(2023) 05 DEL CK 0183

In the Delhi High Court

Case No : CUSAA No. 229 Of 2019

Additional Director General (Adjudication) APPELLANT

Vs

M/S It?S My Name Pvt. Ltd RESPONDENT

Date of Decision : 26-05-2023

Acts Referred:

Baggage Rules, 2016 — Rule 5
Customs Act, 1962 — Section 2(3), 44, 46, 46(1), 108, 110A, 130, 130(1)
Foreign Trade (Development and Regulation) Act, 1992 — Section 3, 4

Citation : (2023) 05 DEL CK 0183

Hon'ble Judges : Mukta Gupta, J;C. Hari Shankar, J

Bench : Single Bench

Advocate : Zoheb Hossain, Kavish Garaich, Vivek Gurnani, Dr. Abhishek Chandra Gupta, Madhav Khurana, Shivek Trehan, Prateek Bhardwaj, Akash Malik

Final Decision : Allowed

Judgement

C. Hari Shankar, J

REVIEW PET. 117/2020 (filed by respondent) & CM APPL. 20797/2022

1. This order disposes of Review Petition 117/2020, preferred by the respondent, seeking review of the judgment dated 1st June 2020, whereby we had disposed of CUSAA 229/2019.

2. The circumstances in which this Review Petition came to be filed have a bearing on its fate; ergo, it would be appropriate to chart the course of proceedings, till its filing, albeit briefly.

3. Gold, imported into India by the respondent, was seized by the Directorate of Revenue Intelligence (DRI), in part from the workshop/factory premises of the respondent and in part from the Airport, after the gold had crossed the Customs barrier. The respondent disputes the legitimacy of the seizure, contending that the gold had been earlier exported by the respondent and was being re-imported into India within a year of export, and was entitled, therefore, to complete duty

exemption under S. No. 5 of Notification 45/2017-Cus dated 30th June 2017, as further clarified by CBIC Circulars Nos 21/2019-Cus dated 24th July 2019 and 108/27/2019-GST dated 18th July 2019. A Show Cause Notice came to be issued by the DRI to the respondent on 26th September 2019, which is presently pending adjudication.

4. In the meanwhile, the respondent applied for provisional release of the seized gold, under Section 110A of the Customs Act, 1962. The Additional Director General (ADG), DRI, rejected the request vide order dated 4th October 2019. The respondent appealed to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) (hereinafter "the learned Tribunal"). Returning a positive finding of fact that the gold imported had been verified and found to tally with the gold earlier exported, the learned Tribunal, vide Final Order dated 13th November 2019, directed provisional release of the gold, on terms fixed by it. CUSAA 229/2019, in which the present Review Petition has come to be filed, was preferred by the DRI against the said Final Order of the learned Tribunal, under Section 130(1)2 of the Customs Act.

110-A. Provisional release of goods, documents and things seized or bank account provisionally attached pending adjudication. – Any goods, documents or things seized or bank account provisionally attached under Section 110, may, pending the order of the adjudicating authority, be released to the owner or the bank account holder on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.

130. Appeal to High Court. –

(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

5. By our judgment dated 1st June 2020 – under review – we disposed of CUSAA 229/2019. We upheld the decision of the learned Tribunal directing release of the gold seized from the factory/warehouse of the respondent as well as 25400.06 grams gold jewellery covered by Bill of Entry (B/E) No. 107190 dated 26th February 2019, but enhanced the conditions of release to furnishing of a bond covering the entire value of the gold along with an irrevocable Bank Guarantee (B/G) for ☐ 10 crores. However, we set aside the direction of the learned Tribunal permitting release of the consignment of 25299.68 grams gold jewellery also seized at the Airport, on the reasoning that the B/E filed in respect of the said consignment was not signed by the respondent or the Customs clerk.

6. The appellant DRI appealed, against our judgment, to the Supreme Court, vide SLP (C) 10472/2020, to the extent we had directed release of the gold seized from the factory/warehouse of the respondent as well as 25400.06 grams

gold jewellery covered by Bill of Entry (B/E) No. 107190 dated 26th February 2019 seized at the Airport. Said SLP was disposed of, by the Supreme Court, vide the following order dated 1st October 2020:

"1. These proceedings have arisen from an order of a Division Bench of the Delhi High Court dated 28 February 2020 in an appeal from an order of the SLP(C) 10472/2020Customs, Excise and Service Tax Appellate Tribunal. The Tribunal set aside the direction of the competent authority declining to provisionally release the goods under Section 110A of the Customs Act, 1962 and while doing so, imposed certain conditions.

