

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 30206 of 2024

(Arising out of **Order-in-Appeal** No.HYD-CUS-HYC-APP-178-23-24 (APP 1) dated
18.01.2024 passed by Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

Mr. R.K. Digital Solutions

101/B, Eldo Rado Estates,
3-6-526, Opp: Hotel Minerva,
Himayatnagar,
Hyderabad,
Telangana – 500 029.

..

APPELLANT

VERSUS

**Commissioner of Central Tax
Hyderabad – GST**

Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

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RESPONDENT

APPEARANCE:

Shri Kishore Kunal, Advocate for the Appellant.

Shri A. Rangadham, Authorized Representative for the Respondent.

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30526/2025

Date of Hearing: 11.09.2025

Date of Decision: 28.11.2025

[ORDER PER: ANGAD PRASAD]

M/s R.K. Digital Solutions (hereinafter referred to as appellant) have filed present appeal under Section 129A of the Customs Act 1962 against the Order-in-Appeal No. HYD-CUS-HYC-APP-178-23-24(APP 1) dated 18.01.2024 passed by Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

2. The facts, in brief, are that the appellant is a partnership firm based out of Hyderabad, inter alia, engaged in the import and export of gold jewellery and holds the Importer Exporter Code. In the usual course of business, the appellant imported consignment of 250 numbers of gold pendants that are oval shaped of 99.99% purity, each weighing 20 grams, in

all totalling to 5 kgs, valued about Rs. 2,15,60,883.27/- from a manufacture in Indonesia vide Bill of Entry No. 3892849 dated 10.05.2021 and classified them under CTH 7113 1910. The impugned goods, being covered under the ASEAN-India Foreign Trade Agreement (FTA) at Sl. No. 966 of Notification No. 46/2011-Cus dated 01.06.2011 which was further amended vide Notification No. 82/2018-Cus dated 31.12.2018, the appellant claimed exemption from payment of customs duty since the goods imported were of Indonesian origin and covered under FTA, as notified by the above notification. Thereafter, all documents including survey report and the pre-export verification report issued by the surveyor of the Country of Origin of goods, namely, Republic of Indonesia were submitted along with uploading of Form-1 on 17.05.2021 as per Customs (Administration of Rules of Origin under Trade Agreement) Rules, 2020 to claim the benefit. The imported goods were not released by the Department.

3. Appellant had filed a Writ Petition No. 12802 of 2021 before the Hon'ble Telangana High Court. In this regard, on 14.06.2021 a letter was issued by the Directorate General of Foreign Trade (DGFT) clarifying that import of goods under CTH 7113 19 'of other precious metal, whether or not plated' is under the 'free' category. The Hon'ble High Court by ad-interim order, in view of clarification dated 14.06.2021 issued by the DGFT, directed to release the impugned goods on furnishing a bond equivalent to the concessional customs duty. Thereafter, pursuant to an application for modification of the said order, detailed arguments were made by the Department on the merits before the Hon'ble High Court, the Hon'ble High Court on 26.08.2021 passed Final Order holding that the impugned goods are rightly classified under CTH 7113 1910 and thus, allowed to be released.

4. The Department filed a Special Leave Petition before Hon'ble Supreme Court and Hon'ble Supreme Court by order dated 21.10.2021 issued interim directions, inter alia, permitting the Department to conclude investigations expeditiously within a period of 4 weeks and deferred the matter for hearing.

5. A Show Cause Notice O.R. No. 387/2021-adjn. Cus (ADC) dated 12.11.2021 was issued against the appellant in pursuance to the liberty granted by Hon'ble Supreme Court. The appellant filed their reply dated 18.11.2021. Thereafter, without considering the submissions and documentary evidence on record, the Order-in-Original O.R. No. 387/2021-Adjn. Cus (ADC) dated 23.12.2021 was passed by Learned Additional Commissioner of Customs, Hyderabad confirming the proposal of the SCN.

6. The Hon'ble Supreme Court on 16.09.2022 directed to pursue the legal remedy of appeal before Appellate Authority and to this extent, the Hon'ble High Court's order dated 26.08.2021 was set aside.

7. The appellant filed an appeal before the Appellate Authority by explaining the delay, due to litigation before the Hon'ble High Court & Hon'ble Supreme Court, but earlier appeal was dismissed solely on the grounds of limitation. Thereafter, the appellant has filed an appeal before this Tribunal and the Tribunal had directed to hear the case on merits based on evidences and submissions. But the Learned Commissioner did not consider the evidences and submissions properly and rejected the appeal by impugned order.

8. Aggrieved by the decision of the Appellate Authority, the appellant has filed the present appeal before this Tribunal.

9. Learned Counsel for the appellant submits that the impugned order has reclassified the impugned goods, i.e., gold pendants, under CTH 7108

1300 and rejected the classification under CTH 7113 1910 on the basis of the statement of Government approved valuer, their reports etc. The classification of imported goods can only be determined according to the terms of the headings and any relevant section or chapter notes in the Customs Import Tariff. However, instead of determining the classification according to the terms of the heading of the Customs tariff, the impugned order based on some statements re-determined the classification.

10. Learned Counsel for the appellant submits that they have classified the impugned goods under CTH 7113 1910, i.e., 'of precious metal, whether or not plated or clad with precious metal' as against the classification upheld by the Appellate Authority under CTH 7108 1300, i.e., 'gold in other semi-manufactured form'. The classification adopted by the appellant is consistent with past practices, prevalent market practices as well as COO certificate issued by the competent authority in terms of the FTA. The Learned Commissioner, rejected the said classification solely on the assumption that gold jewellery cannot be of 99.99% purity. The assumption is neither borne out from Chapter Notes nor based on any technical evidence.

11. Learned Counsel for the appellant submits that the Chapter Notes of the Customs Tariff, which especially classifies "pendants" as objects of personal adornment covered within the expression "articles of jewellery". CTH 7113, as per the Customs Tariff, covers articles of jewellery of precious metals. Further, CTH 7113 1910 covers articles of gold which are unstudded. In this regard, Learned Counsel for the appellant cited Chapter Notes 9 to Chapter 71 reads as follows:

- 9. For the purposes of heading 7113, the expression "articles of jewellery" means:
 - (a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia); and

- (b) Articles of personal use of a kind normally carried in the pocket, in the handbag or on the person (for example, cigar or cigarette cases, snuff boxes, cachou or pill boxes, powder boxes, chain purses or prayer beads).
- These articles may be combined or set, for example, with natural or cultured pearls, precious or semiprecious stones, synthetic or reconstructed precious or semiprecious stones, tortoise shell, mother-of-pearl, ivory, natural or reconstituted amber, jet or coral.

12. Learned Counsel for the appellant also submits that the HSN Explanatory Notes, Heading 71.13 includes 'Articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal' which covers articles of jewellery as defined in Note 9 to HSN for Chapter 71. He further submits that the impugned goods were described as pendants in the Bill of Entries as well as in the COO certificate issued under the FTA without any evidence and on assumption that 99.99% purity is not possible in pendants and disputing the classification by travelling beyond the customs tariff and the HSN is not legally permissible. He submits that as per Oxford dictionary pendant is defined as "the piece of jewellery that hangs from a chain worn round the neck" and as per Merriam Webster, a pendant is defined as "an ornament (as on a necklace) allowed to hang free". Thus, a pendant is a piece of jewellery which hangs and can be worn.

13. Learned Counsel for the appellant submits that impugned goods are oval in shape and have a hook on top. The oval shaped articles have inscription of flower and symbol on one side and are capable of being hung.

14. Learned Counsel for the appellant submits that Department's contention that impugned goods are classifiable under 7108 and not under 7113 is not correct as the goods are not incomplete or unfinished jewellery and moreover, even if it is considered as incomplete or unfinished it will still be considered under 7113 as per explanatory note. Thus, even assuming but

not admitting that it is semi-finished or incomplete jewellery, it would still be classifiable under 7113.

15. Learned Counsel for the appellant relied on Vishnu Narain and others Vs CCE, Kanpur [1987 (31) ELT 813 (Tribunal)], in which, it was held that the gold mohars and habib coins are in fully finished form with design and inscription on both sides and therefore, cannot fall within the definition of 'primary gold'. The subject pendants are in finished form, the same could not be classified under sub-chapter I & II, and necessarily fall under sub-chapter III which covers CTH 7113. The Department relied on notification no. 36/2019 dated 18.12.2019 issued by the DGFT to allege that the goods are restricted for import and thus are absolutely confiscated. He further submits that in this regard that the notification 36 to amend the import policy of goods falling under Chapter 71 is restricted to Exim Codes 7106 1000, 7106 9100, 7106 9210, 7106 9290, 7108 1100, 7108 1200, 7108 1300 and 7118 9000 and changed policy condition from 'free' to 'restricted' and import through nominated agencies. The DGFT itself has issued a policy Notification No. 36/2019 dated 18.12.2019, wherein, it was stated that restrictions can be imposed tariff heading wise. Thus, Notification No. 36 dated 18.12.2019 cannot be read to be made applicable to all tariff headings. Notification No. 22 dated 02.09.2021, which seeks to impose restriction on 'gold in any form' cannot apply to the present case given that the import was made on 10.05.2021 and in view of the Hon'ble Supreme Court judgment in the case of DGFT Vs Kanak Exports [2015 (326) ELT 26 (SC)], it is a settled law that notification imposing restriction cannot be retrospective.

16. Learned Counsel for the appellant also submits that the DGFT itself in their clarification letter dated 14.06.2021 has specifically stated that there are no restrictions on gold imported under CTH 7113. Therefore, in the

absence of any restriction as on the date of import, as held by the Hon'ble CESTAT in the case of Abans Jewels Pvt Ltd., [2022 (4) TMI 1370 - CESTAT] as well as Atul Commodities Vs CC, Cochin [2009 (235) ELT 385 (SC)] , the proposal for confiscation cannot be sustained.

17. Learned Counsel for the appellant submits that the Tribunal, Delhi Bench in the case of Interglobe Aviation Ltd., Vs CC, New Delhi [2024 (23) CENTEX 81 (Tri-Delhi)], held that a provision is said to be clarificatory if a consideration of the meaning of the provision to which the explanation has been added when compared to the meaning given by the added explanation remains the same. However, if the meaning changes, it cannot be said to be clarificatory in nature. If the explanation is clarificatory in nature, it may be given retrospective option, but if it changes the law and alters or widens the scope of the main provision, it cannot be given retrospective effect.

18. Learned Counsel for the appellant also submits that Notification No. 19/2023 dated 12.07.2023 amended the import policy of certain items under CTH 7113 from 'free' to 'restricted'. The import under CTH 7113 became restricted only with effect from 12.07.2023. If such goods were already restricted under Notification No. 36, there would have been no occasion to issue Notification No. 19 again specifically imposing restriction goods falling under CTH 7113. Accordingly, the articles under CTH 7113 were not covered by Notification No. 36 on the date of import.

19. Learned Counsel for the appellant also submits that in the case of Kanak Exports, supra, it was held that DGFT does not have the power to formulate policy under Section 5 as Section 6(3) of the Foreign Trade (Development and Regulation) Act, 1992 does not delegate power to formulate policy under Section 5 to the DGFT. Section 5 does not empower the Central Government to amend the policy retrospectively. Thus, the

amendment in the Notification No. 36 was clarificatory and cannot be implemented retrospectively.

20. Learned Counsel for the appellant also submits that the imposition of such restrictions amount to imposing non-tariff barriers in violation of the Indo-ASEAN FTA. Such non-tariff barriers are completely illegal and cannot be sustained as laid down by the judgment of Hon'ble Supreme Court in the case of Commissioner of Customs, Bangalore Vs GM exports [2015 (324) ELT 2009 (SC)].

22. Learned Counsel for the appellant also submits that the appellant was bonafide, therefore, penalty is not sustainable. The demand pertaining to confiscation is not sustainable, consequently, no penalty imposable. Since the imported goods were imported in compliance with the notification and import policies in existence at the time of import, impugned order is not sustainable.

22. Learned AR has more or less reiterated the findings of the Lower Authorities and also submitted that jewelleryes cannot be made in 24 carot generally. The appellant has brought prohibited gold. He relied on the following judgments:

- i) S. Sundaram Pillai & Ors Vs V.R. Pattabiraman & Ors
[Manu/SC/0387/1985]
- ii) Pr. Commissioner of Income Tax Vs Lokesh Handa
[Manu/JK/0440/2017]

23. We have heard the articulate and detailed arguments of the Learned Counsel for the appellant Shri Kishore Kunal as well as Learned AR for the Department Shri A. Rangadham and have considered the impugned order

along with the submissions made in appeal and during the course of arguments.

24. The main issue is, whether the subject goods are classifiable under CTH 7108 1300 as decided by Lower Authorities or under CTH 7113 1910 as declared by the appellant.

25. According to the appellant, the appellant imported consignment of 250 numbers of gold pendants which are oval shaped and of 99.99% purity, each weighing 20 gms, in all totalling to 5 Kgs, valued about Rs. 2,15,60,883.27/- from a manufacture in Indonesia vide Bill of Entry No. 3892849 dated 10.05.2021 and classified them under CTH 7113 1910. The subject goods, being covered under the ASEAN-India Foreign Trade Agreement (FTA) under Notification No. 46/2011 dated 01.06.2011 which was further amended vide Notification No. 82/2018-Cus dated 21.12.2018, the appellant claimed exemption from payment of customs duty since the goods imported were of Indonesian origin covered under FTA. Whereas, the Department is of the view that the subject goods are not jewellery or part of jewellery merely because the same were declared as 'Gold Jewellery – Gold Pendants'. According to the Department, the subject goods are items of 24 Kt purity, especially in the form of pendants, are uncommon due to practical constraints and market preferences, based on which the Department came to conclusion that the subject goods are not used as pendants as such and the goods are for the purpose of investment or manufacturing by melting them.

26. The Customs Tariff Heading (CTH) 7108 & 7113 has been described as follows:

7108

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
7108	Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form			
	- Non-monetary			
7108 11 00	-- Powder	Kg	10%	-
7108 12 00	--Other unwrought forms	Kg	10%	-
7108 13 00	--Other semi-manufactured forms	Kg	10%	-
7108 20 00	--Monetary	Kg	10%	-

7113

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
7113	Articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal			
	- Of precious metal whether or not plated or clad with precious metal:			
7113 11	- Of silver, whether or not plated or clad with other precious metal			
7113 11 10	- Jewellery with filigree work	Kg	[\$15%]	-
7113 11 20	--- Jewellery studded with gems	Kg	[\$15%]	-
7113 11 30	--- Other articles of jewellery	Kg	[\$15%]	-
7113 11 90	--- Parts	Kg	[\$15%]	-
7113 19	--- Of other precious metal, whether or not plated or clad with precious metal	Kg	[\$15%]	-
	--- Of gold, unstudded	Kg	[\$15%]	-
7113 19 20	--- Of gold, set with pearls	Kg	[\$15%]	-
7113 19 30	--- Of gold, set with diamonds	Kg	[\$15%]	-
7113 19 40	--- Of gold, set with other precious and semi-precious stones	Kg	[\$15%]	-
7113 19 50	--- Of platinum, unstudded	Kg	[\$15%]	-
7113 19 60	--- Parts	Kg	[\$15%]	-
7113 19 90	---Other	Kg	[\$15%]	-
7113 20 00	- Of base metal clad with precious metal	Kg	[\$15%]	-

27. Note 9 of Chapter 71 described the expression “articles of jewellery” as thus:

- 9. For the purposes of heading 7113, the expression "articles of jewelry" means:

- (a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia); and
- (b) Articles of personal use of a kind normally carried in the pocket, in the handbag or on the person (for example, cigar or cigarette cases, snuff boxes, cachou or pill boxes, powder boxes, chain purses or prayer beads).

These articles may be combined or set, for example, with natural or cultured pearls, precious or semiprecious stones, synthetic or reconstructed precious or semiprecious stones, tortoise shell, mother-of-pearl, ivory, natural or reconstituted amber, jet or coral.

28. Classification of goods is governed by General Rules for Interpretation

Rule 1 to 3 are relevant for this purpose which is thus:

1. The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions :

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

3. When by application of Rule 2 (b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows :

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to

3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

29. Accordingly, first rule provides that the classification shall be determined according to the terms of the headings. Rule second provides that if classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3 & Rule 3 provides that the heading which provides the most specific description shall be preferred to headings.

30. Hon'ble Supreme Court in the case of CCE, Salem Vs Madhan Agro Industries (India) Pvt Ltd., [2024 (25) CENTEX 269 (SC)] held that the common parlance test cannot be brought into play when there is no ambiguity and no ambiguity in the clear heading in the First Schedule and the corresponding entry in the HSN.

31. Learned AR argued that subject goods are related to 24 Kt, generally jewellery are not made of 24 Kt., whereas, Learned Counsel for the appellant submits that in the open market, there so many pendants are available with 99.99% purity gold and are being widely bought and sold. Photographs of the pendants sold by some companies like Kundan, Amazon and Anjali Gold have been submitted by the appellant, which are shown as follows:

Pictures of Goods available on various E-commerce Portals



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By these photographs, it is clear that pendants of 24 Kt are also available in open market. Anyone can purchase and sale of 24 Kt gold pendants.

Therefore, argument of Learned AR is not acceptable and only this ground alone, it cannot be said that the pendants are not eligible to be classified under CTH 7113 1910.

32. CTH 7108 described goods as 'Gold (including gold plated with platinum) unwrought or in semi-finished forms or in powder form'. This heading covers the various unwrought, semi-manufactured or powder form of gold or gold alloys. Whereas, subject goods/pendants are in finished condition. Hon'ble Madras High Court in the case of Jewels Magnum Vs Development Commissioner, MEPZ-SEZ, Chennai [2017 (349) ELT 214 (Mad)] defined the pendant as a piece of jewellery. The relevant para of the judgement as thus:

20. The learned counsel for the petitioner also brought to the notice of this Court a letter dated 12-3-2014 addressed by the Customs Department to the Assistant Development Commissioner of MEPZ, SEZ. In the letter dated 12-3-2014, it was stated as follows :-

“As per the Oxford Dictionary, the term ‘pendant’ is described as a piece of jewellery that hangs from a chain worn round the neck and the medallion is a piece of jewellery in the shape of a medal, worn as a pendant. The description of these items by the Oxford English Dictionary substantiates the inclusiveness of medallions under the term pendants. It appears that medallions are also pendants in round shape. Hence, there does not appear to be any violation of LoA.”

33. The imported goods are oval in shape and equipped with a hook to enable insertion of chain for the purpose of wearing around the neck. Therefore, the goods are finished goods/jewellery as requires under CTH 7113.

34. The subject goods have been confiscated under Notification No. 36/2019 dated 18.12.2019 issued by the DGFT to allege that the goods are restricted for import. Whereas, appellant has stated that the said notification restricted to import the goods falling under Chapter 71 Exim Codes 7106 1000, 7106 9100, 7106 9210, 7106 9290, 7108 1100, 7108 1200, 7108 1300 and 7118 9000. The notification does not cover the goods which are falling under

Chapter 7113 1910. Notification No. 36/2019 dated 18.12.2019 is reproduced below for ready reference:

Section (II)

Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade

Notification No. 36/2015-2020
New Delhi, Dated: 18 December, 2019

Subject: Amendment in import policy conditions of gold and silver under Chapter 71 of ITC (HS), 2017, Schedule – I (Import Policy).

S.O. (E): In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the import policy with conditions of gold in any form, other than monetary gold and silver in any form under Chapter 71 of ITC (HS), 2017, Schedule – I (Import Policy).

Exim Code	Item Description	Present Policy	Revised Policy	Existing Policy Condition	Revised Policy Condition
71061000	Powder	Free	Restricted	Subject to RBI Regulations	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).
71069100	Unwrought	Free	Restricted	Subject to RBI Regulations	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies). Silver dore can be imported by refineries against a licence with AU condition
71069210	Sheets, plates, strips, tubes and pipes	Free	Restricted	Subject to RBI Regulations	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).
71069290	Other	Free	Restricted	Subject to RBI Regulations	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).
71081100	Powder	Free	Restricted	Subject to RBI Regulations	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).

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71081200	Other unwrought forms	Free	Restricted	Subject to RBI Regulations. However, import policy of Gold Dore is "Restricted".	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies). Gold dore can be imported by refineries against a licence with AU condition
71081300	Other semi-manufactured forms	Free	Restricted	Subject to RBI Regulations	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).
71189000	Other	Free	Restricted	Subject to RBI Regulations	Import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies).

2. Import of gold under Advance Authorisation and supply of gold directly by foreign buyers to exporters under para 4.45 of FTP against export orders are exempted from the amended provisions.

Effect of the Notification: Import policy of gold in any form, other than monetary gold and silver in any form, is amended from 'Free' to 'Restricted'; import is allowed only through nominated agencies as notified by RBI (in case of banks) and DGFT (for other agencies). **However, Import under Advance Authorisation and supply of gold directly by the foreign buyers to exporters under para 4.45 of FTP against export orders are exempted.**

This issues with the approval of Minister of Commerce & Industry.

35. Thus, it is clear that at that time of import the subject goods related to CTH 7113 1910 were not included in it. DGFT itself in the clarificatory letter dated 14.06.2021 has specifically stated that there are no restrictions on the goods imported under CTH 7113. Clarification letter dated 14.06.2021 is as follows:

Subject: Customs – Import of Gold Jewellery viz. Gold Pendant under CTH 71131910 by M/s R.K. Digital Solutions, Hyderabad-regarding

Sir

This has reference to your letter C.No.ACC/ASST/BE/Misc/206/2021 dated 04.06.2021 on the above mentioned subject.

2. The matter has been examined. It is clarified that the effect of Notification No. 36 dated 18th December, 2019 i.e. import policy of gold in any form is amended from "free" to "restricted", is applicable only on the tariff sub-headings of HS Code 7108 (Gold Unwrought or in Semi – Manufactured forms, or in powder form) as mentioned in

the table of the said notification. It is also clarified that import policy of items under HS Code 7113 19- Of other precious metal, whether or not plated is "free".

3. This issues with the approval of competent authority.

36. As per clarification issued by DGFT, the subject goods were not restricted. Hon'ble Supreme Court in the case of Atul Commodities Pvt Ltd., Vs CC, Cochin [2009 (235) ELT 385 (SC)] held as follows:

17. Under para 2.3 of the FTP (2004-09) DGFT is empowered to interpret the Policy. If any doubt or question arises in respect of interpretation of any provision in FTP or in the matter of classification of any item in the ITC (HS) or in the Handbook, the said question or doubt shall be referred to the DGFT, whose decision thereon shall be final and binding.

The DGFT clarified vide letter dated 14.06.2021 that there are no restrictions on the goods imported under CTH 7113. The Department cannot go beyond clarification as per Hon'ble Supreme Court's decision.

37. As per Department, by subsequent Notification No. 22/2015-2021 dated 02.09.2021 an explanation in Notification No. 36/2019 dated 18.12.2019 was inserted to provide that "Expression, Gold in any form" includes gold in any form above 22 carats under Chapter 71 of ITC (HS) 2017, Schedule-I (Import Policy). Such import can be made only by nominated agencies as notified by RBI (in case of banks) and DGFT (in case of others). The same is clarificatory in nature, issued with a view to bringout the legislature's intent clearly and hence, the same has retrospective effect. The subject goods had been imported on 10.05.2021 and Notification No. 22/2021 has been issued on 02.09.2021 thereafter.

38. Hon'ble Karnataka High Court, in the case of CC, Bangalore Vs SRI Exports [2021 (375) ELT 169 (Kar)] held that items imported on 03.07.2017 and 21.09.2017, restriction on import imposed vide DGFT Notification dated 24.08.2019 and 18.12.2019 respectively. Hence, items were freely importable on the date of import and same brought under restricted

category. Therefore, the notification is inapplicable in the factual matrix. The relevant paras of the judgment are reproduced below:

6. We have considered the submissions made by Learned Counsel for the parties and have perused the record. The Foreign Trade (Development and Regulation) Act, 1992 is an Act to provide for development and regulation of foreign trade by facilitating imports into, and augmenting exports from, India and for matters connected therewith or incidental thereto. Section 3 of the Act deals with Powers of the Central Government to make provisions relating to imports and exports. Section 3(2) empowers the Central Government to make a provision for prohibiting, restricting or otherwise regulating, in all cases or in a specific class of clauses and subject to such exceptions, if any, as may be made by or under the order the import or export of goods or services of technology, by an order published in the Official Gazette. Section 3(4) of the Act provides that without prejudice to contained in any other law, rules, regulation, notification or order, no permit or licence shall be necessary for import or export of goods nor any goods shall be prohibited for import or export except, as may be required under this Act, or Rules, or orders made thereunder. Section 5 of the Act provides that Central Government may from time to time formulate and announce by notification in the Official Gazette, the Foreign Trade Policy and may also amend the same. Thus, the Foreign Trade Policy which has been issued by the Central Government in exercise of powers under Section 5 of the Act has the statutory force.

7. Para 2.01 of the Policy provides that exports and imports shall be free except when regulated by way of prohibition, restriction, or exclusive trading through State Trading Enterprises has laid down in Indian Trade Classification (harmonized system) of exports and imports. Para 2.01 empowers the DGFT to impose restrictions on export and import through a notification for the purposes mentioned in the said para. Para 4.41 of the scheme deals with nominated agencies. Thus, from perusal of the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the Foreign Trade Policy, it is evident that amendments to the Foreign Trade Policy can be made by the Central Government under Section 5 of the Act or by DGFT by issuing a Notification under Para 2.07 of the Foreign Trade Policy. The change in categorization from free to restricted can be made in respect of import of goods, only by an amendment and the same cannot be done by DGFT by issuing a Circular.

8. Now we may advert to the facts of the case. In the instant case, admittedly, the gold medallions and gold granules were imported on 3-7-2017. Thereafter the DGFT by Notification dated 25-8-2017 has restricted the import of gold from South Korea. The relevant extract of Notification dated 25-8-2017 reads as under :

In exercise of powers conferred by Section 3(2) of the FT (D&R) Act, 1992 as amended from time to time, read with Paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, the Central Government hereby inserts Policy Condition No. 4 under chapter 71 of the ITC (HS) 2017, Schedule-I (Import Policy) to read as under :

“Imports from South Korea of articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal under Exim Code : 7113; articles of goldsmiths’ or silversmiths’ wares and parts thereof, of precious metal or of metal clad with precious metal under Exim Code 7114; other articles or precious metal or of metal clad with precious metal under Exim Code 7115; and coins under Exim code 7118 are Restricted.”

9. Thus on the date, the gold medallions were imported *i.e.* 3-7-2017 there was no restriction and the restriction was imposed by the Central Government *vide* Notification dated 25-8-2017 subsequently, which has been quoted *supra*. In other words, there was no restriction with regard to import of gold medallion on the date the same was imported by the respondent.

39. Principal Bench, CESTAT, New Delhi in the case of Interglobe Aviation Ltd., Vs CC, New Delhi [2024 (23) CENTEX 81 (Tri-Del)] summarized the law relating to this issue and held as follows in Para 45:

45. What follows from the aforesaid judgments of the Supreme Court and the High Courts is that an Explanation to a provision may either clear the ambiguity in the main provision or it may add and widen the scope of the main provision. A provision is said to be clarificatory if a consideration of the meaning of the provision to which the Explanation has been added when compared to the meaning given by the added Explanation remains the same. However, if the meaning changes, it cannot be said to be clarificatory in nature. If the Explanation is clarificatory in nature, it may be given retrospective operation, but if it changes the law and alters or widens the scope of the main provision, it cannot be given retrospective operation.

The Notification No. 22 dated 02.09.2021 widens the scope of main provision. Hence, it cannot be given retrospective effect in view of the above decision.

40. Learned AR relied on the Hon'ble Jammu & Kashmir decision in the case of Pr. Commissioner of Income Tax Vs Lokesh Handa [MANU/JK/0440/2017], in which Hon'ble High Court observed that "Gold in the raw form cannot be classified as jewellery or as ornament. One of the main distinctive features being that raw gold or standard gold does have the ability and character of being wearable, whereas, jewellery/ornaments are made for that specific purpose". First thing, it is against the Department's view, since, the subject goods are not in raw form and it is also important that the decision is in relation to Income Tax Act, 1961. Therefore, distinguishable.

41. Learned AR has also relied on Hon'ble Supreme Court decision in the case of S. Sundaram Pillai & Ors Vs. V.R. Pattabiraman and Ors

[MANU/SC/0387/1985] and stated that where the plain and literal interpretation of a statutory provision produces a manifestly absurd and unjust result, the Court might modify the language used by the legislature or even do some violence to it so as to achieve the obvious intention of the legislature and produce rational construction and just results. This argument cannot be accepted by the Tribunal, since Tribunal is a creature of Statute and being a statutory body cannot go beyond the statute and settle principles of law. It is a case related to taxation. In this regard, it is very important to cite Hon'ble Supreme Court Constitutional Bench decision in the case of CC (Import), Mumbai Vs Dilip Kumar & Company [2018 (361) ELT 577 (SC)], which is very relevant against Department's argument. The relevant portion of the judgment is reproduced below:

61. This proposition was reiterated by the Constitution Bench of the Supreme Court in Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company³⁰ and the relevant portions of the judgment are reproduced below:

"25.....Indeed, it is well-settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.

42. Thus, in view of the discussion, supra, we find that the subject goods are not classifiable under CTH 7108 as per impugned order, but are classifiable under CTH 7113 as classified by the appellant. It is also noted that Notification No. 22 dated 02.09.2021 widens the scope of main provision, hence cannot be given any retrospective effect. There is no conclusive evidence adduced by the Department that gold jewellery cannot

be of 99.99% purity, whereas appellants have demonstrated that such oval shaped pendants with hook are capable of being worn on the body as pendant and hence can be considered as jewellery. The explanation was added to cover even jewellery but that explanation could only have prospective effect.

43. Therefore, demand is not sustainable, consequently penalty is also not imposable. Since, there is no restriction at the time of importing the subject goods, the question of confiscating the subject goods does not arise.

44. Thus, in view, of discussions, supra, the order of the Commissioner is not sustainable and therefore the impugned order is set aside.

45. Appeal allowed with consequential reliefs, if any, as per law.

(Order pronounced in the open court on 28.11.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)