

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 52265 OF 2024

(Arising out of Order-in-Original No. DLI/CUS/PREV/HKP/COMMR/03/2024-25 dated 25.06.2024 passed by the Principal Commissioner of Customs, (Preventive), New Customs House, New Delhi)

Pawan Soni

M/s Bikaner Jewellers
1170, 2nd Floor, Kucha Mahajani,
Chandani Chowk, Delhi-06

...Appellant

Versus

**Commissioner of Customs,
(Preventive) New Custom House,**

Near IGI T-3 Terminal
New Delhi-110037

...Respondent

APPEARANCE:

Mr. Premendra Ojha and Ms. Deepansha Saini, Advocates for the appellant
Mr. Gurdeep Singh, Special Counsel and Mr. Rakesh Kumar, Authorised
Representative for the Department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**DATE OF HEARING: 13.08.2025
DATE OF DECISION: 08.12.2025**

FINAL ORDER NO. 51829/2025

JUSTICE DILIP GUPTA:

Pawan Soni¹ has filed this appeal to assail that portion of the order dated 25.06.2024 passed by the Commissioner of Customs (Preventive)² that imposes a penalty of Rs. 5,00,000/- upon him under section 112(b)(i) of the Customs Act 1962³.

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- 1. the appellant**
 - 2. the Commissioner**
 - 3. the Customs Act**

2. To appreciate the issues that have been raised in this appeal, it would be useful to narrate the relevant facts.

3. On 19.01.2023, Manish Kumar and Naresh Kumar who were travelling from Chennai to New Delhi in a train were intercepted at Hazrat Nizamuddin Railway Station, New Delhi by officials of the Directorate of Revenue Intelligence⁴ and a notice under section 102 of the Customs Act was issued to them for search of their luggage. They were then taken for a physical search at the DRI Head Quarters at New Delhi. Thereafter, their statements were recorded at the DRI Office under section 108 of the Customs Act. The search of Manish Kumar and his baggage resulted in recovery and seizure of 7 gold bars, collectively weighing 7000gm, from a blue colour trolley bag which contained a purple colour trolley bag and a black colour bag. Rs. 1,17,590/- of Indian currency was also recovered and seized. Similarly, the search of Naresh Kumar and his baggage resulted in recovery and seizure of 5 gold bars, collectively weighing 5000 gm from a blue colour trolley bag, which contained a brown colour trolley bag and a black colour bag. Rs. 1,19,820/- of Indian currency was also recovered from him and seized.

4. The statements made by Manish Kumar and Naresh Kumar under section 108 of the Customs Act revealed that they were working for Bharat Shantilal Shah of Mahalaxmi Chains & Jewellery of that Manish Kumar used to deliver gold jewellery like chains/rings from Mahalaxmi Chains & Jewellery in Mumbai to Bikaner Jewellers at New Delhi.

5. Pursuant to the statement made by Manish Kumar, a search of the premises of M/s. Bikaner Jewellers, New Delhi was carried out on 19.01.2023. Pawan Soni was found to be present at the shop premises

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and search of the premises was conducted in his presence. This search resulted in recovery of gold jewellery and articles (in different forms, including cut pieces) from 5 transparent boxes. A black colour bag was also found in one wooden cupboard. There were 2 transparent plastic boxes underneath the black bag and 3 boxes inside it. The following seizures were recorded:

- (i)** Gold cut pieces recovered from one transparent box
 - 5 gold pieces: 566 gm
 - 15 small uneven cut pieces: 332.5 gm
 - 17 uneven cut pieces: 1920 gm

- (ii)** Gold jewellery recovered from other 4 transparent boxes
 - Chains: 7898 gm
 - Rings: 1938.4 gm
 - Mix gold articles/jewellery: 1388 gm
 - A total of 11,224.4 gm of gold was seized from the premises of M/s. Bikaner Jewellers.

- (iii)** Gold jewellery/articles recovered from metal locker
 - 3 transparent plastic boxes, 1 pink colour transparent plastic box, 1 big transparent plastic box, collectively weighing 6730 gm along with Rs. 1,60,000 of Indian currency were also recovered and 'detained'.

6. It is seen that gold jewellery weighing 11,224.4 gms and gold cut pieces weighing 2818.5 gms were recovered from the almirah.

7. During the search, the appellant informed the officers that the gold jewellery (11,224.4 gms) and gold cut pieces (2,818.5 gms) belonged to Bharat Shantilal Shah of Mumbai and had been kept by Bharat Shantilal Shah as he had to immediately rush to Mumbai for urgent personal work. The appellant was told by Bharat Shantilal Shah that he would take the gold jewellery after 4-5 days when he would come back from Mumbai. The appellant agreed to keep the bag as they both knew each other as Bharat Shantilal Shah was supplying Chains to

M/s. Bikaner Jewellers for the last 5-6 years which fact was recorded by the officers in the Panchnama dated 19.01.2023.

8. The officers also recovered the gold jewellery weighing 6730 gms belonging to M/s. Bikaner Jewellers. The said jewellery was detained by the officers for verification.

9. The statement of the appellant under section 108 of the Customs Act was recorded on 20.01.2023. The statements of Bharat Shantilal Shah under section 108 of the Customs Act were recorded on 19/20.01.2023, 06.02.2023, 25.04.2023. Bharat Shantilal Shah in his statements corroborated the statement of the appellant that the gold jewellery weighing 11,224.4 gms and gold cut pieces weighing 2818.5 gms kept in the almirah at the premises of Bikaner Jewellers belonged to Bharat Shantilal Shah and he had kept the bag containing the jewellery as he had to immediately rush to Mumbai for urgent personal work. He also stated that he had told the appellant that he would take the bag after 4-5 days when he would come back from Mumbai. Bharat Shantilal Shah in his statements also stated that the appellant was not aware of the contents of the bags.

10. The gold jewellery weighing 6730 gms belonging to Bikaner Jewellers was ultimately released by the officers after verification.

11. A show cause notice dated 17.07.2023 was issued to various persons, including the appellant. The allegation made against the appellant is that he had indulged in the activity of handling gold jewellery/articles manufactured from smuggled bars. The relevant portion of the show cause notice is reproduced below:

"102.5 As per the statements of the concerned persons & evidences brought on record above, the role of Sh. Pawan Soni in the syndicate is as follows:

- Gold Jewellery/ Articles weighing 11,224.4 grams manufactured from foreign origin gold bars and gold cut pieces 2818.5 grams were recovered from the shop premises of M/s Bikaner Jewellers owned by father of Sh. Pawan Soni.
- The said gold jewellery manufactured from smuggled foreign origin gold bars along with gold cut pieces 2818.5 grams was kept by Sh. Bharat Shantilal Shah in the shop premises of Sh. Pawan Soni with his consent and knowledge.

Therefore, Sh. Pawan Soni indulged himself in the prejudicial activity of handling gold jewellery/articles manufactured from smuggled gold bars.”

12. The show cause notice further mentions that the said jewellery recovered from the premises of Bikaner Jewellers was liable to confiscated under section 111 of the Customs Act and, therefore, the appellant was asked to show cause why penalty should not be imposed upon him under section 112(b) of the Customs Act.

13. The appellant filed a reply to the show cause notice and stated that the appellant had no knowledge of the contents of the bags given by Bharat Shantilal Shah and he had not violated any provisions of the Customs Act.

14. The submissions made in the reply by the appellant are broadly:

- (i)** The Panchanama dated 19.01.2023 drawn regarding the search of premises of Bikaner Jewellers wherein the officers had recorded the explanation given by the appellant at the time of search proceeding;
- (ii)** The corroboration of the statement of the appellant by Bharat Shantilal Shah; and
- (iii)** The settled law for invoking the provisions of section 112(b)(i) of the Customs Act is that the

person should know and should have reason to believe that the goods are liable to confiscation under section 111 of the Customs Act, but in the instant case the appellant had no knowledge of the goods of Bharat Shantilal Shah that were kept in the almirah.

15. The Commissioner, however, imposed penalty upon the appellant under section 112(b)(i) of the Customs Act and the relevant findings are as follows:

"150.13 In view of the above discussion, I find that Sh. Bharat Shantila Shah and Sh. Pawan Soni failed to provide documents/ evidence under Section 123 of Customs Act, 1962 for licit possession of Gold Jewellery weighing 11224.4 grams having tariff value as Rs. 5,38,68,684/- and Gold cut pieces weighing 2818.5 grams having mtariff value as Rs. 1,40,13,743/-. **As the Gold Jewellery was manufactured out of smuggled gold and Gold cut pieces were found to be part of foreign Origin Smuggled Gold. xxxxxxxxxxxx. Therefore, I hold for confiscation of Gold Jewellery weighing 11224.4 grams having tariff value as Rs. 5,38,68,684/- and Gold cut pieces weighing 2818.5 grams having tariff value as Rs. 1,40,13,743/- recovered from the possession of Sh. Pawan Soni and owned by Sh. Bharat Shantilal Shah under Section 111(a)/111(b) and Section 111(d) of The Customs Act, 1962.**