2. In appeal, the High Court by its order dated 28 February 2020 noted that the total value of the goods was Rs 28.23 crores. The High Court has directed provisional release, subject to the respondent furnishing a bank guarantee quantified at Rs 10 crores, besides other incidental conditions.

3. During the course of the hearing, we have heard Mr S V Raju, Additional Solicitor General in support of the Special Leave Petition and Mr Harish N Salve, Senior counsel on behalf of the respondent.

4. We are of the considered view that the quantum of the bank guarantee which has been directed to be furnished by the High Court, should be enhanced from Rs 10 crores to Rs 15 crores. Mr Salve has stated on instructions that he has no objection to an enhancement of the quantum of the bank guarantee. We accordingly modify the order of the High Court by directing that the quantum of the bank guarantee shall stand enhanced to Rs 15 crores. The other conditions which have been imposed by the High Court shall continue to govern.

5. The Special Leave Petition is accordingly disposed of.

6. Pending applications, if any, stand disposed of."

7. The lis, as regards provisional release of the gold seized from the factory/ warehouse of the respondent as well as 25400.06 grams gold jewellery covered by Bill of Entry (B/E) No. 107190 dated 26th February 2019 seized at the Airport, thus, stands concluded, with the Supreme Court upholding our judgment subject to enhancement of the quantum of B/G to be furnished from ☐ 10 crores to ☐ 15 crores.

8. Qua the third consignment, viz. 25299.68 grams gold jewellery also seized at the Airport, the respondent has filed the present Review Petition, seeking review of our decision to set aside the judgment of the learned Tribunal, which had permitted provisional release of the said consignment as well.

9. We proceed, by this order, to dispose of the Review Petition.

10. We have heard, at various points of time, Mr S.K. Bagaria, learned Senior Counsel and Mr. Madhav Khurana, learned Counsel for the respondent-Review Petitioner, and Mr Zoheb Hussain, learned SCGSC, for the appellant-DRI.

11. Written submissions have also been filed by both sides.

12. The main contention of the respondent-Review Petitioner is that the quantity of 25299.68 grams gold jewellery was imported as baggage and that the requirement of filing of a B/E, which emanates from Section 46(1) of the Customs Act, in Chapter VII thereof, does not apply to baggage, in view of Section 44. "Baggage", it is pointed out, as defined in Section 2(3), "includes unaccompanied baggage".

46. Entry of goods on importation. –

(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

44. Chapter not to apply to baggage and postal articles. – The provisions of this Chapter shall not apply to (a) baggage, and (b) goods imported or to be exported by post.

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

13. The review petitioner submits that, in fact, even in respect of the quantity of 25299.68 grams gold jewellery, a B/E was filed by Amit Pal Singh, who imported the jewellery, and was appraised by the Customs appraiser.

14. That the 25299.68 grams gold jewellery was imported as baggage, submits the review petitioner, stands acknowledged in paras 2, 2.1.1, 5.2(i), 5.2(v) and 25.4 of the Show Cause Notice dated 26th September 2019 issued by the appellant itself. Moreover, para 71 of the judgment under review also notes the fact that clearance, both of 25400.06 g as well as of 25299.68 g, of jewellery, was permitted only after appraisement and recording of satisfaction, by the appraiser, of the fact that the jewellery was the same as that which had been exported by the review petitioner vide Shipping Bills (S/Bs) dated 20th February 2019 and 13th March 2019, for the purpose of exhibition abroad. The correctness of these facts, it was also observed by this Court, could not be examined in an appeal under Section 130 of the Customs Act, which lies only on substantial questions of law. Despite these facts, submits the review petition, the order of the learned Tribunal, insofar as it directed provisional release of 25299.68 grams of jewellery, was set aside solely on the ground that the B/E, in respect of the said consignment, was undated and unsigned. In so holding, it is submitted that the judgment under review suffers from an error apparent on the face of the record, insofar as, by virtue of Section 44 of the Customs Act, Section 46 does not apply to goods imported as baggage.

15. The appellant filed a response to the Review Petition and the respondent-review petitioner has filed a rejoinder thereto.

16. In its reply to the Review Petition, the only contentions advanced by the appellant-DRI are that

(i) Standing Order (SO) 3/2018 dated 18th December 2018 mandated filing of a B/E,

(ii) Rule 5 of the Baggage Rules, 2016, allowed duty free clearance, in bona fide baggage, of jewellery upto a weight of 20 grams and value of ☐ 50000 only by passengers returning after a stay abroad for more than 1 year, and

5. Jewellery – A passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his bona fide baggage of jewellery upto a weight of twenty grams with a value cap of fifty thousand rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees if brought by a lady passenger.

