CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 50728 OF 2019

[Arising out of the Order-in-Original No. DLI/CUS-PREV/OPD/COMMR/12/ 2018 dated 24/12/2018 passed by The Principal Commissioner of Customs (Preventive), New Delhi – 110 037.]

Shri Rahul Khanna **......Appellant**
s/o Shri Surinder Kumar Khanna,
R/o B-2/180, Paschim Vihar,
New Delhi – 110 063.

Versus

Principal Commissioner of Customs, **....Respondent**
(Preventive),
New Customs House, Near IGI Airport,
New Delhi – 110 037

<u>APPEARANCE:</u>
Ms. Mrinalini, Advocate for the appellant.
Shri Rakesh Kumar, Authorized Representative for the Department

WITH
CUSTOMS APPEAL NO. 50729 OF 2019

[Arising out of the Order-in-Original No. DLI/CUS-PREV/OPD/COMMR/12/ 2018 dated 24/12/2018 passed by The Principal Commissioner of Customs (Preventive), New Delhi – 110 037.]

Shri Aman Kumar **......Appellant**
s/o Shri Jagdeesh Prasad,
Village & PO : Titihara,
Tehsil : Karbi, ,
Distt. Chitrakoot (UP).

Versus

Principal Commissioner of Customs, **....Respondent**
(Preventive),
New Customs House, Near IGI Airport,
New Delhi – 110 037

AND
CUSTOMS APPEAL NO. 50730 OF 2019

[Arising out of the Order-in-Original No. DLI/CUS-PREV/OPD/COMMR/12/ 2018 dated 24/12/2018 passed by The Principal Commissioner of Customs (Preventive), New Delhi – 110 037.]

Shri Shyam Sundar **......Appellant**
s/o Shri Ramaanuj,
Village Deval, PO : Chaura,
Thana Pahadi, Tehsil Karbi,
Distt : Chitrakoot – 216 206 (UP).

Versus

Principal Commissioner of Customs, (Preventive), **....Respondent**
New Customs House, Near IGI Airport,
New Delhi – 110 037

APPEARANCE:

Shri M. Thirupathi Reddy, Advocate for the appellants.
Shri Rakesh Kumar, Authorized Representative for the Department

CORAM:
HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50741-50743/2025

DATE OF HEARING : 07.04.2025
DATE OF DECISION: 21.05.2025

P.V. SUBBA RAO

These three appeals assail the order-in-original dated 24.12.2018[1] passed by the Principal Commissioner of Customs in denovo adjudication proceedings in compliance of the directions of this Tribunal in the Final Order dated 27.03.2017 whereby the matter was remanded to the Commissioner with a direction to supply the documents and give an opportunity of being heard. By the impugned order, the Principal Commissioner confiscated 6 kg. gold Bars valued at Rs. 1,84,20,200/- and 6.1 kg. gold Bars valued at Rs. 1,86,87,350/- seized on 20.02.2014 and 21.02.2014 from Shri

1. **Impugned order**

Aman Kumar[2] and Shri Shyam Sundar[3] respectively along with the goods used to conceal the gold. Silver Ingots weighing 3.184 kg. valued at Rs. 1,52,196/- seized from the premises of M/s Kiran Forex, Chandani Chowk, New Delhi were also confiscated under section 111 of the Customs Act, 1962[4]. Further, Indian currency amounting to Rs. 10,79,300/- seized from the premises of M/s Kiran Forex was also confiscated under section 121 of the Act as sale proceeds of the smuggled goods. Further penalty of Rs. 95,00,000/- was imposed on Shri Rahul Khanna[5] under section 112 of the Act. Penalty of Rs. 45,00,000/- was imposed on Shri Shyam and penalty of Rs. 45,00,000/- was imposed on Aman under the same section.

2. We have heard Ms. Mrinalini Sharma, learned counsel for Shri Rahul Khanna and Shri M. Thirupathi Reddy, learned counsel for Shri Aman Kumar and Shri Shyam Sundar and Shri Rakesh Kumar, learned authorized representative for the Revenue and perused the records.

3. Learned counsel for Shri Rahul Khanna stated that he was not contesting the confiscation of the gold in the impugned order and was only contesting the confiscation of the Silver Ingots and cash and imposition of penalty of Rs. 95,00,000/- on Shri Rahul. It is his submission that the silver did not belong to the Rahul or to M/s Kiran Forex. It belonged

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2. Aman
3. Shyam
4. Act
5. Rahul

to Rahul's wife who had purchased it and who was also a director of M/s Kiran Forex. It is also his submission that the Indian currency which was confiscated was also not the sale proceeds of smuggled gold but it was part of the business cash of M/s Kiran Forex.

4. Shri M. Thirupathi Reddy, learned counsel for Aman and Shyam specifically stated that both are contesting only the penalty imposed on them and nothing else.

5. The facts which lead to the issue of the impugned order are as follows :-

(i) The Directorate General of Revenue Intelligence[6] received information that one, Aman, would be arriving at New Delhi Railway Station from Kolkata by Sealdah Rajdhani Express on 20.02.2014 with smuggled gold. He was accordingly intercepted at the railway station and on his personal search 6 kg. of gold bars were found. He could not produce any document showing legal import and possession of the gold bars. They were accordingly seized by DRI under the belief that they were liable for confiscation. Statement of Aman was recorded and he said that Rahul, the owner of M/s Kiran Forex, had sent him to Kolkata to bring smuggled gold which he was to deliver to Rahul. For this service, he would be paid Rs. 4,000/- per trip + the railway tickets on each occasion. He further said that Shri Babulal Bhai of M/s Banaras Saree

6. DRI

Centre, 97, Rabindra Sarani, 1st Floor, Kolkata used to give him the smuggled gold.

(ii) Next day i.e., on 21 February 2014 Shri Shyam was intercepted by New Delhi Railway Station arriving by Sealdah Rajdhani Express. His search resulted in recovery of 5 gold bars and 11 gold biscuits of foreign origin total by weighing 6.1 kg. He could not produce any document to show licit import and possession of the gold. When questioned, he said that his brother-in-law had introduced him to Rahul of M/s Kiran Forex who is also the owner of M/s Mahalaxmi Traders, where he (Shyam) had worked earlier. He further said that Rahul told him that he could earn good money by bringing smuggled gold from Kolkata to Delhi and that he would be paid Rs. 4,000/- per trip + tickets and he agreed to the proposal. He also said that Rahul had also told him that he had to collect gold from Babulal Bhai of Kolkata. In other words, in their statements both Aman and Shyam indicated that they were carriers employed by Rahul to bring smuggled gold from Babulal Bhai of Kolkata and hand it over to Rahul. Both said that Rahul was the owner of M/s Kiran Forex Pvt. Ltd.

(iii) In follow up searches conducted at M/s Kiran Forex Pvt. Ltd. and M/s Mahalaxmi nothing incriminating was recovered at the premises of Mahalaxmi Traders. From M/s Kiran Forex Pvt. Ltd., Indian currency amounting to Rs. 10,79,300/- and three pieces of silver weighing 3.184 kg. were recovered and seized on the belief that they were sale proceeds of smuggled gold and, hence, were liable for confiscation.

(iv) Rahul was summoned and his statement was recorded. In addition to his personal details, he said that he had started investing in MEX commodity betting and incurred losses when an agent in Kucha Mahajani, Chandni Chowk, New Delhi suggested to invest money in smuggled gold as there was a big price difference between domestic price and international market price of gold. The agent also gave him the mobile number of Babulal Bhai of Kolkata. He contacted Shri Babulal Bhai on his mobile and it was agreed that Rahul would send a person with full amount of money to Babulal Bhai who would, in exchange, give the smuggled gold to the person. Since it was a new business he wanted a very trustworthy person to carry money and return with gold. So, he asked his employee Shri Luvkush for a trustworthy person. Luvkush introduced him to his brother-in-law Shyam and his brother Aman for the purpose. Rahul employed Shyam and Aman as carriers. He further said that Babulal Bhai assured him that there was no risk in dealing with the gold as he (Babulal Bhai) had taken steps to melt and remove the markings and make 1 kg. gold bars and biscuits with MMTC marketing. Rahul also said that he used to pay Rs. 4,000/- + railway fare per trip to Shyam and Aman. While Shyam had delivered gold to him on several occasions, Aman had brought to him gold on only two earlier occasions. On being asked, Rahul said that since December

