

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
AHMEDABAD**

**REGIONAL BENCH, COURT NO. 2**

**CUSTOMS APPEAL NO. 10636 OF 2024  
(C/Misc/10106/2025)**

[Arising out of OIA-AHM-CUSTOM-000-APP-163-24-25 dated 26/07/2024 passed by Commissioner of Customs (Appeals)-AHMEDABAD]

**PRADIPBHAI SEVANTILAL SHAH**

B-602, Aryavrat Skies,  
Behind Kanchandeeep & Bikanerwala,  
Nehrunagar, Ahmedabad- 380015

**Appellant**

Vs.

**COMMISSIONER OF CUSTOMS-CUSTOMS AHMEDABAD**

Office of the Pr. Commissioner of Customs,  
1<sup>st</sup> Floor, Customs House, Opp. Old High Court,  
Navrangpura, Ahmedabad-380009

**Respondent**

**Appearance:**

Shri Hardik Modh, Advocate for the Appellant  
Smt Sunita Menon, Superintendent (AR) for the Respondent

**CORAM:**

**HON'BLE Dr. AJAYA KRISHNA VISHVESHA, MEMBER ( JUDICIAL )**

**FINAL ORDER NO. 10841/2025**

Date of Hearing : 04.08.2025  
Date of Decision : 10.10.2025

**Dr. AJAYA KRISHNA VISHVESHA**

This appeal is directed against the order of Commissioner (Appeals) Customs, Ahmedabad dated 26<sup>th</sup> July, 2024 through which the learned Commissioner upheld the order passed by Assistant Commissioner of Customs, SVPI Airport Ahmedabad dated 12<sup>th</sup> October, 2023 and rejected the appeal.

1.1 The facts of the case in brief are that the appellant arrived at Ahmedabad International Airport from Dubai on 26<sup>th</sup> March, 2018. He was intercepted by officers of Directorate General of Revenue Intelligence (DGRI) as soon as he crossed the green channel. The appellant was asked whether he had any dutiable articles to be declared to the Customs to which he denied. The baggage of the appellant was searched which led to recovery of gold jewellery / ornaments viz. 4 gold kadas, 4 gold kadiwali chains, and 1 gold chain totally weighing 937.800 grams having market value of Rs. 29,86,045/- and Tariff value of Rs. 26,28,982/-. Since the gold jewellery / ornaments were not declared on arrival, the same were seized and subsequently absolutely confiscated under the Provisions of Section 111 (d) (i) (l) and (m) of the Customs Act, 1962 vide Order-in-Original dated 31<sup>st</sup> December, 2018 issued by the Additional Commissioner, Customs House, Ahmedabad. Penalty of Rs. 2,62,000/- was also imposed on the appellant under the provisions of Section 112 (a) and (b) of the Customs Act, 1962.

1.2 Aggrieved from the order dated 31<sup>st</sup> December, 2018 passed by the Additional Commissioner, as mentioned above, the appellant filed appeal before the Commissioner of Customs (Appeals), Ahmedabad. The learned Commissioner (Appeals) rejected the appeal vide Order-in-Appeal dated 1<sup>st</sup> October, 2019. Being aggrieved from the Order-in-Appeal dated 1<sup>st</sup> October, 2019, the appellant filed Revision Application under Section 129 DD of the Customs Act, 1962. The Principal Commissioner and ex-officio Additional Secretary to Government of India vide order no. 243-244/2022 CUS (WZ/SZ) / ASRA/MUMBAI dated 24<sup>th</sup> August, 2022 set aside the order of absolute confiscation passed by the Adjudicating Authority and the impugned gold jewellery having market value of Rs. 29,86,045/- and Tariff value of Rs. 26,28,982/- was allowed to be redeemed on payment of redemption fine of

Rs. 4,25,000/-. However, the Revisional Authority upheld the penalty of Rs. 2,62,000/- imposed under section 112 (a) and (b) of the Customs Act, 1962. Pursuant to the order dated 24.08.2022, as mentioned above, the appellant received letter dated 22<sup>nd</sup> November, 2022 of the Deputy Commissioner, Customs SVPIA Ahmedabad informing that the said gold weighing 937.890 grams was sent to the Mint on 16<sup>th</sup> January, 2020 for further process. Therefore, the said gold cannot be redeemed to the appellant. The Deputy Commissioner further informed the appellant that an equivalent amount after adjustment / deduction of redemption fine, penalty and warehouse charges and applicable rate of duty would be paid to him. Subsequently, the appellant received a cheque for Rs. 21,17,213/- in lieu of gold ordered to be redeemed vide order dated 24<sup>th</sup> August, 2022 from the Superintendent Customs, Paldi Division, Ahmedabad vide letter dated 14.12.2022. Further, the appellant vide letter dated 11<sup>th</sup> January, 2023 addressed to the Deputy Commissioner, Paldi requested him to provide computation of the amount paid to them in lieu of gold and also requested to pay the differential amount while calculating the value of gold as per market value. Thereafter, the appellant filed appeal before the Commissioner of Customs (Appeals) Ahmedabad against the letter dated 22<sup>nd</sup> November, 2022 issued by the Deputy Commissioner of Customs SVPIA Ahmedabad. The Commissioner of Customs (Appeals) Ahmedabad vide Order-in-Appeal dated 21<sup>st</sup> August, 2023 remanded the matter back to the Adjudicating Authority.

1.3 In *de novo* adjudication, the Adjudicating Authority issued the order dated 12<sup>th</sup> October, 2023 showing the calculation of the amount refunded. The Adjudicating Authority computed the amount in the light of Instruction No. 22/2022 Customs dated 6<sup>th</sup> September, 2022. Being aggrieved with the Order-in-Original dated 12<sup>th</sup> October, 2023 the appellant filed appeal before

the Commissioner of Customs (Appeals) Ahmedabad. The learned Commissioner passed the impugned order dated 26<sup>th</sup> July, 2024 in which, he came to the conclusion that on conjoint reading of Section 125 (2) of the Customs Act, 1962, the order dated 24<sup>th</sup> August, 2022 passed by the Principal Commissioner and ex-officio Additional Secretary to Government of India and para 2 (i) and 3.1.2 (i) of the Instruction No. 22/2022 Customs dated 6<sup>th</sup> September, 2022 issued under F. No. CBIC-50711/5/2021-INV CUSTOMS, it is clear that the Adjudicating Authority has correctly effected the deduction in table 4 of the impugned order. He found no infirmity in the Order-in-Original dated 12<sup>th</sup> October, 2023 and accordingly, he dismissed the appeal filed by the appellant. Feeling aggrieved from the impugned order dated 26<sup>th</sup> July, 2024, the appeal has been filed before this Tribunal.

2. The learned counsel for the appellant submitted that the Revenue failed to follow the due process provided under Section 110(1B) of Customs Act for disposing of gold. Section 110 (1B) provides that where any goods, being goods specified under sub-section (1A), 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 proceeding under this act and shall make an application to a Magistrate. However, no such procedure was followed by the revenue.

2.1 The learned counsel for the appellant also argued that Central Board of Excise and Customs vide Instruction No. 711/4/2006-Cus (AS) dated 14<sup>th</sup> February, 2006 issued a clarification in respect of requirement of issuing notice to the owner of the goods wherein the goods have been confiscated but in

respect of which, the appeal / legal remedies have not been exhausted by the owner of the goods. However, the department never informed the appellant before disposing of the goods.

2.2 The learned counsel for the appellant also submitted that when the gold jewellery is seized, there is a legal obligation on the part of the Revenue to preserve property of the appellant and keep the same intact, pending disposal of the appeal / revision application. The Government is a bailee until the confiscation order attains finality. The gold jewellery is a property of the appellant and disposal of the same without any information has put the appellant to undue loss and has deprived him of his property.

2.3 The learned counsel for the appellant also submitted that the order passed by the Adjudicating Authority is not a final order and it is subject to appeals and revisions. Therefore, the confiscation order may be reversed or modified in appeal. Therefore, in such eventuality the department cannot retain the seized gold with him. It is a statutory obligation on the Revenue to return the goods to its rightful owner.

2.4 The learned counsel for the appellant relied upon the decision of Hon'ble Bombay High Court in **Laila Mehmudi vs. Additional Commissioner of Customs** reported in 2024 (387) ELT 651 (Bombay) in which, it has been observed that the Assistant Commissioner who disposed of the gold never informed either the Appellate Authority or the Revisional Authority that the seized gold jewellery of the petitioners was not available with them and was disposed off. It is something which raises a serious doubt in the method or manner in which, the customs officer discharged their duty under the Act. Even if there is a power to dispose off gold, it has to be exercised fairly, reasonably and transparently. Disposal of the property belonging to the

persons like the petitioners and to sell the seized goods at the *Ipse Dixit* of the officers is not what the law would recognize. The procedure to dispose of such valuable commodities is required to withstand the test of law and more particularly the constitutional requirement of reasonableness (not arbitrariness), fairness and transparency as enshrined in Article 14 of the Constitution coupled with safeguarding the valuable rights of property recognized by the Constitution.

2.5 The learned counsel for the appellant also submitted that the appellant is entitled to get market value of the gold as existed on the date of payment via cheque issued by the department. He further submitted that the confiscated gold was melted on 16<sup>th</sup> January, 2020 when the market price of gold was Rs. 40,986/- per ten grams. However, the cheque for the melted gold was handed over on 14<sup>th</sup> December, 2022, after more than 2 years of melting of the said gold when the market price of the gold was Rs. 52,670/- per ten grams. The Revenue was duty bound to have returned the amount equivalent to the market value of the gold i.e. Rs. 52,670/- per ten grams when the cheque was issued to the appellant. Therefore, the appellant is entitled to receive the differential value of gold on market value amounting to Rs. 9,06,943/- or the differential value of gold on Tariff value amounting to Rs. 7,34,192/- along with applicable interest.

2.6 The learned counsel for the appellant also argued that the learned Commissioner of Customs (Appeals) Ahmedabad failed to consider that this Hon'ble Tribunal has held in **Satish Mehta and Dhanishtha Gold vs. Commissioner of Customs Ahmedabad** reported in 2022 (11) TMI 62 CESTAT Ahmedabad that the action of the department in disposing of gold when the matter was pending, without informing the assessee is gross violation of principles of natural justice. The Tribunal has also held that the

assessee is entitled for the refund of differential value of gold as claimed by them along with applicable interest.

2.7 The learned counsel for the appellant also submitted that the Revenue must not have deducted redemption fine of Rs. 4,25,000/- imposed by the Revisional Authority vide order dated 24<sup>th</sup> August, 2022 because at the time of redemption, the goods were not available with the Revenue Authorities. The Redemption fine of Rs. 4,25,000/- was imposed on the appellant on the premise that after payment of redemption fine, the goods in dispute will be released to the appellant. However, in the present case, at the time of imposing redemption fine, the Revenue Department was not having the possession of the impugned gold ornaments with them. Therefore, the appellant is not liable to pay redemption fine. The learned counsel for the appellant also submitted that in catena of cases e.g. **Commissioner vs. Chinku Exports** - 2005 (184) ELT A36 (SC); **ShivKripa Ispat Pvt Ltd vs. Commissioner** - 2009 (235) ELT 623 (Tri.Ld) and **Ram Khajana Electronic vs. Commissioner of Customs, Air cargo Jaipur** reported in 2003 (156) ELT 122 (Tri. Delhi), it has been held that redemption fine is not to be imposed when the goods are not liable to confiscation.

2.8 The learned counsel for the appellant prayed that the appeal may be allowed and the impugned order, passed by the learned Commissioner be set aside.

3. The learned Authorised Representative for the department reiterated paragraphs no. 5.6, 5.7 and 5.8 of the impugned order passed by the learned Commissioner and submitted that the learned Commissioner has rightly concluded that on conjoint reading of Section 125 (2) of the Customs Act, order dated 24<sup>th</sup> August, 2022 of the Principal Commissioner and ex-officio

Additional Secretary to Government of India and para 2 (i) and 3.1.2 (i) of Instruction No. 22/2022 Customs dated 06.09.2022, it is clear that the Adjudicating Authority has correctly effected the deduction as shown in table 4 of the Order-in-Original. He has prayed that the impugned order be upheld and the appeal must be rejected.

4. I have heard the learned counsel for the appellant and the learned Authorised Representative for the Revenue and perused the records. In Instruction No. 22/2022-Customs, issued by Government of India, Ministry of Finance, Department of Revenue, CBIC dated 6<sup>th</sup> September, 2022, it has been provided:-

*"3.1.2 whenever seized gold has to be returned on account of any order from the Judicial forum and the gold has already been disposed off, the amount to be refunded in lieu of such gold shall be calculated as given below:-*

*(i) if the seizure is made in the Customs area, calculation shall be based on the Tariff Value of gold on the date of transfer of such seized / confiscated gold to SPMCIL; and*

*(ii) if the seizure is made at any place other than Customs area, calculation shall be based on the average market price of gold on the date of transfer of such seized / confiscated gold to SPMCIL."*

4.1 Therefore, the Revenue is bound to follow the procedure as mentioned above while returning the seized gold to its rightful owner.

4.2 The question before this Tribunal is whether the officers of the department have followed the prescribed procedure during confiscation of gold, keeping it in their custody and returning the value of gold to the appellant after deducting dues.

4.3 The learned Assistant Commissioner SVPI Airport Ahmedabad has prepared a table for calculation of refund amount and designated it as table no. 4 which is as follows:-

<b>S. No.</b>	<b>Description</b>	<b>Amount (in Rs. )</b>
1	Total Revenue receipt on disposal of Gold	3821501
2	Less Customs duty including (SWS)	1012158
3	Less Redemption Fine (As per R.A Order)	425000
4	Less Penalty imposed (As per R.A Order)	262000
5	Less Warehouse Charges till sent to Mint	27780
6	Add : Pre-deposit (7.5%) paid vide T R 6 Challan No. 5042 dated 22.02.2019	19650
<b>7</b>	<b>Refund Amount</b>	<b>2117213</b>

4.4 The learned Commissioner (Appeals) Customs, Ahmedabad has mentioned in his impugned order dated 26<sup>th</sup> July, 2024 at page no. of the order that he is of the considered view that Adjudicating Authority has correctly effected the deduction in Table no. 4 of the Order-in-Original.

4.5 I do not agree with the learned Commissioner (Appeals) that the Adjudicating Authority has correctly effected the deduction in table no. 4 of his order. The table has not been prepared in compliance of the order of this Tribunal in **Satish Mehta and Dhanishtha Gold vs. C. C. Ahmedabad** reported in 2022 (11) TMI 62 CESTAT Ahmedabad and order of Delhi High Court in **Gor Sharian vs Commissioner of Customs** WP (c) No. 1807/2025, CM APPL.8675/2025 and CM APPL. 8676/2025 in which Hon'ble Delhi High Court has held in para 19 of the judgment that under these circumstances, this court is of the opinion that the petitioner is entitled to the entire value of the detained gold as on the market rate prevalent today which would be liable to be paid by the Customs department within a period of three weeks. If the said amount is not paid within three weeks, cost of Rs. 1,00,000/- would be liable to be paid by the Customs department to the Petitioner. The Hon'ble Delhi High Court also held that no duty would be liable to be deducted from

the said payment of the value of the detained gold as the petitioner has already deposited the redemption fine and penalty in terms of the Order-in-Appeal.

4.6 I am of the view that it was not proper on the part of the department to have sent the gold seized from the appellant to Mint without informing him. In this context, it is pertinent to refer to the order passed in **Satish Mehta and Dhanishtha Gold vs C. C. Ahmedabad** – 2022 (11) TMI 62- CESTAT Ahmedabad. The Tribunal has held in this case that during the disputed period when the matter was sub-judice before the Tribunal, the Department, in a hasty manner disposed off the goods without seeking permission from the Appellate Court where the matter was sub-judice. Thus, the department has committed a serious mistake by disposal of the disputed goods which was a subject matter of appeal. The department also did not intimate the appellants regarding the disposal of confiscated goods. This act of the department ex-parte cannot be held as proper and legal. The Tribunal cited **Kailash Ribbon Factory Ltd vs. Commissioner of Customs and Central Excise New Delhi** (2002) (3) TMI 57 (High court Delhi), in which Hon'ble High Court has held that it is a serious lapse on the part of the department when it auctioned confiscated goods without permission of the Tribunal during pendency of the appeal without even giving notice to the appellant. It was also held that the department has to refund the declared value of the goods with interest per annum from the date of auction of the goods.

4.7 The Tribunal has also held in the above mentioned decided case that at the time when the goods were disposed off the department was well aware about the pendency of the appeal before this Tribunal. Therefore, the action of the department is clearly in gross violation of principles of natural justice. Hence the same cannot be allowed to sustain. In this case, the Tribunal

allowed the appeal and held appellant entitled for the refund of differential value of the gold as claimed by them along with interest.

4.8 In the **Spring RPG India Ltd** 2002 (140) ELT 73 Delhi. Hon'ble Delhi High Court has observed as follows:-

"It had, in our opinion, a moral obligation to inform the CEGAT as also the Supreme Court of India that the goods in question have already been sold in auction. It failed and neglected to do so. Prior to putting the goods in question to auction, it was expected that the petitioner would at least be put to notice that on payment of additional duty, it could get the imported goods cleared. It is really also a matter of great surprise that the Airport Authorities also sold the goods within two days of the receipt of the list of such goods".

In view of the above legal position I am of the view that the learned Commissioner has erred in upholding the order of the first Adjudicating Authority and rejecting the appeal. In my opinion the impugned order passed by the learned Commissioner is liable to be set aside and the appeal deserves to be allowed.

4.9 I am also of the view that the Revenue is justified in deducting the redemption fine of Rs. 4,25,000/- imposed by the Revisional Authority vide order dated 24<sup>th</sup> August, 2022 because on the basis of that order, the appellant is claiming gold in question. The appellant cannot be allowed to take benefit of that order and at the same time refuse to accept the onerous part of the same order. In the present case the gold in question was confiscated. Therefore, if the appellant to take the gold in question back or its market value, he is bound to pay the redemption fine.

5. Consequently, the appeal is allowed, the impugned order passed by the learned Commissioner is set aside. The Revenue shall pay the market value of gold to the appellant as it was effective on the date when the cheque of refund amount was handed over to the appellant by the Department after adjustment / deduction of redemption fine, penalty, warehouse charges, applicable rate of duty as shown in the Table-3 of the Order-in-Original. The Miscellaneous Application is also stands disposed off.

(Order pronounced in the open Court on 10.10.2025)

**(Dr. AJAYA KRISHNA VISHVESHA)**  
**MEMBER ( JUDICIAL )**