

**IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

**FRIDAY, THE TWENTY SECOND DAY OF NOVEMBER  
TWO THOUSAND AND TWENTY FOUR**

**PRESENT**

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE  
AND  
THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**

**CENTRAL EXCISE APPEAL Nos: 23, 27, 29, 31 and 32 OF 2024**

**C.E.A. No. 23 of 2024 :**

**Between:**

Principal Commissioner of Customs, Hyderabad, L.B. Stadium Road, Basheerbagh,  
Hyderabad - 500 004. **...APPELLANT**

**AND**

Ms Diamond India Limited, 2A, A-Wing, Laxmi Towers, Bandra Kurla Complex,  
Bandra East, Mumbai -400 051. **...RESPONDENT**

Appeal is filed under Section 130 of the Customs Act, 1962 against the order of the Customs, Excise & Service Tax Appellate Tribunal, Regional Bench at Hyderabad, vide Final Order No.A/ 30054 -30063/ 2024-CU (DB) in Customs Appeal No. C/30192/2021 dated 08-02-2024 preferred against the Order in Original No. 46/SA(47) ADG (ADJ)/DRI, Mumbai / 2020-21 dated 26-08-2020 29-07-2011 on the file of the Additional Director General ( Adjudication) Directorate of Revenue Intelligence, Mumbai.

**Counsel for the Appellant: SRI. DOMINIC FERNANDES (Senior Standing  
Counsel for CBIC)**

**Counsel for the Respondent: SRI ARJUN RAGHAVENDRA Assisted by Mr.  
PIYUSH DESHPANDE, learned counsel for  
Ms.SNEHA BHOGLE**

**CENTRAL EXCISE APPEALS NO: 27 OF 2024**

**Between:**

1. Principal Commissioner of Customs, L.B. Stadium Road, Basheerbagh, Hyderabad.
2. ADG DRI Zonal Unit, H.No. 10- 2 – 289/ 57 / 1 & 2, Suryavanshi Residency II Cross Road, Shantinagar, Masab Tank, Hyderabad - 500028
3. ADG(Adj), Mumbai, 2<sup>nd</sup> Floor, Old Building, New Custom House, Ballard Estate, Mumbai-400001 **...APPELLANTS**

**AND**

M/s. Bullionline LLP, B/3, C-1,2,3, P.P. Tower, Netaji Subash Place, Pitam Pura, Delhi - 110 034. **...RESPONDENT**

Appeal is filed under Section 130 of the Customs Act, 1962 against the order of the Customs, Excise & Service Tax Appellate Tribunal, Regional Bench at Hyderabad, vide Final Order No.A/ 30054 -30063/ 2024-CU (DB) in Customs Appeal No. C/30192/2021 dated 08-02-2024 preferred against the Order in Original No. 47/SA(47) ADG (ADJ)/DRI, Mumbai / 2020-21 dated 26-08-2020 on the file of the Additional Director General ( Adjudication) Directorate of Revenue Intelligence, Mumbai.

**IA NO: 2 OF 2024**

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of the Hon'ble CESTAT's Final Order No. A/30054-30063/2024 dated 08.02.2024 passed in Appeal No. C/30092/2021, pending the disposal of the main appeal.

**IA NO: 1 OF 2024**

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to dispense with the filing of the certified copy' of the Hon'ble CEISTAT's Final)Order No. A/30054-30063/2024 dated 08.02.2024 and pass

**Counsel for the Appellant: SRI. DOMINIC FERNANDES (Senior Standing Counsel for CBIC)**

**Counsel for the Respondent: SRI S. MURALIDHAR, Senior Counsel for SRI TRICHNOPLY RAVI KANTH SHIVANI**

**CENTRAL EXCISE APPEALS NO: 29 OF 2024**

**Between:**

1. Principal Commissioner of Customs, L.B. Stadium Road, Basheerbagh, Hyderabad.
2. ADG DRI Zonal Unit, Hyderabad, H.No. 10- 2- 289/ 57/ 1 & 2 Suryavanshi Residency, II Cross Road Shantinagar, Masab Tank. Hyderabad - 500028
3. ADG Adj Mumbai, 2<sup>ND</sup> Floor Old Building New Custom House, Ballard Estate Mumbai – 400001  
**...APPELLANTS**

**AND**

Mr. Ashish Gupta, Director, M/s. Jurassic Refiners and Jewels Private Limited, 1157/1124, 3rd Floor, Kucha Mahajani. Chandini Chowk, Delhi - 110006.  
**...RESPONDENT**

Appeal is filed under Section 130 of the Customs Act, 1962 against the order of the Customs, Excise & Service Tax Appellate Tribunal, Regional Bench at Hyderabad, vide Final Order No.A/ 30054 -30063/ 2024-CU (DB) in Customs Appeal No. C/30193/2021 dated 08-02-2024 preferred against the Order in Original No. 48/SA(48) ADG (ADJ)/DRI, Mumbai / 2020-21 dated 26-08-2020 on the file of the Additional Director General ( Adjudication) Directorate of Revenue Intelligence, Mumbai.

**IA NO: 2 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of the Honorable CESTAT s Final Order No. A/30054-30063/2024 dated 08.02.2024 passed in Appeal No. C/30093/2021, pending the disposal of the main appeal

**IA NO: 1 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to dispense with the filing of the certified copy of the Honorable CESTAT's Final Order No. A/30054-30063/2024 dated 08.02.2024

**Counsel for the Appellant: SRI. DOMINIC FERNANDES (Senior Standing Counsel for CBIC)**

**Counsel for the Respondent : SRI P. SRI RAGHU RAM, Senior Counsel  
appears for SRI TRICHOPLY RAVI KANTH SHIVANI**

**CENTRAL EXCISE APPEALS NO: 31 OF 2024**

**Between:**

Principal Commissioner of Customs, L.B. Stadium Road, Basheerbagh. Hyderabad.

**...APPELLANT/ Respondent**

**AND**

Mr Rahul Gupta, Partner of M/s Bullionline LLP, B/3, C-1,2,3, P.P. Tower, Netaji Suhhash Place, Pitam Pura, Delhi-110 034.

**...RESPONDENT**

Appeal is filed under Section 130 of the Customs Act, 1962 against the order of the Customs, Excise & Service Tax Appellate Tribunal, Regional Bench at Hyderabad, vide Final Order No.A/ 30054 -30063/ 2024-CU (DB) in Customs Appeal No. C/30191/2021 dated 08-02-2024 preferred against the Order in Original No. 47/SA (47) ADG (ADJ)/DRI, Mumbai / 2020-21 dated 26-08-2020 on the file of the Additional Director General ( Adjudication) Directorate of Revenue Intelligence, Mumbai.

**IA NO: 1 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to dispense with the filling of the certified cops' of the Hon'ble CESTAT's Final Order No. A/30054- 30063/2024 dated 08.02.2024.

**IA NO: 2 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of the Hon'ble CESTAT's Final Order No. A/30054- 30063/2024 dated 08.02.2024 passed in Appeal No. C/30091/2021, pending the disposal of the main appeal.

**Counsel for the Appellant: SRI. DOMINIC FERNANDES (senior standing counsel for CBIC)**

**Counsel for the Respondent: SRI S. MURALIDHAR , SENIOR COUNSEL  
FOR SRI TRICHNOPOLY RAVI KANTH SHIVANI**

**CENTRAL EXCISE APPEALS NO: 32 OF 2024**

**Between:**

Principal Commissioner or Customs., L.B. Stadium Road, Basheerbagh. Hyderabad.

**...APPELLANT**

**AND**

M/s. Jurassic Refiners and Jewels Private Limited., 1157/1124, 3rd Floor, Kucha Mahajani, Chandini Chowk, Delhi -- 110006.

**...RESPONDENTS**

Appeal is filed under Section 130 of the Customs Act, 1962 against the order of the Customs, Excise & Service Tax Appellate Tribunal, Regional Bench at Hyderabad, vide Final Order No.A/ 30054 -30063/ 2024-CU (DB) in Customs Appeal No. C/30094/2021 dated 08-02-2024 preferred against the Order in Original No. 48/SA (48) ADG (ADJ)/DRI, Mumbai / 2020-21 dated 26-08-2020 on the file of the Additional Director General ( Adjudication) Directorate of Revenue Intelligence, Mumbai.

**IA NO: 1 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to dispense with the filing of the certified copy of the Hon'ble CESTAT's Final Order No. A/30054-30063/2024 dated 08.02.2024 and pass .

**IA NO: 2 OF 2024**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of the Hon'ble CESTAT's Final Order No. A/30054-30063/2024 dated 08.02.2024 passed in Appeal No. C/30094/2021, pending the disposal of the main appeal.

**Counsel for the Appellant: SRI. DOMINIC FERNANDES (senior standing counsel for CBIC)**

**Counsel for the Respondent: SRI P. SRI RAGHU RAM , Senior Counsel for TRICHNOPOLY RAVI KANTH SHIVANI**

**The Court delivered the following Common Judgment :**

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**

**AND**

**THE HON'BLE SRI JUSTICE J.SREENIVAS RAO**

**CENTRAL EXCISE APPEAL Nos.23, 27, 29, 31 and  
32 of 2024**

**COMMON JUDGMENT:** *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. Dominic Fernandes, learned Senior Standing Counsel for the Central Board of Indirect Taxes and Customs appears for the appellants.

Mr. M.Arjun Raghavendra assisted by Mr. Piyush Deshpande, learned counsel appears for Ms. Sneha Bhogle, learned counsel for the respondent in CEA.No.23 of 2024.

Mr. S.Muralidhar, learned Senior Counsel appears for Mr. Trichnopoly Ravi Kanth Shivani, learned counsel for the respondent in CEA.Nos.27 and 31 of 2024.

Mr. P.Sri Raghu Ram, learned Senior Counsel appears for Mr. Trichnopoly Ravi Kanth Shivani, learned counsel for the respondent in CEA.Nos.29 and 32 of 2024.

2. These appeals under Section 130 of the Customs Act, 1962 (hereinafter referred to as, "the Act"), emanate from the common order dated 08.02.2024 passed by the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench at Hyderabad (hereinafter referred to as, "the Tribunal"). As the proposed substantial questions of law are similar and the appeals arise out of the common order, the same were heard analogously and are being decided by this common judgment. For the facility of reference, the facts from C.E.A.No.23 of 2024 are being referred to.

3. The respondent is engaged in the business of import of rough diamond, gold and silver. The respondent imported gold and silver as nominated agency in terms of DGFT Notification No.88/2008 dated 26.02.2009 and as per para 4.41(ii) of Foreign Trade Policy 2015-20 (FTP). The respondent also imported duty free gold claiming exemption from duty for supply to jewellery exporters under various schemes as provided in the Foreign Trade Policy.

4. One M/s.Bullionline LLP having registered office at Delhi and a branch office at Hyderabad was engaged in trading of bullion and manufacture and export of gold jewellery. The aforesaid LLP was one of the exporters, to whom duty free gold had been issued under replenishment scheme by the respondent.

5. The Intelligence gathered by the officers of the Directorate of Revenue Intelligence, Hyderabad indicated that M/s.Bullionline LLP had fraudulently obtained/purchased duty free gold bars from the respondent under replenishment scheme, against exports of jewellery by them by resorting to mis-declaration of description of export goods and value addition in the export documents and without complying with the norms specified in Foreign Trade Policy. Thus, the aforesaid LLP indulged in evasion of applicable customs duty on gold obtained/purchased from the respondent under the replenishment scheme. Thereupon, search proceedings were conducted on the premises of the aforesaid LLP for recovery of evidence in connection with the intelligence received and to further investigation.



6. On the basis of the documents recovered during search operations, show cause notice dated 31.08.2018 was issued, *inter alia*, on the grounds mentioned therein to the respondent proposing demand of duty on the quantum of gold given under replenishment scheme received from the aforesaid LLP and the penalty was proposed on both the exporters, namely Bullionline LLP as well as its partner. The Additional Director General (Adjudication) by order dated 26.08.2020 confirmed the demand against the respondent that penalty was imposed on LLP and its partners. Being aggrieved, the respondent filed Appeal before the Tribunal.

7. The Tribunal by a common order dated 08.02.2024, *inter alia*, held that no case of violation of conditions of Notification No.57/2000-Customs is made out. The Tribunal further held that the jewellery in question, which was exported was manufactured by the job worker by fully mechanised process. The Tribunal also recorded a finding that calculation of value addition by the Adjudicating Authority is wholly erroneous and palpably wrong and

since the process of manufacturing of jewellery is fully mechanised, the value addition would be 2% and not 3.5%. The Tribunal concluded that the provisions of Section 113(i) of the Act for confiscation are not attracted as the case is not one of mis-declaration. The Tribunal kept open the issue whether the order has been passed in violation of Section 28(9) of the Act inasmuch as, after the issuance of show cause notice, the proceeding was not concluded within a period of one year. The Tribunal allowed the appeals preferred by the respondent. In the aforesaid factual background, these appeals arise for our consideration.

8. Learned Senior Standing Counsel for the appellants, at the outset, contended that the issue involved in these appeals is with regard to interpretation of the policy circular, notifications as well as Foreign Trade Policy and is not confined to value of goods alone for the purposes of assessment, therefore the appeals filed before this Court under Section 130 of the Act are maintainable. It is further submitted that the Tribunal ought to have appreciated that the process adopted by job worker while manufacturing the

jewellery was not fully mechanised process and therefore, the value addition ought to have been done at 3.5% instead of 2%. It is also submitted that the Tribunal ought to have appreciated that the importer had violated the provisions of the Notification No.57/2000-Customs, dated 08.05.2000, and the Circular No.27/206-Customs, dated 10.06.2016, issued by the Central Board of Excise & Customs read with Foreign Trade Policy 2015-20 as well as the Handbook of Procedures. It is contended that the Tribunal ought to have appreciated that there was a mis-declaration on account of process of manufacture and value addition and therefore the Tribunal ought to have appreciated that the provisions of Section 113(i) of the Act are attracted. Our attention has also been invited to the circular dated 27.09.2019 issued by the Directorate General of Foreign Trade.

9. On the other hand, learned Senior Counsel for the respondent in CEA.Nos.27 and 31 of 2024 has raised a preliminary objection with regard to maintainability of the appeals. Our attention has been invited to the show cause notice as well as the order of the Adjudicating Authority

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and Section 130 of the Act and it has been contended that the issue involved in these appeals pertains to valuation of the goods and therefore the appeals before this Court are not maintainable and the same ought to have been filed before the Supreme Court. It is also contended that the Notification No.57/2000-Customs does not deal with value of goods. It is further submitted that no substantial questions of law arise for determination in these appeals and the findings of fact recorded by the Tribunal have not been assailed on the ground that the same are perverse.

10. Learned Senior Counsel for the respondent in CEA.Nos.29 and 32 of 2024 has also taken a stand that the appeals before this Court are not maintainable and the same ought to have been filed before the Supreme Court. It is contended that the findings recorded by the Tribunal are based on appreciation of material available on record and cannot be termed as perverse. In support of his submission, reliance has been placed on the decision of the Supreme Court in **Chandrabhan (Deceased) Through Lrs. v. Saraswati**<sup>1</sup>.

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<sup>1</sup> 2022 SCC OnLine SC 1273

11. Learned counsel for the respondent in CEA.No.23 of 2024 submitted that the dispute in these appeals does not pertain to valuation and the appeals do not pertain to determination of valuation as envisaged under Section 14(2) of the Act. Therefore, these appeals are maintainable. It is, however, urged that no substantial questions of law arise for consideration in these appeals.

12. We have considered the rival submissions made on both sides and have perused the record.

13. Before proceeding further, it is apposite to take note of the preliminary objection urged on behalf of the respondent with regard to maintainability of the appeals.

14. The relevant extract of Section 130 and Section 130-E of the Act are extracted below for the facility of reference:

**“130. Appeal to High Court.--**(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1<sup>st</sup> day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment), if the High Court is

satisfied that the case involves a substantial question of law.”

**130E. Appeal to Supreme Court.** An appeal shall lie to the Supreme Court from—

- (a) xxx
- (b) any order passed before the establishment of the National Tax Tribunal by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment.”

Thus, it is evident that if an order pertains to determination of any question having a relation to rate of duty of customs or value of goods for the purposes of assessment, an appeal lies before the Supreme Court.

15. In the instant case, from perusal of the show cause notice dated 31.08.2018, it is evident that the same was issued on the ground that the respondent has mis-declared the description and value addition so as to wrongly claim the benefit under the replenishment scheme. From the order passed by the Adjudicating Authority as well as the Tribunal, it is evident that the issue with regard to mis-declaration as well as applicability of Notification

No.57/2000-Customs, dated 08.05.2000, and the Circular No.27/206-Customs, dated 10.06.2016, issued by the Central Board of Excise & Customs as well as the Foreign Trade Policy 2015-20 was also involved. Therefore, we hold that the appeals before this Court are maintainable.

16. Now we may advert to the facts of the case in hand. The issue in the instant appeals pertains to demand of duty on quantum of gold given under replenishment scheme received from the LLP. It is not the case of the appellant that matching quantum of gold has not been exported as required under Notification No.57/2000-Customs. The Tribunal, on the basis of meticulous appreciation of evidence on record, has recorded the following findings:

i) In the instant case, gold has been supplied by Diamond India Limited by way of replenishment and there is no allegation that matching quantum of gold has not been exported as required under Notification No.57/2000-Customs, dated 08.05.2000.

ii) It has further been found that all shipping bills along with export invoices were approved by the proper officer of

customs on being satisfied as to the declarations and requirements.

iii) The Diamond India Limited has not violated the provisions of the Act read with Notification No.57/2000-Customs, dated 08.05.2000.

iv) The Tribunal, taking into account the statement of the job worker and the Government approved jewellery valuers, who are experts, as well as the Chartered Engineer, has certified the process as fully mechanized. Therefore, the value addition would be 2% and not 3.5%.

v) The allowable wastage is 0.9%.

vi) There is neither any allegation against the respondent that it had exported gold jewellery using less quantum of gold than declared or made by some other metal other than gold nor regarding the purity of gold. Therefore, the provisions of Section 113(i) of the Act for confiscation are not attracted.

17. The aforesaid findings of fact are recorded on the basis of proper appreciation of material available on record. The aforesaid findings have not even been assailed on the ground that the same are perverse.



18. For the aforementioned reasons, no substantial questions of law arise for consideration in these appeals.

19. The appeals fail and are hereby dismissed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

Sd/- K. SRINIVASA RAO  
JOINT REGISTRAR

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SECTION OFFICER

To,

1. The Customs, Excise & Service Tax Appellate Tribunal, Regional Bench at Hyderabad.
2. The Additional Director General ( Adjudication) Directorate of Revenue Intelligence, Mumbai.
3. One CC to SRI. DOMINIC FERNANDES (Senior Standing Counsel for CBIC) [OPUC]
4. One CC to Ms. SNEHA BHOGLE, Advocate [OPUC]
5. One CC to Sri TRICHNOPOLY RAVI KANTH SHIVANI, Advocate (OPUC)
6. Two CD Copies

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HIGH COURT

DATED:22/11/2024



COMMON JUDGMENT

CENTRAL EXCISE APPEAL Nos. 23, 27, 29, 31 AND 32 OF 2024

DISMISSING THE ALL APPEALS

WITHOUT COSTS

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