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* IN THE HIGH COURT OF DELHI AT NEW DELHI
% ***Judgment reserved on: 10.07.2026***
Judgment pronounced on: 15.07.2026
Judgment uploaded on:15.07.2026

\+ W.P.(C) 9182/2024

ABDUL SAMAD .....Petitioner

Through: Mr. M. C. Dhingra, Sr. Adv. along with Mr. MD Shahid Anwar and Mr. Mohd. Syed Affan, Advs.

versus

COMMISSIONER OF CUSTOMS & ANR. .....Respondents

Through: Sh. Atul Tripathi, SSC along with Mr. Akshay Sagar and Mr. Shubham Mishra, Advs.
Ms. Sarika Singh, SPC along with Mr. Rahul Singh, Adv. for UOI.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE SHAIL JAIN

JUDGMENT

ANIL KSHETARPAL, J.:

1. The principal question that arises for consideration in the present Writ Petition is whether this Court should interfere with the concurrent findings of fact recorded by the Adjudicating Authority, the Commissioner of Customs (Appeals) and the Revisional Authority holding that the Petitioner had attempted to import substantial quantities of gold jewellery and gold biscuits into India without

making the mandatory declaration before the Customs authorities, thereby rendering the goods liable to confiscation under the Customs Act, 1962 ['the Customs Act'].

2. By way of the present Writ Petition, the Petitioner seeks quashing of Order No.295/22-Cus dated 20.09.2022 ['Impugned Order'] passed by the Additional Secretary, Ministry of Finance, Department of Revenue, Government of India, whereby the Revision Application preferred by the Petitioner under Section 129DD of the Customs Act came to be dismissed. Consequently, the Petitioner also seeks setting aside of the orders passed by the Adjudicating Authority and the Commissioner of Customs (Appeals), as affirmed in revision, and prays for refund of the sale proceeds of the confiscated gold without deduction towards redemption fine, customs duty and penalty together with interest.

FACTUAL MATRIX

3. In order to appreciate the controversy involved in the present Petition, the relevant facts, in brief, are required to be noticed.

4. The Petitioner is an Indian passport holder and a resident of Mumbai. On 11.10.2013, he arrived at the Indira Gandhi International Airport, New Delhi from Dubai. According to the Customs Department, the Petitioner was intercepted after crossing the Green Channel. Upon examination of his baggage, the officers recovered 477 gold chains weighing 2,516.5 grams along with two (02) gold biscuits weighing 100 grams each, aggregating to 2,716.5 grams, besides Indian currency amounting to Rs. 19,090/- and 785 UAE Dirhams.

The Customs Declaration Form submitted by the Petitioner disclosed 'Nil', indicating that he had not declared carrying any dutiable goods.

5. During the course of investigation, the statement of the Petitioner was recorded on 12.10.2013 under Section 108 of the Customs Act. In the said statement, the Petitioner disclosed that he was engaged in the business of auto parts in Dubai in association with a local businessman and used to visit India frequently as his family resided in Mumbai. He stated that the gold jewellery and gold biscuits had been purchased by him in Dubai on 11.10.2013 with the intention of selling the same in India. The gold biscuits bore the engraving *"AL ETIHAD GE DUBAI–UAE 100G 995.0"*.

6. The Petitioner further disclosed that during the preceding one and a half years, he had carried approximately 20 to 25 tolas of old gold jewellery from Mumbai to Dubai without declaring the same before the Customs authorities. He also stated that for the preceding two months, he had been travelling to Mumbai and Hyderabad almost every week and carrying televisions and laptops for sale in India so as to earn additional income. It was also recorded in his statement that he had wrapped the gold jewellery and gold biscuits in tissue paper and secured them with adhesive tape in order to avoid detection by the Customs officials. The Petitioner further admitted that although he had not declared the gold items in the Customs Declaration Form, he was carrying them into India without payment of the applicable customs duty.

