

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. I

Customs Appeal No. 52316 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)

Shri Anand Dasmal Shah

Anand Shah Jewels LLP
10th Floor, Wing B, Diamond Court,
Napean Sea Road, Mumbai-400026

..... Appellant

Versus

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

Near IGI T-3 Terminal
New Delhi-110037

..... Respondent

APPEARANCE:

Mr. Pankaj Bhagat and Mr. Sadre Alam, 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. 51830/2025

JUSTICE DILIP GUPTA:

Anand Dasmal Shah¹ has sought the quashing of that portion of the order dated 25.06.2024 passed by the Commissioner of Customs (Preventive)² that confiscates gold jewellery/gold ornaments weighing 4440.840 gms belonging to the appellant under section 119 of the Customs Act, 1962³.

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

2. It needs to be noted that though the impugned order confiscates gold jewellery/gold ornaments weighing 20,756.3 gms from Subhash Tukaram Karan under the Panchnama dated 19.01.2023, the appellant claims to be the owner of only 4440.84 gms. The details of the gold jewellery/gold ornaments seized from Subhash Tukaram Karan, of which the appellant claims to be the owner, are as follows:

Serial No.	Buyer Name	Invoice Details	Description of the goods	Gross weight (grams)
1.	M/s. Vikash Chain Jewellery India Ltd. New Delhi	GST Invoice no. SG-460 dated 17.01.2023	22CT New gold ornaments	1975.790
2.	M/s. Vikash Chain Jewellery India Ltd. New Delhi	GST Invoice no. SG-465 dated 18.01.2023	22CT New gold kundan	741.510
3.	M/s. Vikash Chain Jewellery India Ltd. New Delhi	GST Invoice no. SG-466 dated 18.01.2023	22CT New gold kundan	1427.890
4.	M/s. Manish Bhai, New Delhi (prospective buyer)	Approval Voucher No. IA-26 dated 12.01.2023	22CT New gold ornaments-approval basis	295.650
Total		2,17,83,707/-		4440.840 grams

3. It transpires from the records that on 19.01.2023 Subhash Tukaram Karan, an employee of the appellant, who was travelling from Mumbai to New Delhi by train was intercepted by DRI Officials at Hazrat Nizamuddin Railway Station. The DRI Officers issued a notice to him under section 102 of the Customs Act for search of his baggage. Subsequently he and Sanjay Ram, who had come to pick him, were taken to the DRI Office. At the DRI office, a search was effected resulting in recovery of 12 boxes containing gold jewellery from one dark grey colour trolley. A box was also found to contain a blue paper envelope with the marking 'Anand Shah', containing Original Invoice No. SG-460 dated 17.01.2023 issued by M/s. Anand Shah Jewels LLP, Mumbai to M/s. Vikas Chain Jewellery India Ltd, New Delhi. 5 boxes of

gold jewellery and another Invoice No. SG-160 dated 18.01.2023 were also recovered from one green trolley and black backpack. This invoice was issued by M/s. Mahalaxmi Chains & Jewellery, Mumbai to M/s. Khandelwal Chain Co., New Delhi. The gold jewellery seized from Subhash Tukaram Karan collectively weighed 20,756.3 gm. The statements of both these persons were also recorded at the DRI Office under section 108 of the Customs Act.

4. The case set out by the appellant is as follows:

- (i)** Anand Shah Jewels LLP is a Limited Liability Partnership and the appellant is its partner. The appellant is inter alia engaged in the supply of gold jewellery/gold ornaments. Bharat Shantilal Shah is the nephew of the appellant but the two are engaged in independent businesses;
- (ii)** One Dinesh Verma of M/s. Vikash Chain Jewellery India Limited had come for an exhibition titled 'Signature' on 05.01.2023 and selected certain jewellery/jewellery ornaments which had been made by the appellant and were being displayed in this exhibition. On the orders of Dinesh Verma, the selected jewellery/jewellery ornaments were to be supplied by the appellant to M/s Vikash Chain Jewellery India Limited, New Delhi;
- (iii)** The said gold jewellery/gold ornaments were made by the appellant using gold which the appellant had purchased by legitimate transactions from the Bullion market through cheque payments during the relevant time and also from gold lying in the stock of the

appellant. The said jewellery was made and manufactured by the appellant for the purpose of an exhibition, namely 'Signature' before Gem E-Jew Export Promotion Council, which was to be held between 05.01.2023 and 09.01.2023. The gold jewellery/gold ornaments were prepared in a span of one or two months prior to this exhibition. The books of the appellant maintained in the usual course of business reflected the said gold jewellery and ornaments in the accounts;