(iii) in the event of import of goods as baggage, a baggage declaration was required to be filed under the Customs Baggage Declaration Rules.

Apropos Notification 45/2017-Cus, para 19 of the reply states that the Notification permits duty free import of gold jewellery only if the Assistant Commissioner (AC)/Deputy Commissioner (DC) is satisfied that the gold jewellery being reimported is the same as that which had been exported earlier, and that no such satisfaction had been recorded by the AC or the DC.

17. Insofar as the reference to the import of the gold jewellery by Mr Amrit Pal Singh as baggage, in the Show Cause Notice, is concerned, the reply by the appellant-DRI merely states that the word “baggage” was used, in the Show Cause Notice, “in normative terms”.

18. Besides reiterating its stand, the review petitioner, in its rejoinder, has contended that the DRI is, in its response to the review petition, trying to set up a new case, contrary to the case already set up against it. The review petitioner has further relied on Standard Operating Procedure (SOP) dated 29th March 2016, which specifically deals with appraisement of hand carried jewellery for exhibition under export promotion schemes. Clause 2(xii) of the said Standing Order reads thus:

“(xii) On return, the exporter shall approach the Customs Red Channel counter situated in Arrival Hall in Terminal-3, IGI Airport, New Delhi-37 and produce the jewellery along with the copy of packing list handed over to him by the Customs at the time of departure. If the importer arrives between 5.00 PM and 10.00 AM on working days, and at any time during holidays and weekends, the jewellery will be detained and kept by the Customs in the CWC warehouse by the Baggage Officers by making a Detention Receipt. A copy of the Detention Receipt will be given by the Customs to the exporter. Their consignments will be taken up for examination by the Jewellery Appraiser on the next working day. If the exporter arrives between 10.00 AM and 5.00 PM on working days, their consignments will not be detained and records of such exporters will be entered in DR Register for information/records purpose only. Such consignments will be attended by the Jewellery Appraiser immediately. The charges of CWC warehouse shall be paid by the importer/exporter. The Jewellery Appraiser will attend to all such cases during the working day inside the Customs Warehouse of the International Arrival Hall of I.G.I. Airport, Terminal-3.

(xiii) The importer will hand over both the copies of Customs endorsed packing lists and sealed packet of photographs to the Appraiser, along with sold invoice, packing list, unsold invoice and packing list, Export Declaration form, Endorsed Jewellery Declaration form, copy of letter of Gems & Jewellery Export Promotion Council and the endorsed copies of invoice and packing list given to him at the time of export. The jewellery shall be appraised by matching with the documents and photographs provided in the sealed cover. Once the same are tallied and the jewellery released, one set of the documents will be handed over to the importer for submitting it to the Bank for remittance purpose. Entries in the Register will be matched against the particulars entered earlier. One copy of the documents shall be retained by the Customs so that the unsold details will be entered in the Register and the data will be reconciled."

(Emphasis supplied)

19. Apropos the requirement of filing a Baggage Declaration, the review petitioner submits that, as per Notification 31/2016-Cus dated 1st March 2016, baggage declarations are required to be filed only by "passengers who come to India and have anything to declare or are carrying dutiable or prohibited goods". It is asserted that Amit Pal Singh, on arrival, proceeded to the Red Channel and followed the procedure envisaged in SOP dated 29th March 2016 supra. In any event, submits the review petitioner, these factors pale into insignificance, given the fact that the jewellery which was imported by Amrit Pal Singh was found to the same as that exported by him earlier.

Analysis

20. Though several arguments were advanced at the Bar, especially by the DRI, regarding intricate provisions of the Foreign Trade Policy and other statutory mandates, we are of the opinion that any venture, by us, into those areas are outside the scope of the present review proceedings, as well as of Section 130 of the Customs Act.

21. These review proceedings arise out of a judgment in an appeal filed by the DRI under Section 130 of the Customs Act. As has been pointed out by us even in the judgment under review, the scope of examination, in a statutory appeal under Section 130, is limited to substantial questions of law. Findings of fact cannot be interfered with, under Section 130, unless they suffer from manifest perversity.

22. The scope of the present review proceedings stands further curtailed by the fact that the DRI actually moved the Supreme Court against the judgment under

review which declined to interfere with it, except for enhancing the amount of B/G to be furnished for securing provisional release of the goods. We had, in our judgment under review, categorically held that the findings of fact, of the learned Tribunal, regarding the identity of the imported jewellery with the exported jewellery, was not open to re-appreciation. The findings of the learned Tribunal, and of this Court, on this aspect, are as under:

Findings of the learned Tribunal

"25. Having considered the rival contentions and perusal of the records, we find that there is no cogent reason given for refusal to release the goods provisionally. Rather the impugned order is non-speaking and cryptic. This is clearly a case of non-exercise of discretion vested in him fairly, by the Revenue Authority, rendering the provision of Sec. 110A of the Act, practically otiose.

26. We find that gold jewellery which have been seized at IGI Airport by Directorate of Revenue Intelligence totalling weighing of 50699.74 gms. is covered by two bill of entries: Bill of Entry no. 107190 dated 26 February 2019 giving a job No. 109524 dated 26 February 2019 which covers a quantity of 25.4000 kg. of gold jewellery, same has been assessed by the Assessing Officer on 24th April 2019. There is another bill of entry which is without any bill of entry registration number and without any job number, however, same has also been assessed as per the Learned Advocate for the appellant on 24th April 2019. This bill of entry also covers a gold jewellery weighing 25.209 kg. Thus, we find that importing person Shri Amit Pal Singh has presented the g gold jewellery which was being imported on 24th April, 2019 to the Assessing Officer and has claimed that the gold jewellery is 'India made' which is being re-imported after same had been exported for exhibition purpose vide shipping Bill no. 117209, dated 20th April 2019 covering quantity of 33.805 kgs, and vide shipping Bill No. 117932, dated 13th March 2019 under which jewellery weighing 25.299 kg. was exported. It is a matter of record that at the time of the re-import of balance quantities of the jewellery, the Assessing Officer was presented with necessary documents, such as, shipping bill along with invoices, permission for taking goods for exhibition, export declaration form of the appellant, Customs endorsed colour photographs of jewellery, the bill of entries for re-import along with packing list covering details of jewellery items of import along with the photocopies of the jewellery. We find that authenticity of the goods being re-imported being sae as had been exported by two shipping bills as mentioned above, has not been doubted by the Department. We find that the Department has not adduced any evidence to contradict the fact that the same jewellery has been imported by the appellant which had been exported for exhibition purpose. At this juncture, we are only examining whether the import of the subject seized gold jewellery was in violation of any of the provision of Customs Act, 1962 and Import-Export Policy of 2015-2020 or whether it was a legitimate re-import of exported goods. We find that the Assessing Officer after scrutiny of all the relevant documents and on satisfaction has allowed the clearance of re-imported

gold jewellery and had endorsed that the imported gold jewellery was same which had been exported under the two shipping bills (as mentioned in preceding paras). We find that the Department has not adduced any evidence to establish that the re-imported gold jewellery is not which have been exported by the appellant for exhibition purpose. We also find that there might have been certain violations in following the procedure for proper importation of these goods, however, same will also not make the ?Indian made? gold jewellery as prohibited goods as per the provision of Customs Act 1962 read with the provisions of the Import-Export Policy 2015-2020.

(Emphasis supplied)

Findings of this Court

“60. Proceeding to the merits, we reiterate that our jurisdiction, conferred by Section 130 of the Act, is limited to deciding substantial questions of law, arising from the impugned order of the learned Tribunal. We are not an appellate authority on facts; we exercise appellate jurisdiction only on "substantial questions of law". It is obvious that an order of provisional release, is essentially a discretionary order, as is apparent from the very tenor of Section 110A of the Act. The scope of interference, by an appellate court, with a discretionary order of the court below, especially where the appellate jurisdiction is statutorily limited to substantial questions of law, is heavily circumscribed. In passing an order of provisional release, there is no adjudication, by the authority concerned, of the competing rights and liabilities of the parties before it. The authority does not pronounce on the issue of whether there has, or has not, been an actual evasion of duty, or other contravention of Customs law, by the importer seeking provisional release. That is an exercise which has to suffer the rigour of the adjudicatory process, which, in the case of the present respondent, stands set in motion with the issuance of Show Cause Notice dated 26th September, 2019.

61. At the same time, provisional release is not a rule, or a vested right. Section 110A has, advisedly, left the matter to the discretion of the adjudicating authority, to be exercised in his best judgment, keeping in mind the overall facts and circumstances. The use of the word "may" is amply sufficient to clothe the adjudicating authority with the jurisdiction to decide one way or the other, on the request for provisional release, keeping, at all times, the interests of justice paramount. The sequitur would, however, be that, where the authority – in the present case, the learned Tribunal – has decided to provisionally release the goods in issue, and has fixed the terms of provisional release, this Court would, in appellate jurisdiction under Section 130 of the Act, interfere only where the exercise of discretion, by the learned Tribunal, is found to be perverse, in that it is contrary to the facts before the learned Tribunal, amounts to a perverse appreciation thereof, or is such as no reasonable person would have arrived at. Absent these infirmities, we are convinced, in our mind, that no case for interference, with the decision of the learned Tribunal could be said to have been made out, even if we, on the facts, may be of the opinion that the learned

Tribunal could have decided otherwise. These, in our view, are principles which are too well settled to merit repetition.

62. Viewed thus, how does the present case pan out?

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69. Insofar as the first category, of 25400.06 grams of gold jewellery, is concerned, the learned Tribunal has, in para 26 of the impugned Final Order, observed that "the Assessing Officer after scrutiny of all the relevant documents and on satisfaction has allowed the clearance of the imported gold jewellery and had endorsed that the imported gold jewellery was same which had been exported under the 2 shipping bills (as mentioned in preceding paras)." The appeal, of the ADG, DRI, does not seek, in any manner, to traverse this specific finding, i.e., that the imported gold jewellery was the same as that which had been exported, for participation in the exhibition, and that the competent assessing officer had satisfied himself on this count

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71. The submissions, though attractive at first blush do not, on closer scrutiny, make out a case for interference, by this Court, with the decision, of the learned Tribunal, to permit provisional release of the seized gold jewellery. The mere fact that, at a later point of time, all copies of the concerned Bills of Entry were found with the Jewellery Appraiser Vikram Bhasin, in our view, does not militate against the fact that, at the time of their clearance, Amit Pal Singh did, in fact, present to Bills of Entry, one of which was duly registered, with a Job number, and had been signed by the Customs Import Clerk, and the second, unregistered, undated and unsigned. The first Bill of Entry covered 25400.06 g, and the latter, 25299.68 g, gold jewellery. Clearance of the jewellery was permitted, after appraisement and recording of satisfaction, by the Appraiser, of the fact that the jewellery was, in fact, the same as that which had earlier been exported vide Shipping Bills dated 20th February, 2019 and 13th March, 2019, for the purpose of exhibition abroad. While examining an appeal, against the decision, of the learned Tribunal, to allow provisional clearance of the jewellery, we are not required to enter into the correctness of these facts, especially as, save and except by way of reference to various statements, recorded during the course of investigation, there is precious little, in the appeal of the ADG, DRI, to dispute the same.

72. Insofar as the quantity of 25400.06 grams of gold jewellery, covered by the registered, apprised, dated and signed Bill of Entry, dated 20th April, 2019, is concerned, therefore, the decision, of the learned Tribunal, to allow provisional clearance, cannot be said to be perverse, so as to give rise to any substantial question of law, as would warrant interference, in appeal, by us. We may repeat, in this context, that the decision, as to whether the gold jewellery ought, or ought not, to have been provisionally released, was entirely discretionary. The facts before the learned Tribunal, which are also before us, cannot be said to be such as would render the exercise of discretion, by the learned Tribunal, in favour

of provisional release of the 25400.06 grams of gold jewellery, perverse. Absent such perversity, no case, in our view, can be said to exist, as would justify our interference, with the exercise of discretion by the learned Tribunal, in exercise of our jurisdiction under Section 130 of the Act.

73. We may hasten to add, here, that our view, in this regard, does not discountenance, in any manner, the allegation, of the DRI, that the entire quantity of 51172.4 grams of gold jewellery was, in fact, being smuggled into India, or that it was, consequently, liable to confiscation. That is a matter to be decided in adjudication. Provisional release of the gold jewellery does not, in any manner, inhibit the adjudicating authority from holding that the jewellery was, in fact, liable to confiscation, or passing appropriate orders in that regard. It is precisely for this reason that, at the time of provisional release, the importer is required to furnish a bond, covering the full value of the imported goods, along with security, in accordance with law. Allowing provisional release of the seized gold jewellery does not, therefore, interfere, in any manner, with due adjudication of the Show Cause Notice, or with the jurisdiction, of the adjudicating authority, to hold the gold jewellery liable to confiscation. The mere fact that imported goods, consequent on adjudication may, possibly, be held to be liable to confiscation at a later stage, cannot be a ground to refuse provisional release. Else, Section 110A of the Act would, in our view, be largely rendered nugatory and otiose."

23. Thus, there were positive findings of fact, by the learned Tribunal, that the imported jewellery had been appraised and found to be the same as the jewellery which had earlier been exported. We, in our judgment, clearly held that, in exercise of the jurisdiction vested in us by Section 130 of the Customs Act, we could not revisit these findings, absent perversity, which we did not find to exist. Save and except for the consignment of 25299.68 grams forming subject matter of the present review petition, we had, therefore, upheld the decision of the learned Tribunal to permit provisional release of the remaining gold and gold jewellery, on furnishing of enhanced B/G.

24. Our decision in that regard stands endorsed by the Supreme Court by its order dated 1st October 2020, which has declined to interfere except for further enhancing the value of the B/G to be deposited by the review petitioner.

25. The finding of the learned Tribunal regarding the identity of the imported gold jewellery with the exported jewellery also extends to the 25299.68 grams gold jewellery forming subject matter of the present review petition. By operation of Notification 45/2017-Cus, therefore, the plaintiff would, prima facie, be entitled to duty free clearance of the imported jewellery.

26. The only reason why we did not choose to extend, to the said imported gold jewellery, the same approach as was extended to the other imports, was our view that, in respect of the 25299.68 grams of gold jewellery, no signed and endorsed B/E was available.

27. The review petitioner has sought to point out that the said 25299.68 grams gold jewellery was imported as baggage. This assertion stands supported by paras 2, 2.1.1, 5.2(i), 5.2(v) and 25.4 of the show cause notice dated 26th September 2019, which read thus:

“2. On the basis of above specific information, DRI officers started keeping surveillance and the said person was identified by the DRI officers and intercepted near the Customs exit gates alongwith two bags i.e. one black colour backpack and one black colour stroller bag being carried by him. After interception Sh. Amit Pal Singh, alongwith the baggage being carried by him was escorted by the DRI officers in the Customs Preventive Room situated at the Arrival Hall of Terminal-3, IGI Airport New Delhi, for conducting further enquiry under the provisions of the Customs Act 1962. The DRI officers introduced two independent witnesses to Sh. Amit Pal Singh who remained present during the entire proceedings and to witness any recovery. Thereafter, on being enquired by the DRI officers in presence of the independent witnesses, Sh. Amit Pal Singh informed that he is working as Supervisor in the firm, M/s Its My Name Private limited, C-1,2,3, 10th Floor, PP Tower, Netaji Subhash Palace Pitampura, New Delhi. The DRI officers further asked Sh. Amit Pal Singh to explain the contents kept in baggage i.e. two black colour bags (one black colour backpack and one black colour stroller bag) being carried by him. In response, Sh. Amit Pal Singh informed the DRI officers that he was carrying gold jewellery which was imported back by the firm, M/s Its My Name Pvt. ltd. New Delhi from one Dubai based firm, M/s MN Khan Jewellers (FZE), Dubai, as these gold jewellery articles were unsold in the exhibition at Dubai.

2.1.1 Thereafter, the DRI officers asked Sh. Amit Pal Singh to produce the documents available with him relating to the legal possession of the said gold jewellery being carried by him in his baggage. In response, Sh. Amit Pal Singh produced the following documents before the DRI officer in presence of the panchas. (i) Custom Gate Pass Book No. 1563, Sl. No. 158246, dated 24.04.2019 issued in the name of Sh. Amit Pal Singh, only for one package, having remarks 'ReImport of Indian Jewellery.

(ii) Xerox copy (photocopy) of Invoice (on which a no. “117932' was given by blue pen) having Invoice no. ITS/EXH/031 dated 13.03.2019, having Exporter Name: M/s Its My Name Private Limited, C-1 ,2,3, 10th Floor, PP Tower, Netaji Subhash Palace, Pitampura, New Delhi, Consignee Name: M/s MN Khan Jewellers (FZE), PO Box 513648, Saif Office, P8-09-49, Dubai, UAE, with remarks 'Personal Carriage by Sh. Amit Pal Singh Passport No. Z4857412, containing declaration of 0.916 fine gold jewellery having gross weight 25299.680 grams, having remarks 'For Exhibition Purpose'. Further, on the body of the photocopy of Export Declaration Form No. G19000030725 and photocopy of Shipping Bill for Export of Duty Free goods Export Promotion Copy (attached with the said xerox copy of Invoice), it has been mentioned at 'Gold- unsold- 25299.680 grams - USD1044601.36 having signature with stamp of Sh. Vikram Bhasin, Jewellery

Appraiser customs, IGI Airport, New Delhi.