7. The Petitioner was thereafter arrested and produced before the

competent Court. He was granted bail on 14.10.2013. Subsequently, on 15.10.2013, upon his release on bail, the Petitioner sought to retract the statement made by him under Section 108 of the Customs Act, alleging that the same had not been made voluntarily. On 24.10.2013, he also filed an application before the learned Chief Metropolitan Magistrate [‘CMM’] seeking preservation of the CCTV footage of the relevant area of the airport. Notice on the said application was issued to the learned Public Prosecutor for 08.11.2013. *Vide* order dated 04.04.2014, the learned CMM directed preservation of the said CCTV footage. However, in response thereto, the Deputy Inspector General, CISF, *vide* communication issued on 09.04.2014, informed that the CCTV footage relating to 11.10.2013 had already been erased automatically from the system upon expiry of the stipulated period. It was further stated that no intimation had been received from any investigating or concerned agency for preservation of the said CCTV footage.

8. Upon completion of the adjudication proceedings, the Additional Commissioner of Customs passed an Order-in-Original dated 28.03.2018, ordering confiscation of the gold jewellery and gold biscuits and imposing a penalty of Rs.13,23,225/- upon the Petitioner. Aggrieved therefrom, the Petitioner preferred an appeal before the Commissioner of Customs (Appeals), which came to be dismissed *vide* order dated 06.12.2021. Thereafter, the Petitioner invoked the revisional jurisdiction of the Central Government under Section 129DD of the Customs Act. The Revision Application was also dismissed by the Additional Secretary, Ministry of Finance

(Department of Revenue) *vide* order dated 20.09.2022.

9. Challenging the aforesaid revisional order, as well as the concurrent findings recorded by the Adjudicating Authority and the Commissioner of Customs (Appeals), as affirmed by the Revisional Authority, the Petitioner has instituted the present Writ Petition. Notice was issued in the matter, pursuant whereto the Respondents filed their counter affidavit. The Petitioner has also filed a rejoinder controverting the stand taken by the Respondents.

CONTENTIONS OF THE PARTIES

10. Contentions of the Petitioner

10.1. Learned counsel for the Petitioner contended that although the Petitioner had intended to make the requisite declaration regarding the gold articles brought by him, he was intercepted by the Customs officials before he could approach the Red Channel for making such declaration. Consequently, the allegation that the Petitioner had consciously attempted to evade payment of customs duty is wholly misconceived.

10.2. It was further contended that immediately after the Petitioner's release on bail, he took steps to establish the true sequence of events by seeking preservation of the CCTV footage of the relevant area of the airport. An application to that effect was moved before the learned CMM. However, since the CCTV footage was ultimately not preserved and stood erased, valuable evidence which could have substantiated the Petitioner's version has been irretrievably lost.

According to the learned counsel, the failure to preserve the CCTV footage has caused serious prejudice to the Petitioner's defence.

10.3. It was next submitted that the statement recorded from the Petitioner on 12.10.2013 under Section 108 of the Customs Act was not voluntary. It was contended that the said statement was obtained under coercion and cannot, therefore, be relied upon. Particular emphasis was laid upon the fact that the Petitioner retracted the said statement immediately after his release on bail.

10.4. Lastly, it was contended that while dismissing the statutory appeal, the Commissioner of Customs (Appeals) travelled beyond the reasoning adopted by the Adjudicating Authority and proceeded to make out an entirely new case against the Petitioner. It was submitted that the Appellate Authority could not have sustained the confiscation and penalty on grounds which did not form part of the adjudication order. Consequently, the impugned appellate order, as affirmed by the Revisional Authority, is liable to be set aside.

11. <u>Contentions of the Respondents</u>

11.1. *Per contra*, learned counsel for the Respondents submitted that although the Petitioner filed an application before the learned CMM on 24.10.2013 seeking preservation of the CCTV footage, no immediate direction for its preservation was passed. Instead, notice was issued to the Government Counsel for 08.11.2013. *Vide* order dated 04.04.2014, the learned CMM directed preservation of the CCTV footage. By that time, the footage relating to 11.10.2013 had already been automatically erased upon expiry of the prescribed retention period. It was further submitted that no request had been received from any investigating or concerned agency during the relevant period requiring preservation of the CCTV footage.

11.2. It was further submitted that the Petitioner's retraction of his statement under Section 108 of the Customs Act is wholly unreliable. The retraction was made only after the Petitioner had been released on bail and was, therefore, a clear afterthought. It was emphasized that the statement recorded on 12.10.2013 runs into eleven (11) pages, each page whereof bears the Petitioner's signatures as well as the signatures of the concerned Customs officer. She further pointed out that the last page of the statement contains the Petitioner's signatures both in English and in Hindi, thereby clearly demonstrating that the statement was voluntarily made. It was, therefore, contended that the authorities below have rightly relied upon the said statement while recording the findings against the Petitioner.

