

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO. 8933 OF 2022

Mohammed Shahad Choy Choo  
Mauritian National, Aged 45 years  
Occupation: Business  
3B, Rue De La Concorde  
Roche-Brunes, Mauritius

...Petitioner

Versus

1. Union of India  
Through Dedicated Legal Cell,  
Air Intelligence Unit,  
CSI International Airport.  
Andheri, Mumbai.

2. The Joint Commissioner of  
Customs, (Airport),  
Air Intelligence Unit,  
CSI International Airport,  
Andheri, Mumbai.

3. The Commissioner of Customs  
(Appeals)  
Mumbal Zone - III  
Awas Corporate Point, (5th Floor),  
Makwana Lane, Behind S.M.Centre,  
Andheri-Krula Road, Marol,  
Mumbai-400 059.

4. Principal Commissioner &  
Ex- Officio) Additional Secretary to  
Govt. of India, 8th Floor, World  
Trade Centre, Centre- 1, ) Cuffe Parade,  
Mumbai-400005

..Respondents

Mr. Anand M. Sachwani for Petitioner.

Mr. Jitendra B. Mishra a/w Abhishek Mishra, Ashutosh Mishra, Rupesh Dubey for  
the Respondents

CORAM: G. S. KULKARNI &  
AARTI SATHE, JJ.

RESERVED ON: 6<sup>th</sup> JANUARY 2026

PRONOUNCED ON: 30<sup>th</sup> JANUARY 2026

**JUDGMENT (PER AARTI S. SATHE, J.)**

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. This Petition under Article 226 of the Constitution of India is filed challenging the confiscation of gold jewellery by the Customs Authorities without following the due process of law and without issuance of any show-cause notice under Section 124 of the Customs Act, 1962 [hereinafter referred to as “the Act”]. The present Petition also challenges the disposal of the confiscated gold without issuing any show-cause notice to the Petitioner while the appeal proceedings were pending before Respondent No. 4. For the sake of convenience, the prayers in the present Petition are reproduced herein below:-

(a) Rule be issued;

(b) This Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ or direction in the nature of mandamus under Article 226 of the Constitution of India, after perusing the relevant documents in the matter and after examining the validity, propriety and legality of the same, set aside the confiscation of gold jewelry 373.700 grams.

(c) This Hon'ble Court be pleased to issue a writ of mandamus or any other writ or direction in the nature of mandamus under Article 226 of the Constitution of India, after perusing the relevant documents in the matter and

after examining the validity, propriety and legality of the same direct the Respondent to refund and compensate the Petitioner equivalent value of gold as on the present date as the old and used gold jewelry has been disposed off by the Respondent No.2.

(d) Interim/ad-interim relief in terms of prayer (c) above;

(e) Such other and further reliefs as this Hon'ble Court may deem fit in the facts and circumstances of the case.”

3. Briefly the facts of the case are as follows:

i. The Petitioner is a citizen of Mauritius and is a businessman by profession running a business in the name and style of M/s. Voila Chemical Company Limited, having registration No. C-20172197, issued by the Government of Mauritius.

ii. The Petitioner arrived at Mumbai Airport on 16<sup>th</sup> May 2014 from Mauritius via Dubai by Flight No. EK-504. The Petitioner, when landed at the Mumbai Airport, was wearing a gold Kada in his hand, one chain of 22 Carat and one chain of 18 Carat and carrying one small coin of 14 Carat (hereinafter referred to as the “gold jewellery”).

iii. It is the Petitioner's contention that the gold jewellery was his personal jewellery and was given to him by his family members, to which he attached great sentimental and emotional values. On arrival of the Petitioner at the Mumbai Airport on 16<sup>th</sup> May 2014, the Petitioner was intercepted by the Customs Officers, and was requested to remove the gold jewellery which was worn by him and accordingly the Petitioner removed the gold jewellery and handed it over to the

said Officers. It is the Petitioner's contention that after the officers verified the said gold jewellery, they informed the Petitioner that at the time of his departure from India, the gold jewellery would be returned to him, as he was scheduled to return on 18<sup>th</sup> May 2014.

iv. The gold jewellery was thereafter detained under Detention Memo No. A44486 dated 16<sup>th</sup> May 2014. The Petitioner was not returned his gold jewellery; however, on the same date, the matter was referred for adjudication, and the charges were orally communicated to the Petitioner by the Batch Officer. The Petitioner thereafter requested that he be heard personally by the adjudicating authority before any final adjudication was made against him.

v. The main charge against the Petitioner by the Customs Authorities, on the basis of which the detention of the gold jewellery was made, was that the Petitioner had opted to not declare the aforesaid gold jewellery to the Customs Authorities and had sought clearance thereof by passing through the green channel for customs clearance. As stated above, it was at that point in time that the Petitioner was intercepted with the aforesaid gold jewellery, weighing 374 grams and having an approximate value of Rs. 9,64,936/- in the year of its detention, i.e., 2014. The Petitioner was heard on the said date, and the charges framed against him were communicated to him.

vi. In reply thereto, the Petitioner orally submitted that the gold detained from him was not of 999 purity but was 22 Carat (one chain, one Kada, one small coin of 14 Carat and one chain of 18 Carat). The Petitioner also submitted that he

had no intention to defraud the Customs Authority and the gold jewellery was his personal jewellery, which was given to him by his family members. After affording an oral hearing to the Petitioner, an Order-in-Original bearing dated 20<sup>th</sup> May 2014, issued on 30<sup>th</sup> July 2017 No. JC/RR/ADJN/107/2014-15 (Order-in-Original) was passed by Respondent No.2, confiscating the gold jewellery of an approximate weight of 374 grams. Respondent No.2 ordered the aforesaid confiscation on the basis that the Petitioner had contravened the provisions of Section 77 of the Act and hence the gold jewellery became liable for confiscation under Section 111(l) and 111(m) of the Act. By way of the aforesaid Order-in-Original, Respondent No.2 also held that the Petitioner was liable to pay penalty under the provisions of Section 112(a) of the Act and a penalty under Section 114AA of the Act. The operative part of the order reads thus:-

*“ORDER*

*i) I confiscate gold jewellery in crude form weighing 374 grams of value Rs. 9,64,936/- detained vide DR No A 44486 dated 16.05.2014 under Section 111 (d), (l) &(m) of the Customs Act, 1962. However, I give the passenger Mr. Mohamed Shahad Choy Choo an option to redeem the goods on payment of a fine of Rs. 3,50,000/- (Rupees Three Lakh & Fifty Thousand only) under Section 125(1) of the Customs Act, 1962. The normal baggage rate of duty and other charges if any shall be paid under Section 125 (2) of the Customs Act 1962.*

*ii) I impose a personal penalty of Rs. 1,00,000/-(Rupees One Lakh only) on Mr Mohamed Shahad Choy Choo under Section 112 (a) of the Customs Act, 1962.*

*iii) further impose a penalty of Rs. 5,000/- (Rupees Five Thousand only) on Mr Mohamed Shahad Choy Choo under Section 114 AA of the Customs Act, 1962.*

*Before issue of this order in original a request vide letter dated 21.05.2014 was received from Mr. Mohamed Shahad Choy Choo to*

*give him three months time to arrange money for getting the goods released. The request is accepted.”*

vii. Being aggrieved by the Order-in-Original dated 20<sup>th</sup> May 2014 (supra) passed by Respondent No.2, the Petitioner preferred an Appeal before Respondent No.3 bearing Appeal No. S/49-522/2014 AP, praying for re-export of the gold jewellery under Section 80 of the Act considering that the same was his personal jewellery and not meant for sale and that the Petitioner was a Foreign National from Mauritius. Respondent No.2 also filed an Appeal against the Order-in-Original dated 20<sup>th</sup> May 2014 before Respondent No.3 challenging the release of the gold jewellery to the Petitioner.

viii. On 23<sup>rd</sup> January 2015, Respondent No.3 passed an Order-in-Appeal No. MUM/CUSTOM-PAX-APP-645/14-15 after giving a personal hearing to the authorized representative of the Petitioner. At the aforesaid hearing, none appeared on behalf of the Respondent No. 2, and no cross-objections were filed. Respondent No.3 by the aforesaid Order-in-Appeal dated 23<sup>rd</sup> January 2015, held that the investigation did not reveal that the Petitioner was a habitual offender/carrier and no attempt had been made on the part of the Petitioner to conceal the goods. She further held that the Petitioner held a foreign passport and considering the facts of the case and the difference in the CIF value & LMV, reduced the redemption fine to Rs. 3,00,000/- and the penalty to Rs. 50,000/- under Section 112(a) of the Act. Respondent No.3 did not interfere with the penalty imposed under the provisions of Section 114AA of the Act.

ix. Both the Petitioner and Respondent No.2 filed Revision Applications against the Order-in-Appeal dated 23<sup>rd</sup> January 2015 before Respondent No.4. In the Revision Application filed by Respondent No.2, they prayed for setting aside the Order-in-Appeal and the case being remanded back to Respondent No.3 to decide the matter afresh in terms of the submission made by Respondent No.2. In the aforesaid Revision Application, the Petitioner sought Revision of the Order-in-Appeal once again seeking re-export of the gold jewellery under Section 80 of the Act contending that the same is his personal jewellery and was not meant for sale and that he is a foreign National of Mauritius. The Petitioner also prayed that the personal penalty be set aside or reduced substantially insofar as the Petitioner was concerned.

x. In the meantime, on 6<sup>th</sup> February 2019 during the pendency of the Revision Application filed before Respondent No.4, Respondent No.2 sent the Petitioner's detained gold jewellery to the Government Mint, where the gold was melted.

xi. On 12<sup>th</sup> March 2021, the Revision Application filed by the Petitioner was heard by Respondent No.4 during the Covid-19 Lockdown period and an order dated 28<sup>th</sup> May 2021 came to be passed in the aforesaid Revision Application, wherein it was held that as the gold jewellery was not declared by the Petitioner as required under Section 77 of the Act and the confiscation of the said gold jewellery was justified in the facts of the case. However, absolute confiscation as pleaded by Respondent No. 2, would be an order in excess inasmuch as the gold

jewellery was of a personal nature of the Petitioner. It was further held that the Petitioner is a foreign National and he was intercepted only on the ground that he had opted for the Green Channel without declaring the gold jewellery as mandated under Section 77 of the Act. It was further held that, in none of the orders before the adjudicating authorities, there was any finding rendered against the Petitioner that the gold jewellery was ingeniously concealed. It was held that the gold jewellery was not of 24 Carat as ascertained by the adjudicating authority. Further, the Petitioner had produced purchase receipts evidencing that the gold was old and used and was hence not meant for sale. The order further went on to hold that there were no allegations against the Petitioner that he was a habitual offender or was involved in similar offences earlier, and since the Petitioner was a foreign citizen, the release of the personal jewellery on payment of redemption fine without allowing the Petitioner to re-export the same, would not allow him to take back the gold and hence the said stand of Respondent No.2 was not justified. In view thereof, Respondent No.4 allowed the re-export of gold and set aside the penalty under Section 114AA of the Act, however, sustaining the penalty imposed under Section 112(a) of the Act.

xii. The Petitioner thereafter filed a Refund Application dated 12<sup>th</sup> July 2021 before the Deputy Commissioner of Customs (Refund) for the refund amount of sale proceeds of the seized gold jewellery after adjustment of fine and personal penalty. It is the Respondent Department's contention that this fact of filing the refund application dated 12<sup>th</sup> July 2021 was not disclosed by the Petitioner in the Petition and hence they have approached the Court with unclean

hands. The Deputy Commissioner of Customs (Refund) pursuant to the application filed by the Petitioner, passed the Refund Order dated 8<sup>th</sup> January 2024 wherein it was held that the legitimate right of refund could not be denied to the Petitioner. Further, it was also held that the realized value of the gold jewellery was Rs. 9,76,952/-, out of which the Petitioner was refunded an amount of Rs. 5,12,877/-, after reducing the warehouse charges, redemption fine, personal penalty, and after adding pre-deposit of 7.5% of the personal penalty imposed.

4. It is in the backdrop of the aforesaid facts of the case that the issue which has fallen for consideration before this Court is as to whether the confiscation of the gold jewellery was justified and whether the consequent imposition of redemption fine and penalty was also justified in the facts of the present case.

5. Mr. Sachwani, learned Counsel for the Petitioner, has made the following submissions in support of his contention that the confiscation of the gold jewellery and the redemption fine for the re-export and the penalty are not justified. The submissions as made by the Petitioner can be summarized as below:-

i. It is submitted that confiscation of the personal gold jewellery without issuance of a show-cause notice under Section 124 of the Act was bad in law and there was no seizure memo made by the Customs Department prior to the aforesaid confiscation. It was also submitted that the Detention Memo, which was purportedly made under Section 80 of the Act, was to be primarily a temporary detention. However, the gold jewellery was not

returned back to the Petitioner, despite the detention being a temporary detention as envisaged under Section 80 of the Act.

ii. The Petitioner had no intention to clear the goods for home consumption as these goods were meant for personal use and the Petitioner had categorically requested Respondent No.2 and the other officers who had issued the Detention Memo for reshipment of the goods.

iii. It is in fact the Petitioner's contention that Respondent No.2 while passing the Order-in-Original (supra) had held that the jewellery was for the personal use of the Petitioner and not for any other ulterior motive. Hence, the question of the redemption fine was not warranted, and the penalty was also not imposable. It was further submitted that Respondent No.2, in the Order-in-Original, had categorically come to a finding that the Petitioner was clearing himself from the Green Channel, for which there is no seizure memo nor any independent witnesses who have seen the Petitioner clearing from the Green Channel on the date of arrival.

iv. It is further submitted that none of the adjudicating authorities have disputed the fact that the Petitioner's jewellery, which was detained, was meant for personal use. It was further submitted that even in the revision order, though it has appreciated that the Petitioner had used the gold jewellery for personal purposes and had not concealed the same from the Customs Authority, yet, it had erroneously upheld the penalty under Section

112(a) of the Act and further not set aside the redemption fine and simply allowed the re-export of the gold jewellery.

vi. It was also submitted that the gold jewellery was sent to the Government Mint in 2019, without giving any notice to the Petitioner, when the Appeal and Revision proceedings were pending before the Appellate Authority as well as Revisional Authority. In view of the aforesaid, it was contended on behalf of the Petitioner that since the gold jewellery was no longer available with the Customs Authorities, Respondent Nos. 1 to 4 be directed to reimburse the same amount or quantity of gold to the Petitioner which was intercepted from the Petitioner on 16<sup>th</sup> May 2014 or the equivalent value as on date.

6. An affidavit in reply on behalf of the Respondents is filed by one Mr. G. B. Tilve, Assistant Commissioner of Customs CSMI Airport, Mumbai-III, wherein it has been submitted that the present Petition is liable to be dismissed on the ground that the Petitioner opted for passing through the Green Channel when he was not entitled to, as the Petitioner was allegedly carrying prohibited goods i.e. the gold jewellery. It is also contended that the Petitioner has wrongly submitted that the goods were detained under Section 80 of the Act, however, the same were confiscated under Section 111(d),(l), and (m) of the Act. It is further contended that the goods were detained by issuing a detention memo as it was issued pending adjudication and the same was not issued under Section 80 of the Act for re-export purposes, this in view of the fact that no declaration was made by the Petitioner as

required under Section 77 of the Act and temporary detention for re-export purpose is allowed only for passengers who lawfully declare dutiable/restricted and prohibited goods, under Section 77 of the Act, which was not done by the Petitioner in the facts of the present case. It is next submitted that since the confiscated gold jewellery was lying for a long time in the strong room, audit objections were raised as it was sensitive material, therefore the gold jewellery was disposed of by following the due process of law and subsequently passing an Order-in-Original for disposal of the gold jewellery by the Office of the Pr. Commissioner of Customs (Airport) Terminal 2.

7. Learned Counsel for the Respondents has also submitted a short note of propositions opposing the admission of the present petition. He has primarily submitted as follows:

*i) The Petitioner, through his advocate, had filed refund application dated 12th July 2021, inter alia praying for refund amount of sale proceeds of the said gold jewellery after adjustment of redemption fine and personal penalty, as ordered by the Order-in-Appeal dated 02.02.2015 (page 47 of the petition) and Revision Order dated 28.05.2021 (page 63 of the petition). However, this refund application dated 12.07.2021 has not been annexed with the petition nor been disowned till date. The same has been annexed in the reply of the respondents (page 110).*

*ii) In ground (ff) of the petition at page 24, the Petitioner has averred that he was asked to file a refund application which he has filed as and by way of abundant precaution. It is pertinent to note that the adjudicating authority vide order dated 8th January 2024 (page 197 of rejoinder filed by the Petitioner has sanctioned the refund of Rs. 5,12,877/- to the petitioner, thereby allowing the refund application of the petitioner. The Petitioner has not challenged the said Order dated 8<sup>th</sup> January 2024 till date.*

*iii) The Petitioner has not challenged the order of confiscation before the lower authorities. The prayer in the Revision Application (page 55*

*of the petition) filed by the Petitioner is only for re-export and setting aside personal penalty. The Petitioner cannot approbate and reprobate.*

*iv) The judgment of this Hon'ble Court in the case of Leyla Mehmoodi (page 151 of rejoinder) is not applicable in the facts and circumstances of the case. In Leyla Mehmoodi, the gold was sold even before issuance of Show Cause Notice much less to order of confiscation. However, in the present case, the gold was sold on 06.02.2019 much after the same was ordered to be confiscated vide Order-in-Original dated 20.05.2014, upheld vide Order-in-Appeal dated 02.02.2015 and Revision Order dated 28.05.2021. In Leyla Mehmoodi, there was specific prayer for return of gold which is not the case here.*

*v) Before disposal of the gold, a notice was displayed on the notice board of the Airport Commissionerate. Since the gold was lying for about 5 years, it was sold pursuant to the circulars issued by the Board, from time to time.*

He has also relied on some decisions, which we shall deal with later, to contend that the litigant/party cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands.

8. In view of the aforesaid submissions, the Learned Counsel for the Respondents submitted that no case has been made out by the Petitioner for granting any relief as prayed for in the present Petition.

9. On the present proceedings, an order dated 18<sup>th</sup> November 2022 was passed by a co-ordinate Bench of this Court which reads thus:-

*“1. In paragraph 12 of the Affidavit-in-Reply filed through one G. B. Tilve, affirmed on 29th August, 2022, there is a reference to a disposal order dated 28th January, 2019. The same has not been annexed to the Affidavit. In paragraph 44 of the Affidavit-in-Reply it is averred that gold was disposed following due process of law and subsequently passing an order-in-original for disposal of the goods before the competent authority. No details are provided. Respondent is directed to provide copy of the disposal order dated 28th January, 2019 as also*

*order-in-original for disposal of the goods referred to in paragraph 44 within one week.*

*Respondent shall also provide to Petitioner the entire details of the alleged "due process of law" followed while disposing the gold. This would include (a) notice, if any issued to Petitioner (b) valuation done of the gold (c) auction notice (d) bills received (e) the details of the purchaser and the payment receipt. All this shall be provided in a further affidavit which shall be affirmed and copy served within one week from today.*

*2. Stand over to 5th December, 2022."*

10. In pursuance of the aforesaid order, an additional affidavit dated 2<sup>nd</sup> December 2022 was filed by the G. B. Tilve, Assistant Commissioner of Customs CSMI Airport, Mumbai-III. The relevant paragraphs of the aforesaid affidavits are reproduced below:-

*"4. I state that the 57 packages containing 11,518.12 grams of confiscated/unclaimed gold was lying in the strong room of Airport Commissionerate. I further state that these packages were lying for more than five years and all concerned notice was displayed on the notice board of the Airport Commissionerate intimating the disposal of the gold so as to enable anyone to lodge objection before the Competent Authority if any and no separate notice was given to any individual.*

*5. I state that subsequent to the said notice the Competent Authority vide Order-In-Original No. ADC/AK/ADJN/427/2018-19 dated 28.01.2019 was passed by the Additional Commissioner Airport and ordered confiscation of gold contained in 57 packages under section 111(d), (1) and (m) of the Customs Act, 1962. The jewellery of the Petitioner is mentioned at Sr. No. 41 in the list annexed to the said O-I-O. Annexed herewith and marked as "Exhibit-A" is the copy of the Order-In-Original No. ADC/AK/ADJN/427/2018-19 dated 28.01.2019.*

*6. I state that the valuation of the gold was done at the time of detention of the Gold and the same is mentioned in detention receipt which is annexed as exhibit-A to the affidavit-In-Reply of the Respondents.*

*7. I state that the all the packages which were lying in the strong room were removed for handing over to India Government Mint for conversion of the gold into standard gold bars.*

*8. I state that the India Government Mint vide out-turn certificate No. OT/GAD/118 dated 06.02.2019 in the said out-turn certificate the details of gold refined is mentioned such as the weight of the gold before and after melting, purity of the gold etc. The total gold handed over to the Respondents weighing about 33830 grams. Annexed herewith and marked as "Exhibit-B" is the copy of the out-turn certificate No. OT/GAD/118 dated 06.02.2019.*

*9. I state that the said lot of the 33830 grams of gold was auctioned by the State Bank of India and the State Bank of India vide their letter No. BBM/2018-19/263 dated 08.03.2019. Annexed herewith and marked as "Exhibit-C" is the copy of the letter No. BBM/2018-19/263 dated 08.03.2019.*

*10. I state that while disposing of the gold the Respondents have followed the due process."*

11. In response to the said affidavits, the Petitioner has filed an affidavit in rejoinder dated 28<sup>th</sup> August 2024, once again reiterating the submissions as made by him in the Petition. In the rejoinder affidavit, the Petitioner submitted that the gold jewellery had been disposed of without any notice to the Petitioner, and that too, when the appeal and revision proceedings were pending adjudication. It was further submitted that during the pendency of the present Petition, a refund order dated 8<sup>th</sup> January 2024 has been passed by the Deputy Commissioner of Customs (Refund). It is also submitted that in the present case, there has been no seizure of goods in question and the same were detained under Section 80 of the Act and on the detention receipt at the bottom of the aforesaid receipt, it was specifically ticked for re-export out of India. In view thereof, the Petitioner submitted that he had

complied with Section 77 of the Act and since the gold jewellery had not been seized, the question of confiscation of goods and release of the same on redemption fine and penalty does not arise at all. The Petitioner also relied upon several case-laws and circulars to contend that since there was no seizure of goods, the question of confiscation and redemption fine being imposed along with penalty did not arise at all. The Petitioner also categorically submitted that since the gold jewellery had been disposed of without giving him notice and as the same is no longer available with the Respondents, the same quantity of the gold should be returned to the Petitioner or alternatively the present market value of the same quantity of the gold be returned to the Petitioner.

12. We have heard the learned Counsel for the parties with their assistance we have perused the record and the orders passed by the adjudicating authority.

13. At the outset we may note some of the admitted facts. It is not in dispute that on 16<sup>th</sup> May 2014 the Petitioner arrived at Mumbai airport from Mauritius via Dubai with the said gold jewellery and was apprehended / intercepted at the Mumbai Airport. The gold jewellery was detained, and the Petitioner was given an option to redeem the goods on payment of fine of Rs. 3,50,000/- under S. 125 (1) of the Act along with a penalty of Rs. 1,00,000/- under Section 112(a) and a penalty under of Rs. 5000/- under Section 114AA of the Act. The aforesaid fine and penalty were either reduced or deleted by various subsequent orders passed by Respondent Nos. 3 and 4.

14. In order to appreciate the controversy in the present case, it is important to list out the following relevant provisions which will govern the dispute at hand.

**“80. Temporary detention of baggage.—** Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India 1 [and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name].

**110. Seizure of goods, documents and things.—(1)** If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

*Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.*

*[(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.*

*(1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and*

shall make an application to a Magistrate for the purpose of

—

(a) certifying the correctness of the inventory so prepared;  
or

(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1C) Where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.]

**(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:**

**[Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:**

*Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.]*

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs

**111. Confiscation of improperly imported goods, etc.—**The following goods brought from a place outside India shall be liable to confiscation:—

*(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;*

*(b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;*

*(c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;*

*(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

***(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;***

*(f) any dutiable or prohibited goods required to be mentioned under the regulations in an 1 [arrival manifest or import manifest] or import report which are not so mentioned;*

*(g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;*

*(h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;*

*(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;*

*(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;*

*(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods*

*required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;*

*(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*

*(m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 3 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];*

*(n) any dutiable or prohibited goods transited with or without transshipment or attempted to be so transited in contravention of the provisions of Chapter VIII;*

*(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;*

*(p) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.]*

**124. Issue of show cause notice before confiscation of goods, etc.—***No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—*

*(a) is given a notice in 1 [writing with the prior approval of the officer of Customs not below the rank of 2 [an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*

*(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*

*(c) is given a reasonable opportunity of being heard in the matter:*

*Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.*

*[Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]”*

*(Emphasis supplied)*

15. On a plain reading of the above provisions, it is clear that the same govern the temporary detention of baggage (as envisaged under Section 80 of the Act) and Section 110 deals with seizure of goods, documents and things, whereas Section 111 envisages confiscation of improperly imported goods, and Section 124 categorically provides for issue of show-cause notice before confiscation of goods.

16. It is the Petitioner’s case that in the facts of the present case the Petitioner’s gold jewellery was temporarily detained under Section 80 of the Act and the same was to be returned to him on his leaving India inasmuch as the same was meant for the personal use of the Petitioner and was worn by him on his body, which would be returned to him by reshipment as they were not prohibited by Section 77 of the Act. It is the Petitioner’s case therefore that the said gold jewellery was wrongfully detained and not returned to the Petitioner when he returned to Mauritius. This being the position, however, the Petitioner’s gold jewellery was confiscated and an option was given to the Petitioner to pay the redemption fine of Rs. 3,50,000/- imposed under Section 125 (1) of the Act and a consequential fine imposed under Section 114AA in the Order-in-Original dated 20<sup>th</sup> May 2014

passed by Respondent No. 2. The said order, which was challenged by the Petitioner was upheld by Respondent No. 3 – by an order dated 23<sup>rd</sup> January 2015 wherein only the quantum of redemption fine and the penalty under Section 112(a) of the Act were reduced. Even in the revision proceedings, re-export was allowed and the penalty under Section 112(a) was upheld. However, the penalty under section 114AA of the Act was set aside. This revision order was passed on 28<sup>th</sup> May 2021 (supra). However, in the year 2019, the gold was sent to the government mint, where the gold was melted, while the revision application was pending before Respondent No. 4. These peculiar facts to our mind, are a complete abuse of the process of law by the Respondent-Department, inasmuch as, none of the provisions as envisaged above regarding detention and seizure have been followed in the facts of the present case. The analysis of the relevant provisions governing the facts of the present case would make it clear as to how none of these provisions have been followed in respect of the seizure and confiscation of the gold jewellery.

17. On a plain reading of Section 110 of the Customs Act, it is a provision relating to seizure of goods, documents and things. It provides that if the proper officer has a reason to believe that any goods are liable for confiscation under the Customs Act, he may seize such goods. Sub-section (1), sub-sections (1A), (1B) and (1D) are required to be cumulatively read inasmuch as section (1A) is the power of Central Government to issue a notification in the Official Gazette to specify the goods or class of goods which shall, as soon as may be after their seizure under sub-section (1) be disposed of by the proper officer in such manner as the

Central Government may, from time to time, determine after following the procedure as specified in the said provision. This having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations. Sub-section (1B) provides that any goods specified under sub-section (1A), having been seized by a proper officer under sub-section (1), the proper officer shall prepare an inventory of such goods containing details relating to their description, quality, quantity, marks, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under the Customs Act and shall make an application to a Magistrate for the purpose, inter alia, of certifying the correctness of the inventory so prepared; or taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or allowing to draw representative samples of such goods, in the presence of the Magistrate and certifying the correctness of any list of samples so drawn. Sub-section (1C) provides that when an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application. Sub-section (1D) provides that when the goods seized under sub-section (1) is gold in any form as notified under sub-section (1A), then, the proper officer shall, instead of making an application (1B) to the Magistrate, make such application to the Commissioner (Appeals) having jurisdiction, who shall, as soon as may be, allow the application and thereafter, the proper officer shall dispose of such goods in such manner as the Central Government may determine. In the facts of the present case, none of the ingredients as listed out in Section 110 of the

Act have been fulfilled prior to the seizure and confiscation of the gold jewellery in question.

18. Further on a plain reading of Section 111 of the Act, the category of goods under Clauses (a)-(q), which are liable for confiscation as improperly imported has been specified, wherein the relevant clause in so far as the present facts would be clause 111(e) which categorically states that dutiable or prohibited goods found concealed in any manner in any conveyance are liable to be confiscated. In the facts of the present case, even if the department has sought to confiscate the gold jewellery invoking the above provisions, yet there was no concealment of the gold jewellery by the Petitioner and in fact the Order-in-Appeal categorically holds that the Petitioner was not a habitual offender/carrier and no attempt was made to conceal the goods. It was in these circumstances that the Order-in-Appeal reduced the quantum of fine and penalty in facts of the present case. Thus, the provisions of both Sections 110 and 111 have stood breached in the facts of the present case.

19. Further, the Order-in-Original dated 20<sup>th</sup> May 2014, and the Order-in-Appeal dated 23<sup>rd</sup> January 2015 have also been passed without considering the provisions of Section 110 and Section 111 of the Act. Redemption fines under Section 125 (1) of the Act and further fines under Section 112(a) and 114-AA of the Act imposed on the Petitioner amount to a gross abuse of the process of law as envisaged in the aforesaid sections. What is fundamentally disturbing in the facts of the present case, is that the gold jewellery was seized from the Petitioner on 16<sup>th</sup>

May 2014, and as envisaged under Section 110(2), where if any goods are seized under Section 110(1) and no notice in respect thereof is served under Section 124(a) within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. In the facts of the present case no such show-cause notice was issued even after the six-month period post the seizure on 16th May, 2014. In spite of this fatal legal flaw, Respondent Nos.2 and 3 have proceeded to pass the Order-in-Original order dated 20<sup>th</sup> May, 2014 and the Order-in-Appeal dated 23rd January 2015 respectively, upholding the confiscation and imposing relevant fines. This approach on the part of the authorities is a blatant disregard of the provisions of law and cannot be sustained considering the facts of the present case.

20. To add further insult to the injury, the Customs authorities have further acted without following the provisions of law inasmuch on 6<sup>th</sup> February 2019, the gold jewellery detained from the Petitioner was sent to the Government Mint where the gold was melted without issuing a notice under Section 124(a) of the Act to the Petitioner, during the pendency of the Revision Applications before Respondent No. 4. However, what is perplexing to note is that we find that no reasons, whatsoever, are placed on record much less brought to our notice, as to why it was felt necessary by the proper officer to send the Petitioner's gold jewellery to the mint hurriedly on 06<sup>th</sup> February 2019. Section 110(2) provides that where any goods are seized under 110(1) and no notice is issued under of Section 124(a) within six months of the seizure of the goods, the goods 'shall be returned' to the possession of the person from whom it was seized. In the facts of the present

case, the seizure took place on 06<sup>th</sup> May 2014 and the 6-month period ended on 06<sup>th</sup> November 2014. However, neither was a show-cause notice served on the Petitioner in a manner known to law and nor were the proceedings by the customs authorities imposing redemption fines and penalties completed while following the due process of law as envisaged under Sections 110 and 111 of the Act. It is surprising as to what was the need and purpose on the part of the Customs authorities to dispose of the gold jewellery hurriedly and not provide an opportunity to the Petitioner to make a representation prior to confiscation of the goods. As envisaged in Section 110(2) of the Act, a notice in respect of the goods which are seized has to be given under Section 124(a) within six months of the seizure of the goods and if such notice is not issued then the said goods are to be returned to the person from whose possession the goods had been seized.

21. It is a settled principle of law that when the order of a customs officer is not final and is subject to an appeal, and if the appellate authority finds later that there was no good ground for the exercise of that power, the property could no longer be retained and under the Act and has to be returned to the owner. In such a situation there is a legal obligation on the part of the department to preserve the property intact and also return it in the same condition in which it was seized, inasmuch as in such a situation the State Government would be a bailee of the seized property until the order became final. In such context, the relevant observations of the Supreme Court in State of Gujarat v. Memon Mahomed Haji Hasam, 1967 SCC OnLine SC 120 reads thus:-

*“On the facts of the present case, the State Government no doubt seized the said vehicles pursuant to the power under the Customs Act. But the power to seize and confiscate was dependent upon a customs offence having been committed or a suspicion that such offence had been committed. The order of the Customs Officer was not final as it was subject to an appeal and if the Appellate Authority found that there was no good ground for the exercise of that power, the property could no longer be retained and had under the Act to be returned to the owner. That being the position and the property being liable to be returned there was not only a statutory obligation to return but until the order of confiscation became final an implied obligation to preserve the property intact and for that purpose to take such care of it as a reasonable person in like circumstances is expected to take. Just as a finder of property has to return it when its owner is found and demands it, so the State Government was bound to return the said vehicles once it was found that the seizure and confiscation were not sustainable. There being thus a legal obligation to preserve the property intact and also the obligation to take reasonable care of it so as to enable the Government to return it in the same condition in which it was seized, the position of the State Government until the order became final would be that of a bailee. If that is the correct position once the Revenue Tribunal set aside the order of the Customs Officer and the Government became liable to return the goods the owner had the right either to demand the property seized or its value, if, in the meantime the State Government had precluded itself from returning the property either by its own act or that of its agents or servants. This was precisely the cause of action on which the respondent's suit was grounded. The fact that an order for its disposal was passed by a Magistrate would not in any way interfere with or wipe away the right of the owner to demand the return of the property or the obligation of the Government to return it. The order of disposal in any event was obtained on a false representation that the property was an unclaimed property. Even if the Government cannot be said to be in the position of a bailee, it was in any case bound to return the said property by reason of its statutory obligation or to pay its value if it had disabled itself from returning it either by its own act or by any act of its agents and servants. In these circumstances, it is difficult to appreciate how the contention that the State Government is not liable for any tortious act of its servants can possibly arise.”*

In the facts of the present case, the appeals were pending before the Revision Authority for adjudication and hence the action of the Respondents/

Custom Authorities to dispose off the gold jewellery hurriedly in 2019 was not in consonance with the aforesaid principles of law.

22. On a plain reading of the provisions of Section 124, it is clear that, no order confiscating any goods or imposing any penalty on any person shall be made under this Chapter, unless the owner of the goods or such person is given a notice in writing with the prior approval of the Officer of Customs not below the rank of an Assistant Commissioner of Customs. Further, an opportunity of making a representation in writing within a reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty has to be given and also a reasonable opportunity of being heard in the matter has to be given to the owner of the goods. It is only after these conditions are fulfilled, that the confiscation of the goods can be made and if the case of the noticee is accepted then the logical corollary would be that the same have to be released to the owner. If they are not released, then Chapter XIV makes another provision, namely in Section 125 which provides for the option to pay a fine in lieu of confiscation. Section 125 reads as follows-

*“125. 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 4 [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: [Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-*

*section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply: Provided further that], without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon. [(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.] [(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending. Explanation.—For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]”*

23. In the facts of the present case neither a notice was issued under Section 124 nor the provisions of Section 110 and Section 111 were followed and the Petitioner was subjected to the fine as contemplated under Section 125 of the Act and further under Sections 112 and 114AA of the Act. The fact that the gold jewellery had been sent in the year 2019 to the mint and thereafter the Revision Order was passed in 2021, allowing for the re-export of the gold reeks of further abuse of the process of law, inasmuch as, now there is no gold available with the customs authorities to allow re-export as stipulated by such order.

24. This case, to our mind, is also one of these a gross cases which shows complete apathy on the part of the Customs Department to follow the basic principles of law. Even if the Customs Department has the power to dispose of the gold it has to be exercised fairly, reasonably and transparently. Disposal of the property belonging to a person like the Petitioner and of all the seized goods, would have to withstand the test of law and more particularly, the Constitutional requirement of reasonableness, non-arbitrariness, fairness, and transparency as enshrined under Article 14 of the Constitution, coupled with safeguarding the valuable rights of the property recognised by the Constitution under Article 300A.

25. A Division Bench of this Court in the case of Leyla Mahmoodi and Anr vs. Additional Commissioner of Customs and Ors., to which one of us (G. S. Kulkarni, J.) was a member, in similar circumstances, allowed the petition of the Petitioner, therein taking a serious view of the matter where the Customs Authorities had already disposed off the seized gold without following the due process of law. Relevant paras of the said judgment, which are aptly applicable to the present facts, are reproduced below:-

*“34. Now applying such legitimate requirements to the facts of the present case, we find that no reasons whatsoever are placed on record, much less brought to our notice, as to why it was felt necessary by the proper officer that the petitioners' gold was required to be disposed of hurriedly on June 1, 2018 even prior to the issuance of show-cause notice, which was issued on July 6, 2018, i.e., one month and five days after the disposal order.*

*35. In so far as the applicability of sub-section (1D) is concerned, in the present case, sub-section (1D) was not applicable, as an application was made to the Magistrate and no such application was made, as provided under sub-section (1D), to the Commissioner (Appeals).*

36. *There is something more fundamental in the present proceedings inasmuch as on January 14, 2018 the gold jewellery in question was seized from the petitioners. Sub-section (2) of section 110 provides that where any goods are seized under sub-section (1) and no notice in respect thereof is issued under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. Thus, the seizure having taken place on January 14, 2018, six months period was to end on July 14, 2018, however, what is significant is that a show-cause notice for confiscation of such gold came to be issued to the petitioners on July 6, 2018, however, the same was never served on the petitioners in a manner known to law.*

37. *Be that as it may, it is surprising as to how such notice to confiscate the gold jewellery could be issued, when the gold jewellery stood disposed of by the Assistant Commissioner by an order dated June 1, 2018, which was preceded by the notice dated April 4, 2018 as noted above, although all this was not to the knowledge of the petitioners. Once the gold itself was not available for confiscation, it is surprising as to what was the need and purpose for issuing such notice. This inasmuch as the confiscation of the gold jewellery in question would be required to be understood in terms of what Chapter XIV of the Customs Act would provide, which contains provisions in relation to confiscation of goods. In the said Chapter, provisions of section 124 would have significant bearing on the facts of the present case, inasmuch as section 124 provides for issuance of show-cause notice before confiscation of goods. Section 124 reads thus:*

*"124. Issue of show-cause notice before confiscation of goods, etc.*

*No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person.—*

*(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing) him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*

*(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned*

therein; and

(c) is given a reasonable opportunity of being heard in the matter:

*Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.*

*Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."*

38. On a plain reading of section 124 what would be implicit is that an order confiscating any goods or imposing any penalty can be passed only after the owner of the goods is issued a notice in terms of the said provisions, *inter alia*, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty and an opportunity of making a representation in writing is given to him within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty and a reasonable opportunity of being heard. The object of the provision making an allowance of representation is to permit such person who has been issued such notice to show cause against non-confiscation. In the event, the case of the noticee is to be accepted, the only consequence which the law would recognize would be that the confiscation of goods, subject-matter of show-cause notice, itself would be dropped. The corollary to this would be that the seized goods are required to be released to the owner. If they are not to be released, then Chapter XIV makes another provision, namely, in section 125 which provides for

"Option to pay fine in lieu of confiscation". Section 125 reads thus:

*"125. 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:*

*Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply:*

*Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

*(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.*

*(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.*

*Explanation.-For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received."*

*39. Now applying such provision to the facts of the case, the situation is quite alarming, inasmuch as, on one hand, the Assistant Commissioner had already disposed of the gold jewellery of the petitioners before the period of six months as contemplated under sub-section (2) of section 110 would come into play, that is, almost at the fag end of such period of six months would come to an end (eight days before such period would expire), the petitioners were purportedly issued a show-cause notice under section 124 as to why the gold jewellery of the petitioners ought not to be confiscated. As noted above such show-cause notice in effect was meaningless as the gold jewellery itself was not available for confiscation.*

*40. It is quite glaring that the respondents have failed to follow the*

*basic procedure, the law would recognize, namely, that knowing well that the petitioners are foreign nationals, no attempt was made to serve show-cause notice on the petitioners through the Consulate General of the Islamic Republic of Iran, when the respondents were fully aware that the petitioners were not available in India. The concerned officer nonetheless proceeded to adjudicate the show-cause notice and passed an order-in-original on January 18, 2019 without hearing the petitioners.*

*41. Be that as it may, as noted above, now the proceedings which had arisen under the show-cause notice dated July 6, 2018 issued to the petitioners have attained finality in view of the revisional authority passing an order on September 19, 2022, whereby it has been held that absolute confiscation was not justified in the present case and the petitioners be permitted to re-export the gold jewellery on payment of a redemption fine. Such order as seen from the facts as noted above is incapable of compliance, inasmuch as, the gold jewellery itself is not available for the petitioners to re-export it. This more significantly as the revisional authority having observed that this was not the case where the petitioners have attempted to smuggle the gold.*

*42. As rightly urged on behalf of the petitioners, the Assistant Commissioner who disposed of the gold never informed either the appellate authority or the revisional authority that the seized gold jewellery of the petitioners itself was not available and was disposed of. This, in our opinion, is something which raises a serious doubts on the method and manner in which the customs officers discharge their duties under the Act. In our opinion, even if there is a power to dispose of the gold, it has to be exercised fairly, reasonably and transparently. Disposal of the property belonging to the persons like the petitioners and/or to sell the seized goods at the ipse dixit of the officers, is not what the law would recognise. The procedure to dispose of such valuable commodities is required to withstand the test of law and more particularly, the Constitutional requirement of reasonableness, non-arbitrariness, fairness and transparency as enshrined under article 14 of the Constitution coupled with safeguarding the valuable rights of property recognized by the Constitution, under article 300A. It cannot be otherwise, as section 110(1A) would be required to be read, interpreted and applied only in a manner the basic law of land under the provisions of articles 14 and 300A of the Constitution of India, would permit the Department to so apply.*

*43. As noted above sub-section (1A) of section 110 cannot be read as absolute entitlement or authority with the proper officer to dispose of the items like gold in the absence of any cogent reasons,*

*which would attract the ingredients of sub-section (1A) of section 110. Such reasons as falling under sub-section (1A) are required to be intimated to the owner of the goods for the reason that ultimately the disposal of the goods would entail serious consequences of affecting the Constitutional rights of the owner of the goods guaranteed under article 300A of the Constitution, as the owner would be deprived of his property. This would be the basic requirement of law the proper officer dealing with any goods, which are merely seized and not confiscated would be required to be followed. This for the reason that prior to the goods being confiscated, rights in the goods, the corporeal ownership of the goods remain with the owner of the goods and such rights do not stand vested and/or transferred in favour of the Customs Department/Government.*

*45. It is abundantly clear from the record that the gold jewellery belonging to the petitioners was not merely disposed of but sold by the respondents, which is clear from the respondents' own showing in the reply affidavit as also compounded by a letter of the State Bank of India dated August 1, 2018. Once the property of the ownership of the petitioners was being disposed of and/or sold, in our opinion, certainly the provisions of article 300A of the Constitution would stand attracted. Article 300A of the Constitution reads thus:*

*"300A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law."*

*46. It is well-settled that the provisions of article 300A of the Constitution are available to any person including a juristic person and are not confined to only citizen, and that the illegal seizure would amount to the owner being deprived of his right of property as contained under article 300A of the Constitution of India. (See : paragraph 55 of the Dharam Dutt v. Union of India and paragraph 25 of the State of West Bengal v. Sujit Kumar Rana<sup>TM</sup>).*

*47. In the present case the gold jewellery belonging to the petitioners has been dealt, disposed of and sold in patent disregard to the basic principles of law as articles 14 and 300A of the Constitution would ordain. This apart, even the provisions of the Customs Act, which we have discussed, stand violated not only in taking away the substantial statutory rights as the law would guarantee to the petitioners, on seizure of the petitioners gold jewellery but also in the manner in which the gold jewellery has been disposed of. If such is the consequence of the actions, as taken by the respondents and the same cannot be recognized in law on*

any parameters, then the only conclusion to be reached by the court is that the disposal/sale of the gold jewellery belonging to the petitioner, is per se illegal, void, ab initio and unconstitutional. Once such action on the part of the respondents is being regarded as a brazen illegality, the mandate of law would be to restore to status quo ante which is the legitimate corollary to remedy such illegality. The legal principle in this regard can be discussed.

48. In *State of Gujarat v. Memon Mahomed Haji Hasam*- involved an issue in regard to illegal seizure of the vehicles as belonging to the respondents therein, leading to an order of confiscation being finally set aside and a claim for return of the vehicles being made. It so transpired that the vehicles were sold and the amounts were paid to the creditors of the respondents. It is in such context the Supreme Court observed that the order of confiscation was not the final order and was subject to appeal/further proceedings and if the appellate authority found that there was no good ground for exercising of power of confiscation, the property could no longer be retained under the Act and was required to be returned to the owner, which was the statutory obligation to return the property. It was held that there was a legal obligation to preserve the property in tact, also an obligation to take reasonable care of the same so as to enable the property to be returned in the same condition in which it was seized. It was held that the respondent was entitled to return of the property or to the value of the property. The observations of the Supreme Court in such context are required to be noted, which read thus:

"6. There can, therefore, be bailment and the relationship of a bailor and a bailee in respect of specific property without there being an enforceable contract. Nor is consent indispensable for such a relationship to arise. A finder of goods of another has been held to be a bailee in certain circumstances.

7. On the facts of the present case, the State Government no doubt seized the said vehicles pursuant to the power under the Customs Act. But the power to seize and confiscate was dependent upon a customs offence having been committed or a suspicion that such offence had been committed. The order of the customs officer was not final as it was subject to an appeal and if the appellate authority found that there was no good ground for the exercise of that power, the property could no longer be retained and had under the Act to be returned to the owner. That being the position and the property being liable to be returned there was not only a

*statutory obligation to return but until the order of confiscation became final an implied obligation to preserve the property intact and for that purpose to take such care of it as a reasonable person in like circumstances is expected to take. Just as a finder of property has to return it when its owner is found and demands it, so the State Government was bound to return the said vehicles once it was found that the seizure and confiscation were not sustainable. There being thus a legal obligation to preserve the property intact and also the obligation to take reasonable care of it so as to enable the Government to return it in the same condition in which it was seized, the position of the State Government until the order became final would be that of a bailee. If that is the correct position once the Revenue Tribunal set aside the order of the customs officer and the Government became liable to return the goods the owner had the right either to demand the property seized or its value, if, in the meantime the State Government had precluded itself from returning the property either by its own act or that of its agents or servants. This was precisely the cause of action on which the respondent's suit was grounded. The fact that an order for its disposal was passed by a Magistrate would not in any way interfere with or wipe away the right of the owner to demand the return of the property or the obligation of the Government to return it. The order of disposal in any event was obtained on a false representation that the property was an unclaimed property. Even if the Government cannot be said to be in the position of a bailee, it was in any case bound to return the said property by reason of its statutory obligation or to pay its value if it had disabled itself from returning it either by its own act or by any act of its agents and servants. In these circumstances, it is difficult to appreciate how the contention that the State Government is not liable for any tortious act of its servants can possibly arise. The decisions in State of Rajasthan v. Mst. Vidhyawati and Kasturi Lal v. State of U.P.<sup>4</sup>, to which Mr. Dhebar drew our attention, have no relevance in view of the pleadings of the parties and the cause of action on which the respondent's suit was based."*

49. In "*Union of India v. Shambhunath Karmakar*"<sup>15</sup> the Division Bench of the Calcutta High Court on a plea of the respondents therein for return of the gold ornaments, which were seized from

*them which were forwarded for melting, it was observed that the owner of the goods was entitled to claim damages for disposal of the seized gold. It was observed that the cause of action for return of the gold accrued on the date the confiscation order was set aside and the owner became entitled to obtain return of the seized gold. It was observed that the seized gold was not sold to a third party for value and that if the seized gold has been forwarded for melting to the Government of India, it really amounted to appropriation of the gold by another Department of the Government. It was also observed that if the gold and gold ornaments were melted, the same resulted only in the change of form. The court observed the Government would continue to hold the melted gold in some form or other and therefore, the Government was bound to return the said gold or the value. It was also observed that at the time when the confiscation order was set aside, both in equity and law status quo ante prior to the passing of the confiscation order ought to be restored.*

*50. In Zhinet Banu Nazir Dadany a Division Bench of the Delhi High Court was dealing with a similar situation, as in the present case, wherein the gold as seized by the respondent was disposed of when the same was neither perishable nor hazardous. In such context, the Division Bench held that the gold could not have been hurriedly disposed of and in the absence of a show-cause notice being served or the petitioners. It was held that there was no reason to proceed to the disposal of the seized gold without notice, and that too without passing any order on adjudication and accordingly set aside the seizure of the gold with a direction that the proceeds which were collected in the auction which were equal to the value of the gold ought to be refunded to the petitioner with interest. The relevant observations of the court in paragraphs 22 and 23 which reads thus:*

*22. There is no explanation offered by the respondents as to why they were constrained to dispose of the seized gold, when it was neither perishable nor hazardous. Also, there is no answer why it had to be disposed of without notice being issued to the person from whom it was seized. This irrespective of whether the SCN was served or not. The SBEC has issued a circular dated February 14, 2006 in this regard where it was impressed upon the field formations as under:*

*'An instance has recently been brought to the notice of the Board where seized goods were disposed of without issuing notice to the owner of the goods. The seizure having been set aside by*

*the adjudicating authority, the owner of the goods sought their return but was advised to obtain the sale proceeds, which were significantly lower than the seizure value. In subsequent proceedings, the High Court has directed the refund of an amount higher than the sale proceeds, as well as payment of interest. The loss of the exchequer has resulted from a failure to comply with the requirements of section 150 of the Customs Act, 1962.*

*2. It is impressed upon field formations that where any goods, not being confiscated goods, are to be sold under any provision of the Customs Act, they shall be sold by public auction or by tender or in any other manner after notice to the owner of the goods.*

*3. It is further clarified that the requirement to issue notice to the owner of the goods shall also obtain in case of goods that have been confiscated but in respect of which all appeal/legal remedies have not been exhausted by the owner of the goods.'*

*23. In the present case with the seized material not being perishable, being gold bars there was no reason for the respondents to have hurriedly disposed it off and that too without notice to the petitioner. When it was plain that even the SCN was not served upon the petitioner, there was no reason to proceed with disposal of the seized gold without notice. It also appears that the respondents hurriedly went ahead and passed an adjudication order more than four years after the gold was seized only after the present petition was filed.."*

*51. In our opinion, the petitioners would also be correct in contending that the impugned action of the respondents in the present case was in the teeth of the CBEC instructions dated February 14, 2006. The relevant extract as relied on behalf of the petitioners reads thus:*

*"8. As per CBEC instructions vide letter F. No. 711/4/2006-Cus.*

*(AS), dated February 14, 2006, before selling the goods notice must be given to the owner/importer. The text of the circular is reproduced herewith—*

*As instance has recently been brought to the notice of*

*the Board where seized goods were disposed of without issuing notice to the owner of the goods. The seizure having been set aside by the adjudicating authority, the owner of the goods sought their return but was advised to obtain the sale proceeds, which were significantly lower than the seizure value. In subsequent proceedings, the High Court has directed the refund of an amount higher than the sale proceeds, as well as payment of interest. The*

*loss to the exchequer has resulted from a failure to comply with the requirements of section 150 of the Customs Act, 1962.*

*It is impressed upon filed formations that where any goods, not being confiscated goods, are to be sold under any provision of the Customs Act, they shall be sold by public auction or by tender or in*

*any other manner after notice to the owner of the goods.*

*It is further clarified that the requirement to issue notice to the owner of the goods shall also obtain in case of goods that have been confiscated but in respect of which all appeal/legal remedies have not been exhausted by the owner of the goods."*

***52. We are also of the opinion that the concerned officer of the respondents in the present case has completely overlooked that the gold jewellery in question was sold/disposed of at the stage of the seizure, in fact, prior to the issuance of a show-cause notice under section 124 of the Customs Act, being issued to the petitioners, much less prior to any order of confiscation being passed, which came to be passed on January 18, 2019. Such order was certainly subjected to an appeal as per the provisions of section 128 of the Customs Act, before the appellate authority and thereafter, a revision being maintainable under the provisions of section 129DD before the Central Government. It was thus an obligation on the concerned Customs officials as conferred by law to preserve the gold jewellery belonging to the petitioner unless the circumstances for justified reasons or otherwise were against preservation of the said goods that for no reason whatsoever the goods ought not to be preserved, till the proceedings attain finality. In the present case there are none.***

***53. We may also sound a note of caution that it would be travesty of justice, as also a patent illegality if in the teeth of the well-settled principle of law and constitutional provisions conferring right to***

*property, any authority being conferred on the Customs officials purportedly under section 110 to dispose of the seized goods, can be recognized, merely because the goods are seized under the Customs Act. The Customs official without recording cogent and acceptable reasons and without a prior notice being issued to the owner of the goods or the persons from whom the goods are seized, would not wield a power/authority to sell and/or dispose of the seized goods, and more particularly, valuable items like gold. Such unbridled power cannot be recognized under the provisions of section 110 of the Customs Act, and if any action contrary to the legitimate principles of law as applicable and discussed by us hereinabove, is sought to be taken, the same would be rendered illegal.*

*54. In other words, the scheme as envisaged under section 110 cannot be read to mean that mere seizure of the gold by the customs officer can be construed to confer any power, authority to sell the goods without following the due procedure in law namely of a prior notice of hearing being granted to the owner of the goods, or to the person from whom the goods are seized, when the property of the ownership of a person is sought to be deprived to him by sale or disposal of the goods. It would be fallacious to read into the scheme of section 110(1) read with (1A) to (1D) any power to be exercised by the Customs officials which is not based on cogent reasons and which can be exercised without due procedure being not followed, apart from such action satisfying the test of lack of any illegal motives, non-arbitrariness, reasonableness and fairness, on the part of the Customs Officials.*

*55. In the present case, it is difficult to imagine as to what could be the reason for the customs officers to dispose of the goods hurriedly and with such lightening speed and by throwing to the wind the norms of fairness and reasonableness. This is not acceptable even from the reading of the provisions of section 110. Any reading of section 110 otherwise than what has been discussed above, would amount to foisting draconian, reckless and/or unfettered authority on the customs officers conferring a licence to commit illegality. In fact the recognition of any such power with the customs officers would lead to an anomalous situation of the substantive provisions and procedure for confiscation and the appellate/revisional remedy being rendered meaningless, only to be realized that any order for return of property at any stage of such proceedings, would merely remain a paper order, impossible of implementation/execution. Thus, such substantive provisions of the Customs Act cannot be rendered nugatory, by recognizing unguided and unfettered powers being conferred under section 110 on the customs officers, to dispose of the seized property, till the*

*orders of any confiscation attains finality, unless there are strong reasons which would justify any such action when tested on such constitutional and legal parameters, and that too on the satisfaction of the officers to be reached only after hearing the owner of the property.*

*58. In the light of the above discussion, interest of justice would require that the petition be allowed by granting the following reliefs to the petitioners:*

*Order*

*(i) It is declared that the action on the part of the Assistant Commissioner of Customs in disposing of/selling the gold jewellery belonging to the petitioners subject-matter of the present proceedings, is illegal and unconstitutional.*

*(ii) The respondents are directed, to restore to the petitioners, equivalent amount of gold namely 1028 gms. and/or to compensate the petitioners by making payment of amounts equivalent to the market value of the said gold, as on date.*

*(iii) The above directions be complied by the respondents within a period of three weeks from today.*

*(iv) In the event the petitioners are granted payment of the amounts as directed in (iii) above, the amount of redemption fine and penalty as directed by the Revisional Authority in its order, be deducted.*

*59. The petition is accordingly, disposed of in the above terms. No costs."*

**(Emphasis supplied)**

25. In the present case, the Petitioner had sought to redeem the gold pursuant to the order of the Revisional Authority giving them an option to redeem the confiscated goods on paying a redemption fine and penalty. However, in facts of the present case the very basis of confiscation and seizure of the gold jewellery itself is bad in law and made without following the due process of law. Hence the Petitioner is entitled to the value of the gold jewellery as per the present market value. Further, in the facts of the present case, the Revisional Authority has ordered the re-export of the gold jewellery when the same is itself not available for re-

export. For such reason, we are not persuaded to accept the Revenue's contention that the petitioner be granted the value of the gold as on the date of seizure. This would be contrary to the decision of the Division Bench in Leyla Mahmoodi and Anr. Vs. Additional Commissioner of Customs and Ors. (supra), which is accepted by the Respondents. It is for such reason, we do not accept the Revenue's contention relying on the decision in the case of Division Bench in **Ramesh Shamji Patel Vs. Union of India (O.S. Writ Petition (L) No. 23037 of 2024)**, the fact of the said case being totally different wherein the Petitioner had written to the authorities to redeem the gold and therefore there was no challenge to the confiscation or seizure of the gold.

26. Further the contention of the Respondent that the Petitioner has not disclosed in the Petition that he had filed the refund application on 12<sup>th</sup> July 2021 and has hence suppressed facts from this Court would not be completely correct inasmuch as in the affidavit-in-rejoinder filed by the Petitioner, the Petitioner has averred that his refund application was processed and allowed on 8<sup>th</sup> January 2024. Further, this contention of the Respondent would not help them to advance their case further, as the very premise of confiscation is bad in law.

27. In so far as the judgments relied upon by the Respondents are concerned, the same are not apposite to the facts of the case, inasmuch as the Petitioner had prayed for the re-export of the gold jewellery on the ground that the same was meant for personal use and not liable for confiscation. In fact, when the gold jewellery was confiscated from the Petitioner the detention memo was issued under Section 80 of the Act, is the case of the Petitioner. Hence, the confiscation of

the said gold jewellery without following the provisions of law is itself bad in law. Therefore, the contention of the Respondent that the Petitioner cannot approbate and reprobate deserves to be rejected, as also the decisions relied upon by the Respondents in such context will not assist the Respondents.

28. In the light of the above discussion, it is eminently in interest of justice that the Petition be allowed in terms of the following order:-

**Order**

- i. It is declared that the action on the part of the Office of the Pr. Commissioner of Customs (Airport) in disposing of/selling the gold jewellery belonging to the Petitioner in the present proceedings, is illegal and unconstitutional.
- ii. The Respondents are directed, to restore to the Petitioner, the equivalent amount of gold namely 373.700 grams. and/or to compensate the Petitioner by making payment of amounts equivalent to the market value of the said gold, as on date.
- iii. The above directions be complied by the Respondents within a period of three weeks from today.
- iv. The petition is accordingly disposed of in the above terms. No Costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)