



2026:DHC:8640-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 30.09.2026**

CNR No. DLHC010462352026

+ **W.P.(C) 14228/2026, CM APPL. 66577/2026, CM APPL. 66578/2026, CM APPL. 66579/2026**

UBAID KHAN

.....Petitioner

Through: Ms. Riya Soni, Mr. Satish Kumar, Mr. Sunil Kumar Tripathi & Ms. Kavya Thapliyal, Advs.

versus

**UNION OF INDIA THROUGH THE SECRETARY
& ORS.**

.....Respondents

Through: Mr. Neeraj Dubey, SPC for R1 & 2.
Mr. Anurag Ojha, SSC with Mr. Vipul Kumar & Mr. Manish Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE AVNEESH JHINGAN

HON'BLE MS. JUSTICE SHAIL JAIN

AVNEESH JHINGAN, J. (ORAL)

1. The writ petition is filed seeking quashing of the order dated 14.07.2025 (hereinafter 'impugned order') passed by the revisional authority (hereinafter referred to as 'RA') under Section 129DD of the Customs Act, 1962 (for short 'the Act').



Brief Facts

2. The brief facts are that the petitioner, an Indian passport holder on 04.02.2019 arrived at Terminal-3, IGI Airport, New Delhi (for short 'the airport') from Dubai by flight no. EK 510 and was intercepted by the customs officer near the exit gate of international arrival hall after he crossed the green channel. The petitioner was carrying one check-in bag and one hand bag. It was inquired whether the petitioner was carrying any gold/contraband/prohibited items or had hidden/left anything intentionally inside the gents toilet located near belt no.13 on the duty free shop side of the airport where the petitioner entered before interception. Initially, the petitioner replied in the negative but subsequently admitted to have hidden two gold bars kept in a black coloured pouch inside the false wall behind the flush assembly of cubical no.3 of the gents toilet (for short 'toilet').

2.1 The panchas along with the petitioner and the officers of customs searched the toilet and on removal of the upper slab of the false wall behind the flush assembly a black pouch was recovered containing two yellow metal bars bearing the marks "MUS Melter Assayer 1 Kilo Gold 999.9" and "GSR Gulf Gold Refinery 1 Kilo Gold 999.9" each weighing 1000 grams and totalling 2000 grams.

2.2 Under Section 108 of the Act, statements of the petitioner dated 04.02.2019 and 05.02.2019 were recorded. It was stated that the gold belonged to an Afghan national named Mustafa who worked as a taxi driver in Dubai and was neighbour of the cousin of the petitioner. Mustafa handed over the pouch containing two kilograms of gold to the



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petitioner but no bill/legal invoice was given and that the petitioner would receive Rs.30,000/- on successful delivery of the gold. The petitioner further stated that the gold was to be handed over to an unknown person waiting outside the airport who would identify the petitioner on arrival. Mustafa on coming to know that custom officers had suspected the petitioner directed him to hide the gold in the toilet.

2.3 The recovered gold bars were seized under Section 110 of the Act. The Order-in-Original (for short 'O-I-O') dated 06.03.2020 was passed by the Additional Commissioner of Customs (Airport) (hereinafter 'adjudicating authority/AA') whereby the two gold bars weighing 2000 grams valued at Rs.61,09,704/- were confiscated under Section 111 of the Act, with an option to redeem confiscated goods on payment of fine of rupees twelve lakhs along with applicable duty and a penalty of rupees twelve lakhs under Sections 112 and 114AA of the Act. The AA held that the gold belonged to the petitioner and relied upon the invoice produced during adjudication.

2.4 Both the petitioner and the customs department (hereinafter 'the department') filed appeals against the O-I-O. The Commissioner of Customs (Appeals) (hereinafter 'first appellate authority/FAA') *vide* Order-in-Appeal (for brevity 'the appellate order') dated 18.07.2022 rejected the appeal of the department and partly allowed the appeal of the petitioner by reducing the redemption fine and penalty to Rs.6,10,000/- each.

2.5 A review order dated 11.01.2023 was thereafter passed by the Commissioner of Customs (Airport) directing filing of a revision



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application (for brevity 'revision') against the appellate order. The department filed revision dated 25.01.2023 under Section 129DD of the Act. The petitioner filed a representation dated 08.08.2024 for implementation of the appellate order.

2.6 On 29.07.2025 the writ petition filed by the petitioner was disposed of by this court on the premise that the revision was not decided and the department was directed to give effect to the appellate order and release the gold. A review petition filed by the department was allowed by this court on 21.08.2026. It was noted that the revision had already been decided by the RA on 14.07.2025 and this fact had not been brought to the notice of the court. The order dated 29.07.2025 was recalled and the matter was permitted to be dealt with in accordance with the order passed by the RA.