ANALYSIS & FINDINGS

12. This Court has carefully considered the submissions advanced on behalf of the parties and perused the material on record.

13. The controversy essentially revolves around three issues, namely, whether the Petitioner was intercepted before he could make a declaration before the Customs authorities, whether the statement recorded under Section 108 of the Customs Act can be relied upon despite its subsequent retraction, and whether the concurrent findings recorded by the authorities below warrant interference in exercise of the extraordinary jurisdiction of this Court under Article 226 of the

Constitution of India.

14. The principal submission advanced on behalf of the Petitioner is that he intended to declare the gold articles carried by him and proceed through the Red Channel, but was intercepted by the Customs officials at the aerobridge before he could do so. This Court is unable to accept the said submission.

15. The case set up by the Respondent Department throughout has been that the Petitioner was intercepted after crossing the Green Channel. Except for the bald assertion made by the Petitioner, there is no material on record to substantiate the plea that he was intercepted at the aerobridge before he could approach the Red Channel. On the contrary, the Customs Declaration Form admittedly submitted by the Petitioner records 'Nil', thereby indicating that he did not declare carrying any dutiable goods. The said circumstance assumes significance, particularly when viewed in conjunction with the remaining material available on record.

16. It is also not in dispute that during the period between March, 2013 and 11.10.2013, the Petitioner had undertaken as many as twenty-one (21) trips to India. Although his family admittedly resides in Mumbai, he was repeatedly entering India through different international airports, including New Delhi, Hyderabad and Lucknow. The statement recorded under Section 108 of the Customs Act further reveals that the Petitioner had been residing and working in the Gulf countries for a considerable period of time. He disclosed that he had initially worked in Saudi Arabia and, thereafter, in Dubai, where he

was engaged in the business of auto parts in association with a local businessman. He further stated that he was earning approximately Rs.1.5 lakhs per month and was an income-tax assessee in India. These facts unmistakably demonstrate that the Petitioner was an experienced international traveller who was well acquainted with the customs formalities applicable to passengers arriving in India. The aforesaid circumstances lend further support to the conclusion that the Petitioner was fully aware of his obligation to declare dutiable goods before the Customs authorities upon his arrival in India.

17. In these circumstances, this Court finds no infirmity in the concurrent finding recorded by the Adjudicating Authority, the Commissioner of Customs (Appeals) and the Revisional Authority that the Petitioner's plea of having been intercepted before he could make the requisite declaration is not borne out from the record. The finding is based upon contemporaneous documentary evidence, including the Customs Declaration Form, and is neither shown to be perverse nor unsupported by the material available on record. Accordingly, the first contention advanced on behalf of the Petitioner deserves to be rejected.

18. The next contention advanced on behalf of the Petitioner relates to the non-preservation of the CCTV footage of the relevant area of the airport. According to the Petitioner, the said footage would have conclusively established that he was intercepted at the aerobridge before he could proceed towards the Red Channel. This submission also does not merit acceptance.

19. It is true that the Petitioner had moved an application before the learned CMM on 24.10.2013 seeking preservation of the CCTV footage. However, the record reveals that no immediate direction for preservation of the footage came to be passed. The order directing preservation was ultimately passed only on 04.04.2014, by which time more than seven (07) months had elapsed from the date of the Petitioner's interception. During the intervening period, the CCTV footage, which remained under the control of the CISF, stood automatically erased upon expiry of the prescribed retention period. Consequently, although the application seeking preservation had been filed by the Petitioner, the footage had already ceased to exist by the time the order directing its preservation came to be passed and communicated to the concerned authorities.

20. In the aforesaid circumstances, the mere non-availability of the CCTV footage cannot, by itself, justify acceptance of the Petitioner's version that he had been intercepted at the aerobridge before reaching the Red Channel. More importantly, except for the Petitioner's own assertion, no independent material has been placed on record to substantiate such a plea. The Petitioner also did not file any reply to the Show Cause Notice issued by the Adjudicating Authority, despite having been afforded sufficient opportunity to do so. He was further granted an opportunity of personal hearing before the Order-in-Original came to be passed. Thus, the absence of the CCTV footage, by itself, does not dislodge the contemporaneous documentary evidence relied upon by the authorities below or render their findings unsustainable.