2013 he had received 90 kg. of smuggled gold from Babulal Bhai of Kolkata and sold it to different brokers/agents in Kucha Mahajani, Chandni Chowk, New Delhi and that he would collect the sale proceeds personally. He would also deliver the smuggled gold through Luvkush in a packed condition without disclosing to him the nature of the goods.

(v) Shri Luvkush was summoned who confirmed that he had introduced Aman and Shyam to Rahul as Rahul wanted some trusted persons for business. However, he did not know the nature of the business and the travel details of Shyam and Aman.

(vi) In short, the statements of the two persons Shyam and Aman from whom gold was seized matched entirely with the statement of Rahul for whom they carried the gold and with the statement of Luvkush who had introduced Aman and Shyam to Rahul. A show cause notice dated 14.08.2014 was issued to Rahul, Aman and Shyam by DRI proposing confiscation of the gold, silver, the seized currency and imposition of penalties. It was adjudicated by the Commissioner by an order dated 30.03.2016. On appeal, this Tribunal, by order dated 27.03.2017, remanded the matter to the Commissioner with the direction to pass a fresh adjudication order after providing documents and giving an opportunity of being heard. Following the order of this Tribunal dated 27.03.2017, DRI sent a letter dated 25.04.2017 to Rahul stating that all relied upon documents had been provided to him under an acknowledgement dated 14.08.2014, but a set of Relied Upon Documents were again being sent for information and record. However, on 09.06.2017 Rahul again contested before the Adjudicating Authority that certain documents were not received from DRI. Accordingly, a letter was sent to DRI to supply documents to the noticee and send a copy of the acknowledgement. DRI, in its letter dated 24.07.2017 addressed to Rahul with a copy to the Adjudicating Authority sent copies of the earlier letters dated 14.08.2014 and 25.04.2017 by which all RUDs were supplied to Rahul. However, certain documents which were sought again were supplied to Rahul. Rahul sent another letter dated 14.08.2017 claiming that some documents were withheld by the DRI, therefore, the Adjudicating Authority sent another letter to DRI requesting them to take suitable action. DRI, by letter dated 08.12.2017, explained that it had not withheld any documents and the facts of the case relating to the show cause notice and asked him to clarify which documents are yet to be received. By a letter dated 17.12.2018, DRI informed the Adjudicating Authority that no RUDs pertaining to the case were with it and all documents were supplied to Rahul with proper acknowledgements.

(vii) Thereafter, personal hearing was fixed on 27.08.2018, but none of the three appellants appeared. Rahul sent another letter dated 28.08.2018 stating that the documents were not supplied without specifying which documents were not supplied. Therefore, another personal hearing was fixed on 26.09.2018 and Rahul was sent the letter of DRI as well as his acknowledgement of the receipt of the documents but again nobody appeared. In the impugned order, the Commissioner recorded that in the first round of litigation six personal hearings were granted by his predecessor and in the denovo proceedings he granted three opportunities of personal hearing and nothing on merit have ever been contested by the appellants. In all nine opportunities of personal hearing were provided to the appellants – six during the earlier proceedings and three during the denovo proceedings and none appeared on behalf of any of the appellants. After examining the facts of the case and the evidence on record, the Commissioner passed the impugned order.

Submissions on behalf of Rahul

6. There was no prayer in the appeal memorandum filed by Rahul. Later, an application was filed to include a prayer clause as follows :-

"It is, therefore, humbly prayed that this Hon'ble Appellate Tribunal may be pleased to :

(a) Set aside the impugned order and allow the release of the seized silver which was covered under the invoice for silver weighing 3.184 kg. valued at Rs. 1,52,196/- ;

(b) Allow the seized Indian currency amounting to Rs. 10,79,300/- to be released as the same was part of cash in hand of M/s Kiran Forex Pvt. Ltd.

(c) Set aside imposition of a penalty of Rs. 95,00,000/- (Rupees ninety five lakhs only) on Shri Rahul Khanna under section 112 (a) (i) and 112 (b) (i) of the Customs Act, 1962 ; and

(d) Pass such further order or orders as may be deemed fit and appropriate".

7. During hearing, learned counsel was specifically asked if the silver which was seized belonged to Rahul or to his business M/s Kiran Forex Pvt. Ltd. She clarified that it belonged to Rahul's wife and prayed that the silver may be released to Rahul along with the Indian currency and the penalty imposed on Rahul may be set aside. No other submissions were made by the learned counsel.

Submissions on behalf of the Aman and Shyam

8. Shri M. Thirupathi Reddy, learned counsel for Aman and Shyam said that both were contesting only the penalties imposed on them and nothing else. On being asked about role of Aman and Shyam, learned counsel said that the gold was seized from them at the New Delhi Railway Station when they arrive by Sealdah Rajdhani Express. Smuggled gold was recovered from them. No other submissions were made by the learned counsel.

Submissions on behalf of the Revenue

9. Learned authorized representative for the Revenue made the following submissions :

(i) When asked, both Aman and Shyam had stated that the gold belonged to Rahul for whom they were carrying it from Kolkata. Both said that they had brought it from Babulal Bhai of Kolkata. Both said that they were getting paid Rs. 4,000/- per trip + railway tickets.

(ii) When Rahul was summoned, he also confirmed that he would get smuggled gold from Babulal Bhai from Kolkata and sell it in Kucha Mahajani, Chandni Chowk, New Delhi. He also provided details which were in his exclusive knowledge such as that he had entered into an agreement/understanding with Babulal Bhai according to which he would send cash to him and get gold. Since it was a risky venture, he needed some trusted persons. He asked his employee Luvkush for some trustworthy persons who introduced his brother and brother-in-law for the purpose. He also admitted that he had obtained and disposed over 90 kg. of gold.

(iii) When Luvkush was questioned, he also confirmed that Rahul wanted some trustworthy persons and that he introduced Aman and Shyam to Rahul although he did not know the nature of the work done by them.

(iv) Rahul further said that he would send gold sometimes to his buyers through Luvkush but always in packed form without telling Luvkush about the contents of the pack.

(v) All these details which emerged during the investigation gave DRI the reason to believe that the gold was smuggled gold which was covered under section 123 of the Act. None of the three appellants had provided any evidence that the gold was not smuggled. Therefore, the confiscation was correct.

(vi) As far as the cash was concerned, it was believed to be the sale proceeds of smuggled goods as it was lying in the premises of M/s Kiran Forex Pvt. Ltd. through which Rahul was engaged in obtaining and disposing smuggled gold.

(vii) As far as the silver is concerned, even according to Rahul, it does not belong to either him or to M/s Kiran Forex Pvt. Ltd., but it belongs to his wife, but there is no claim from the wife of Rahul at all.

(viii) In the first round of litigation, the appellants contended that some documents were not provided and adequate opportunity of hearing was not provided to them. Accordingly, the matter was remanded by this Tribunal. Three personal hearings were fixed, but none of the appellants appeared before the Commissioner. Rahul kept sending letters that he had not received RUDs and DRI sent him the documents and also the acknowledgement which had earlier provided for the documents. However, none appeared for any of the appellants before the Commissioner.

(ix) In view of the above, the Commissioner passed the impugned order which is correct and proper and calls for no interference.

Findings

10. We have considered the submissions by Ms. Mrinalini Sharma, learned counsel for Rahul and Shri M. Thirupathi Reddy, learned counsel for Aman and Shyam and Shri Rakesh Kumar, learned authorized representative for the Revenue and perused the records.

11. As far as the confiscation of the gold is concerned, there is no contest at all by any of the appellants. Rahul is contesting only confiscation of the cash seized from M/s Kiran Forex Pvt. Ltd. and the confiscation of the silver and the penalty imposed on him. As far as the silver is concerned,

even before us, the submission of learned counsel for Rahul is that it does not belong to M/s Kiran Forex Pvt. Ltd. and it also does not belong to Rahul. It is the submission that it belongs to wife of Rahul. The case of the department is that this silver was found along with the cash at M/s Kiran Forex Pvt. Ltd. and is suspected to be the sale proceeds of the smuggled gold and, hence, was liable for confiscation. There is no claim whatsoever by the wife of Rahul. We, therefore, find that neither Rahul nor M/s Kiran Forex Pvt. Ltd. have any *locus standi* to claim the seized silver.

12. As far as the seized currency is concerned, the submission of the learned counsel is that it belonged to M/s Kiran Forex Pvt. Ltd. and it was a part of its business proceeds. The case of the department is that it was sale proceeds of smuggled gold.

13. We find that Section 121 of the Customs Act reads as follows :-

> **"121. Confiscation of sale-proceeds of smuggled goods.**
>
> - Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale-proceeds thereof shall be liable to confiscation".

14. Thus, it provides for confiscation of sale proceeds of smuggled gold. In this case, the only smuggled gold in question is the one which was seized from Aman and Shyam. Confiscation of this gold is not contested. This gold was not sold by Rahul because it was seized before Rahul could lay his hands on it. It is true that Rahul had, in his statement, mentioned that he had earlier obtained about 90 kg. gold and had sold it in the market. The question which arises is whether this cash would be the sale proceeds of some gold, which was smuggled earlier and sold in the market.

15. While section 123 of the Act shifts the burden of proof in respect of gold, such reversal is not applicable to the sale proceeds of smuggled goods under section 121 of the Act. In other words, the cash is not covered by section 123 of the Act. It can be confiscated, if there is evidence that it was the sale proceeds of smuggled gold. In this case, we do not find any evidence to establish that some smuggled goods was sold by the Rahul and the cash which was seized was the sale proceeds of the smuggled goods so sold. Therefore, we find that the cash which was seized from M/s Kiran Forex Pvt. Ltd. deserves to be released to it. It also needs to be noted that M/s Kiran Forex is in the business of money changing, i.e., exchanging Indian Rupees for foreign currency and vice-versa. It is not unusual for it to have cash.

16. As far as the penalty on Shri Rahul is concerned, it is relatable to the gold, which has been confiscated under section 111 of the Act. The total gold which was confiscated was 12.1 kg. valued at Rs. 3,71,07,550/-. Section 112 of the Act provides for imposition of a penalty not exceeding the value of the goods or Rs. 5,000/- whichever is greater in respect of those goods on which any prohibition is in force. We, therefore, find that the penalty of Rs. 95,00,000/- imposed on Rahul is fair and proper and calls for no interference.

17. Penalty of Rs. 45,00,000/- was imposed on Shyam under section 112 of the Act which is relatable to the confiscation of 6.1 kg. of gold bars valued at Rs. 1,86,87,350/- seized from him and confiscated. The penalty of Rs. 45,00,000/- is less than a third of the value of the confiscated goods and it calls for no interference.

18. Penalty of Rs. 45,00,000/- imposed on Shri Aman under section 112 of the Act for bringing 6 kg. valued at Rs. 1,84,20,200/-. Considering the value of goods and the role played by Aman, we find that the penalty imposed on him is fair and proper and does not call for any interference.

19. In view of the above, the impugned order is modified to the extent that the seized cash of Rs. 10,79,300/- shall be released to M/s Kiran Forex Pvt. Ltd. Rest of the impugned order is upheld. Appeal No. C/50728 of 2019 filed by Shri Rahul is partly allowed by releasing the cash to M/s Kiran

Forex Pvt. Ltd. Appeal No. C/50729 of 2019 filed by Shri Aman and Appeal No. C/50730 of 2019 filed by Shri Shyam are rejected.

(Order pronounced in open court on 21/05/2025.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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