

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

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 30211 of 2023(Arising out of **Order-in-Appeal** No.VJD-CUSTOM-000-APP-076-2022-23 dated 02.02.2023
passed by Commissioner of Central Tax & Customs (Appeals), Guntur)**Mitta Sunil Kumar**18/574, Main Bazar,
Produktur, YSR Kadapa District,
Andhra Pradesh – 516 360.

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APPELLANT

VERSUS

**Commissioner of Customs,
(Preventive) Vijayawada**D. No. 55-17-3, 2nd Floor, C-14,
Road No. 2, Industrial Estate,
Vijayawada,
Andhra Pradesh – 520 007.

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RESPONDENT**AND****Customs Appeal No. 30360 of 2023**(Arising out of **Order-in-Appeal** No.VJD-CUSTOM-000-APP-075-2022-23 dated 02.02.2023
passed by Commissioner of Central Tax & Customs (Appeals), Guntur)**M R Prakash**Owner of M/s Sai Tirumala Jewellers,
389, Maruthi Road, Shakambari,
J.P. Nagar 1st Phase,
Indira Gandhi Circle,
Bangalore,
Karnataka

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APPELLANT

VERSUS

**Commissioner of Customs,
(Preventive) Vijayawada**D. No. 55-17-3, 2nd Floor, C-14,
Road No. 2, Industrial Estate,
Vijayawada,
Andhra Pradesh – 520 007.

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RESPONDENT**APPEARANCE:**

Ms Veda Samhitha, Advocate for the Appellant.

Shri A Rangadham, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)**FINAL ORDER No. A/30374-30375/2023**

Date of Hearing:14.08.2023

Date of Decision:08.11.2023

[ORDER PER: ANIL CHOUDHARY]

The issue in this appeal is whether the absolute confiscation of 22 numbers of gold bars (each biscuit weighing 100 gms) totalling 2200 gms

valued at ₹ 71,44,968/- is justified which was seized under Mahajar dated 27.05.2019. Further issue is whether penalty have been rightly imposed Rs. 15 Lakhs on Appellant – Shri Mitta Sunil Kumar and Rs.15 Lakhs on Shri M R Prakash, the other Appellant both under Section 112(b)(i) of the Customs act.

2. The brief facts are that Mitta Sunil Kumar is carrying the Jewellery business at Proddatur, YSR Kadapa District. His Employee Shri Pachipulusu Venkata Nageswara Rao (P V N Rao) while carrying 22 numbers of gold biscuits of 100 gms each, total weighing 2200 gms, the Police Department had intercepted him at Y-Junction of Yerraguntla on 21-04-2019. Subsequently, on the information from Electronic Media, the Asst Commissioner of Customs, Customs Division, Tirupati, requested the Inspector of Police, Yerraguntla vide his letter dated 22-04-2019 to handover the seized gold. Thereafter the impugned goods had been handed over to a team of Customs authorities on 27-05-2019. It is worthwhile to note that the Inspector of Police has handed over goods only on the Instructions of Asst Commissioner of Income Tax, Investigation, Tirupati. Mitta Sunil Kumar visited the Customs Preventive Division, Tirupati claiming the ownership of the seized gold of 2200 gms (22 numbers of gold biscuits of 100 gms each) and submitted the copy of the Invoice bearing No. 00601, dated 20-04-2019, as a proof of purchasing Legitimate Gold. The said copy of the Invoice has been submitted to this Bench as Appendices, as a part of Additional information and also explained how he made payments towards the purchase of the legitimate gold. The seized gold was got assayed by Approved Gold Appraiser - Mr K Subbarayudu, of State Bank of India, Kaddapa, the details of which are as follows:

Sl.No.	Description	Markings	Net Weighment in Grams	Purity	Market Value @ Rs. 3270/- per gram (in Rs.)
1	22 Gold biscuits each weighing 100 gms	Serial Nos from 1) 3821531 to 3821540 2) Serial Nos from 3821581 to 3821591 3) Serial No 3821593	2200 gms	24 CT	71,94,000/-

The carrier Mr P V Nageswara Rao recorded his voluntary statement on 28.05.2019 in his mother tongue Telugu, wherein he inter alia stated that he has studied up to class X and was working with the Appellant – M Sunil Kumar for past few years. He had alighted at Yerraguntla bus stand

travelling from Bangalore to Kadapa by bus, at 5:30 AM on 21.04.2019 from where he took his 2 wheeler that was parked at the Yerraguntla Railway station. He was intercepted by the police of Yerraguntla. At the time of frisking him, police found two packets which contained 11 gold biscuits each from his trouser pockets. He had gone to Bangalore on 20.04.2019 along with his employer – M Sunil Kumar by bus. From there on 20.04.2019 in the evening at 9 PM he had boarded bus from Bangalore for Kadapa. His employer M Sunil Kumar handed him two packets of gold at Majestic Bus Stand, Bangalore. All the transaction of purchase of the said gold were handled by his employer Mr M Sunil Kumar. He is not the owner of the seized gold and the owner is his employer Mr M Sunil Kumar.

3. The Appellant M Sunil Kumar proprietor of Sunil Kumar Jewellers located at Yellappagiri Street, Old Market, Proddatur, Kadapa district who is registered with GST, visited the customs office and produced the bill/invoice in respect of purchase of 22 number of gold biscuits being invoice No. 00601 dated 20.04.2019 for 22 gold bars/biscuits weighing 100 gms each issued by M/s Sai Tirumala Jewellers, Bangalore for value of Rs. 69,36,600/- + GST Rs.2,08,098 totalling Rs.71,44,968/-.

4. The statement of Appellant M Sunil Kumar was recorded on 02.06.2019 which was recorded in his mother tongue – Telugu, wherein he inter alia stated that he has studied upto class X and he can read and write in Telugu language only. He is the Proprietor of Sunil Kumar Jewellers and is registered with the GST department and he is also an income tax assessee. His PAN number is AOCPM6338P. His average turnover is about 40 lakhs during the last 3 years. He is dealing in gold and silver for the past 10 years. He has purchased 22 numbers of gold biscuits of 999 purity from Sai Tirumala Jewellers, Bangalore on 20.04.2019 on credit basis. Further stated that P V Nageswara Rao is his employee who has been working with him for the last 2 ½ years. The said employee was intercepted by the police on 21.04.2019 and where as during frisking they have seized the gold biscuits which he had entrusted for carrying to shop. As the purchase bill was available with him, his employee could not show the bill to the police. Further stated that he is the owner of the seized gold, being 22 numbers of gold biscuits totally weighing 2200 gms which was purchased on credit basis for which payment is made within 15 days to Sai Tirumala Jewellers, Bangalore. So far he has paid Rs.62,45,000 (Rs.36,00,000 on 03.05.2019 and Rs.26,45,000/- on 20.05.2019) from his bank account with Kotak Mahindra Bank being account No. 3311882372, to the bank account of the

seller - Tirumala Jewellers with Karur Vyshya Bank, Bangalore. He has been visiting Bangalore with respect to his business and have developed friendship with Mr Harish of Chickpeta, who brokerages in gold bars and gold biscuits. Mr Harish introduced him to Shri M R Prakash of Sai Tirumala Jewellers. The shop of Sai Tirumala Jewellers is located at 45, Raja Market, Avenue Road, Bangalore – 560002 and mobile number of Mr M R Prakash is 9743974443 and his email is saithirumalajewellers@gmail.com. He does not know from where Mr Prakash purchased the gold, sold to him. He has purchased the gold under proper invoices on payment of applicable GST. He does not have any idea about the engraved serial numbers on the seized gold bars. The serial numbers mentioned on the seized gold bars are not mentioned in the purchase invoices. He had also shown the said invoice No. 00601 to the police at about 8 AM on 21.04.2019. However the police had seized the gold on the instructions of the Assistant Director, Investigation of Income Tax, Tirupati, he had also furnished all the relevant details to the Income Tax Authorities. He further stated that he is the legitimate owner of the seized gold.

5. The seller of the gold - Appellant Shri M R Prakash owner of Sai Tirumala Jewellers appeared on summons before the Customs Officer on 07.06.2019 and inter-alia stated that he had purchased 4300 gms of gold from M/s Infinity Jewellers and bullion, shop No. 13, CT street, Bangalore on payment of Rs. 1,40,74,800/- along with applicable GST vide invoice No. 207 dated 17.04.2019 and invoice No. 229 dated 20.04.2019. He further admitted the description, markings and engraved serial numbers in respect of 4000 gms of gold under invoice No. 207 dated 17.04.2019 and MMTC marking in respect of 300 gms of gold under invoice No. 229 dated 20.04.2019. Further stated that the quantity of 22 number of gold biscuits that were sold to Shri Sunil Kumar of M/s Sunil Kumar Jewellers under invoice No. 00601 dated 20.04.2019 are part of the goods purchased by him from M/s Infinite Jewellers and Bullion. Further stated that, he admits that there is no mention of the engraved serial numbers of the gold bars in the invoice issued by him in respect of the 22 gold bars. In his invoice he has mentioned the particulars of the gold as – GOLD BULLION. On enquiry Mr M R Prakash stated that the engraved serial numbers and markings of the 22 seized gold biscuits sold by him to M Sunil Kumar, do not tally with that of his purchase invoices aforementioned. However the gold sold by him is by way of genuine transaction wherein he has received the sale consideration through bank challan and have also issued proper invoices charging GST.

6. He further admitted that there is some mis match with respect to the serial numbers on the gold biscuits which have been seized. He further stated that he has not mentioned the engraved serial numbers in the invoice for the gold biscuits, sold to M. Sunil Kumar.

7. As there appeared some infirmities to the Revenue Department, thus arrested the appellant M. Sunil Kumar on 02.07.2019 who was subsequently enlarged on bail.

8. In the course of further investigation, Revenue made enquiry regarding source of the seized gold biscuits. Summons were issued to Shri Akshay Agadia of Infinity Jewellers & Bullion, Bangalore. Mr Akshay Agadia in his statement recorded on 08.07.2019 interalia stated that vide invoice No. 207 dated 17.04.2009 and invoice no. 229 dated 20.04.2009 they have sold gold to Shri M R Prakash, Owner of Sai Tirumala Jewellers. He also produced his purchase invoice No. KA0119TI00000044 dated 20.04.2019 issued by MMTC Pamp India Pvt Ltd., in support of his purchase wherein serial numbers of the gold biscuits are also mentioned wherein the purity of the gold is mentioned as 999. Further, stated that they have also procured gold vide bill from Sri Kalinga Kawad Bullion vide purchase invoice no. SKKB-179 dated 16.04.2019 wherein bar numbers are not mentioned. Further stated that he has not sold the 22 number of gold biscuits of particular serial number 3821531, 3821540, 3821581 to 3821591 and 3821593 to Sai Tirumala Jewellers, Proprietor M R Prakash.

9. Further, Shri Chetan Kumar Jain, Manager of DP Gold Private Ltd., Chennai had also recorded his statement before the Customs on 06.06.2019, stating that they had purchased 40 kg gold from MMTC-PAMP India Pvt Ltd., New Delhi which includes gold bars bearing serial nos. 3821401-3821800.

10. Revenue made further investigation and it appear that DP Gold Private Ltd., had sold gold to another jeweller/dealers which includes the serial number of the gold bars seized from M Sunil Kumar.

11. Pursuant to investigation, show cause notice was issued dated 31.12.2020 proposing to confiscate the 22 number of gold biscuits each weighing 100 gms totalling to 2200 gms. Valued at Rs. 71,44,968/- under Section 111(l) and (d) of the Act with proposal to impose penalty under Section 112(b) and 112(i) on P.V. Negeshwar Rao (staff of M Sunil Kumar) and Shri M Sunil Kumar of Sunil Kumar Jewellers. Further, M R Prakash was also made a co-noticee. The Show cause notice was adjudicated vide Order-

in-Original dated 30.06.2022 on contest by the Additional Commissioner, who was pleased to order 'absolute confiscation' of 22 number of gold biscuits holding the same to be smuggled total weighing 2200 valued at Rs.71,44,968/- under Section 111(d) and 111(l) of the Act. Further, equal amount of penalty of Rs. 15 lakhs was imposed on appellant - M Sunil Kumar and appellant - Shri M R Prakash. No penalty was imposed on P V N Rao who had died during pendency of the proceedings.

12. Being aggrieved by the Order-in-Original appellants preferred appeal. The appeals were dismissed by the Learned Commissioner (Appeals) upholding the common Order-in-Original.

13. Being aggrieved, appellants are before this Tribunal.

14. Heard the parties.

15. Learned Advocate for the appellants have stated that, admittedly other than 22 gold biscuits, 35 more gold biscuits were found and seized from another staff of M Sunil Kumar - appellant on the same day. The said 35 gold biscuits were released soon after seizure as Revenue found that the serial numbers engraved on the gold biscuits tally with the serial numbers mentioned on the invoice produced, in respect of the purchase by the appellant. It is further evident from the facts available in the show cause notice, particularly the statement of Chetan Kumar Jain, Manager of DP Gold Pvt Ltd., Chennai, wherein they have stated that they had purchased gold biscuits totalling 40 kg having engraved serial numbers from 3821401-3821800 from MMTC-PAMP India Pvt Ltd., New Delhi. Thereafter, they have been selling in retail. Admittedly the 22 gold biscuits seized & confiscated, tally with the serial numbers of gold biscuits purchased by DP Gold Private Ltd., Chennai from MMTC-PAMP. Thus, the allegation of the Revenue that gold biscuits being smuggled in nature falls flat, in view of the glaring facts on record. The Court below have erred in ignoring such facts on records and have wrongly confiscated the gold in question absolutely, and also erroneously imposed penalties on these appellants.

16. Learned Advocate further urges that as the non-smuggled nature of gold is evident on the face of record, and also the fact that appellant - M Sunil Kumar produced the GST invoice in respect of purchase. Thus, the impugned order is erroneous and fit to be set aside. Accordingly, prays for allowing the appeals with consequential benefits.

17. Learned AR for Revenue relies on the impugned order. Learned AR further insists that the serial numbers of the 22 gold biscuits did not match nor appear to be sold by the appellant - M R Prakash to the other appellant - M Sunil Kumar. He further narrates in detail the sequence of purchase and sale as mentioned in the show cause notice, and relies on the same. Accordingly, prays for dismissing the appeals.

18. Having considered the rival contentions, I find that it is evident from the facts apparent in the show cause notice, that the serial numbers of the 22 gold biscuits are covered within the 40 kg gold purchased by DP Gold Pvt Ltd., Chennai from MMTC-PAMP India Pvt Ltd., and there after they had sold the gold to other dealers/ other jewellers. Thus, I find that the allegation of smuggled nature of gold in question, does not stand. I further hold that the gold in question is not smuggled in nature. Accordingly, I allow both the appeals and set aside the impugned orders.

19. I am informed that the gold in question has already been sent to appropriate Government Authority for re-sale and or melting by the Government. Accordingly, we direct the Revenue either to return the gold to the appellant - M Sunil Kumar, or to pay the value - amount of gold as valued on the date of sale/melting with interest as per rules.

20. Appeals allowed.

(Order pronounced in open court on 08.11.2023)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)