- (iv)** The appellant was also required to send gold jewellery/gold ornaments on approval basis to Manish in New Delhi. Manish was to approve the said jewellery and the final invoices were to be made subsequently;
- (v)** The gold jewellery/gold ornaments were handed over by Suraj Dongre, an employee of the appellant, to Bhavik Baldia, an employee of Bharat Shantilal Shah at the office of Bharat Shantilal Shah in Kalpa Devi, Mumbai. Bharat Shantilal Shah had indicated to the appellant that he had an employee who would be travelling to Delhi, and, therefore, in order to ensure safety and delivery of the jewellery ordered by M/s Vikash Vikash Chain Jewellery India Ltd. at Delhi, the consignment was handed over at the Mumbai office of Bharat Shantilal Shah on 18.01.2023 at 02.30pm; and
- (vi)** It came to light that Subhash Tukaram Karan, an employee of Bharat Shantilal Shah, who was carrying

the jewellery of the appellant and other jewellery items belonging to Bharat Shantilal Shah by train from Mumbai to Delhi was called for questioning by the DRI on his arrival at the New Delhi Railway Station on 19.01.2023. Further, it came to light that another employee of Bharat Sharat Shantilal Shah, namely Sanjay Ram was also called for questioning by the DRI on 19.01.2023. The DRI confiscated all gold jewellery/gold ornaments with the 2 bags that were recovered from Subhash Tukaram Karan.

5. The DRI, as noticed above, confiscated all the gold jewellery/gold ornaments weighing 20,756.3 gms recovered from the bag of Subhash Tukaram Karan, out of which the appellant claims to be the owner of 4440.84 gms. The premises of the appellant were searched on 21.01.2023 and the statement of two employees namely Rakesh Sharma and Suraj Dungare were recorded on 20/21.01.2023.

6. The appellant also filed a letter dated 25.01.2023 before the DRI explaining facts relating to the goods belonging to the appellant. It was stated that the gold jewellery/gold ornaments were being supplied to M/s. Vikash Chain Jewellery India Limited as also to Manish for approval basis. This letter was followed by another letter dated 31.01.2023.

7. The statement of the appellant was recorded on 13.02.2023 by the DRI in its office. After the recording of the statement, the appellant submitted two letters on 14.02.2023. In the first letter, the appellant stated that when he attended the office of the DRI he had volunteered to provide the relevant records. The second letter sent by the appellant provided the following records:

- (i) Stock Item Register of gold bar-999 from 01.04.2022 to 31.01.2023
- (ii) Bill of gold bar-995 form 01.11.2022 to 31.01.2023,
- (iii) Stock Item Register of gold bar-999 from 01.04.2022 to 31.01.2023,
- (iv) Bill of gold bar-999 form 01.11.2022 to 31.01.2023,
- (v) Ledger of Auric Bullion and Jewellers from 01.04.2022 to 31.01.2023.

8. However, a show cause notice dated 17.07.2023 was issued to various persons, including the appellant. The appellant along with Bharat Shantilal Shah and Subhash Tukaram Karan were required to show cause why gold jewellery/gold ornaments weighing 20,756.3 gms which were used for the concealment of gold jewellery/articles and covered under two invoices numbers SG-460 dated 17.01.2023 and SG-160 dated 18.01.2023 recovered from the possession of Subhash Tukaram Karan under Panchnama dated 19.01.2023 should not be confiscated under section 119 of the Customs Act.

9. The appellant filed a detailed reply dated 17.01.2023 to the show cause notice. The appellant, apart from placing the factual position, also submitted records to establish that the gold jewellery/gold ornaments belonging to the appellant were made from legitimate gold which had been purchased by the appellant through cheque payments and also from gold lying in the stock of the appellant. The appellant also disclosed the purchase invoices of the gold and the ledger accounts. The appellant also supplied details of the transaction between the appellant and M/s. Vikash Chain Jewellery India Limited, which was backed by three GST invoices numbers SG-460 dated 17.01.2023, SG-465 dated 18.01.2023 and SG-466 dated 18.01.2023. The invoices are also reflecting on the GSTN portal. The transaction relating to approval of

goods by Manish was also backed by Approval Voucher No. IA-26 dated 12.01.2023.

10. The impugned order, however, confiscates gold jewellery/gold ornaments weighing 20,756.3 gms, including 4440.84 gms belonging to the appellant.

11. The relevant portion of the order relating to the appellant is reproduced below:

"149.10 I also find that Invoice no. SG-460 dated 17.01.2023 recovered from Gold Jewellery seized from Sh. Subhash Tukaram Karan for Gold jewellery weighing 1975.79, Grams was issued by M/s Anand Shah Jewels LLP, Mumbai to M/s Vikas Cham Jewellery India Ltd, Delhi. In this regard, I have examined the statement of Sh. Rakesh Sharma, accountant of M/s Anand Shah Jewels LLP dated 20.01.2023 & 21.01.2023 and **I find that Sh. Rakesh Sharma informed the DRI that invoice nos, SG-460 dated 17.01.2023; SG-465 & 466 both dated 18.01.2023 was issued to M/s Vikas Chain Jewellery India Ltd and the Gold Jewellery was given to Sh. Subhash Tukaram Karan for delivery in Delhi. The total weight of Gold Jewellery covered under said invoices was 4145.19 grams as per the above table in Para 149.8.** Sh. Rakesh Sharma also stated that he does not have any purchase order for the said invoices.

149.11 I also examined the statement of Sh. Anand Dasmal Shah tendered on 13.02.2023 and I find that Sh. Anand Dasmal Shah was summoned vide summons dated 20.01.2023; 23.01.2023; 27.01.2023 and 10.02.2023 but he had not appeared. I also find that Sh. Rakesh Sharma also stated in statement dated 21.01.2023; that he had tried to contact Sh. Anand Dasmal Shah telephonically several time but he intentionally switched off his phone. I find that this evasive tendency shows that Sh. Anand Dasmal Shah was also involved in the said racket of transport of illegal Gold Jewellery. I also find that Sh. Anand Dasmal Shah on asking about non-appearance on summons

stated that he had apprehension that he might get arrested. **I also find that except the invoice no. SG-460 dated 17.01.2023; Sh. Anand Dasmal Shah has not stated anything about other two invoice SG-465 & SG-466 both dated 18.01.2023. I also find that during inventory of Gold Jewellery weighing 20756.3 grams recovered from Sh. Subhash Tukaram Karan only one invoice SG-460 dated 17.01.2023 was recovered. In view of the above findings, I observe that invoice no. SG-465 & 466 both dated 18.01.2023 was raised when information about the arrest of Sh. Subhash Tukaram was received and only one invoice SG-460 dated 17.01.2023 was raised to coverup the full Gold Jewellery given to Sh. Subhash Tukaram Karan.**

149.12 Therefore, from the findings in Para 149.11 and 149.12, I hold that Sh. Bliarat Shantilal Shah and Sh. Anand Dasmal Shah were hand in glove in the business of manufacture/ sale of Gold jewellery prepared from foreign origin smuggled Gold Bars. Therefore, I find that the Gold Jewellery covered under Invoice no. SG-460 dated 17.01.2023 used to cover up the other Gold Jewellery is also liable for confiscation under Section 119 of the Customs Act, 1962.”

(emphasis supplied)

12. Shri Pankaj Bhagat and Shri Sadre Alam, learned counsel appearing for the appellant made the following submissions:

- (i)** Out of the total quantity of 20,756.3 gms of gold jewellery/gold ornaments seized, the appellant is the lawful owner and manufacturer of 4440.840 gms of gold ornaments, duly covered by the following documents:
- (a) Invoice No. SG-460 dated 17.01.2023;
 - (b) Invoice No. SG-465 dated 18.01.2023;
 - (c) Invoice No. SG-466 dated 18.01.2023; and
 - (d) Approval Voucher No. IA-26 dated 12.01.2023;

- (ii)** Despite repeated intimation by the appellant and production of invoices clearly reflecting M/s. Vikas Chain Jewelry India Limited as the buyer, the department neither conducted any enquiry nor sought verification from the said purchaser;
- (iii)** The impugned order does not deal with the reply and documents filed by the appellant and, therefore, deserves to be set aside;
- (iv)** The only allegation noted in the impugned order is that the appellant failed to appear on four occasions despite being summoned, though it is also recorded that the statement of the appellant was tendered on 13.02.2023. On this limited basis, the appellant has been wrongly held to be 'hand in glove with Bharat Shantilal Shah' and the ornaments were manufactured out of 'smuggled gold of foreign origin'; and
- (v)** The statements of persons recorded under section 108 of the Customs Act cannot be considered as relevant since the procedure contemplated under section 138B of the Customs Act had not been followed.

13. Shri Gurdeep Singh, learned special counsel appearing for the department and Shri Rakesh Kumar, learned authorised representative appearing of the department, however, supported the impugned order and made the following submissions:

- (i)** The appellant has claimed that gold jewellery weighing 4440.840 gms carried by Subhash Tukaram Karan belongs to him. However, only one invoice

bearing SG-460 dated 17.01.2023 was carried by Subhash Tukaram Karan when he was intercepted with the jewellery. 1975.79 gms of gold jewellery/gold ornaments relating to that invoice has been confiscated finding it to have been used as a cover up for other jewellery;

- (ii)** In respect of the remaining gold jewellery/gold ornaments that were seized, no documentary records were submitted to establish legal procurement;
- (iii)** In their statements both Subhash Tukaram Karan and Sanjay Ram admitted their role in dealing with the gold jewellery/gold ornaments liable to confiscation; and
- (iv)** Penalty has rightly been imposed upon the appellant under section 119 of the Customs Act.

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

15. The issue that arises for consideration in this appeal relates to 4440.84 gms of gold jewellery/gold ornaments out of gold jewellery/gold ornaments weighing 20,756.3 gms recovered from the bag of Subhash Tukaram Karan. The appellant claims to be the owner of this 4440.84 gms of gold jewellery/gold ornaments. The appellant has provided details of the said gold jewellery/gold ornaments. According to the appellant, Dinesh Verma of M/s. Vikash Chain Jewellery India Limited had selected certain jewellery made by the appellant displayed in an exhibition and it is this jewellery that was being supplied to M/s. Vikash Chain Jewellery India Limited that was recovered from the bag of

Subhash Tukaram Karan while carrying the said jewellery from Mumbai to Delhi. The appellant has provided details of the three GST invoice numbers SG-460, SG-465 and SG-466 regarding 1975.790 gms, 741.510 grms and 1427.890 gms respectively relating to 4155.19 gms. The remaining 295.650 gms were covered by Approval Voucher No. IA-26. The appellant has stated for this jewellery that they were being sent to Manish on approval basis. The appellant has also given details of the gold from which the said jewellery was prepared. The appellant also stated that the invoices were reflected on the GSTN portal.

16. These facts have not been considered by the Commissioner in the impugned order while arriving at a conclusion that the gold jewellery was liable to confiscation under section 119 of the Customs Act.

17. These records were produced by the adjudicating authority and the only reason assigned is that the invoices were raised "to cover up" the full gold jewellery given to Subhash Tukaram Karan. The invoices have not been found to be false nor is there any finding that they were not reflected on the GSTL portal. The appellant had also provided details of the gold out of which the jewellery was prepared. It cannot, therefore, be concluded that this gold jewellery/gold ornaments were prepared out of smuggled goods.

18. The provisions of section 119 of the Customs Act are not satisfied and, therefore, the gold jewellery/gold ornaments could not have been confiscated under section 119 of the Customs Act.

19. The impugned order fails to notice that the burden of proof under section 123 of the Customs Act stood discharged as the appellant, being the owner of the goods, had provided sufficient documents to show that the seized gold jewellery/gold ornaments were not made out of

smuggled gold bars. The department did not lead any evidence to show that the gold jewellery/gold ornaments were manufactured from the smuggled gold bars.

20. The statements of Subhash Tukaram Karan and Sanjay Ram made under section 108 of the Customs Act cannot be considered as relevant as the procedure contemplated under section 138B of the Customs Act was not followed. This is what was held by a Division Bench of the Tribunal in **M/s Surya Wires Pvt. Ltd. vs. Principal Commissioner, CGST, Raipur⁴**.

21. The confiscation of gold jewellery/gold ornaments weighing 4440.84 gms belonging to the appellant under section 119 of the Customs Act cannot, therefore, be upheld.

22. The impugned dated 25.06.2024 passed by the Commissioner so far as it concerns the appellant, therefore, deserves to be set aside and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **08.12.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Jyoti

4. **Excise Appeal No. 51148 of 2020 decided on 01.04.2025**