Submissions of the Parties

3. Learned counsel for the petitioner contends that under Section 129DD(2) of the Act, the limitation for filing revision is three months from the date of communication of the order and the delay can be condoned for a further period of three months, on sufficient cause being shown. The submission is that the appellate order was dispatched on 22.07.2022 but the revision was filed before the RA on 25.01.2023 i.e. beyond the prescribed period and delay cannot be condoned. Reliance is on the decisions of the Supreme Court in *M/s Singh Enterprises v. Commissioner of Central Excise, Jamshedpur*, (2008) 3 SCC 70 and *Ramlal, Motilal and Chhotelal v. Rewa Coalfields Ltd.*, 1961 SCC OnLine SC 39.



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3.1 The contention is that unlike Section 129B of the Act there is no power vested in the RA under Section 129DD of the Act to remand the matter to the AA and the RA acted beyond jurisdiction in remanding the matter. Reliance is on *MIL India Ltd. v. Commissioner of Central Excise, Noida*, (2007) 3 SCC 533 to contend that the power of remand is a statutory power and cannot be assumed in the absence of a statutory conferment. Further reliance is on *Union of India & Ors. v. Umosh Dhaimode*, (1997) 10 SCC 223 to fortify the argument that the power to remand depends upon the language of the provision conferring the appellate power.

3.2 The contention is that the RA has pre-decided the issue that it is not a case for redemption and the remand is a futile exercise. The submission is that the petitioner produced an invoice of purchase and this formed the basis of the O-I-O and was also considered by the FAA. The grievance is that the RA erred in ignoring this aspect.

3.3 The decision of Supreme Court in *Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh*, (2014) 9 SCC 78 is pressed into service to contend that revisional jurisdiction is distinct from appellate jurisdiction and does not permit re-appreciation of evidence as an appellate authority. Section 129DD(5)(b) of the Act is relied upon to canvass that the petitioner was not given a separate notice before the matter was remanded.

4. *Per contra*, the revision was decided after granting an opportunity of hearing to the petitioner and no objection that the revision was time-barred was raised before the RA. The contention is



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that Section 129DD(2) of the Act provides that the period of three months shall commence from the date of communication of the order and not passing of the order. The submission is that the proviso to Section 129DD(2) of the Act permits the RA upon being satisfied of sufficient cause to allow the revision to be presented within a further period of three months.

4.1 The submission is that the RA on considering the facts, circumstances and evidence adduced in totality, concluded that the appellate order and the O-I-O were not legal or proper. It is argued that the petitioner was neither eligible to import gold into India nor had an import-export code as required under the Foreign Trade (Exemption from Application of Rules in Certain Cases) Rules, 1993. The submission is that the petitioner was a carrier and had no financial capacity to purchase two kilograms of gold.

4.2 The argument is that the invoices produced by the petitioner were an afterthought and the place of purchase mentioned in the invoices was not reconciling with the presence of the petitioner on that date in that country. The invoice dated 02.02.2019 was for purchase of gold from Dubai but the petitioner was stated to be in Bangkok on that date. Moreover, the passport number of the petitioner was not mentioned on the invoice. It is submitted that the invoice was produced before the AA and not at the time of interception.

5. Heard learned counsel for the parties at length and perused the record with their able assistance.

6. Before proceeding further, it would be apposite to reproduce the



relevant provisions of the Act:

“Section 123. Burden of proof in certain cases

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

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

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

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

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

(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.”

Section 125. Option to pay fine in lieu of confiscation

“(1). Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit.”

Section 129DD of the Act

“129DD. Revision by Central Government



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(1) The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order:

²[PROVIDED that the Central Government may in its discretion, refuse to admit an application in respect of an order where the amount of duty or fine or penalty, determined by such order does not exceed five thousand rupees.]

(1A) The ⁴[Principal Commissioner of Customs or Commissioner of Customs] may, if he is of the opinion that an order passed by the Commissioner (Appeals) under section 128A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order.]

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

(5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section,—

(a) in any case in which an order passed under section 128A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value, and

(b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order



sought to be annulled or modified.”

ANALYSIS

7. The contention that the RA under Section 129DD of the Act has no power to remand the matter as is specifically provided under Section 129B of the Act is noted to be rejected. Section 129DD of the Act empowers the RA to annul or modify the order passed by the appellate authority. The annulment of the order carries an inherent power to remand the matter for fresh adjudication. The language of Section 129DD has no express bar against directing fresh adjudication. Reference in this regard may be made to the decision of Supreme Court in *Umosh Dhaimode* (supra):

“2. As the order under appeal itself notes, the aforesaid provision vested the appellate authority with powers to pass such order as it deemed fit confirming, modifying or annulling the decision appealed against. An order of remand necessarily annuls the decision which is under appeal before the appellate authority. The appellate authority is also invested with the power to pass such order as it deems fit. Both these portions of the aforesaid provision, read together, necessarily imply that the appellate authority has the power to set aside the decision which is under appeal before it and to remand the matter to the authority below for fresh decision.”

