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Date: 25.09.2025

CESTAT Kolkata Sets Aside Penalties in Alleged Gold Smuggling



This Article has been written by Shri Ravi Shekhar Jha, Advocate based in New Delhi. The views expressed are based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

In a significant ruling, the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Eastern Zonal Bench, Kolkata, has set aside penalties imposed on three appellants in a case involving alleged smuggling of gold bars. The decision, pronounced on September 17, 2025, highlights critical legal principles surrounding the burden of proof, reasonable belief, and the applicability of penalties under Section 112(b)(i) of the Customs Act, 1962.

Background of the Case

The case originated from the seizure of 40 gold bars weighing 6638.450 grams and valued at Rs. 2,18,40,500/- from a truck intercepted near CRPF Camp, Guwahati, on March 7, 2019. The gold was concealed in a cavity under the driver's seat, and the truck occupants, along with three appellants, were involved in the alleged smuggling operation. The appellants were accused of being involved in the transshipment of the gold, based primarily on their statements and those of co-accused individuals.

Key Issues Addressed by the Tribunal

The Tribunal analyzed three critical issues:

1. **Involvement in Smuggling:** The Tribunal found that the appellants were implicated solely based on their statements and those of co-accused individuals, without any corroborative evidence. The appellants had retracted their statements, and the investigation failed to establish their direct involvement in the smuggling operation.
2. **Burden of Proof Under Section 123:** The Tribunal held that the burden of proof under Section 123 of the Customs Act, which shifts to the person claiming ownership of seized goods, was not applicable to the appellants as they did not claim ownership of the gold. The Department failed to establish the foreign origin of the gold, a prerequisite for invoking Section 123.
3. **Imposition of Penalties Under Section 112(b)(i):** The Tribunal observed that penalties under Section 112(b)(i) require evidence that the goods were smuggled and prohibited. In this case, the gold bars lacked foreign markings, and their purity did not match standard foreign-origin gold. The Department failed to prove that the gold was smuggled, rendering the penalties unsustainable.

Tribunal's Observations

The Tribunal emphasized the importance of "reasonable belief" and substantive evidence in cases of alleged smuggling. It cited several landmark judgments, including *Tata Chemicals Ltd. v. Commissioner of Customs (Preventive)* and *Gian Chand v. State of Punjab*, to underline that suspicion alone cannot justify seizure or penalties. The Tribunal also noted that the appellants were not present in the vehicle carrying the gold and were implicated without sufficient evidence.

Outcome

The Tribunal set aside the penalties imposed on the appellants, stating that the evidences on record did not establish their involvement in smuggling or justify the penalties under Section 112(b)(i). The decision provides consequential relief to the appellants and reinforces the principle that penalties cannot be imposed without conclusive evidence.

Implications of the Ruling

This ruling is a landmark decision that underscores the importance of adhering to legal standards in smuggling cases. It highlights the need for Customs authorities to provide substantive evidence before invoking provisions like Section 123 and imposing penalties under Section 112. The judgment also serves as a reminder that procedural safeguards, such as cross-examination of witnesses, are essential to ensure fair adjudication.

Conclusion

The Tribunal's decision in this case is a victory for justice and due process. It sets a precedent for future cases involving alleged smuggling and reinforces the principle that penalties cannot be imposed based on mere suspicion or unsubstantiated statements. As the appellants walk free from the shadow of penalties, this ruling serves as a beacon of hope for individuals facing similar allegations.

Source: CESTAT Kolkata

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**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75033 of 2022

(Arising out of Order-in-Appeal No. 25/CUS(A)/GHY/2021 dated 13.10.2021 passed by the Commissioner (Appeals), CGST, Central Excise & Customs 3rd Floor, GST Bhawan, Kedar Road, Machkhowa, Guwahati-781001)

Shri Kailash Pareek @ Kailash Sharma Pareek, : **Appellant**
Son of Shri Sanwar Mal Pareek,
Ward No. 23, Near Old Well (Ghar),
P.O. Ratangarh, Dist-Churu, Rajasthan-331 022

VERSUS

Commissioner of Customs (Preventive) : **Respondent**
110, Mahatma Gandhi Road, NER,
Shillong

WITH

Customs Appeal No. 75064 of 2022

(Arising out of Order-in-Appeal No. 27/CUS(A)/GHY/2021 dated 17.11.2021 passed by the Commissioner (Appeals), CGST, Central Excise & Customs 3rd Floor, GST Bhawan, Kedar Road, Machkhowa, Guwahati-781001)

Shri Shankar Lal @ Shankar Lal Prajapati, : **Appellant**
Ward No. 23, Near Old Well (Ghar), P.O. Ratangarh,
District: Churu, Rajasthan - 331 022

VERSUS

Commissioner of Customs (Preventive) : **Respondent**
110, Mahatma Gandhi Road, NER,
Shillong

AND

Customs Appeal No. 75152 of 2022

(Arising out of Order-in-Appeal No. 32/CUS(A)/GHY/2021 dated 30.12.2021 passed by the Commissioner (Appeals), CGST, Central Excise & Customs 3rd Floor, GST Bhawan, Kedar Road, Machkhowa, Guwahati-781001)

Shri Jyotish Pareek @ Jyotish Kumar Pareek, : **Appellant**
Ward No. 23, Near Old Water Tank, P.O.: Ratangarh,
District: Churu, Rajasthan – 331 022

VERSUS

Commissioner of (Appeals), CGST, Central Excise & Customs, : **Respondent**
3rd Floor, GST Bhawan, Kedar Road,
Machkhowa, Guwahati-781001

APPEARANCE:

Shri Aditya Dutta, Advocate, for the Appellant(s)
Shri S. Chakravorty , Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOS.77417-77419/ 2025

DATE OF HEARING: 11.09.2025

DATE OF PRONOUNCEMENT: 17.09.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

1.1. Customs Appeal No. 75033 of 2022, has been filed by Shri Kailash Pareek @ Kailash Sharma Pareek, against imposition of penalty of Rs.21,80,000/-under Section 112(b)(i) of the Customs Act, 1962, in the Order-in-Appeal No. 25/CUS(A)/GHY/2021 dated 13.10.2021 passed by the Commissioner (Appeals) CGST, Central Excise & Customs 3rd Floor, GST Bhawan, Kedar Road, Machkhowa, Guwahati-781001.

1.2. Customs Appeal No. 75064 of 2022, has been filed by Shri Shankar Lal @ Shankar Lal Prajapati, against imposition of penalty of Rs. 21,80,000/- under Section 112(b)(i) of the Customs Act, 1962, in the Order-in-Appeal No. 27/CUS(A)/GHY/2021 dated 17.11.2021 passed by the Commissioner (Appeals) CGST, Central Excise & Customs 3rd Floor, GST Bhawan, Kedar Road, Machkhowa, Guwahati-781001.

1.3. Customs Appeal No. 75152 of 2022, has been filed by Shri Jyotish Pareek against imposition of penalty of Rs. 21,80,000/- under Section 112(b)(i) of the Customs Act, 1962, by Order-in-Appeal No. 32/CUS(A)/GHY/2021 dated 30.12.2021 passed by the Commissioner (Appeals) CGST, Central Excise & Customs 3rd Floor, GST Bhawan, Kedar Road, Machkhowa, Guwahati-781001.

2. The facts of the case are that on 7th of March, 2019, at about 16:00 hrs the officers of DRI, Guwahati Zonal Unit intercepted a truck bearing registration No. MN-01-9905 which had been parked near the CRPF Camp, 9th Mile, Khanapara, Guwahati. The truck was reportedly travelling from Imphal having its occupants Md. Tazuddin of Mayag, Imphal, Manipur, as the Driver and another person Md. Saukat Ali of Lilong, Manipur, sitting in the vehicle helper. At the same time, two other persons who were later identified as Shri Shankar Lal Prajapati and Shri Kailash Sharma Pareek both of Ratangarh, Churu, Rajasthan approached the truck and had conversations with the occupants of the truck when the DRI officers of Guwahati intercepted the truck.

2.1. On search of the said truck, the said officers recovered some yellow metal bars from inside a cavity under the backseat of the driver's cabin. For safety reasons the said officers took the truck along with the said four persons to the Customs departmental designated parking yard at Chandrapur, Guwahati for detailed examination. After rummaging, the DRI officers recovered a total of 40 pieces of such yellow metal bars from the said cavity under the backseat of the driver's cabin in the presence of local Goldsmith K.K. Jewelers, who ascertained the cumulative weight of such bars to be 6638.450 grams and took representative samples for testing. The samples of the bars on being chemically tested were later ascertained to be made of gold and the total value of said 40 pieces was also ascertained as Rs. 2,18,40,500/-.

2.2. As the persons available in the vehicle namely the driver Shri. Tazuddin and Mr. Soukat Ali, could not produce any document for the licit

purchase/import of the said gold, the officers seized the said 40 gold bars under the 'reasonable belief' that the said gold bars were smuggled into the country without payment of appropriate duties of customs. The said truck valued at Rs 20,07,361/- bearing registration No. MN-01-9905 in which the such materials were being carried was also seized.

2.3. Samples were drawn from the said gold bars and on testing the same by the Senior Quality Control Officer, Department of Industries and Commerce, the purity of the gold bars were ascertained to be 995.1% to 996.7%.

2.4. On 07.03.2019, written statements of all the four persons were taken by DRI Officers and all of them were arrested and sent to jail till 20.03.2019. During the course of investigation, the name of one Shri Jyotish Pareek resident of Chur Rajasthan was revealed by the said persons, involved in the instant case.

2.5. On completion of the investigation, a Show Cause Notice dated 02.09.2019 was issued seeking:

(a) Confiscation of the 40 gold bars reportedly of foreign origin under Section 111(b) and (d) of the Customs Act, 1962,

(b) Confiscation of torn packaging materials used for concealing the 40 gold bars under Section 119 of the Customs Act, 1962,

(c) Seizure of Truck Bearing registration No. MN 01 9905 valued at Rs.20,07,361/- under Section 115(2) of the Customs Act, 1962,

(d) Imposition of penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962 upon all five noticees (i) Jyotish Pareek, (ii)

Saukat Ali, (iii) Shankar Lal, (iv) Kailash Pareek and (v) Md. Tazuddin.

2.6. The said SCN was adjudicated by the Additional Commissioner of Customs (Preventive), N.E.R. Shillong vide his Order-in-Original No. COM/CUS/ADDL.COMMR/03/2021 dated 09th February, 2021, wherein the Ld. Adjudicating authority passed the following order:-

(a) Absolute confiscation of 40 pieces of primary gold bars of foreign origin having total weight of 6638.450 grams valued at Rs. 2,18,40,500/- under Section 111(b) and (d) of the Customs Act, 1962.

(b) Confiscation of Tata 12-Wheeler Truck bearing Registration No. MN-01-9905 valued at Rs. 20,07,361/- for concealing and transporting foreign gold bars. Actual owner was given option to redeem the truck on payment of Rs. 5,00,000/-.

(c) Penalty of Rs. 21,80,000/- each on all five noticees, namely (i) Jyotish Pareek, (ii) Saukat Ali, (iii) Shankar Lal, (iv) Kailash Pareek and (v) Md. Tazuddin under Section 112(b)(i) of the Customs Act, 1962.

(d) Release of the items mentioned at Sl. Nos. 2,4 to 16 of the seizure list.

2.7. Thereafter, the appellants herein filed separate appeals against the penalties imposed on them vide the Order-in-Original dated 09.02.2021. On appeal, the Ld. Commissioner (Appeals), CGST, CE & Customs, Guwahati, vide Order-in-Appeal Nos. 25/CUS(A)/GHY/2021 dated 13.10.2021 (Kailash Sharma Pareek), 27/CUS(A)/GHY/2021 dated

17.11.2021 (Shankar Lal Prajapati) and 32/CUS(A)/GHY/2021 dated 30.12.2021 (Jyotish Kumar Pareek) upheld the penalties imposed on the appellants herein vide the Order-in-Original dated 09.02.2021.

2.8. The main grounds under which the Ld. Commissioner (Appeals) has upheld the penalties are re-summarised as under:

(a) As per the confessional statement dated 29.06.2019, Jyotish Parekh admitted that they had deputed Shankar Lal to collect gold from Saukat Ali and Kailash Pareek was deputed to keep vigil of the transshipment. Hence it is beyond doubt that if the departmental officers would not have intervened transshipment/ handing over of the gold would have gone through.

(b) The prayer of gold being not recovered from the appellant does not hold good since he could not give any proof that he did not have prior knowledge that the gold bars were liable to confiscation.

(c) As the goods fall under the purview of Section 123 of the Customs Act, 1962 and nobody has come forward with any licit documents for possession of the said gold, the impugned goods became prohibited goods. The marking and purity of gold does not have any impact on the facts of the case.

(d) The apprehension of the appellant with the seized gold, voluntary statements of accused recorded under Section 108 of the Customs Act, phone calls made between the

accused persons are evidences from which the case is established beyond doubt.

(e) Since from the records and evidences available, it has been proven beyond doubt that by the act of the appellants rendered the goods liable for confiscation. Therefore, penalty under Section 112b(i) has been correctly imposed.

2.9. Being aggrieved by the Orders-in-Appeal, the appellants Shri Shankar Lal Prajapati (Noticee No.3), Shri Kailash Pareek (Noticee No.4) and Shri Jyotish Pareek (Noticee No.5) have filed these appeals before the Tribunal.

3. The Individual roles played by all the five persons as investigated by the DRI officers were as below:-

Md. Tazuddin, Driver of the Truck Seized

3.1. He is a resident of Imphal and he had been driving the said truck for about last 6 months reportedly on behalf of some Nathuni Prasad Jaiswal said to be the resident of Manipur. As per his statement recorded on 07.03.2019 before the DRI officers, he along with his helper Shri. **Saukat Ali**, was about to leave Imphal for Guwahati on 06.03.2019 when some person by name **Ibungo (not earlier known to him) mobile No. 9402949451** approached them to carry gold bars for delivery to some person named '**uncle**' at Guwahati, against a gratification amount of Rs. 5000/- to which Md. Tazuddin had agreed. Tazudin kept the gold bars concealed within the cavity behind the driver's seat of the Truck. After reaching Guwahati '**uncle**' contacted them for taking delivery of the gold. Afterwards, at about 16:00 hrs '**Uncle**' **alias Shankar Lal** along with a person named

Kailash Pareek reached CRPF Camp, Guwahati where the truck was standing and both Md. Tazuddin and Saukat Ali started talking to them. At that point of time, the DRI officers intercepted them and apprehended all of them. Tazuddin had stated that he did not know the actual owner of gold bars.

Soukat Ali, Helper of the Truck

3.2. He is a resident of Manipur. He was in the vehicle with Tazuddin as helper of the Truck. In his statement recorded by the DRI officers, he stated that they were supposed to deliver the gold consignment to 'Uncle' alias Shankar Lal at Guwahati as directed by one person named Ibungo of Mantripukhri, Manipur. He further stated that 40 pieces of gold bars were kept in three long and four small packets. He stated that he did not know the actual owner of gold bars. Search was conducted in his residential premises but nothing incriminating was found.

Shankar Lal Prajapati

3.3. In his statement, he has stated that he along with one Kailash Sharma alias Pareek had come to Guwahati from their native village in Rajasthan on 02.03.2019. As per direction of Jyotish Pareekh. He had called up Saukat Ali on 07.03.2019 at about 4PM and had gone to receive 40 pieces of gold biscuits from Saukat Ali. On reaching CRPF camp where they were supposed to meet, he called Saukat Ali and asked him to wait on the road side. On arrival of the Truck, Saukat Ali got down and was talking to him when DRI officers apprehended him. He further stated that he was working for one Jyotish Pareek of Churu Rajasthan whose address he gave it to DRI officials. He also stated that he had been working for

Jyotish Pareek at a monthly salary of Rs. 6000/- and that Jyotish Pareek is the real owner of the gold.

Kailash Sharma Pareek

3.4. In his statement, he stated that he is resident of Churu, Rajasthan. He came to Guwahati with Shankar Lal in search of a job. Only after reaching Guwahati, he came to know that they have come to Guwahati for collecting some valuable material. The mobile numbers available with him was registered in the name of one Jyotish Pareek, having a saree shop at Churu, Rajasthan. He also gave the address of Jyotish Pareek to DRI officers. Subsequently, further investigation was carried out by DRI official on 09.03.2019 at Jaipur at the address given by Shankar Lal and Kailash Pareek as mentioned in their aforesaid statements. But Jyotish Pareek was reportedly out of station for a business trip at that point of time. On search of his residence and shop, nothing incriminating was found by the DRI officers. Subsequently, as per summon Jyotish Pareek appeared before the DRI officers on 28.06.2019.

Jyotish Pareek

3.5. He stated that he could not attend the previous summons as he had gone to Surat to buy sarees. He stated that he goes to Guwahati every year to visit Kamakhya Temple and this year he had gone by train on 18.06.2019 and he returned on 26.06.2019. DRI officers showed some photographs and Shri Jyotish Pareek identified his friend named 'Yeha' who is a resident of Myanmar. He also stated that he once visited Myanmar and once Dubai. In his further statement on 29.06.2019, he stated that Shankar Lal and Kailash Pareek had gone to Guwahati on 02.03.2019. He used to talk with them over phone.

As per his statement, Kailash wanted to buy a truck to put in a transport company. He also stated that Shankar Lal and Kailash Pareek had talked with one person named Saukat Ali regarding a person who wanted to sell his truck. He stated that he also had a talk with Saukat Ali as per the request of Kailash Pareek (his brother).

3.6. He stated that the full gold consignment was Saukat Ali's and only 3 pieces out of them he was supposed to get. He got contact of Saukat Ali from his friend Yeha' who is a resident of Myanmar. He used to talk with Saukat Ali regarding gold business.

3.7. Shri. Jyotish Pareek was arrested and sent to Jail Custody till 12.07.2019. All the above named five persons who were put to jail custody and are out on bail.

4. The Ld. Counsel appearing on behalf of the appellants submits that they have been implicated in the alleged offence of smuggling of gold biscuits on the basis of the statements given by the co-accused. He argues that other than the statements, there is no other corroborative evidence available on record to implicate them in the offence; they have not given the statements on their own volition and accordingly, they have retracted their statements at the earliest opportunity.

4.1. The Ld. Counsel for the appellants further submits that in the present case, the seized gold bars were carried by a goods truck which was travelling from Imphal to Guwahati; further the gold seized did not 'have' any foreign marking on it and there is no observation by the Department also to that effect. Thus, the submission of the appellants is that the provisions of section 123 of the Customs

Act, 1962 are not applicable to them in this case; to make Section 123 of the Customs Act, 1962 applicable, the seizing officer either by his own evidence or other materials placed before the adjudicating authority, has to prove to the satisfaction that there was ground for him to reasonably believe that the goods were smuggled in nature. It is contended that if the adjudicating authority is not satisfied that the goods were seized on a reasonable belief that the goods were of smuggled in nature, Section 123 cannot be invoked; in that event, it would be for the customs authorities to prove that the goods were smuggled in nature; in the present case, the investigation has not brought in any evidence that the gold in question were of smuggled in nature. Thus, the Ld. Counsel for the appellants submitted that Section 123 has been wrongly applied in this case.

4.2. It is further submitted on behalf of the appellants that the gold bars were seized on the 'reasonable belief' that they were smuggled into India, but as has been held by the Hon'ble Apex Court in the case of *Tata Chemicals Ltd. v. Commissioner of Customs (Preventive), Jamnagar* reported in (2015) 11 SCC 628 = 2015 (320) E.L.T. 45 (S.C.), to form a 'reasonable belief' that the goods are smuggled into India, there must be **irrefutable evidence to prove that allegation**; in the present case, there is no such evidence/facts available to prove that the goods were of foreign origin and smuggled into India. It is pointed out that in this case, the gold was seized from Guwahati, travelling from Imphal, which is far away from Indo-Myanmar border. Thus, it is contended that there ought to have been some other corroborative evidence

available to have the reasonable belief that the gold was smuggled from foreign country.

4.3. In this regard, the appellants have also cited the purity of the gold in question. It is their submission that upon testing of samples of the gold, it was found that the said gold bars had the purity of 995.1 mille to 996.7 mille. It is submitted that this level of purity proves that the gold is not standard foreign origin gold, which normally has purity of 999.9 mille. Thus, it is the appellants' contention that the evidence on record does not indicate that the 40 gold bars absolutely confiscated were of smuggled in nature.

4.4. Regarding the penalty imposed on the appellants under Section 112(b)(i) of the Customs Act 1962, the Ld. Counsel representing the appellants submits that there is no evidence on record to show that the gold bars were of foreign origin and smuggled into the country; in the absence of any evidence to establish that the gold bars were smuggled ones, no penalty is imposable under Section 112(b)(i) of the Customs Act, 1962; that in the present case, it is not proven that the gold bars were imported. Further, he submits that the gold bars found were not established as smuggled in nature and hence on the face of it, it cannot be treated as prohibited goods; the gold bars were seized at Guwahati, away from the Indo-Myanmar international border and the investigation has not brought in any evidence to counter this factual position. Hence, it is the contention of the appellants that no penalty is imposable on them under Section 112(b)(i) of Customs Act, 1962.

4.5. In support of the above contention, the appellants rely upon the decision of this Tribunal in

the case of *R.K. Swami Singh v CC(Preventive), Shillong [(2024) 18 Centax 459 (Tri.-Cal)]* wherein under similar facts and circumstances, this Tribunal has set aside the penalty imposed under Section 112(b)(ii) of the Customs Act 1962. The appellant also relied on the Final order No.76269 of 2025 dated 02.05.2020, by the Tribunal Kolkata in the case of *Suresh Maruti Patil Vs Commissioner of Customs (Preventive), Kolkata*.

4.6. In view of the above submissions, the Ld. Counsel for the appellants prays for setting aside the penalties imposed on the appellants, as upheld in the impugned orders.

5. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order. In his submission that the gold bars were concealed in a cavity in the vehicle and the appellants could not produce any documents evidencing licit procurement of the gold; gold being an item listed under section 123 of the customs act, the onus is on the appellant to establish that the gold bars were legally procured. He contends that as the appellants could not produce any document for the legal procurement, the gold bars have been absolutely confiscated. He also justifies the penalties as having been rightly imposed on the appellants for their role in the alleged offence of smuggling of gold bars. Accordingly, he prayed for upholding the penalties imposed on the appellants.

5.1. By way of written submissions filed on 12.09.2025, the Ld. Authorized Representative of the Revenue has also made various submissions, wherein it has been *inter alia* submitted that: -

(i) No document could be produced by the said four persons in respect of legal importation, acquisition, possession and / or transportation of the said seized gold.

(ii) In his statement dated 29.06.2019, Shri Jyotish Pareek, admitted inter alia that he was involved in this clandestine act of dealing in smuggled gold and used to talk about gold to Md. Saukat Ali since he wanted to do business of gold.

5.2. The respondent has also placed reliance upon various case-laws in respect of the issues involved, which are as follows:-

On the issue of burden of proof on the person from whom the smuggled gold is seized & on the issue that reasonable belief of the officers for seizing smuggled gold not questionable:

- *State of Gujarat vs. Mohanlal Jitmalji Porwal and Another.* [1987 (29) E.L.T. 483 (S.C.)]
- *Indru Ramchand Bharvani vs. Union of India* [1992 (59) E.L.T. 201 (S.C.)]
- *Tirupati Trading Corporation vs. Collector of Customs* [1998 (104) E.L.T.618 (Cal.)]

On the issue of delayed retraction being an afterthought and not admissible:

- *Commissioner of Customs Patna vs. Amar Kishore Prasad* [2013 (298) E.L.T. 711 (Pat.)- High Court at Patna]

On the issue of gold becoming prohibited goods if not legally procured:

- *Commissioner of Customs (Export) Vs. Shri Ashwini Kumar alias Amanullah* [CUS AA 37/2021 & CM APPL. 34847/2023- HIGH COURT OF DELHI]
- *Nidhi Kapoor & Others vs. Principal Commissioner and Addl. Secy. to GOI & Ors.* [WP(C) 8902/2021 ,9561/2021, WP(C) 13131/2022,CM APPL. 11400/2023, WP(C) 531/2022, CM APPL 1519/2022 and W.P.(C) 8083/2023,CM APPL 31146/2023- HIGH COURT OF

DELHI]

- *Shankar Lal Goyal Vs. Commissioner of Customs, New Delhi. [2023 (12) TMI 1156 - CESTAT NEW DELHI -- CA- 50070 of 2020, F.O. No. 51685/2023]*

On the issue of gold being liable to confiscation even if seized in town area and not within airport or port area & on the issue of gold liable to confiscation even if it does not contain foreign markings or purity being less than 99.9% :

- *Commr. of Customs(Prev.) Vs Rajendra Damani @ Raju Damani [2024 (5) TMI 730 - CUSTA No. 16 of 2023-- CALCUTTA HIGH COURT]*
- *Om Prakash Khatri Vs. Commissioner [2019 (368) E.L.T. A 155 (Supreme Court.)]*
- *Commissioner of Customs, Cochin Vs. Om Prakash Khatri. [2019 (366) E.L.T. 402 (Ker.)-High Court of Kerala at Ernakulam.]*
- *Commr. of Customs (Prev.), NCH, New Delhi Versus Suresh Bhonsle [2024 (388) E.L.T. 90 -CESTAT PRINCIPAL BENCH, NEW DELHI- C.A.Nos. C/50934 with 51257 & 51737/2018 (DB)]*
- *Deepak Handa vs. Principal Commissioner of Customs(Prev.), New Delhi & Ravi Handa vs. Principal Commissioner of Customs(Prev.), New Delhi. [C.A. No. 52922 of 2019 & 52923 of 2019, F.O. No. 51520-21 /2021- CESTAT, PRINCIPAL BENCH, NEW DELHI.]*
- *Bala Nagu Naga Raju Versus Commissioner of Central Tax, Guntur GST. [C.A.30400 of 2022 (S.M.) /F.O. No. 30092/2023]*
- *Rajan Kumar Jha, Ramesh Kumar Agrawal, Raju Arora vs. Commr. of Customs (Prev. Kolkata [Customs Appeal No(s).: C/75234,75247,75263/2016-DB- EZB, KOLKATA]*

6. Heard both sides and perused the appeal documents.

7. We observe that the appellants herein have filed the appeals against the penalties imposed on them. The appellants are not claiming the ownership of the gold. It is observed from the records that the appellants have been implicated in the alleged

offence of smuggling of gold biscuits on the basis of their own statements and the statements given by the co-accused. Thus, in the present case, the following issues emerge for our consideration: -

- (i) Whether the evidences available on record indicate that the appellants were involved in the alleged offence of smuggling of gold bars, or not.
- (ii) Whether the burden of proof under Section 123 of the Customs Act, 1962, can be shifted to the appellants in the absence of any conclusive evidence proving the foreign origin of the gold, or not.
- (iii) Whether the imposition of penalties under Section 112(b)(i) of the Customs Act, 1962, is legally justified, or not.

Issue No. (i) Whether the evidences available on record indicate that the appellants were involved in the alleged offence of smuggling of gold bars?

8. It is a fact on record that the said 40 gold bars were seized from a truck, when it was parked near CRPF Camp, Guwahati. It is also a fact on record that the driver Tazuddin and helper Saukat Ali were the persons available in the vehicle when the vehicle was intercepted by the officers of DRI. The appellants herein came from outside and met the driver Tazuddin and helper Saukat Ali near the vehicle. It is alleged that the appellants herein have come there to collect the gold from Shri Tazuddin and Mr. Saukat Ali. However, we find that the appellants have been implicated in the alleged offence of smuggling of gold biscuits on the basis of their own statements and the statements given by the co-accused. It is seen that

other than the statements, there is no other corroborative evidence available on record to implicate them in the offence. In this context, we also take note of the submission of the appellants that they have not given the statements on their own volition and they have retracted their statements at the earliest opportunity. We also observe that the statements were not tested as mandated under section 138B of the Customs Act, 1962.

8.1. In the present case, we find that the officers of DRI did not derive any subjective satisfaction that the gold was of foreign origin and smuggled. The seizure inventory fails to disclose any material evidence justifying a 'reasonable belief' for seizure of the gold. In this regard, we observe that mere finding of gold does not render it liable for seizure unless there is cogent and positive evidence proving its foreign origin as the first condition, as precursor to seizure.

8.2. The Hon'ble Supreme Court in the case of *Tata Chemicals Ltd. v. Commissioner of Customs (Preventive), Jamnagar reported in (2015) 11 SCC 628 = 2015 (320) E.L.T. 45 (S.C.)*, explained the meaning of the phrase 'reason to believe' as under:-

"reason to believe" by opining it to be not the subjective satisfaction of the officer concerned, for "such power given to the officer concerned is not an arbitrary power and has to be exercised in accordance with their strains imposed by law" and that such belief must be that of an honest and reasonable person based upon reasonable grounds. Further, if the authority would be acting without jurisdiction or there is no existence of any material or conditions leading to the belief, it would be open for the Court to examine the same, though

sufficiency of the reasons for the belief cannot be investigated.

8.3. We find that the Hon'ble Delhi High Court in the case of *Shanti Lal Mehta v. Union of India & Ors. [1983 (14) E.L.T. 1715 (Del.)]*, has elaborately dealt with town seizures and the evidences required to have the 'reasonable belief' that the goods are smuggled in nature, in such cases. The relevant portion of the said decision is reproduced below: -

"54. The other question which was argued before me was that the customs officer did not act on any reasonable belief when he searched the petitioner's premises on 15-12-1967 and seized the goods. Section 110 opens with the words "if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods". What is the meaning of "reasonable belief"? Did the officer entertain reasonable belief in the facts and the circumstances of this case? This is the other question to be decided. The Supreme Court has said that reasonable belief is a pre-requisite condition of the power of seizure that the statute confers on the officer. (See Collector of Customs v. Sampathu Chetty, AIR 1962 S.C. 316). The preliminary requirement of Section 110 is that the officer seizing should entertain a reasonable belief that the goods seized were smuggled.

55. Reasonable belief as required by Section 110 refers to the point of time when the goods in question are seized and not to a stage subsequent to the act of seizure. (M.G. Abrol v. Amichand, AIR 1961 Bom. 227). The condition precedent that there was such a reasonable belief anterior to the seizure must exist before the presumption under section 123 can be invoked. Section 123 says :

8.4. The Hon'ble Supreme Court, in *Gian Chand v. State of Punjab (1962 AIR 496)*, has categorically held that mere suspicion is not sufficient to justify seizure, and the prosecution must provide substantive evidence of foreign origin. Further, we observe that in *Union of India v. Mahesh Raj (1990 SCC (3) 115)*, the Hon'ble Supreme Court ruled that

the burden under Section 123 arises only if there is prima facie evidence indicating foreign origin, which is entirely absent in this case. Also, in *D. Bhoormull (1974 AIR 859)*, the Hon'ble Supreme Court emphasized that suspicion alone is not a substitute for evidence. In *Umrao Lal v. Commissioner of Customs (2016 (331) E.L.T. 216 (Tri.-Del.)*, it was held that in the absence of markings or material evidence proving foreign origin, confiscation is not sustainable.

8.5. Thus, we are of the considered opinion that the evidences available on record do not indicate that the appellants were involved in the alleged offence of smuggling of gold bars. Accordingly, we answer the question raised in paragraph 7(i) of this Order in the negative.

Issue (ii): Whether the burden of proof under Section 123 of the Customs Act, 1962, can be shifted to the appellants in the absence of any conclusive evidence proving the foreign origin of the gold, or not.

9. Section 123 of Customs Act, 1962, prescribes that the burden of proving that goods which have been seized under the Act are not smuggled in nature is on the person who claims the ownership of the goods. For the sake of ready reference, the said Section is extracted below: -

"SECTION 123. Burden of proof in certain cases. — (1) *Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -*

(a) *in a case where such seizure is made from the possession of any person, -*

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify."

9.1. Admittedly, in the case on hand, the appellants herein are not claiming the ownership of the gold. They were not available in the vehicle which carried the gold bars. It can be seen that other than the statements, there is no other corroborative evidence available on record to implicate them in the offence. For shifting the onus on the person who claims the ownership of gold, it is required to prove first that the gold under seizure were of foreign origin. Once foreign character of the gold is proved, then only the onus is shifted on the person who claims the ownership, to show that the same were not smuggled. Incidentally, we find from the impugned order the onus of proving that the gold was procured legally has been cast upon Shri. Tazuddin and Mr. Saukat Ali only and not on the appellants herein. For ready reference, the relevant para 35 of the findings in the Order in Original are reproduced below:

35. In other words, the burden of proof was on Md. Saukat Ali and Md. Tazuddin to prove that the gold bars in question were not smuggled goods. As stated hereinabove, adequate opportunity was afforded to them to set up their defence which they failed to avail of. They were unable to produce any valid documents in support of licit

importation/possession/acquisition/carrying/harboursing, etc. of the seized gold bars and thus failed to discharge the burden of proof in terms of section 123 of the Act, ibid that the gold so seized were not smuggled. The Show Cause Notice has proposed penal action under section 112 of the Customs Act 1962 against Md. Saukat Ali and Md. Tazuddin. I find that the seized 40 pieces of gold bars have been recovered from their vehicle concealed in a secret cavity specially made for such a purpose. The gold samples sent for testing were confirmed to be gold of purity 23.9 Karat and Fineness of Gold ranged from 994.3 to 996.2%. The seized gold bars have been found to be smuggled and of foreign origin and have been held liable for confiscation. Md. Saukat Ali and Md. Tazuddin could not produce any licit document for acquiring, possessing, purchasing, transporting of the recovered gold biscuits. In their voluntary statement Md. Saukat Ali and Md. Tazuddin have admitted to the transportation/carrying/acquisition/possession/concealing and dealing of the seized gold biscuits and confessed that they were carrying the gold bars from Manipur to Assam for monetary benefits. They gave evasive replies in respect of the person who had purportedly supplied them the gold bars. From the circumstances and facts of the case, there is reasonable belief that the said gold bars were not of legal nature, the onus to show the legal acquisition and possession lies solely upon them. In the absence of any evidences to show the licit nature of the gold bars, their involvement in acquiring, possessing, purchasing, transporting, concealing with the seized gold bars have been proved beyond doubt. I find that it is evident that Md. Saukat Ali and Md. Tazuddin have involved themselves in acquiring, possessing, concealing and transporting the said gold bars respectively for pecuniary benefits which they knew or had reasons to believe were liable for confiscation under section 111(b) and (d) of the Customs Act, 1962.

9.2. Thus, we observe that the Ld. Adjudicating authority has considered Shri. Tazuddin and Shaukat Ali as the persons involved in the alleged smuggling of gold and not the appellants herein. In the findings, the Ld. Adjudicating authority alleged that Shri Jyotish Pareek @Jyotish Kumar Pareek was the main

mastermind behind this operation. However, the lower authorities have not brought in any evidence to substantiate this allegation. It is alleged in the impugned order that Shri Jyotish Pareek had been dealing and conniving with Saukat Ali to acquire the seized 40 pieces of Gold bars of foreign origin from across the border from Myanmar for a period of 6 months. However, from the statement dated 28.06.2019 of Shri Jyotish Pareek given before the DRI, Jaipur, we find that he has categorically stated that he wanted to buy a truck from Saukat Ali so that he can engage it in some transport company and his brother had gone to Guwahati to see the truck being brought by Saukat Ali. All the calls recorded in the CDR submitted by the investigation are related to this transaction of purchase of the truck. Even though the lower authorities have dismissed this claim as a story built up by Shri Jyotish Pareek, we find that the investigation has not brought in any evidence to the contrary. Thus, we do not find any reason to reject the claim made by the appellants that they were no way connected with the alleged smuggling of the 40 gold bars.

9.3. In this regard, it is relevant to cite the judgement of the Hon'ble Supreme Court in *Ganesh Das v. Collector of Central Excise [1994 (70) ELT 441 (SC)]* wherein it was held that before the burden shifts to the person from whom the goods were seized, it must first be established that the goods were of foreign origin and mere suspicion or presence of certain disputed markings is not sufficient. Further, the Hon'ble Supreme Court in *Commissioner of Customs v. Abdul Gani [2012 (278) ELT 474 (SC)]* has reiterated that reasonable belief must be backed by sufficient evidence of foreign origin. If there are no foreign markings or

documentation, the Customs authorities cannot simply assume that the gold in question were of smuggled in nature.

9.4. It is a fact that in the present case, the gold biscuits do not have any foreign markings on it. Further, the appellants herein are not claiming the ownership of the gold. Hence, in the facts and circumstances of the case, we observe that the burden of proof under Section 123 of the Customs Act does not shift on the appellants herein. The Customs authorities must first establish the foreign origin before invoking the presumption of smuggling. So, we are of the view that in this case, the responsibility is on the Department to show that the gold in question was smuggled into the country without payment of appropriate duties of Customs thereon, which the Department has failed to discharge in this case.

9.5. We find that the issue has been examined by this Tribunal at Hyderabad in the case of *Balanagu Naga Venkata Raghavendra vs CC Vijayawada [2021 (378) ELT 493 (Tri-Hyd)]*, wherein it has been held that the burden under Section 123 *ibid.* will not shift on the appellants when the seizure of gold without foreign markings are seized from city.

9.6. In this regard, we also find that a similar view has been expressed in the case of *Sarvendra Kumar Mishra & Anr. v. Commissioner of Customs [2021 (9) TMI 405 - CESTAT, Allahabad]*. The relevant observations of the Tribunal, Allahabad in the said order are as under: -

"14. *Having considered the facts and circumstances, we find that admittedly this is a case of town seizure wherein, the impugned gold was intercepted, initially taken possession of by the officer of GRP and then handed over to the*

Customs. Admittedly, the gold did not have any tell-tale foreign markings and it was merely accused that the markings were removed to hoodwink investigation. The place where seizure took place is not Customs Area. Hon'ble Supreme Court in the case of Gian Chand & Ors(Supra), wherein in case of seizure by the Police and thereafter the possession was shifted to the Customs Officer held that the pre-requisite of seizure is not satisfied. Accordingly, it is held that the circumstances as required under the Customs Act are not satisfied and consequentially the whole burden or onus to establish the smuggled nature of gold is on the Revenue."

9.7. Thus, we hold that the burden of proof under Section 123 of the Customs Act does not shift to the appellants herein, as they have not claimed the ownership of the gold in this case. Accordingly, we answer the issue framed at paragraph 7(ii) supra, in the negative.

Issue (iii): Whether the imposition of penalties under Section 112(b)(i) of the Customs Act, 1962, is legally justified, or not.

10. Regarding the penalty imposed on the appellants under Section 112(b)(i) of the Customs Act 1962, we find that there is no evidence available on record to show that the gold bars were of foreign origin and smuggled into the country. In the absence of any evidence to establish that the gold bars were smuggled ones, penalty under Section 112(b)(i) of the Customs Act, 1962 is not attracted. In the present case, it is not proved that the gold bars were imported. Further, the gold bars found were not established as smuggled in nature and hence on the face of it, the same cannot be treated as prohibited goods. Thus, we observe that when the gold in question is not considered as 'prohibited goods', the provisions of section 112 (b) (i) cannot be invoked to impose penalty. In this context, we also note that

the gold bars were seized at Guwahati, away from the Indo-Myanmar international border and the investigation has also not brought in any evidence to counter this factual position. Hence, in these facts and circumstances, we are of the opinion that no penalty is imposable on the appellants herein under Section 112(b)(i) of Customs Act, 1962.

10.1. In support of the above view, we refer to the decision of this Tribunal in the case of *R.K. Swami Singh v CC(Preventive), Shillong [(2024) 18 Centax 459 (Tri.-Cal)]* wherein under similar facts and circumstances, this Tribunal has set aside the penalty imposed under Section 112(b)(ii) of the Customs Act 1962. The relevant portion of the said decision is reproduced below:

"12.11 Regarding penalty imposed under section 112(b)(ii) of the Customs Act 1962, the appellant stated that the gold was purchased by his father and he inherited the gold from his father. There is no evidence on record to show that the gold bars/pieces were of foreign origin and smuggled into the country. In the absence of any evidence to establish that the gold bars/pieces were smuggled ones, no penalty is imposable under section 112(b)(ii) of the Customs Act, 1962. The appellant cited various decisions of the Tribunals and High Courts to support this claim. We find merit in the argument of the Appellants. Section 112 of the Customs Act, 1962 details the circumstances under which penalty is imposable under this section. Under Section 112(b), penalty is imposable when the person is found to be dealing with goods for which prohibition is in force or the goods are liable for confiscation. The gold bars/pieces found in possession of the appellant were not established as smuggled in nature and hence they are not prohibited goods. The gold bars/pieces were seized at Imphal, away from the Indo-Myanmar international border. The appellant was carrying the gold which he claimed that they were domestically purchased by his father and he inherited the same. We observe that the investigation has not brought in any evidence to counter this claim. Hence, we find merit in the

argument of the appellant that penalty is not imposable on him under Sction 112(b)(ii) of Customs Act, 1962. Accordingly, the answer to question no. (iv) in paragraph 12 above, is in the negative."

10.2. In the instant case, the appellants have been alleged to be the intended purchasers/buyers of the gold in question. We find that under similar facts and circumstances of the case, this Tribunal has analysed the aspect of imposition of penalties on the alleged buyer of the gold under Section 112(a) and (b) of the Customs Act, 1962 in the cases of *Gagan Karel v. Commissioner of Customs (Preventive), Kolkata*, [Final Order No. 75104 of 2025 dated 23.01.2025 in Customs Appeal No. 76205 of 2017 (CESTAT, Kolkata)]. The said decision has also been followed in the case of *Suresh Maruti Patil v. Commissioner of Customs (Preventive), Kolkata* [Final Order No. 76269 of 2025 dated 02.05.2025 in Customs Appeal No. 75909 of 2021 - CESTAT, Kolkata], wherein this Bench has observed as follows: -

"10. We observe that in this case, two (02) gold bars, each weighing 1000 grams, were seized from Shri Rajesh Bhagat on 06.04.2018. In his statement dated 06.04.2018, Shri Ashish Lakhotia had inter alia informed that the gold was supposed to be sold to the appellant. However, it is observed that during the course of cross examination, the said Shri Ashish Lakhotia has informed that his statement was not voluntary. Accordingly, we find that the said statement cannot be relied upon against the appellant.

11. We also find that other than the said statement, there is no other corroborative evidence available on record to implicate the appellant in the alleged offence of smuggling gold bars of foreign origin into the country. It is also observed that there is no evidence against the appellant to indicate that he was the intended purchaser of the gold bars in question. Under these circumstances, we hold that no penalty is imposable on the appellant.

11.1. We find that the same view has been expressed by this Tribunal in the case of *Gagan Karel v. Commissioner of Customs (Preventive), Kolkata, [Final Order No. 75104 of 2025 dated 23.01.2025 in Customs Appeal No. 76205 of 2017 (CESTAT, Kolkata)]* where, under similar facts and circumstances, this Tribunal has set aside the penalty imposed vide Final Order dated 23.01.2025. The relevant part of the said decision are reproduced below:

"6. We find that 58 pieces of gold biscuits and bars and about half a piece of biscuit having a total weight of 10.54855 kgs. collectively valued at Rs.2,85,86,569/- was seized from Shri Pawan Prasad and Smt. Monika Yadav on 16.06.2015. It is alleged that a part of the smuggled gold was supposed to be sold to Shri Gagan Karel, as per the statement recorded from Shri Pawan Prasad. We observe that except the statement dated 16.06.2015 of Shri Pawan Prasad, there is no other evidence available on record to implicate the Appellant in the alleged offence. Since the statements of Shri Pawan Prasad and Smt. Monika Yadav are the only evidences against the Appellant, an opportunity for cross-examining them should have been granted to the Appellant, to verify the claims made by the said persons in their respective statements. In the present case, the Id. adjudicating authority has given only one opportunity of cross-examination of Shri Pawan Prasad and Smt. Monika Yadav on 19.12.2016 and on the said date, both of them had not appeared. The Id. adjudicating authority has not given any further opportunity to cross-examine them and passed the impugned order by relying upon the statements recorded earlier. It is a settled position of law that in such circumstances, when statements recorded from the co-accused are the only evidence to implicate another person in that offence, the said statements cannot be relied upon against the person (the appellant in this case) without giving an opportunity for cross-examining the persons who have given the statements implicating the appellant. In the present case, it is a fact on record that Shri Pawan Prasad and Smt. Monika Yadav had participated in the adjudication

proceedings and therefore, another opportunity must have been given by the Id. adjudicating authority to examine them before relying upon their statements to impose penalty on the appellant. Thus, we hold that the statements of Shri Pawan Prasad and Smt. Monika Yadav cannot be relied upon against the Appellant, without any other corroborative evidence to support the allegations.

7. *We have gone through the findings recorded by the Id. adjudicating authority in the impugned order regarding the role played by the Appellant in the alleged offence. From the findings of the Id. adjudicating authority, we observe that except the statements of Shri Pawan Prasad and Smt. Monika Yadav, there is no other corroborative evidence to establish the role of the Appellant in the alleged offence.*

8. *Section 112 of the Customs Act, 1962, which deals with penalty for improper importation of goods, is reproduced below:-*

"SECTION 112. Penalty for improper importation of goods, etc. — Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the

provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest."

8.1. From the Section 112 of the Customs Act, 1962 reproduced above, we observe that penalty can be imposed under this section only when a person commits an act which renders the goods liable for confiscation. In the present case, we observe that the gold recovered from Shri Pawan Prasad and Smt. Monika Yadav has been ordered to be confiscated under Section 111 of the Customs Act vide the impugned order dated 31.03.2017 and penalty has been imposed on them for the role played by them in the offence. There is

no other evidence available on record to implicate the appellant in the alleged offence. Thus, in the present case, we observe that the elements as mentioned in Section 112 of the Act are not available to impose penalty on the appellant. Hence, we hold the provisions of Section 112(a) and 112(b) cannot be invoked to impose penalty on the appellant. Consequently, we hold that the penalty imposed on the Appellant by invoking the provisions of Section 112(a) and (b) of the Act is not sustainable and hence we set aside the same.

9. In view of the above discussion, we set aside the penalty imposed on the Appellant and allow the appeal filed by the Appellant."

11.2. Therefore, in view of the above discussion and by relying on the decision cited supra, we hold that the penalty of Rs.10,00,000/- imposed on the appellant under Section 112(a) and 112(b) of the Customs Act, 1962 is not sustainable and accordingly, the penalty imposed on the appellant is set aside."

10.3. Thus, by relying on the decisions cited supra, we hold that the penalties imposed on the appellants herein, who are the alleged buyers of the gold, under Section 112(b)(i) *ibid.* are not sustainable. Hence, we answer the question raised in paragraph 7(iii) supra in the negative.

11. We have gone through the case laws cited by the Revenue in support of their contentions. Regarding the case laws cited on the issue of burden of proof on the person from whom the smuggled gold is seized, we observe that the decisions cited are not relevant to this case as the appellant has not claimed ownership of the gold. Further, we observe that the Ld. Adjudicating authority himself has considered Shri. Tazuddin and Shaukat Ali as the persons involved in the alleged smuggling of gold and not the appellants herein. Thus, the provisions

of section 123 are not applicable to the appellant herein.

11.1. Regarding the case laws cited on the issue of gold becoming prohibited goods if not legally procured, we observe that there is no evidence available on record to show that the gold bars were of foreign origin and smuggled into the country. In the absence of any evidence to establish that the gold bars were smuggled ones, we hold that they cannot be considered as prohibited goods for the purpose of imposition of penalty on the appellants herein under section 112(b) (I) of the Customs Act, 1962.

11.2. Accordingly, we hold that the decisions cited by the Revenue are not applicable to the facts and circumstances of the present case.

12. We summarise the answers to the questions raised at paragraph 7 (supra) as below: -

(i) The evidences available on record do not indicate that the appellants herein were involved in the alleged offence of smuggling of gold bars.

(ii) The burden of proof under Section 123 of the Customs Act does not shift to the appellants herein, as they have not claimed the ownership of the gold in this case.

(iii) The penalty imposed on the appellants herein under section 112(b) (i) of the Customs Act, 1962, are not sustainable and the same are liable to be set aside.

13. In view of the above discussion, we hold that the penalty imposed on the appellants herein in the

impugned orders are not sustainable and consequently, we set aside the same.

14. The appeals filed by the appellants herein are disposed of on the above manner, with consequential relief, if any, as per law.

(Order Pronounced in Open court on 17.09.2025)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP