CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70140 of 2024

(Arising out of Order-in-Appeal No.121 & 122-CUS/APPL/LKO/2023 dated 02.02.2023 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

Shri Shashikant Gupta Alias
Vinod Kumar Gupta, **.....Appellant**
(S/o Shri Dineswar Prasad Gupta,
2, Madhab Babu Lane, Near Shyam Mandir,
Ghusuri, Howrah-711107)

VERSUS

Commissioner of Customs (Preventive),
Lucknow **....Respondent**
(Hall No.03, 5th & 11th Floor, Kendriya Bhawan,
Sector-H, Aliganj, Lucknow-226024)

WITH

Customs Appeal No.70141 of 2024

(Arising out of Order-in-Appeal No.121 & 122-CUS/APPL/LKO/2023 dated 02.02.2023 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

Shri Rajesh Singh Alias
Pintu Singh, **.....Appellant**
(S/o Bhola Singh, residing at Karbigawan,
Sadh, Sarsaul, Kanpur Nagar-208001)

VERSUS

Commissioner of Customs (Preventive),
Lucknow **....Respondent**
(Hall No.03, 5th & 11th Floor, Kendriya Bhawan,
Sector-H, Aliganj, Lucknow-226024)

APPEARANCE:

Shri Prithwijit Sharma, Advocate for the Appellant
Smt. Chitra Srivastava, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NOs.- 70776-70777/2025

DATE OF HEARING : 16.07.2025
DATE OF PRONOUNCEMENT : 10.11.2025

Both the above stated appeals are taken together for hearing and decision since they are arising out of a common investigation and dealt with in common Order-in-Original No.129/JC-ADC/2021-22 dated 31.03.2022 and are arising out of impugned common Order-in-Appeal No.121 & 122-CUS/APPL/LKO/2023 dated 02.02.2023 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow.

2. The Present case stems from the apprehension of two individuals being Amit Kumar Soni and Shahid Husain at Deen Dayal Upadhyaya Railway Station on October 5, 2020, acting upon specific intelligence so developed by the Directorate of Revenue Intelligence[1]. Thereupon, a search of the apprehended individuals yielded 2,998.050 grams of gold valued at Rs.1,50,80,192/-, and, thereafter, inquiry revealed that the purported owner of the seized consignment was one Shri Rajesh Kumar. Subsequently, statements recorded from the co-accused implicated the Appellants Shri Rajesh Singh alias Pintu Singh and Shri Shashikant Gupta alias Vinod Kumar Gupta in the smuggling operation, averring that Shri Rajesh Singh facilitated the supply of gold to Shri Rajesh Kumar's employees/apprehended individuals and that Shri Shashikant Gupta held the gold in custody prior to its onward transfer. Meanwhile, the co-accused provided two mobile phone numbers for each Appellant; accordingly, DRI developed Customer Acquisition Forms[2] and Call Detail Records relating to those numbers and issued summons to both Appellants. However, Rajesh Singh's summons were returned back with the remarks "not known" at the address, and Shri Shashikant Gupta, through subsequent representations, explained his inability to attend. Thereafter, a search of Shri Shashikant's residence on 23.11.2020, produced no incriminating materials. Upon completion of the investigation, a Show Cause Notice[3] dated 26.11.2020, was issued to the Appellants proposing penalties under Sections 112(a)/(b) and

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[1] DRI
[2] CAF
[3] SCN

117 of the Customs Act, 1962[4] for their alleged commission and omission. Thereafter, post adjudication the learned Additional Commissioner of Customs, by Order-in-Original dated 31.03.2022, imposed penalty of Rs.15,00,000/- upon Shri Rajesh Singh alias Pintu Singh, under Section 112(b) and penalty of Rs.3,00,000/- under Section 117 of the Act. Penalty of Rs.20,00,000/- under Section 112(b) and penalty of Rs.3,00,000/- upon Shri Shashikant Gupta alias Vinod Kumar Gupta under Section 117 of the Act.

Subsequently, the Appellants filed appeals before the learned Commissioner of Customs, who, by his order dated 02.02.2023, upheld the penalties imposed. Hence, the present appeals before the Tribunal.

3. Learned Advocate appearing on behalf of the Appellants submitted that mere non-attendance at summons cannot by itself establish culpability, nor does the Appellants' inability to appear demonstrates any deliberate evasion, consequently, the invocation of Section 117 of the Customs Act is manifestly unwarranted. Further, it is pertinent herein to be mentioned that the non-appearance arises from *bona fide* circumstances rather than willful default as such, penal consequences cannot follow. The leaned Advocate also contended that the Department's reliance on Call Detail Record[5]s is fundamentally flawed, as the original CDRs were neither produced for independent scrutiny nor examined in their entirety, and only selective extracts were adduced during adjudication without furnishing the complete records to the Appellants; consequently, the Tribunal cannot sustain any inference of culpability based on partial and unverified data, because a fair inquiry demands full access to documentary evidence, forensic validation of call logs and the opportunity to challenge any discrepancies or anomalies in the records themselves. He submitted that the essential prerequisite for imposing any penalty under the proposed provisions requires actual recovery of illicit goods which was entirely absent in the

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[4] The Act
[5] CDR

case of both the Appellants, since no gold or incriminating articles were found upon their person or at their respective residences. Accordingly, Section 112 of the Customs Act, which penalizes custodial nexus or possession, cannot be invoked in the absence of tangible seizure, and any adverse finding predicated solely on remote associations must be set aside as lacking both factual foundation and legal justification. Learned Advocate vehemently argued that the impugned penalty order rests exclusively on conjecture and presumption rather than on demonstrable proof, because the Adjudicating Authority embarked upon a preponderance of probability standard and relied on tenuous logical correlations between co-accused statements and phone-data inferences, whereas penal liability under the Customs Act requires clear, cogent and objective evidence. Accordingly, the quantum of penalty cannot stand when it is grounded upon speculative reasoning divorced from any concrete evidentiary nexus linking the Appellants to the smuggling operation. He submitted that the learned Commissioner's order dated February 2, 2023, errs in asserting that the Department has discharged its primary onus merely by recording statements, without appreciating that in penal proceedings, allegations must be established beyond reasonable doubt, absent incontrovertible proof, the Appellants are entitled to the benefit of every reasonable doubt, and any conclusion to the contrary undermines the fundamental tenets of criminal jurisprudence and the presumption of innocence guaranteed under law. He contended that the Appellants were denied the fundamental right to cross-examination, as neither the co-accused whose statements were relied upon nor the officials responsible for the CAF and CDR analyses were made available for confrontation, thereby vitiating the entire adjudicatory process, the ability to test, challenge and elicit the truth from witnesses is indispensable to ensure fairness, and without it any adverse inference drawn from untested evidence cannot sustain a penalty.

4. The learned Advocate further submitted that the absence of *mens rea* on the part of the Appellants further undermines the validity of the penalty, since neither Appellant possessed the requisite guilty intention or knowingly facilitated any smuggling operation, and the discovery of the gold in question bore no nexus to their actions, in the absence of any demonstrable intent or willful participation, the imposition of Rs.18,00,000/- as penalty under Sections 112(b) and 117 of the Customs Act is both disproportionate and legally untenable. Thus, in light of the above, the Bench may be pleased enough to consider the submissions made by the Appellants herein and pass necessary order and/or orders, as the Tribunal may deem fit and proper, for the ends of justice.

5. Learned Departmental Authorized Representative justified the impugned orders and prayed that the appeals filed by the Appellants, being devoid of merits, may be dismissed.

6. Heard both the sides and perused the appeal records.

7. I find that this Bench of the Tribunal in Customs Appeal No.70179/2023 & Customs Appeal No.70110/2024 vide the Final Order No.70211-70212/2025 dated 23.04.2025 allowed the appeals and set aside the penalties imposed. The confiscation of gold and Indian currency was also set aside by observing as under:-

> *"9. From the case record, we know that confiscated gold was having purity less than 99.9%. This Tribunal in its Final Order dated 17.04.2024 in the case of Neeraj Agarwal and others has held in paragraph 12 that gold of foreign origin has purity of 99.9%. By relying on the said decision of this Tribunal, we observe that the gold confiscated in the present case is having purity less than 99.9% and therefore the same cannot be held to be gold of foreign origin. We also note that the subject gold was not seized at any entry point of India nor was there any investigation in respect of the country from which it was brought into India, from whom it was purchased from a place outside India and therefore we hold that subject gold*