(emphasis supplied)

8. Section 129B has no application in the present case as it deals with the powers of the appellate tribunal and not the revisional jurisdiction of the RA. Reliance of the learned counsel for the petitioner on *MIL India Ltd.* (supra) is of no avail. In that case the power of remand of the Commissioner (Appeals) under Section 35A of the



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Central Excise Act was specifically taken away by legislative amendment. The present case arises under Section 129DD of the Act and no such express bar against remand is contained therein.

9. The contention that the RA has pre-judged the matter and the remand is a futile exercise is misconceived. For deciding the revision the legality and propriety of the appellate order and the O-I-O was considered. The petitioner was apprehended on being intercepted and it was disclosed that two gold bars were hidden in the toilet. The recovery was made in the presence of panch witnesses and the petitioner. The invoice of purchase was produced before the AA and not at the time of interception. The petitioner in his statement under Section 108 of the Act stated that the gold belonged to Mustafa and the petitioner would receive Rs.30,000/- for successful delivery of the gold. The invoice was for purchase of gold from Dubai but in the reply to the show cause notice the petitioner stated to be in Bangkok during that period. Moreover, the passport number of the petitioner was not mentioned on the invoice.

10. In this background relying upon various decisions of the Supreme Court and other High Courts, the RA concluded that the FAA failed to consider the relevant aspects before deciding whether it was a case for redemption or not. There is no doubt that the matter having been remanded for afresh adjudication would be decided by the AA in accordance with law.

11. The argument that the petitioner claimed ownership of the gold and produced invoice of purchase in his name and this was considered



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by the AA and the FAA while allowing redemption, lacks merit. Section 123 of the Act deals with the burden of proof and applies in case of seizure under circumstances giving rise to a reasonable belief that the goods are smuggled. The burden is cast upon the person from whom the goods are seized or upon a person claiming to be the owner to prove that the seized goods are not smuggled.

12. In the present case the invoice produced was relied upon as the basis for discharging this onus. However, the invoice itself was found doubtful as the passport number of the petitioner was not mentioned on the invoice and the petitioner was not present in Dubai on the date of purchase. The matter was remanded to the AA to be decided afresh after considering the facts and evidence in accordance with law. There is no factual or legal error in the RA remanding the matter for fresh adjudication.

13. The reliance on *Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh* (supra) does not enhance the case of the petitioner. It was held that a finding of fact can be interfered with in revisional jurisdiction where it is perverse, based on no evidence, arrived at by ignoring material evidence or is so grossly erroneous that it would result in miscarriage of justice. The relevant para is reproduced below:

“43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded



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by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness, legality or propriety of any decision or order impugned before it, as indicated above. However, to satisfy itself as to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal.

(emphasis supplied)

14. The present case is not one of re-appreciation of evidence. The RA considered whether the order passed by the FAA was legal and proper in view of the material on record. The RA has therefore acted within the scope of revisional jurisdiction.

15. The reliance of learned counsel for the petitioner on Section 129DD(5) of the Act that no separate notice for remand of the matter was given, is of no avail. Sub-section(5) contemplates notice where the RA proposes to enhance the penalty or fine in lieu of confiscation or to confiscate goods of greater value than that ordered by the appellate authority. The provision requires notice to show cause within the period



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prescribed therein in that case. The present case is not one of enhancement of penalty or redemption fine. Further, the petitioner was granted an opportunity of hearing before the RA and was represented on 20.05.2025 and 23.05.2025. The RA remanded the matter for fresh adjudication to the AA thereby granting another opportunity to the petitioner to discharge the onus under Section 123 of the Act and to set up a defence that it is not a case of confiscation.

16. The contention regarding limitation does not advance the case of the petitioner. There is no material on record to establish that the application was filed beyond the permissible period of six months from the communication of the appellate order. The mixed question of law and fact cannot be decided in the absence of evidence and pleadings more so, when the issue was not raised before the RA.

17. There is no quarrel with the proposition laid down in ***Singh Enterprises*** (supra) that in view of the statutory scheme the period prescribed under Section 129DD cannot be extended by invoking Section 5 of the Limitation Act, 1963. However, in the present case the date of communication of the appellate order to the department has not been established and therefore there is no factual foundation that the application was filed beyond the period of six months.

18. In view of the above discussion, the challenge to the impugned order cannot be sustained. The RA has directed fresh adjudication after affording an opportunity to the petitioner to establish the case in accordance with law. No ground is made out for interference with the impugned order.



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19. The writ petition is dismissed.
20. All pending applications are also disposed of.

AVNEESH JHINGAN, J

SHAIL JAIN, J

SEPTEMBER 30, 2026

Ch

Reportable: Yes

Signature Not Verified

Signed By: HONEY W.P.(C) 14228/2026
ARORA
Signing Date: 06.10.2026
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