

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75045 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS/CCP/AKR/696/2021 dated 16.08.2021 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Principal Commissioner of Customs (Preventive) : Appellant

Custom House, 15/1, Strand Road, 3rd Floor,
Kolkata, West Bengal – 700 001

VERSUS

Shri Tutun Chandra Roy

S/o. Late Subal Chandra Roy,
Sanghati Apartment, 1st Floor, Bagbazar,
G.T. Road, P.O.: Chandannagar,
District: Hooghly, West Bengal – 712 136

: Respondent

APPEARANCE:

Shri Ashwini Kr. Choudhary, Authorized Representative, for the Appellant (Revenue)

Shri S.C. Ratho, Consultant, for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 75117 / 2026

DATE OF HEARING / DECISION: 27.01.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed by the Revenue against the Order-in-Appeal No. KOL/CUS/CCP/AKR/696/2021 dated 16.08.2021 passed by the Ld. Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001.

2. The facts of the case are that on 18.09.2018, two gold bars were seized from Shri Anup Saha, an employee of Shri Tutun Chandra Roy (the respondent herein) before his shop, M/s. Gems & Jarwa House.

The specifications of the seized gold bars were shown as:

- i) AS-1 - 156469, weighing 999.900 gms.
- ii) AS-2 - 151551, weighing 999.900 gms

2.1. The respondent, who is the proprietor of the said firm, admitted that, both the gold bars belonged to him. The shop premise of the Respondent was searched and his statement was recorded.

2.2. In his statement, the respondent inter alia deposed that one gold bar was purchased from M/s. Dutta Bullion Mart, Kolkata and another one was purchased by his cousin brother, namely, Shri Satyendra Chandra Roy, who died on 20.07.2018, which had been handed over to him against some loan, prior to his death.

3. Statement of Shri Aniruddha Dutta of M/s. Dutta Bullion Mart, was recorded, wherein he inter alia stated that both the said gold bars were purchased from M/s. J J House Private Limited. Accordingly, investigation was initiated against M/s. J J House Private Limited and statement of one Shri Siddhartha was recorded on 27.12.2018, wherein he submitted evidence that both the gold bar nos. 151551 and 156469 were purchased from M/s. Kundan Care Products Limited, Kolkata under tax invoices which were sold to M/s. Dutta Bullion Mart, against tax invoices. Shri Aniruddha Dutta of M/s. Dutta Bullion Mart, in his statement, also deposed that gold bar no. 156469 was sold to Shri Tutun Chandra Roy, proprietor of M/s. Gems and Jarwa House (the respondent herein) and the gold bar no. 151551 was

sold to different customers in cut pieces, but no evidence to that effect was produced by him.

4. A Show Cause Notice dated 06.09.2019 was issued proposing confiscation of the seized gold totally weighing 1999.800 grams valued at Rs.61,79,382/- under Section 111(b) and (d) of the Customs Act, 1962, along with imposition of penalties under Sections 112(a), 112(b) and 14AA of the Act, inter alia, on the respondent.

5. The case was adjudicated vide Order-in-Original No. 95/ADC(P)/CUS/WB/19-20 dated 05.03.2020. On adjudication, one gold bar bearing no. 156469 was ordered to be released by the adjudicating authority, but the gold bar bearing no. 151551, weighing 999.900 grams valued at Rs.30,89,691/- was ordered to be absolutely confiscated under Section 111(b) and 111(d) of the Act; the Id. adjudicating authority also imposed a penalty of Rs.6,00,000/- on the respondent under Section 112(a) and 112(b) of the Act.

5.1. The Respondent challenged the above adjudication order before the Ld. Commissioner of Customs (Appeals), Custom House, Kolkata, who passed the impugned order dated 16.08.2021 setting aside the Order-in-Original dated 05.03.2020 passed by the Id. adjudicating authority and also ordered for unconditional release of the gold bar bearing no. 151551 weighing 999.900 grams in favour of the Respondent; the penalty imposed on the Respondent under Section 112 of the Act was also dropped. While arriving at the said decision, the Ld. Commissioner (Appeals) has relied upon the decision in the case of *Commissioner of Central Excise, Meerut-I Vs. Parmarth Iron Pvt Ltd [2010(260)E.L.T. 514(All.)]*, wherein it was held that, if the Revenue

does not allow cross examination of any prosecution witness, then the Revenue cannot rely upon statement given by such prosecution witness. The Ld. Commissioner (Appeals) also observed that from the different statements recorded by the investigating authorities, it is amply clear that the gold was imported and was sold against proper receipt, which was legally roaming in the Indian market and accordingly, arrived at the conclusion that the Department had failed to discharge its burden of proof to establish the smuggled nature of the gold.

