

(2025) 02 DEL CK 1139

In the Delhi High Court

Case No : Writ Petition (C) No. 1807 Of 2025, Civil Miscellaneous Petition No. 8675, 8676 Of 2025

Gor Sharian

APPELLANT

Vs

Commissioner Of Customs

RESPONDENT

Date of Decision : 14-02-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 112, 114A, 125

Citation : (2025) 02 DEL CK 1139

Hon'ble Judges : Prathiba M. Singh, J; Dharmesh Sharma, J

Bench : Division Bench

Advocate : S. Vijay Kanth, Utkarsh Tripathi, Gibran Naushad, Sumit Kumar, Sunil Kumar, Abhitesh Kumar

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Article 226 of the Constitution of India inter alia challenging the impugned Refund Order No. 13/2024-25 dated 3rd October, 2024 (hereinafter "Refund Order") and corrigendum dated 16th January, 2025 to the said impugned order (hereinafter "Corrigendum Order"), passed by the Assistant Commissioner (Refund), IGI Airport, New Delhi.
3. The said proceedings arise from the interception of the Petitioner, stated to be a Russian citizen, on 24th September, 2021 after crossing the Green Channel at IGI Airport, New Delhi. On the said date, the Petitioner's baggage was searched and 1065.10 grams of gold was recovered from the Petitioner. The said gold was detained and the case of the Petitioner was adjudicated vide Order-in-Original No. 242/Adj/2021 dated 17th November, 2021. The said Order-in-original was challenged by the Petitioner in appeal before the Commissioner of Customs

(Appeals). Vide Order-in-Appeal dated 26th July, 2022 the said appeal was allowed and, inter alia, the detained goods were directed to be released to the Petitioner on payment of redemption fine of Rs. 4,60,000/- as also penalty of Rs. 4,60,000/-. The operative portion of the said Order-in-Appeal dated 26th July, 2022 is extracted below:

"6.0 In view of the discussion above, I allow the appeal against the O-in-O 242/Adj/2021 dated 17.11.2021 and order that the impugned Gold chain weighing 1065.10 grams, valued at Rs. 45,80,271/- be released to the Appellant on payment of redemption fine of Rs. 4,60,000/- under Section 125 of the Customs Act, 1962, for re-export only. I reduce the penalty under Section 112 & 114A to Rs. 4,60,000/-. The Appeal is disposed with such modifications and consequential relief as above."

4. It is the case of the Petitioner that despite payment of the said redemption fine and the said penalty, the detained goods were not released by the Respondent. Accordingly, the Petitioner had approached this Court in W.P. (C) No. 6690/2023 titled Gor Sharian vs. Commissioner of Customs (Airport) New Delhi & Anr., wherein vide order dated 20th July, 2023 the following directions were passed:

"3. According to the petitioner, although the redemption fine as well as penalty have been duly deposited, the gold chain has neither been released nor has the petitioner been permitted to receive the same for re-export.

4. Mr. Ojha, learned counsel appearing for the respondent, on instructions submits that there appears to be an issue of some discrepancy in the total deposit made by the petitioner and the amounts which were otherwise payable in terms of the order passed by the Commissioner of Customs (Appeals).

5. If that be the only issue which survives, let the respondents communicate to the petitioner the shortfall, if any, in respect of the deposit which is stated to have been effected in terms of the aforesaid order within a period of one week from today.

6. Subject to the petitioner making good any shortfall that may be indicated, the seized gold chain may thereafter be released and the petitioner's prayer for permission for re-export be processed and disposed of in light of the order of the Commissioner of Customs (Appeals)."

5. Strangely however, instead of complying with the above directions, vide the impugned Refund Order the Assistant Commissioner (Refund) directed the refund of only Rs. 50,14,704/- to the Petitioner. To make things worse, the said refund amount was modified and reduced vide the impugned Corrigendum Order to Rs. 29,46,139/- on the ground that Customs Duty of Rs. 20,68,565/- is also payable.

6. The Petitioner being aggrieved by the aforesaid orders has preferred the present petition.

7. The writ petition was listed yesterday i.e., on 13th February, 2025, challenging the impugned Refund Order and the impugned Corrigendum Order. The Court issued notice to the Respondent and observed as under:

"8. It is noticed in the present case that the impugned Refund Order has been passed without taking into consideration the various chronology of events that have taken place in this matter. The Petitioner was permitted to re-export the goods and had in fact deposited the redemption amount, the fine and the penalty as imposed by the Commissioner of Customs (Appeals). The manner in which the impugned Refund Order and the impugned Corrigendum Order has been issued shows a complete lack of application of mind by the concerned Assistant Commissioner (Refund).

9. It is also noticed that in these impugned orders, the names of the officers who are passing these orders are not mentioned except the designation. In future, it shall be ensured that the name of the concerned officer who is passing the order shall also be mentioned in the full so that the said official can be held responsible for such glaringly incorrect orders that have been passed.

10. The impugned orders have been passed in this case by one Mr. Meena whose name is not clear and whose designation is mentioned as Assistant Commissioner (Refund).

11. At this stage, Mr. Gibran Naushad, Id. Senior Standing Counsel for the Respondent seeks time to take instructions.

12. In view of the above, the Court is inclined to direct the Customs Department to deposit the entire value of the detained gold of the Petitioner. However, on a request by the Id. Counsel for the Respondent, the matter is adjourned to tomorrow."

8. Pursuant to the above order, today, Mr. Sumit Kumar, A.C.S, Mr. Sunil Kumar, A.C.S and Mr. Abhitesh Kumar, A.L.O are present along with Mr. Gibran Naushad, Id. Senior Standing Counsel for the Customs Department. The Id. Counsel submits that there was an error by the Customs Department in this case as the Order-in-Appeal allowing release of the detained goods was not communicated to the Department concerned. It is also submitted that the gold detained from the Petitioner, actually stood disposed of on 29th November, 2022 along with various other gold items which were detained/confiscated.

9. Upon a query from the Court as to whether any intimation was given to the Petitioner prior to the disposal of the detained goods, an undated letter has been handed over to the Court on behalf of the Customs Department, which is extracted below:

10. A perusal of the above letter would show that the Petitioner's Passport number and e-mail id are mentioned therein. However, there is no clarity as to how this letter was communicated to the Petitioner. There is no copy of the e-mail communicating the said letter to the Petitioner attached to this letter

handed over by the Id. Counsel for the Customs Department. It is noted that the letter also is signed by an official, whose name is not clear and along with the signatures, the date 7th November, 2022 has been mentioned.

11. It is clear from the facts stated above that the factum of disposal of the gold detained from the Petitioner, despite the Order-in-Appeal having been passed on 26th July, 2022, was not even communicated to this Court, when the order dated 20th July, 2023 was passed in W.P. (C) No. 6690/2023 filed by the Petitioner.

12. In the said petition, the Court had clearly directed release of the detained gold, which order would not have been passed if the gold was already disposed of. The Petitioner had in fact deposited the redemption fine and penalty as directed vide the Order-in-Appeal.

13. Thus, the following glaring facts have come to the notice of this Court in this petition:

(i) The Order-in-Appeal dated 26th July, 2022 was either not communicated or was completely ignored by the said authority.

(ii) The detained gold was disposed of on 29th November, 2022 without proper intimation to the Petitioner.

(iii) The Order-in-Appeal had permitted release of the detained gold to the Petitioner, subject to payment of redemption fine and penalty. The said redemption fine and the penalty of a sum of Rs.7,00,000/- and Rs. 2,20,000/- was paid by the Petitioner on 8th December, 2021 and 8th May, 2023, respectively. On the date of the second deposit, the detained gold itself was disposed of, however, the redemption fine and penalty was still accepted by the Department.

(iv) There was no proper communication or intimation given to the Petitioner prior to the disposal of the detained gold.

(v) The disposal of the detained gold was also not informed to this Court, when the order dated 20th July, 2023 was passed.

(vi) The impugned Refund Order was passed on 3rd October, 2024. The operative portion of the said order reads as under:

"17. Return of tariff value of 1065.10 grams of confiscated gold amounting to Rs. 50,14,704/- (Rupees Fifty Lakh Fourteen Thousand Seven Hundred and Four Only) in lieu of the re-export of the same after realizing the Redemption Fine of Rs. 4,60,000/- and Penalty of Rs. 4,60,000/- and order to pay an amount of Rs. 50,14,704/- (Rupees Fifty Lakh Fourteen Thousand Seven Hundred and Four Only) to the applicant/Authorized representative through RTGS against Cheque No. 604890 Dated. 10.2024 issued to PNB, Sansad Marg, New Delhi."

As per the impugned Refund order, the confiscated gold has been valued at Rs.50,14,704/-, after realizing the redemption fine which has been deposited

along with the penalty.

(vii) To further compound the irregularities, the impugned Corrigendum Order is then issued, holding the Petitioner liable for customs duty, further reducing the amount payable in the following terms:

"Refund of Rs. 29,46,139/- (Twenty Nine Lakh Forty Six Thousand One Hundred Thirty Nine Only) in lieu of re-export of the confiscated gold after realizing the applicable duty of Rs. 20,68,565/-, Redemption fine of Rs. 4,60,000/- and penalty of Rs. 4,60,000/- and order to pay an amount of Rs. Rs. 29,46,139/- (Twenty Nine Lakh Forty Six Thousand One Hundred Thirty Nine Only) to the applicant1Authorized representative through RTGS against Cheque No. 604894 Dated. 01.2025 issued to PNB, Sansad Marg, New Delhi."

14. The above conduct of the Customs Department is completely unreasonable, arbitrary and untenable. The Ld. Counsel for the Department has relied upon a Circular dated 6th September, 2022, which prescribes the manner in which the gold has to be returned. The relevant paragraph of the said Circular is extracted hereinbelow:

"3.1.2 Whenever seized gold has to be returned on account of any order from a judicial forum and the gold has already been disposed of, 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."

15. The chronology of events set out above would show that there is a triple benefit being claimed by the Department:

(i) Firstly, the detained gold has been disposed of long back without intimation to the Petitioner, at much less the value of the gold as of today – despite the Order-in-Appeal;

(ii) Despite having disposed of the detained gold, the redemption fine and penalty has been accepted by the Department;

(iii) Further, duty payable at 41.25% is being deducted without paying the amount of the value of the detained gold to the Petitioner.

16. In the opinion of this Court, this course of action would be completely contrary to law inasmuch as the Order-in-Appeal had clearly directed the release and re-export of the detained gold, subject to payment of redemption fine and penalty. The said order could not have been ignored by the Customs Department. Even if there was a lack of communication, the fact of disposal of the detained

gold ought to have been communicated to the Court, when the W.P. (C) No. 6690/2023 was being heard and the final order therein was passed on 20th July, 2023.

17. The disposal of the detained gold without intimation to the Petitioner is also contrary to law. Clause 3.1.2 of the Circular dated 6th September, 2022 would, therefore, have no application in the present case. The entire process followed by the Customs Department for the disposal of the detained gold, collecting the redemption fine and penalty as also deducting customs duty before payment of the value of the detained gold to the Petitioner would, therefore, not be tenable.

18. The Petitioner having succeeded in appeal before the Commissioner of Customs (Appeals) and the Customs Department having not challenged the Order-in-Appeal, the Petitioner cannot be made worse off at this stage.

19. 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, costs of Rs.1,00,000/- would be liable to be paid by the Customs Department to the Petitioner.

20. It is made clear 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.

21. The said amount shall be credited to the Petitioner's bank account directly. The Petitioner shall provide his bank details to the official concerned from his registered Email:- gorhitman@mail.ru. Mr. Gibran Naushad, Id. Senior Standing Counsel shall ensure that the Petitioner speaks to the official concerned before the remittance is paid.

22. In addition, the Customs Department shall ensure in future that the intimation of disposal of detained or confiscated property is given to the concerned party both via email as also the mobile number, so that the said party who has succeeded in Court or Tribunal against the detention of the property, are not deprived of their properties, as has happened in the present case.

23. Registry is directed to communicate this order to the OSD (Legal), Central Board of Indirect Taxes & Customs (hereinafter "CBIC") through email (Osd-legal@gov.in) for necessary information and compliance. Let Mr. Gibran Naushad, Id. Senior Standing Counsel, also communicate this order to the OSD (Legal), CBIC for necessary information and compliance.

24. In view of the above, the writ petition is disposed of. Pending applications, if any, are also disposed of.