is not of foreign origin. The proceedings have held subject gold to be smuggled gold. As we see from definition of smuggling reproduced above, an activity that renders the goods liable for confiscation under Section 111 of the Customs Act, 1962 is activity of smuggling. Similarly, smuggled gold is one which is liable for confiscation 12 under Section 111 of the said act. In the proceedings, the subject gold was confiscated under Section 111 (b) and (d) of the Customs Act, 1962. Provisions of Section 111 (b) and (d) are reproduced above. The said provisions indicate that if the goods are imported through a route other than the route specified or notified and they are imported contrary to any prohibition then they are liable for confiscation. Further, definition of import is also reproduced above which means that bringing goods from a place outside India. In the proceedings at lower level, from which place outside India the subject gold was brought in has not been established. Therefore, we hold that subject gold is neither smuggled in nature nor was liable for confiscation. The Indian currency was confiscated under Section 121 of the Customs Act, 1962 which provide for confiscation of sale proceeds of smuggled goods. It is now established that the gold which was seized by interception or which was seized at the residence of Rajesh Kumar was not smuggled in nature because it was not liable for confiscation therefore the question of any smuggling involved in the whole proceeding does not arise. Revenue has also not established as to the said Indian currency being accumulated by sale of which smuggled goods and by sale to whom and when. Therefore, we hold that Revenue could not make out a case that either 2998.50gms of gold nor two samples of gold weighing 4.9 and 4.72 grams were liable for confiscation. Revenue also could not make out a case that Indian currency of Rs. 1,01,25,600/- was sale proceed of sale of smuggled goods. We, therefore, hold that gold weighing 2998.50 grams and

4.9 and 4.72 grams was not liable for confiscation and Indian currency was also not liable for confiscation. We note that Section 112 (b) deals with imposition of penalty on a person dealing with goods which are liable for confiscation. We have already held that goods were not liable for confiscation therefore Shri Rajesh Kumar was not liable to be imposed with the penalty of Rs. 20,00,000/-. We also hold that Shri Parvez Khan was not liable to be imposed with a penalty of Rs. 3,00,000/-. We, therefore, hold that both the impugned Orders-in-Appeal are liable to be set 13 aside and as a result those parts of the Order-in-Original dated 31.03.2022 which have merged into the said two impugned Orders-In-Original are also not sustainable. We hold that by producing above stated two invoices bearing no. 502 and 545, the appellant has discharged burden of proof required under Section 123 of Customs Act, 1962 since the copies of the same were handed over to the Revenue during the hearing of the appeal with an option to submit their response within a period of one week and in absence of any such submission by Revenue the burden is discharged by the appellant. Section 125 of Customs Act, 1962 requires adjudicating authority to give option to pay fine in lieu of confiscation where as in the present proceedings no such option was given. For said reasons also the order passed for confiscation of gold and Indian currency is not sustainable.

10. For bringing more clarity to the issue, we set aside confiscation of subject gold weighing 2998.50 grams and 4.9 and 4.72 grams. We set aside confiscation of Indian currency of Rs. 1,01,25,600/-. We set aside imposition of penalty of Rs. 20,00,000/- imposed on Shri Rajesh Kumar and we set aside penalty of Rs. 3,00,000/- imposed on Shri Parvez Khan. In above manner, we allow both the appeals with consequential relief to both the appellants."

8. The seized gold and the Indian currency were held not liable for confiscation. I note that Section 112(b) deals with imposition of penalty on a person dealing with goods which are liable for confiscation. Since, it has already been held that the goods were not liable for confiscation, therefore, no penalty can be imposed on the Appellants. Regarding the penalty imposed under Section 117 for contravention etc., I find that since the Appellants were implicated on the statements of the persons who were apprehended, neither seized goods were recovered from the Appellants nor any incriminating articles were found on search at their respective residences. Further, the Appellants were not provided with the CDR Analysis and were denied to cross-examine the co-accused whose statements were relied upon. Accordingly, the imposition of penalty under Section 117 of the Act is not justified.

9. In view of the above discussion, the impugned Orders-in-Appeal are liable to be set aside and as a result those parts of the Order-in-Original dated 31.03.2022 which have merged into the impugned Orders-in-Appeal are also not sustainable. I set aside the imposition of penalty of Rs.15,00,000/- upon Shri Rajesh Singh alias Pintu Singh under Section 112(b) and penalty of Rs.3,00,000/- under Section 117 of the Act. I also set aside the imposition of penalty of Rs.20,00,000/- under Section 112(b) and penalty of Rs.3,00,000/- under Section 117 of the Act upon Shri Shashikant Gupta alias Vinod Kumar Gupta.

10. Both the appeals filed by the Appellants are allowed with consequential relief, as per law.

(Order pronounced in open court on - **10.11.2025**)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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