(iii)Xerox copy (photocopy) of Invoice (on which a no. '117209' was given by blue pen) having Invoice no. ITS/EXH/028 dated 20.02.2019 having Exporter M/s Its My Name Private Limited, C-1,2,3. 10th Floor, PP Tower, Netaji Subhash Palace, Pitampura, New Delhi, Consignee Name: M/s MN Khan Jewellers (FZE), PO Box 513648, Saif Office, PB-09-49, Dubai UAE, with remarks 'Personal Carriage by Sh. Amit Pal Singh Passport No. Z4857412 containing the declaration of 0.916 fine gold jewellery having gross weight 33805.770 grams, having remarks 'For Exhibition Purpose'. Further, on the body of the xerox copy of Export Declaration Form No. G19000021397 and photocopy of Shipping Bill for Export of Duty Free goods Export Promotion Copy [attached with the said xerox copy of Invoice), it has been mentioned at 'Gold - unsold - 25400.060 grams US01075107.13 having signature with stamp of Sh. Vikram Bhasin, Jewellery Appraiser Customs, IGI Airport New Delhi.

(iv) Print-out of photos of jewellery (said to contain 51 Pages) containing signature of Auth. Sign./Director For Its My Name Pvt. Ltd. on first and last page and containing signature of Sh. Neeraj Aneja, Jewellery Appraiser (Customs), Air Cargo Complex (Exports), IGI Airport, New Delhi, on first and last page.

(v) Packing list of return goods ITS/EXH/2018-19/28 dated 24.04.2019 said to contain description and weight of gold jewellery (return goods) having gross weight 25400.060 grams total value USD 1075107.13. On the body of the above said list the signature of Authorised Signatory/Director, For Its My Name Pvt. Ltd. and signature of the Jewellery Appraiser with stamp of Vikram Bhasin, Jewellery Appraiser Customs, IGI Airport, New Delhi, dated 24.04.2019 was appended.

(vi) Packing list of return goods ITS/EXH/2018-19/31 dated 24.04.2019 said to contain description and weight of gold jewellery (return goods) having gross weight 25299.680 grams total value USD 1044601.36. On the body of the above said list the signature of Authorised Signatory/Director, For Its My Name Pvt. Ltd. and signature of the Jewellery Appraiser with stamp of Vikram Bhasin, Jewellery Appraiser Customs, IGI Airport, New Delhi, dated 24.04.2019 was appended.

The above mentioned documents produced by Sh. Amit Pal Singh were resumed under the provisions of the Customs Act 1962, being relevant for further investigation.

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5.2. And, whereas summon was issued to Sh. Vikram Bhasin, Jewellery Appraiser, IGI Airport for his examination under the provisions of Section 108 of the Customs Act, 1962. In response to the above said Summon, Sh. Vikram Bhasin appeared before the DRI officer and tendered his voluntary statement under the provisions of the Customs Act, 1962. In his voluntary statement dated 23.05.2019(RUD-22), Sh. Vikram Bhasin inter alia stated:

i) On being asked to explain the procedure of export and re-import of gold jewelry by hand carry method, he stated that he had no knowledge of the procedure for export of gold jewelry. In re-import of gold jewelry, the baggage is opened in front of the person concerned and goods are matched with the packing list, sold/unsold list, photograph of the gold jewelry, P.D. Bond and the Bill of Entry. He further stated that the documents which are kept in file are packing list, Sold/Unsold list, export documents, P.D. bond and Bill of Entry. The export documents include invoices and photocopy of shipping bill;

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v) On being asked about how did he ensure that the gold jewellery which was being re-imported by hand carry was the same that was exported for exhibition purposes, he stated that re-imported gold jewellry was matched through signed and stamped photographs. He further stated that at the time of export each photograph is signed and stamped by jewelry appraiser; he also informed that appraisement of gold jewelry was being done on the shipping bill and Export Document Form (EDF) until Dec 2018 and thereafter it is being done on the Bill of Entry submitted at the time of re-import along with Packing List:

25.4 Import of gold as baggage by a passenger of Indian origin or a passenger holding a valid Passport issued under the Passport Act, 1967 is being allowed since Notification No. 117/92-Cus. dated 01.03.1992 as amended/superseded and issued under Section 25(I) of the Act ibid came into force from 01.03.1992, whereby the "eligible passengers" are being permitted to import gold, in any form, up to a permissible quantity, on payment of appropriate Customs duty in convertible foreign exchange. The above provisions under the Baggage Rules are also in consistence with the provisions under Rule 3(1)(h) of the Foreign Trade (Exemption from Application of rules in certain cases) Order. 1993 issued under Section 3 read with Section 4 of the Foreign Trade (Development and Regulation) Act, 1992 and in suppression of the Import (Control) Order, 1955. It also further appears that in terms of Notification 12/2012-Cus. Dated 17.03.2012 as amended, an eligible passenger is entitled to import gold bars subject to the conditions mentioned therein."

28. Mr. Zoheb Hossain has sought to wish away the reference, in these passages from the show cause notice issued to the review petitioner, of the imported gold jewellery as "baggage" by stating that the expression was used in its "normative sense". We are unaware of any such "normative" usage of the word "baggage". Goods are either imported as baggage, or not imported as baggage. Once there was an acknowledgement, in the afore-noted passages from the show cause notice, that the 25299.68 grams gold jewellery was in fact imported as baggage, at least for the purposes of the present review petition, arising out of an appeal under Section 130 of the Customs Act, the scope of which is itself extremely limited, we have, prima facie, to accept that the 25299.68 grams gold jewellery was in fact imported as baggage.

29. Needless to say, this view is only prima facie, keeping in mind the fact that

we are concerned with a review petition, arising out of a judgment passed on an appeal under Section 130 of the Customs Act which, in turn, arises out of an order passed by the learned Tribunal, on an appeal against an order of provisional release.

30. In such circumstances, and especially keeping in mind the fact that a substantive show cause notice stands issued to the review petitioner, it would not be proper for this Court to enter in detail into the aspect of whether import of the goods as baggage was, or was not, justified.

31. That said, we are also prima facie of the view that Clauses 2(xii) and 2(xiii) of SOP dated 29th March 2016 itself indicate that, in respect of gold jewellery, which was exported for exhibitions and re-imported into the country, the procedure of filing of a B/E, under Section 46 of the Customs Act, was inapplicable. Also, the regular provisions applying for import of baggage appear to have been substituted, in the case of such re-import, by the procedure envisaged by Clauses 2(xii) and 2(xiii) of the SOP dated 29th March 2016 supra.

32. There is a clear averment, by the review petitioner, that the said procedure was in fact followed even in respect of 25299.68 grams gold jewellery. The learned Tribunal has also, in its Final Order, held, on facts, that the entire quantity of gold jewellery was subjected to appraisal and the appraiser had, on comparing the gold jewellery with the jewellery which had earlier been exported vide shipping bills No. 117932 dated 13th March 2019 and 117209 dated 20th February 2019, found that the jewellery which was being sought to be imported by the respondent-review petitioner was, in fact, the same jewellery which had earlier been exported for exhibition abroad.

33. There is no categorical traversal, of these findings, in the appeal preferred by the DRI, as has already been observed by us in the judgment under review. Even otherwise, absent perversity, these findings cannot be re-examined in an appeal under Section 130 of the Customs Act, which is restricted to substantial questions of law.

34. The only ground on which we had extended differential treatment to the 25299.68 grams gold jewellery, from the remaining gold seized in the warehouse/ godown of the review petitioner and at the Airport, was that the B/E relating to the 25299.68 grams gold jewellery was unsigned by the customs authorities. We are convinced, prima facie, apply to the said gold jewellery in the first place. Moreover, the Show Cause Notice issued to the review petitioner, too, acknowledges that the jewellery was imported as baggage. In these circumstances, we are of the considered opinion that the review petitioner is justified in its prayer that the 25299.68 grams gold jewellery be extended the same treatment as has been extended to the remaining gold.

35. We regard ourselves as fortified, in the view that we are taking, by the fact that the Supreme Court, in the SLP preferred by the appellant-DRI against our judgment under review, did not choose to interfere with our decision to permit

release of the gold jewellery (except for the consignment forming subject matter of the present review proceedings).

36. The judgment under review worked out the quantum of the bank guarantee to be furnished at ☐ 10 crores, as 30% of the total value of the gold seized, including the unreleased 25299.68 grams gold jewellery forming subject matter of the present review proceedings. That amount was enhanced by the Supreme Court to ☐ 15 crores, otherwise upholding our judgment. It is not possible, therefore, for us to direct furnishing of any further bank guarantee, as a condition, for release of 25299.68 grams gold.

37. The review petition accordingly stands allowed.