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161. I find that Sh. Pawan Soni was aware that the Gold Jewellery/ Articles weighing 11,224.4 grams manufactured from foreign origin gold bars and gold cut pieces 2818.5 grams recovered from the shop premises of M/s Bikaner Jewellers owned by father of Sh. Pawan Soni belong to Sh. Bharat Shantilal Shah and he gave his consent for keeping the said gold jewellery/articles/ gold cut

pieces in the premise of M/s Bikaner Jewellers without asking for documents and records relating to the said gold jewellery/articles. Sh. Pawan Soni knowingly allowed the jewellery/articles/ cut pieces made / manufactured from foreign origin gold to be kept at his premise. Thus, I hold that Sh. Pawan Soni for his acts of mission and commission in handling gold jewellery/articles/ gold cut pieces made/manufactured from foreign origin gold knowingly rendered himself liable penal action under section 112(b)(i) of the Customs Act, 1962."

(emphasis supplied)

16. Mr. Premendra Ojha learned counsel for the appellant assisted by Ms. Deepansha Saini, made the following submissions:

- (i)** The adjudicating authority failed to consider the key facts, including the ownership of the seized gold; the circumstances in which the bags were kept in the premises of Bikaner Jewellers; business relationship of the appellant with Bharat Shantilal Shah; and the lack of intent or knowledge to violate customs laws;
- (ii)** Penalty was imposed arbitrarily, ignoring crucial documents including the panchanama with regard to search proceeding of Bikaner Jewellers and the statements of the appellant and Bharat Shantilal Shah which established that the bags were kept for safekeeping by Bharat Shantilal Shah and the contents were not known to the appellant;
- (iii)** The adjudicating authority failed to appreciate that the essential ingredients required to invoke the provisions of section 112(b)(i) of the Customs Act were not satisfied; and

- (iv)** The adjudicating authority failed to appreciate the settled law that mens rea is relevant for imposing penalty under section 112(b)(i) of the Customs Act.

17. Shri Gurdeep Singh, learned special counsel appearing by the respondent for the department and Shri Rakesh Kumar, learned authorised representative appearing for the department, however, supported the impugned order and submitted it does not call for any interference in this appeal.

18. The submissions advanced by the learned counsel for the appellant and the learned special counsel appearing for the department have been considered.

19. It is not in dispute that when the search of the premises of M/s. Bikaner Jewellers was carried out on 19.01.2023, gold jewellery weighing 11,224.4 gms and gold cut pieces weighing 2818.5 gms were recovered from the almirah. The appellant had clearly stated that these belonged to Bharat Shantilal Shah and had been kept by him as he had to immediately rush to Mumbai for urgent personal work. The appellant also informed that Bharat Shantilal Shah had told him that he would take back the gold jewellery after 4-5 days when he would come back to Mumbai. The reason given by the appellant was that he knew Bharat Shantilal Shah for the last 5-6 years as he was supplying chains to M/s. Bikaner Jewellers. This is what was also stated by the appellant in the statement made under section 108 of the Customs Act and this is also what was stated by Bharat Shantilal Shah in his statement recorded under section 108 of the Customs Act.

20. The allegation against the appellant is that the said gold jewellery was manufactured from smuggled foreign origin bars and was kept in

the shop premises with the consent of the appellant and the appellant handled gold jewellery and gold cut pieces manufactures from foreign origin gold.

21. This finding is perverse as there is nothing on the record which may substantiate that the appellant had knowledge that the goods that were kept by Bharat Shantilal Shah were made out of smuggled gold. The appellant had categorically stated that he had no knowledge of the goods that were kept by Bharat Shantilal Shah. For imposition of penalty under section 112(b)(i) of the Customs Act it is necessary to establish that the appellant had knowledge of the fact that the goods were manufactured out of smuggled goods.

22. This issue of gold jewellery weighing 11,224.4 gms and gold cut pieces weighing 2818.5 gms recovered and seized from the shop premises of Bikaner Jewellers was also considered in Customs Appeal No. 51986 of 2024 filed by Bharat Shantilal Shah. After examining the invoices that were produced by Bharat Shantilal Shah regarding the aforesaid jewellery and other jewellery, a categorical finding has been recorded that licit possession of the goods was established and, therefore, penalty could not be imposed upon Bharat Shantilal Shah.

23. It cannot, therefore, also be urged that the gold jewellery and gold cut pieces that were recovered from Bikaner Jewellers were made out of smuggled gold.

24. The imposition of penalty upon the appellant under section 112(b)(i) of the Customs Act cannot, therefore, be sustained.

25. Thus, for all the reasons stated above, the impugned order dated 25.06.2024 passed by the Commissioner in so far as it imposes a

penalty of Rs. 5,00,000/- upon the appellants under section 112(b)(i) of the Customs Act is set aside and the appeal is allowed.

(Order pronounced on **08.12.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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