21. The next contention advanced on behalf of the Petitioner is that the statement recorded under Section 108 of the Customs Act was not voluntary and, therefore, could not have been relied upon by the authorities below. This submission also deserves to be rejected.

22. A perusal of the statement recorded on 12.10.2013 reveals that it is an elaborate statement extending over eleven (11) pages. Every page thereof bears the signatures of the Petitioner as well as the concerned Customs officer, while the concluding page has been signed by the Petitioner both in English and in Hindi. The statement contains detailed particulars regarding the Petitioner's family, his employment history spanning several decades, including his employment in Saudi Arabia, his stay in India and his subsequent business activities in Dubai, his bank account maintained there, as well as his office address. It also contains a detailed narration regarding the purchase of the gold articles, his frequent travels to India and the manner in which the gold jewellery and gold biscuits were carried by him. The nature and extent of the disclosures made therein do not indicate that it was a mechanical or perfunctory statement.

23. Equally significant is the fact that the aforesaid statement came to be retracted by the Petitioner only on 15.10.2013, after he had been released on bail on the preceding day. The authorities below have, therefore, rightly treated the retraction as an afterthought. The evidentiary value of the statement is further reinforced by the contemporaneous *Panchnama* prepared at the time of recovery of the gold jewellery and gold biscuits. A perusal thereof reveals that every page of the *Panchnama* also bears the signatures of the Petitioner and

stands attested by two independent witnesses. Apart from the belated retraction, no contemporaneous material has been placed on record to demonstrate that the statement was procured by coercion, threat or inducement.

24. In these circumstances, this Court finds no reason to discard the statement recorded under Section 108 of the Customs Act merely because it was subsequently retracted. Likewise, the Petitioner cannot derive any advantage from the subsequent destruction of the CCTV footage, particularly when the footage had ceased to exist in the ordinary course owing to expiry of the prescribed retention period before the learned CMM ultimately passed the order directing its preservation.

25. There is yet another aspect which deserves to be noticed. The present proceedings arise out of concurrent findings of fact recorded by the Adjudicating Authority, the Commissioner of Customs (Appeals) and the Revisional Authority after appreciation of the oral as well as documentary evidence available on record. The jurisdiction of this Court under Article 226 of the Constitution of India is essentially one of judicial review. It is well settled that while exercising such jurisdiction, this Court does not sit as an appellate authority to reappreciate the evidence or substitute its own conclusions for the plausible conclusions arrived at by the statutory authorities. Interference is warranted only where the findings are shown to be perverse, based on no evidence, or suffer from manifest illegality resulting in failure of justice. None of these contingencies arise in the facts of the present case.

26. Viewed from any angle, this Court is of the considered opinion that the authorities below have adopted a plausible and legally sustainable view on the basis of the evidence available on record. The material on record unmistakably establishes that the Petitioner was a frequent international traveller who had been residing and working in the Gulf countries for a considerable period prior to the incident in question. Despite his family residing in Mumbai, he had undertaken repeated international journeys and had entered India through different international airports, including New Delhi, Hyderabad and Lucknow.

27. The authorities have taken into consideration the Petitioner's own statement recorded under Section 108 of the Customs Act, the Customs Declaration Form, the recovery proceedings, the *Panchnama* and the surrounding circumstances while arriving at the conclusion that the Petitioner had attempted to bring substantial quantities of gold jewellery and gold biscuits into India without making the mandatory declaration before the Customs authorities. The findings so recorded are founded upon relevant evidence, are neither perverse nor arbitrary, and do not suffer from any jurisdictional error or manifest illegality warranting interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

CONCLUSION

28. In view of the foregoing discussion, this Court does not find any ground to interfere with the Impugned Order, or with the concurrent orders passed by the Adjudicating Authority and the Commissioner of Customs (Appeals), as affirmed thereby.

29. Consequently, the present Writ Petition, being devoid of merit, is dismissed.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

JULY 15, 2026
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