6. Aggrieved by the said order, the Revenue has filed the present appeal, on the following grounds: -

- (i) The Commissioner of Customs (Appeals), Kolkata has failed to appreciate the fact that the Burden of proof under Section 123 of the Customs Act, 1962 was not discharged by the respondent. The respondent stated on 03.10.2018 that he had purchased one piece of gold bar having sl. No. 156469 for his shop and in this context, he had submitted the relevant copy of tax Invoices No. 21197 dt. 18.09.2018 issued by M/s Dutta Bullion Mart. But in the case of the other Gold Bar (mark sl. no. 151551), he could not produce any valid documents and merely stated that it was procured by his brother Shri Satyendra Chandra Roy who has expired on 27.08.2018 and that before his death, he handed over the bar to him due to some loan amount which had remained due. Late Satyendra Chandra Roy did not possess any Trade Licence also.

- (ii) The appellate authority has failed to consider the fact that M/s. Dutta Bullion Mart, Korkata-12, had purchased gold bar marked with "Kundan" no. 151551 from M/s. J.J. House Pvt. Ltd, Kolkata who had purchased the same from M/s. Kundan Care Products Ltd, Kolkata, and M/s. Dutta Bullion Mart sold the same to his different customers in several small cut pieces under several tax invoices, but did not sell to anyone in one Kg bar form. But the same was recovered from the possession of Sri AnupSaha in complete bar form which was subsequently claimed by Shri Tutun Chandra Roy on behalf of his brother late Satyendra Chandra Roy.

- (iii) The appellate authority has failed to consider that the Respondent has purchased only one gold bar with Sl. No. 156469 from M/s. Dutta Bullion Mart with valid documents and the adjudicating authority has also ordered for release of the same. But, in the case of the other gold bar with Sl. No. 151551, the Respondent failed to produce any valid documents regarding his purchase or procurement. Since the seized gold bar with Sl. No. 151551 was procured by him through unauthorised route and illicit manner, he could not produce any valid documents in support of his claim and trying to misguide in the name of his brother Shri Satyendra Chandra Roy who had handed over the same to him due to some loan amount before his death without based on any valid documents. Hence, the same was confiscated by the adjudicating authority.

- (iv) The appellate authority has failed to consider the fact of the statement of Shri Aniruddha Dutta, Prop. of M/s Dutta Bullion Mart wherein he stated that gold bar with sl. no. 151551 has been sold to different customers in small cut pieces under several tax invoices, but did not sell to anyone in one Kg bar form.
- (v) Gold is notified under Section 123 of Custom Act, 1962 and the burden of proof that the same is not smuggled is on the person from whose possession the gold is seized. In this case, the same has not been adequately discharged by the Respondent by not submitting relevant invoices indicating details of the gold so seized by the department.
- (vi) The appellate authority failed to consider that the statement given before the Customs is legal and valid as per Customs Act, 1962.

7. The Ld. Counsel appearing on behalf of the respondent submits that the gold in question had been seized from a Domestic Tariff Area and it had been legally imported. He submits that M/s. Dutta Bullion Mart, Korkata-12, had purchased gold bar marked with "Kundan" no. 151551 from M/s. J.J. House Pvt. Ltd, Kolkata who had purchased the same from M/s. Kundan Care Products Ltd, Kolkata; the Department has only relied upon the statement given by the proprietor of M/s. Dutta Bullion Mart to say that they have sold the same to different customers in several small cut pieces under several tax invoices but not in one kg. form. In this regard, the Ld. Counsel submits that Shri Tutun Chandra Roy (respondent) and his

cousin brother, namely, Shri Satyendra Chandra Roy had purchased the said gold from M/s. Dutta Bullion Mart, which is a domestic purchase; that the Ld. Commissioner (Appeals), in the impugned order, has accepted the above facts and given a categorical finding that the gold bars in question cannot be said to be smuggled ones and that in the absence of any evidence to establish the smuggled character of the said bars, the same cannot be held liable for confiscation. Accordingly, the Ld. Counsel for the respondent contends that the Ld. Commissioner (Appeals) has rightly set aside the Order-in-Original dated 04.03.2020 confiscating the gold in question.

7.1. The Ld. Counsel for the respondent also points out that the Department has primarily relied on the statement recorded from Shri Aniruddha Dutta of M/s. Dutta Bullion Mart, wherein he has stated that the gold bar bearing no. 151551 was sold in cut pieces to different customers; it has also been alleged that the Respondent could not produce any documents regarding licit purchase of the same. In this regard, the respondent submits that the responsibility is cast on the Department to show that the gold is smuggled in nature as the said gold bar has exchanged many hands / people in the Domestic Tariff Area. It is argued that since the respondent has purchased the said gold legally, the allegation of the Revenue as regards the smuggled nature of the goods cannot be sustained. It is also submitted by the respondent that there is no documentary evidence to support the said statement given by Shri Aniruddha Dutta.

