, were not offered for cross-examination. It is an admitted position, noted even in the order of the original authority, that the statement of Shri Manish Jain was retracted.

10.2 In order to brushed aside the GST invoices produced by the appellant in support of his claim for purchase of the gold in issue from M/s. HR Enterprises, the department relied upon the statements of one Shri Hitesh Narendra Rathod of M/s. HR Enterprises, Kolhapur. The said Mr. Hitesh Rathod in his statement to the department stated that he never directly dealt

with M/s. JD Bullion, but again the same Mr. Hitesh Rathod was not permitted to be cross-examined by the appellant.

10.3 Section 138B of the Customs Act, 1962 mandates that a statement made before a Gazetted Officer of Customs is relevant for the purpose of proving the truth of the facts contained therein only in the circumstances specified in clause (a) of sub-section (1), or, in any other case, only where the person who made the statement is examined as a witness before the adjudicating authority and the adjudicating authority, having regard to the circumstances, is of the opinion that the statement should be admitted in evidence in the interest of justice. Where a statement has been retracted by its maker, and the maker is not offered for cross-examination despite a specific request by the noticee, such statement cannot be treated as relevant evidence for proving the truth of its contents against the person sought to be implicated by it. The denial of cross-examination in such circumstances is not a mere procedural lapse but goes to the root of the matter, being violative of the principles of natural justice and of the mandate of Section 138B ibid. Our view is further supported by the decision of the Principal Bench of this Tribunal in *Customs Appeal No. 51986 of 2024; Bharat Shantilal Shah vs. Principal Commissioner of Customs (Preventive), decided vide Final Order No. 51837/2025, on 8.12.2025.* The decision in the matter of *Bharat Shantilal Shah (supra)* was further relied upon recently by the Principal Bench of the Tribunal in *Customs Appeal No. 50647 of 2024; Shri Gaurav Jain vs. The Commissioner of Customs, decided* vide Final Order no. 50222/2026 on 6.2.2026.

10.4 We further find that in the case of *Andaman Timber Industries* (supra) which was relied upon by the appellant, it has been held by the Hon'ble Supreme Court, that when the testimony of witnesses is discredited, and when there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the show cause notice, the case of the department is not sustainable and the order passed by the Tribunal, in that case, for dismissing the appeal was set aside.

10.5 We find that in the present case, the findings of involvement of the appellant, and the consequent imposition of penalty upon him, has proceeded in substantial measure on the strength of the statement of S/Shri Manish Jain and Hitesh Narendra Rathod, implicating the appellant in receipt

and refining of smuggled gold. The statement by Mr. Manish Jain having been retracted, and the appellant having been denied the opportunity to cross-examine Shri Manish Jain, Hitesh Narendra Rathod as well as other persons whose statements were relied upon by the Revenue, we are of the considered view that such statements could not have been relied upon as legal evidence against the appellant. The mere existence of an investigation into a wider smuggling syndicate, or statements of other passengers and persons concerning the movement of smuggled gold generally, does not by itself establish, independently and without reliance on the retracted and untested statement, that the specific gold recovered from the appellant's premises was smuggled gold or that the appellant had requisite knowledge thereof. The evidentiary foundation for implicating the appellant, once the retracted and untested statement of Shri Manish Jain is excluded, is not sufficient to sustain either the confiscation of the gold seized from the appellant or the penalty imposed upon him.

10.6 In view of the above, we hold that the denial of cross-examination of Shri Manish Jain and other persons, coupled with the retraction of the statement of Shri Manish Jain, vitiates the finding recorded against the appellant. The order of confiscation and the penalty imposed on the appellant, resting as they do on such inadmissible material, cannot be sustained in law.

11. Having regard to our findings in aforementioned paragraphs that the finding of the authorities below against the appellant rests on the retracted statement of Shri Manish Jain and of Mr. Hitesh Narendra Rathod which was relied upon without affording the appellant an opportunity of cross-examination in violation of Section 138B ibid and the principles of natural justice, we are of the considered opinion that the impugned order, insofar as it relates to the appellant Shri Vishwajit Deshmukh, cannot be sustained. The order of absolute confiscation of the gold seized from the appellant's premises and the penalty imposed upon him under Section 112 of the Customs Act, 1962 are accordingly liable to be set aside in entirety.

12. In view of the foregoing discussions, analysis and in peculiar facts in this Appeal, we are of the considered view that the impugned order dated 11.07.2025, insofar as it relates to the appellant Shri Vishwajit Deshmukh, is not sustainable in law and is set aside in entirety to such extent. The appeal filed by the appellant is allowed, with consequential relief, if any, as per law.

13. In the result, the appeal filed by the appellant is allowed and the impugned order is set aside to the extent challenged herein.

(Order pronounced in open court on 20.08.2026)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha