

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI
COURT HALL - III**

1. Defect Appeal No. 42151/2024

Noorul Ayin

Wife of Shri Halikul Rahman
2-365, Pattakikal Street
Adiakkamangalam Post
Tiruvarur – 611 101.

Appellant

Vs.

Commissioner of Customs

Chennai VII Commissionerate
Meenambakkam, Chennai – 600 027.

Respondent

With

2. Defect Appeal No. 40285/2025

Mohamed Ebrahim Amsath Hanifa

Door No. 47/139, 1st Floor, 3rd Street
Nethaji Nagar, Tondiarpet
Chennai – 600 081.

Appellant

Vs.

Commissioner of Customs

Chennai VII Commissionerate
Meenambakkam, Chennai – 600 027.

Respondent

With

3. Defect Appeal No. 40287/2025

Yusaf Hussain Shahul Hameed

No. 32, Arthoon Road
Royapuram, Chennai – 600 013.

Appellant

Vs.

Commissioner of Customs

Chennai VII Commissionerate
Meenambakkam, Chennai – 600 027.

Respondent

And

4. Defect Appeal No. 40295/2025

Abdul Salam

No. 106-04-114, 2nd Street
Netaji Nagar, Tondiarpet
Chennai – 600 081.

Appellant

Vs.

Commissioner of Customs

Chennai VII Commissionerate
Meenambakkam, Chennai – 600 027.

Respondent

APPEARANCE:

Shri J. Sirajudeen, Advocate for the Appellant at Sl. No. 1

None for Sl. No. 2 to 4

Smt. Anandalakshmi Ganeshram, Authorized Representative for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Miscellaneous Order No. 40308/2025

Interim Order Nos. 40008 to 40010

Date of Hearing: 20/21.03.2025

Date of Decision: 08.04.2025

Per M. Ajit Kumar,

1. The above mentioned appeals were listed for hearing because the Registry has raised a defect stating that the appeals pertain to goods imported as baggage and hence would be excluded from the jurisdiction of this Tribunal as per proviso section 129A(1) of the CA. The brief facts of the cases are narrated below.

1.1 Defect Appeal No. 42151/2024, **Noorul Ayin**

Brief facts of the case are that on 12.6.2023, Air Intelligence Unit of Customs intercepted the appellant who arrived at Chennai Airport from Dubai by Air India Flight No. AI 906 dated 12.6.2023 and had opted for green channel at the exit of the arrival hall of the International Terminal of Chennai Anna International Airport. On examination of the baggage it was not found to contain any incriminating goods or documents except her personal effects but on search of the 'person', one chain, two anklets and two bangles were found concealed in her undergarments and the same were recovered. Suspecting the recovered yellow metals to be gold, gold appraiser was called and

based on his examination, it was found that the yellow metals were 24 karat gold totally weighing 598 grams and valued at Rs.31,37,108/-.

1.2 Defect Appeal No. 40295/2025, **Abdul Salam**

Brief facts of the case are that on 12.2.2024, the appellant who arrived by Flight No. 6E-179 at Domestic Terminal of Chennai Airport from Mumbai was apprehended by the officers of AIU. On examination of the person/ baggage, the officers found three metal coins of gold of 40 gms (Rs.2,20,956) and 30 grams (Rs.1,65,717) and iphone 15 pro max and iphone 15 pro 258 GB totally valued at Rs.8,44,534/- in his baggage. Show Cause Notice was waived by the appellant and orders were passed confiscating the goods absolutely and also imposed penalty. As the appeal before the Ld. Commissioner (Appeals) was filed beyond the stipulated period, the same was dismissed as time-barred. Hence this appeal.

1.3 Defect Appeal No. 40285/2025, **Mohamed Ebrahim Amsath Hanifa**

Brief facts of the case are that on 12.2.2024, the appellant who arrived by Flight No. 6E-179 at Domestic Terminal of Chennai Airport from Mumbai was apprehended by the officers of AIU. On his baggage being searched it was found to contain 3 iphones pro 128GB totally valued at Rs.2,67,861/-. One bundle wrapped with black adhesive tape and transparent plastic cover which was unusually heavy and suspected to contain gold in paste form and two silver colour coins suspected to be made of gold were found concealed in his underwear. Suspecting the recovered yellow metals to be gold, gold appraiser was called and based on his examination, it was found that the yellow metals were 24 karat gold totally weighing 124 grams and valued at Rs.8,94,873/- as on date.

1.4 Defect Appeal No. 40287/2025, **Yusaf Hussain Shahul Hameed**

Brief facts of the case are that on 12.2.2024, the appellant who arrived by Flight No. 6E-179 at Domestic Terminal of Chennai Airport from Mumbai was apprehended by the officers of AIU. On search his baggage was found to contain 3 iphones pro max 256 GB and 02 nos. of iPhone 15 Pro 128 GB totally valued at Rs.5,00,021/-. However, during the search of the person, one bundle wrapped with black adhesive tape and transparent plastic cover suspected to contain gold in paste form and two silver colour coins suspected to be made of gold were found concealed in his underwear. Suspecting the recovered yellow metals to be gold, gold appraiser was called and based on his examination, it was found that the yellow metals were 24 karat gold totally weighing 165 grams and valued at Rs.9,11,445/- as on date.

2. During the oral hearing, revenue has also raised a preliminary objection in these four cases stating that a reading of Section 129A(1) in the Customs Act, 1962 would show that the Tribunal does not have jurisdiction to decide any appeal in respect of an order passed by the Commissioner (Appeals) under Section 128 A of the Customs Act, 1962 relating to any goods imported or exported as "Baggage". Hence the appeals may not be entertained. They have also filed a written submission in this regard.

3. We find that revenue has raised the issue of jurisdiction, which can be raised at any stage of the proceedings. Jurisdiction refers to the authority or power of a court or tribunal to hear and decide a particular case or type of dispute. It cannot be conferred by consent of parties to the dispute and hence a challenge to jurisdiction of an Authority, needs to be examined at the threshold because any order / judgment passed

by an Authority without jurisdiction would be 'coram non judice' or 'before a court lacking jurisdiction' and would be considered void or a nullity which is non est and of no legal effect. Accordingly, we proceed to examine the issue. We notice that while in Defect Appeal No. 42151/2024, in the case of Noorul Ayin the passenger along with his baggage were examined at the International Airport on arrival from Dubai. In the other three cases the passengers were allegedly intercepted at the Domestic Airport at Chennai on arrival from Mumbai when the aircraft was on a domestic run.

4. We have heard revenue in all the four cases and the Ld. Counsel Shri J. Sirajudeen on behalf of the appellant in the case of Noorul Ayin. None appeared for a hearing on behalf of the appellants in the other cases.

5. The Ld. AR has drawn our attention to Section 129A(1) in the Customs Act, 1962 as given below:

Section 129A. - Appeals to the Appellate Tribunal

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order.

(a) a decision or order passed by the [Principal Commissioner of Customs or Commissioner of Customs) as an adjudicating authority;

(b) an order passed by the [Commissioner (Appeals)] under section 128A;

(c) an order passed by the Board or the [Appellate Commissioner of Customs) under Section 128, as it stood immediately before the appointed day,

(d) an order passed by the Board or the [Principal Commissioner of Customs or Commissioner of Customs), either before or after the appointed day, under section 130, as it stood immediately before that day:

[Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to.

(a) any goods imported or exported as baggage;

(b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination of goods unloaded at such destination are short of the quantity required to be unloaded at that destination;

(c) payment of drawback as provided in Chapter X, and the rules made thereunder:

.....

The Ld. AR stated that a reading of the above provision would show that the Tribunal does not have jurisdiction to decide any appeal in respect of an order passed by the Commissioner (Appeals) under Section 128 A of the Customs Act, 1962 relating to any goods imported or exported as "Baggage". She has placed reliance on;

- (i) AHAMED GANI NATCHIAR - 2022 (10) TMI 100 - MADRAS HIGH COURT
- (ii) SHRI PAYANGADI MOIDU MOHAMMED - 2016 (8) TMI 393 CESTAT CHENNAI
- (iii) AYESHA BEGUM - 2023 (8) TMI 64 CESTAT Hyderabad
- (iv) JUWERIA FATIMA - 2023 (7) TMI 1191 CESTAT HYDERABAD

She prayed that the appeal may be rejected on the grounds of jurisdiction.

6. The Ld. Counsel for the appellant Noorul Ayin stated that **the gold seized from the appellant's possession was not part of 'baggage' but from 'her person'**. The judgment of the jurisdictional high court in the case of **Principal Commissioner of Customs Vs Ahmed Ghani Nachiar** reported in 2024 (15) Centax 177 (Mad.) should not be applied for the reason that the Tribunal in the case of **Vicky Asrani** in Final Order No.87527 of 2024 of the CESTAT, West Zonal Bench dated 19.12.2024 has distinguished the aforesaid judgment and proceeds to hold that this Tribunal would still have the

jurisdiction to decide on the confiscability or otherwise of gold jewellery brought by a person. The Hon'ble High Court Madras in recent judgment in the case of **Ms. Sabeena Mohammed Maideen vs The Principal Commissioner Of Customs** [W.P No.5247 of 2024 dated 31.01.2025], held that jewellery worn by the passenger will not fall within provisions of baggage rules, 2016. Though the aforesaid order of the learned single judge of the Hon'ble High Court of Madras has been stayed by the Division bench of the Hon'ble High Court of Madras in W.A No.411 of 2025, stay of operation of order does not efface the ratio of the said order. Therefore, he prayed that this Hon'ble Tribunal may be pleased to hold

- a. The appeal is maintainable.
- b. Deal with the appeal on merits

In the event of the tribunal not being in agreement with aforesaid views permit the appellant to file a revision in terms of sec. 129DD of the Customs Act within a time frame, giving liberty and excluding the time spent before this Hon'ble Tribunal from date of institution of the Appeal to date of disposal of the same.

7. We shall deal with the issue relating to an individual arriving at the Chennai International Airport from abroad and that of an individual arriving at Chennai Domestic Airport from a domestic airport in India when the aircraft is on a domestic run, separately. We first examine the case of Ms. Noorul Ayin a passenger who arrived from abroad.

8. From the facts of the case we find that after the Customs Officers intercepted the appellant-passenger, Ms. Noorul Ayin, they searched her baggage but no 'incriminating goods or documents' were found in it, but on search of her 'person', one chain, two anklets and two

bangles all made of gold were allegedly found concealed in her undergarments and the same were recovered. The question then arises whether the goods recovered from the person of a passenger are a part of her "baggage", so that the appeal is excluded from the jurisdiction of this Tribunal in terms of proviso (a) to Section 129A(1), of the Customs Act, 1962.

9. In the case of **'The Principal Commissioner or Customs (Air Port), Chennai I Commissionerate Vs. Ahamed Gani Natchiar'**, [Final Order No. 40774/2020 dated 8.6.2020], this Tribunal examined a similar case where a citizen of Malaysia who travelled from Kuala Lumpur to India was intercepted on arrival by a Customs Officer at the Chennai Airport. On a physical search of the person of the appellant, it was found that she was wearing a gold chain and bangles beneath her closed neck and full sleeves dress. After due process the gold was confiscated and the matter travelled, in the course of appeal, to the Tribunal. Before the Tribunal, a preliminary objection was raised by revenue as to the jurisdiction of the Tribunal to entertain / hear the appeal relating to 'Baggage' in view of the restriction/ limitation imposed under the proviso to Section 129 A(1) of the Customs Act, 1962. The Tribunal held that, "It is the failure of the passenger to comply with those prescriptions in relation to 'gold jewellery' that led to exclusion from 'baggage' and proceedings under section 124 of the Customs Act, 1962, for determination of rate of duty and for valuation, which are excluded from the purview of the revisionary jurisdiction of Government of India and, thereby, lies within the appellate structure that embraces the Tribunal." It further held that, "On perusal of the Rules pertaining to importation of jewellery, **as baggage** by an

arriving passenger, it is seen that the quantity in the present dispute is far in excess of that allowed free of duty on import into India. Therefore, the passenger has failed to comply with declaration requirements and confiscation under section 111(1) of Customs Act, 1962 is not misplaced.”

10. Revenue took the issue of jurisdiction in appeal before the Hon’ble High Court of Madras. The High Court in its judgment in **THE PRINCIPAL COMMISSIONER OR CUSTOMS (AIR PORT) VS AHAMED GANI NATCHIAR** [2022 (10) TMI 100 - MADRAS HIGH COURT], held:

12. Though the above judgment of the Kerala High Court does indicate that “Baggage” would not include old ornaments worn by the passenger. However, the above judgment was rendered in the context of Baggage Rules, 1998. The tabulated column which we have set out earlier would show that Baggage under the 2016 Rules includes jewellery worn on the person, however, the 1998 Baggage Rules was not expansive enough to include the same. We had contrasted Rule 3 of the Baggage Rules, 2016, as it existed during the different periods to show two aspects viz.,

a. Baggage normally may not include jewellery worn on a person.

b. Legislature/ Rule making authority whenever it intended to include jewellery worn on the person to constitute "Baggage", it has expressly provided for the same as in Baggage Rules, 2016. The expansive definition of “Baggage” under 2016 Rules, includes jewellery worn on the person. The above clause is in the nature of a fiction. It is trite law that once a fiction is created by the legislature it is important to give effect to the fiction and carry it to its logical end without letting the mind get bogged down by the consequences. In this regard it may be useful to note the following propositions which are well-settled rather axiomatic to appreciate the scope and purport behind creation of fiction by the legislature or its delegate:

“In interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created State (NCT of Delhi Vs. Sanjay, (2014) 9 SCC, and after ascertaining this, the Court is to assume all those facts and consequences which are identical or inevitable corollaries to the giving effect to the fiction J.K.Cotton Spinning & Weaving Mills Ltd. Vs. Union of India, AIR 1998 SC 191.

“After ascertaining the purpose, “full effect must be given to the statutory fiction and it should be carried to its logical conclusion **C.I.T. (Central) Calcutta Vs. Moon Mills Ltd.**, AIR 1966 SC 870 and to that end “it would be proper and even necessary to assume all those facts on which alone the fiction can operate” **State of West Bengal Vs. Sadam K.Bornal**, AIR 2004 SC 3666,. In an oft-quoted passage, LORD ASQUITH stated: “ If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs **Nandkishore Ganesh Joshi Vs. Commr. Municipal Corporation Kalyan**, AIR 2005 SC 34.”

It thus seems that the appellants may be right in its submission that the issue relates to Baggage falls within the exclusion carved out in terms of the proviso to Section 129 A (1) of the Customs Act, 1962 and thus the order of the Tribunal is set aside as bad in law. However, liberty is granted to the respondents to avail statutory remedy by way of a revision before the appropriate authority if so advised within a period of 8 weeks from the date of receipt of a copy of this order. If such revision is filed by the respondents within the time line set out above the Revisional Authority shall examine the matter and pass order on merits.

13. As we have decided that the Tribunal may not have jurisdiction to entertain the appeal in respect of an order relating to import of baggage, as a consequence W.P.No.4811 of 2021 praying for disposal of her jewellery which was premised on the order of the Tribunal which we have set aside appears to have become infructuous. However liberty is granted in the event of the petitioner succeeding in the challenge to the order of the appellate authority before the appropriate forum to avail any remedy that may be available to enforce such order in the manner known to law.

(emphasis added)

11. The appellant has drawn attention to the recent judgment of the Tribunal at Mumbai, in the case of **VICKY RAMCHAND ASRANI Vs COMMISSIONER OF CUSTOMS, CSMI AIRPORT, MUMBAI** [2025-TIOL-445-CESTAT-MUM] wherein it was stated that,

11. . . . In re Ahmed Gatchi Natchair [2020 (10) TMI 100], the Hon'ble High Court of Madras was concerned with a matter in which plea for re-export of gold was allowed by the Tribunal on the finding that the impugned proceedings were bereft of evidence of goods being prohibited for import by person intending to return to country of residence. In the impugned proceedings, there is no challenge to liability for confiscation for non-declaration by person intending to

remain in India and, consequently, not with reference to section 80 of Customs Act, 1962 which was pleaded for in the cited decision.

We have examined the matter and find that the Hon'ble High Court in

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reported in 2024 (15) Centax 177 (Mad.), posed to itself the following question which is extracted below;

7. Against the above background, the following questions arise for consideration:

a. Whether the Tribunal was right in rejecting the plea of the appellant herein of lack of authority/ jurisdiction of the Tribunal, in view of the fact that the issue according to the appellant relates to goods imported as "Baggage" and thus falls within the exclusions carved out in the proviso to Section 129A(1) of the Customs Act, 1962 which reads as under:

A reading of the above provision would show that the Tribunal shall not have jurisdiction to decide any appeal in respect of an order passed by the Commissioner (Appeals) under Section 128 A of the Customs Act, 1962 relating to any goods imported or exported as "Baggage".

b. Whether jewellery worn on the person would constitute "Baggage", if the answer to the above question is in the affirmative it then seems doubtful if the Tribunal was right in assuming jurisdiction. . .

Hence there is no doubt, at least to our mind, that what was answered by the Hon'ble jurisdictional High court and extracted at para 13 above related to the jurisdiction of the Tribunal to decide any appeal in respect of an order passed by the Commissioner (Appeals) under Section 128 A of the Customs Act, 1962 relating to any goods imported or exported as "Baggage" and that "Baggage" under the 2016 Rules includes jewellery worn on the person.

12. In **DIRECTORATE OF REVENUE INTELLIGENCE Vs PUSPHA L. TOLANI** [2024 (390) E.L.T. 15 (S.C.)], decided by the Hon'ble

Supreme Court and cited by the appellant in their favour, the passenger on arrival in India opted to walk through the 'Green Channel'. She was intercepted and on an examination of her baggage, 28 packages containing 44 items of jewellery worth Rs. 1.27 crores were recovered from two hand bags. The Hon'ble Supreme Court held that the respondent did not violate the provisions of Section 77 of the Act since the necessary declaration was made by the respondent by passing through the Green Channel. This is itself a declaration that a passenger had no dutiable or prohibited articles and is devised with a view to facilitate expeditious and smooth clearance of the passenger. After a harmonious reading of Rule 7 of the Baggage Rules, 1998 read with Appendix E (2) of the Rules with the facts of the case, the Hon'ble Court held that the respondent was not carrying any **dutiable goods** because the goods were the bona fide jewellery of the respondent for her personal use and was intended to be taken out of India. Hence the issue was decided in terms of the Baggage Rules only. The Hon'ble Delhi High Court in its judgment in **ANJALI PANDEY**, discussed at para 15 below, which examined the Supreme Court's judgment, also held accordingly. In the circumstances the judgment in **PUSPHA L. TOLANI** (supra) does not support the appellants stand.

13. The appellant has stated that a Single Judge Bench of the Hon'ble High Court of Madras in **Ms. Sabeena Mohammed Maideen** (supra) felt that the Division Bench of the Hon'ble High Court in **AHAMED GANI NATCHIAR** (supra) did not have an occasion to deal with the aspect as to whether the Baggage Rules, 2016, can override the Statute (Section 79 of the Customs Act, 1962), since no issue was framed and no arguments were made on that aspect. The facts of the

said case show that the petitioner on arrival at Chennai International Airport was found wearing 10 nos. of bangles, weighing about 135 grams and on search of her bags no personal effects in the form of gold jewellery were found kept in the baggage. The bangles were confiscated for alleged contravention of the Baggage Rules and provisions of the Customs Act, 1962. The Hon'ble single Judge after examining the matter held that in the said case, the Baggage Rule, 2016 will apply only to the baggage and the Rule made to the extent that the article "carried on the person" will not include baggage, which was in excess of powers conferred by the Rule making Authority and would amount to ultra vires. Therefore, the jewellery worn in person will not come under the purview of baggage. As fairly admitted by the appellants counsel the said judgment of the Single Judge Bench has been stayed by the Division Bench in W.A. No.411 of 2025, dated 14.02.2025. He was however of the opinion that the stay of operation of order does not efface the ratio of the said order. He stated that as per the Hon'ble Supreme Court judgment in the case of **Shree Chamundi Mopeds Vs. Church of South India, Madras** [(1992) 3 SCC 1] a distinction was made between stay of operation of the order challenged and quashing of an order. It holds that quashing of an order results in restoration of the position as on dated of passing of order which has been quashed. Stay would only mean that the order would not be operative from the date of passing of stay order and does not mean that such order has been wiped out from existence.

14. We have examined the matter. We find that the stay granted by the Division Bench in W.A. No.411 of 2025, dated 14.02.2025 [**The Principal Commissioner of Customs, Chennai Vs Ms. Sabeena**

Mohammed Maideen], states that the Court is convinced that **there is a prima facie case in favour of the appellant (revenue)**. The issue concerns the constitutional vires of the provisions of the Baggage Rules, 2016 framed under the Customs Act, 1962 and the Hon'ble Court was inclined to grant stay of operation of the order passed in W.P. No. 5247 of 2024. The issue of the effect of a 'stay' was examined by the Hon'ble Supreme Court in **Consolidated Coffee Ltd., M/s. v. Agricultural Income-tax Officer, Madikeri** [AIR 2000 SC 3731], wherein it was held as under;

7. As has been pointed out by this Court in **Kanoria Chemicals and Industries Ltd. v. U.P. State Electricity Board**, (1997) 5 SCC 772, an order of stay may be made in different ways but the effect thereof is the same, namely, that for the period during which an order of stay operates, **the order that is stayed does not exist in the eye of the law. Once the stay is vacated, the order is resuscitated and may then be executed.** (emphasis added)

We are hence of the opinion that judicial discipline requires that we are bound and should abide by the judgment of the jurisdictional High Court in **AHAMED GANI NATCHIAR** (supra) and a large body of judgments of benches of co-equal strength of this Tribunal, more so when the constitutional vires of certain provisions of the Baggage Rules is under the consideration of the Divisional Bench of the Hon'ble Court. Further, the Hon'ble apex Court in **R. K. Garg Vs Union of India** [(1981) 4 SCC 675], held as follows:

"The presumption of constitutionality is indeed so strong that in order to sustain it, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

[Also see: **St. Johns Teachers Training Institute v. Regional Director, NCTE** [(2003) 3 SCC 321]; **State of T.N. v. P. Krishnamurthy** [(2006) 4 SCC 321]; **Cellular Operators Assn. of India v. TRAI** [(2016) 7 SCC 703] and **Global Energy Ltd. v.**

Central Electricity Regulatory Commission [(2009) 15 SCC 570].

We thus hold that, 'baggage' under the Baggage Rules 2016, includes jewellery worn or concealed on the person of an individual arriving in India from abroad, and hence this Tribunal lacks the jurisdiction to entertain an appeal pertaining to 'any goods imported or exported as baggage' as per the exclusions carved out by the proviso to Section 129A(1) of the Customs Act, 1962, in line with the Hon'ble High Court's decision in **AHAMED GANI NATCHIAR** (supra).

15. We also find that the Hon'ble High Court of Delhi in its very recent judgment in the case of **ANJALI PANDEY Vs UNION OF INDIA AND ORS** [W.P.(C) 10482/2024, Dated: 22.01.2025], has after examining a number of judgments including the judgment of the Hon'ble Supreme Court in **Directorate of Revenue Intelligence & Ors. Vs Pushpa Lekhumal Tolani**, (supra) and the Delhi High Court's judgment in **Qamar Jahan Vs Union of India, represented by Secretary, Ministry of Finance & Ors.** [2025:DHC:174-DB], has stated as under;

16. A conspectus of the above decisions and provisions would lead to the conclusion that jewellery that is bona fide in personal use by the tourist would not be excluded from the ambit of personal effects as defined under the Baggage Rules. (emphasis added)

From the judgment it appears there is by and large a convergence of views among the Constitutional Courts on the applicability of the Baggage Rules 2016, to gold jewellery found on an individual or carried in his/ her baggage while arriving in India from abroad.

16. We also feel that established procedures and practices that have been in place since the Finance Act of 1984, should not be changed suddenly or else it would cause immense difficulty to appellants especially in the case of passengers. This is more so when, in a series

of judgments of this Tribunal, some of which were cited by Revenue above, appeal on disputes related to the import of 'baggage' have been left to the Revisionary Authorities to resolve. In other words, it would be a wise judicial policy and practice not to take a different view, from benches of co-equal strength, in tax matters which are governed by an all India statute. More so, when a need for the special procedure was felt necessary by the legislature and carved out in the Customs Act 1962, even after the setting up of the Tribunal, two years earlier, in 1982. A quote which served as a guide for us and which embodies the spirit of judicial discipline, has aptly observed :

“A judge would desert his duty who did not act up to what his predecessors handed down as the Rules for his guidance in Administration of Justice”. [J.T.R.I. JOURNAL - First Year, Issue - 2 - Year - April - June, 1995]

In **World Sport Group (Mauritius) Ltd. Vs MSM Satellite (Singapore) Pte. Ltd.** [(2014) 11 SCC 639], the Hon'ble Supreme Court opined as under:

“22. We are unable to accept the first contention of Mr. Venugopal that as Clause 9 of the Facilitation Deed provides that any party may seek equitable relief in a court of competent jurisdiction in Singapore, or such other court that may have jurisdiction over the parties, the Bombay High Court had no jurisdiction to entertain the suit and restrain the arbitration proceedings at Singapore because of the principle of Comity of Courts. In **Black's Law Dictionary**, 5th Edition, Judicial Comity, has been explained in the following words:
“Judicial comity. The principle in accordance with which the courts of one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect.”

Thus, what is meant by the principle of “comity” is that courts of one state or jurisdiction will give effect to the laws and judicial decisions of another state or jurisdiction, not as a matter of obligation but out of deference and mutual respect.” (Emphasis Supplied)

17. We now examine the remaining three cases of passenger [Mohamed Ebrahim Amsath Hanifa, Yusaf Hussain Shahul Hameed and Abdul Salam] who arrived at the Chennai domestic airport by an aircraft on a domestic run, from Mumbai domestic airport

and from whose person / luggage imported goods including gold / silver coins etc. were allegedly recovered. We find that the Customs Act, 1962 is the main legislation granting powers to the Government to levy and collect duties of customs on goods imported into and exported from India. The Baggage Rules, 2016, has been framed under the Customs Act 1962. They are a set of guiding principles, which come into play, for clearing 'baggage' both accompanied and un-accompanied - of individuals who travel to India from abroad - between their importation and the time when it exits the international airport upon clearance and loses its presumptive identity as 'baggage'. Hence once the luggage / bag which accompanies an individual arriving from a domestic airport in India, during the aircrafts domestic run, is intercepted by the officers at the Chennai domestic airport, there cannot be a presumption that it is covered under the Customs Act, 1962 and to which the Baggage Rules, 2016 can automatically apply. Imported consumer goods are freely available within the country and cannot be presumed to be goods improperly imported or to be smuggled goods if found on the person or in the luggage of individuals arriving at domestic airports, while the flight is on a domestic run. As stated by the Apex Court in **Suresh Budharmal Kalani Vs State of Maharashtra** (1998 (7) SCC 337) "A presumption can be drawn only from facts and not from other presumptions by a process of probable and logical reasoning". Hence the articles allegedly found / recovered from an individual's luggage or from his person, in the circumstances, cannot be presumed to be part of 'baggage' as defined under the Customs Act 1962. The onus of proof would be on the department, unless provided for otherwise by the statute, and an appeal against

any order passed by a Commissioner (Appeals) in this regard would hence lie before the Tribunal. None of the four judgments cited by revenue pertains to individuals and their baggage being intercepted at a domestic airport and are hence not discussed in this context.

18. Having examined the defect of jurisdiction as pointed out by the Registry and by Revenue, we are of the opinion that Defect Appeal No. 42151/2024 in the case of Ms. Noorul Ayin, requires to be returned to the appellant for being filed before the appropriate appellate forum. In the other three cases dealt with in;

- i) Defect Appeal No. 40285/2025 [Mr. Mohamed Ebrahim Amsath Hanifa]
- ii) Defect Appeal No. 40287/2025 [Mr. Yusaf Hussain Shahul Hameed]
- iii) Defect Appeal No. 40295/2025 [Mr. Abdul Salam]

if no other defect survives, the appeals may be numbered and date allotted for hearing, in the normal course.

(Order pronounced in open court on 08.04.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

Rex