7.2. In view of the above submissions, the Ld. Counsel for the respondent prays for upholding the order passed by the Ld. Commissioner (Appeals).

8. Heard both sides and perused the appeal records.

9. We find that both the gold bars purchased by the respondent had originally been procured from M/s. Kundan Care Products Ltd., under tax invoices, which was eventually sold to M/s. Dutta Bullion Mart, under tax invoices. Thus, we observe that the gold bar in question has exchanged many hands in the Domestic Tariff Area and this fact has not been disputed by the Revenue. From the grounds of appeal, we find that the main ground raised by the Revenue is that the Ld. Commissioner of Customs (Appeals) has failed to appreciate the fact that the burden of proof under Section 123 of the Customs Act, 1962 was not discharged by the Respondent. In this regard, we observe that the burden of proof shifts to the Respondent only when there is a reasonable belief that the gold in question was of smuggled in nature. In the present case, the Revenue has admitted that the gold was originally purchased from M/s. Kundan Care Products Ltd., under tax invoices. Thus, the evidence available on record confirms the purchase of the gold from domestic sources. Thus, we hold that the provisions of Section 123 of the Customs Act, 1962 are not applicable to the facts and circumstances of the present case.

9.1. It is also observed that Revenue has relied upon the statement of Shri Aniruddha Dutta, Proprietor of M/s. Dutta Bullion Mart. In his statement, Shri Aniruddha Dutta has inter alia deposed that the gold bar bearing No. 151551 was sold to different customers in cut pieces. Admittedly, the facts regarding the sale of the gold bar itself indicates that the respondent has purchased the same from

domestic sources. We also find that the Department has not produced any evidence to substantiate its allegation that the said gold bar no. 151551 is of foreign origin. Therefore, in the absence of any corroborative evidence by the Revenue to establish the smuggled nature of the gold bar in question, we hold that the gold in question cannot be held liable for confiscation.

10. From the impugned order, we find that the Ld. Commissioner (Appeals) has recorded the following categorical findings while setting aside the order of confiscation of the gold bar under dispute: -

"13. On perusal of the OIO it is found that the lower authority observed that appellant had purchased one piece of gold bar having serial no. 156469 for his shop and in this context, he had submitted the relevant copy of the Tax Invoice No. 21197 dated 18.09.2018 issued by M/s Dutta Bullion Mart along with his Customer Account Ledger Report (Bank Statement) for the period from 01.09.2018 to 30.09.2018 issued by Oriental Bank of Commerce, Bowbazar Branch indicating the payment made by M/s Gems & Jarwa House in favour of M/s Dutta Bullion Mart through RTGS. Accordingly, I hold that appellant has discharged the burden cast upon him under Section 123(1)(b) of the Customs Act, 1962, in respect of gold bar having serial no. 156469 having been legally procured. I find that the appellant had purchased the gold bar having serial no. 156469 and the appellant is the rightful owner. Release of gold bar having serial no. 156469 by the lower authority is justified.

14. The appellant stated in his statement that the gold bar having Sl. No. 151551 was bought by his cousin Sri Satyendra Chandra Roy on his behalf. But as Shri Satyendra Chandra Roy had died on 27.08.2018 he was unable to submit any documents pertaining to that gold bar no. 151551. In this regard the lower authority observed that the said gold bar No. 151551 was purchased by M/s Dutta Bullion Mart from M/s. JJ House Ltd and the appellant possesses legal document only for one bar bearing no. 156469. With regard to the gold bar

bearing No. 151551 under seizure, the lower authority observed that appellant contended that the gold bar bearing no. 151551 was sold by M/s. Kundan Care Products Ltd. to M/s. JJ House Ltd. who in turn sold the same to M/s Dutta Bullion Mart which has been seized from the possession of Shri Anup Saha in the present case. The lower authority also observed that the said gold bar was procured by his brother Shri Satyendra Chandra Roy who expired on 27.08.2018 and that before his death, he handed over the bar (bearing serial no. 151551) to him due to some lone amount which had remained due.

15. The lower authority examined the extract of the Gold Bar Item Register of M/s Dutta Bullion Mart, for the period 01.04.2018 to 31.10.2018. It was observed with respect to the gold bar having serial No. 151551, that the same was purchased by M/s Dutta Bullion Mart from M/s J. J. House Pvt. Ltd. under Tax Invoice No. JJ03233 dated 14.08.2018. However, there is no sale of any single bar weighing 1000.000 grms, any of their customer from 14.08.2018 to 18.09.2018 by M/s Dutta Bullion Mart. Also, there has been no sale of any gold bar to M/s Gems & Jarwa House during the period from 14.08.2018 to 18.09.20 (i.e. date of seizure) by M/s Dutta Bullion Mart. It is also observed that Sri Aniruddha Dutta, prop. of M/s. Dutta Bullion Mart vide his letter dated 02.01.2019 has stated that the gold bar marked with "Kundan" No. 151551 has been purchased from M/s J.J. House Pvt. Ltd. Kolkata on 14.08.2018 under voucher No. JJ03233 and sold to different customers in small cut piece.

16. Further I find that the entire case of Department is based solely on the statement of Sri Aniruddha Dutta, prop. of M/s. Dutta Bullion Mart wherein he stated that the gold bar marked with "Kundan No. 151551 has been purchased from M/s J.J. House Pvt. Ltd. Kolkata on 14.08.2018 under voucher No. JJ03233 and sold to different customers in small cut piece. However, no verification was done by department to substantiate contents of this statement. Department should have investigated further to ascertain to whom the cut pieces of the said gold bar were sold and statement of those customers should also have been recorded before culmination of the investigation. No documentary evidences is placed on record in form of tax invoice etc. for sell of cut pieces of the said gold bar No. 151551 which should have been sought from Sri

Aniruddha Dutta, prop. of M/s. Dutta Bullion Mart during investigation but no such exercise was carried out by the department.

17. Further it is clear that the gold bar bearing no. 151551 was legally sold by M/s Kundan Care Products Ltd. to M/s J.J. House Pvt. Ltd. who in turn sold the same to M/s Dutta Bullion Mart. No documentary as well as oral evidence on record to show that the marking or serial number on the gold bar bearing no. 151551 under seizure in the present case is fake or forged in nature. In such circumstances, the story of selling of gold bar bearing serial number by M/s Dutta Bullion Mart stands in contrary to the seizure in the present case inasmuch as no two gold bars can have same serial number. From the investigation it is find that the said gold bar bearing no. 151551 was roaming into Indian market and very much available. Legal chain of transaction of the said gold bar is established from the investigation.

18. Further I find that no investigation was carried out about smuggling of the gold bar bearing no. 151551 as well. Statements of appellant has been discarded without any reason that the said gold bar bearing no. 151551 was sold by M/s. Kundan Care Products Ltd. to M/s. JJ House Ltd. who in turn sold the same to M/s Dutta Bullion Mart which has been seized from the possession of Shri Anup Saha in the present case, was procured by his brother Shri Satyendra Chandra Roy who has expired on 27.08.20 and that before his death, he handed over the bar (bearing serial no. 151551) to him due to some lone amount which had remained due. I find that this is the case made out only on conjecture and surmises that seized gold bars were made out of smuggled gold converted into new gold bar.

19. In the present case I find that the Department has not adduced any evidence documentary or otherwise that the gold is illegally imported. Considering the fact that gold is freely imported in the country and it is abundantly available in the market, it cannot be held that some gold found inside the Indian territory is smuggled in nature. There may be doubt and suspicion inviting investigation but cannot be sufficient for the purpose of penal action.

20. I find that the lower authority has not allowed to appellant for cross-examination of Shri Aniruddha Dutta, prop. of M/s. Dutta Bullion Mart in order to verify veracity of such allegation made against them. I find that the lower authority has decided the case solely on the basis of the statement given by Shri Aniruddha Dutta proprietor of M/s Dutta Bullion Mart. Therefore the statement of Shri Aniruddha Dutta proprietor of M/s Dutta Bullion Mart is decisive in the instant case. In this regard I note that it was held by Hon'ble Allahabad High Court in the case of Commissioner of Central Excise v. Parmarth Iron Pvt. Ltd. (supra) that if Revenue does not allow cross-examination of any prosecution witness then Revenue cannot rely on the statement given by such prosecution witness for confirmation of demand. In the present case cross-examination of Shri Aniruddha Dutta proprietor of M/s Dutta Bullion Mart was not allowed. The department cannot enjoy the privilege to adhere on the findings which suit the investigation by ignoring other aspects and probabilities of the case. I also find that department has not put forth any incrementing documents or evidence to refute the claim of appellant that the seized gold bars bearing serial no. 151551 was procured by his brother Shri Satyendra Chandra Roy who has expired on 27.08.20 and that before his death, he handed over the bar (bearing serial no. 151551) to him due to some lone amount which had remained due."

11. We find that in view of the above findings, the Ld. Commissioner of Customs (Appeals), Custom House, Kolkata has passed the impugned order dated 16.08.2021 setting aside the Order-in-Original dated 05.03.2020 and ordered for unconditional release of the gold bar bearing no. 151551 weighing 999.900 grams in favour of the Respondent. We fully agree with the above findings given by the Ld. Commissioner (Appeals) and do not find any reason to differ with the same.

12. Accordingly, we uphold the impugned order passed by the Ld. Commissioner (Appeals) and reject the appeal filed by the Revenue.

(Operative part of the order was pronounced in open court)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd