

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 52001 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)

Mukesh Kumar Soni

...Appellant

Plot No. 3, Janta Colony, Sikar Road,
Jaipur, Rajasthan-302013

Versus

**Principal Commissioner of Customs,
(Preventive)**

...Respondent

New Custom House,
Near IGI T-3 Terminal
New Delhi-110037

APPEARANCE:

Shri Vishwa Raj Singh and Shri Rishabh Thakur, 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. 51831/2025

JUSTICE DILIP GUPTA:

Mukesh Kumar 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. 1,00,00,000/- upon him

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- 1. the appellant**
 - 2. the Commissioner**

under section 114AA of the Customs Act 1962³ and a further penalty of Rs. 2,00,000/- under section 117 of 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. On 20.01.2023, Manish Kumar and Naresh Kumar were arrested by the DRI and remanded to judicial custody.

5. On 30.01.2023, Manish Kumar and Naresh Kumar, while in judicial custody, retracted their previous statements recorded on 19.01.2023 because, according to them, such statements had been recorded by use of force, undue pressure, and intimidation. Manish Kumar and Naresh

3. the Customs Act

4. DRI

Kumar stated that they were hired by one Chennai based businessman named Rinkesh Kumar alias Prem Singh who wanted to send some well-documented gold to Delhi and had provided them 12 gold bars with Rs. 2,40,000/-. They also stated they were provided receipts containing details of the jeweller and were asked to deliver the gold to the said jeweller. They also stated that the earlier statements were recorded under threat and coercion and hence they wanted to retract.

6. On 17.02.2023, Manish Kumar and Naresh Kumar were enlarged on bail by the Additional Sessions Judge, Patiala House Court, New Delhi.

7. It is, thereafter, on 17.07.2023, that a show cause notice dated 17.07.2023 was issued to 10 noticees, but not to the appellant. Noticee No. 1, namely Bharat Shantilal Shah was asked to show cause why he should not be treated to be the owner of the seized gold, including the 12 gold bars, and why penalty should not be imposed him.

8. On 03.08.2023, the appellant made a representation by email to the adjudicating authority claiming ownership of the seized 12 kg gold bars recovered from the person of Manish Kumar and Naresh Kumar. In the said representation, the appellant claimed that the said gold bars had been given by his late brother Mahesh Kumar Soni to Prem Singh through a job work order dated 02.11.2022 for making jewellery.

9. It is thereafter that on 18.11.2023 a supplementary show cause notice dated 18.11.2023 was issued to the appellant, who had claimed ownership of the seized 12kg gold bars.

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

- (i) Mahesh Soni, brother of the appellant and owner of M/s. B.S. Brothers and Industries, Jaipur, had given

the said 12 gold bars to Prem Singh on 02.11.2022 along with Rs. 2,40,000/- on job work basis through job-work issue order, indicating an amount of Rs. 5,92,80,000/- as gold value. The same is reflected in the gold ledger maintained by M/s. B.S. Brothers and Industries;

- (ii) Mahesh Soni had not been keeping well due to multiple ailments and had learnt from his doctors that he would not survive for long. Impending his sudden demise, Mahesh Soni executed a will dated 15.11.2022 naming his brother Mukesh Soni as the inheritor of his properties and also specifically providing that the 12 gold bars from the stock of his firm M/s. B.S. Brothers and Industries, Jaipur as on 15.11.2022 along with cash amount of Rs. 2,40,000/- be given to Rinkesh Kumar alias Prem Singh, resident of 32, Strotten Muthia Mudali Street, 5th Floor Chennai – 600079;
- (iii) Mahesh Soni died on 01.12.2022; and
- (iv) It was in this context that Rinkesh Kumar alias Prem Singh had called Manish Kumar and Naresh Kumar at Chennai to deliver the 12 gold bars and the cash amounting to Rs. 2,40,000/- to the appellant. He had also given Manish Kumar and Naresh Kumar a letter dated 17.01.2023 along with a job-work issue order dated 02.11.2022, which was present in the envelope. In the said letter dated 17.01.2023, Rinkesh Kumar alias Prem Singh had clearly stated that Mahesh Soni had told him subsequently not to make any jewellery out of the 12 gold given to him

and, therefore, he was returning the same along with a cash amount of Rs. 2,40,000/-.

11. Both Manish Kumar and Naresh Kumar in the replies to the show cause notice reiterated the ownership of the appellant of the said 12 gold bars.

12. The appellant also filed a reply to the show cause notice and denied the allegations.

13. However, the Commissioner confirmed the demand holding that the documents submitted by the appellant were fake because the GSTIN of M/s. B.S. Brothers has been cancelled and imposed penalty upon the appellant under sections 114AA and 117 of the Customs Act. The relevant portion of the order is reproduced below:

"145.7 I also find that as per the supplementary notice, GSTIN of M/s B.S. Brothers and Industries, Jaipur was found to be cancelled suo-moto w.e.f. 27.04.2021 whereas job work order was raised on 02.11.2022. I also find that two more GSTNS 08GNMPS2050H1ZO of Paras Gems and Jewellers and 27GNMPS2050H1ZO of Global Impact (proprietor Sh. Mahesh Soni) were also registered with the same PAN GNMPS2050H (two different verticals of GST using the same PAN). Similarly, on checking the details of the said GSTNs, it was found that the said GSTNs were cancelled suo moto w.e.f. 09.12.2019 and 01.02.2020 respectively. **Therefore, I find that the documents submitted by the noticees like Job work order, will of Sh. Mahesh Soni and Gold Ledger of M/s B.S. Brother and Industries did not pass the test of legitimacy and hence, I find that the forged documents were prepared only to prove licit possession of 12 Gold Bars weighing 12000 Grams recovered from Sh. Manish Kumar and Sh. Naresh Kumar.**

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148. I also find that Sh. Mukesh Kumar Soni has not produced any licit document showing legal import of the said gold bars of foreign origin into India. Therefore, from the above discussion and findings, I hold that Sh. Bharat Shantilal Shah, Sh. Manish Kumar, Sh. Naresh Kumar and Sh. Mukesh Kumar Soni had submitted forged documents for licit possession of 12 Gold Bars by Sh. Mukesh Kumar Soni, hence, 12 Gold Bars having Tariff value as Rs. 5,98,48,560/- and Rs. 2,37,410/- seized from the possession of Sh. Manish Kumar and Sh. Naresh Kumar which pertained to Sh. Bharat Shantilal Shah is liable for confiscation under Section 111(b) and 111(d) of the Customs Act, 1962 and Section 121 of The Customs Act, 1962 respectively.

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163.1 Further, I find that Sh. Manish Kumar in his retraction applications dated 30.01.23, had stated facts which were entirely at variance with those stated by him in his letter dated 21.06.2023. According to his retraction, Sh. Manish Kumar stated that he alongwith Sh. Naresh Kumar had visited one Chennai based trader named Sh. Prem Singh who asked them to deliver some legally procured gold to certain Delhi based gold traders for getting gold jewellery made according to his design. They were paid Rs. 2,40,000/- for the said work. However, in contrast to the said submission in his retraction Sh. Manish Kumar in his letter dated 21.06.2023 has stated that Sh. Prem Singh had called him and Sh. Naresh Kumar to deliver gold bars of 12 Kg. and a cash amount of Rs. 2,40,000/- alongwith a letter dated 17.01.2023 to Sh. Mukesh Kumar Soni in which it was clearly mentioned that Sh. Mahesh Soni had told him not to have any jewellery made out of those gold bars and therefore, he was returning the gold bars alongwith the cash amount of Rs. 2,40,000/-. The said fact has been reiterated by Sh. Mukesh Kumar Soni in his letter dated 03.08.2023 that the said gold bars were to be delivered to him in Jaipur, however, the two were intercepted while they alighted from a train at Delhi. The repeated change of stance in

the matter clearly establishes an afterthought instigated at the behest of Sh. Mukesh Kumar Soni to waylay the course of adjudication process. **Thus, I find that Sh. Mukesh Kumar Soni, noticee of the supplementary SCN dated 08.11.2023, on the basis of forged documents tried to claim the ownership of the seized 12 smuggled gold bars of foreign origin and also tried to mislead and delay the investigation proceedings. Therefore, I hold that Sh. Manish Kumar Soni for his acts of omission and commission supplying forged documents and misleading the investigation and delaying the adjudication proceedings rendered himself liable for penal action under Section 114 AA and under Section 117 of the Customs Act, 1962."**

(emphasis supplied)

14. Shri Vishwa Raj Singh, learned counsel for the appellant assisted by Shri Rishabh Thakur, made the following submissions:

- (i)** In the absence of any proposal in the show cause notice regarding proving the ownership of the gold bars, the appellant never got an opportunity under section 123 of the Customs Act before the adjudicating authority to prove his stand that the said 12 kgs gold bars were legitimately procured gold bars of M/s. B.S. Brothers & Industries, which, upon the death of his brother late Mahesh Soni, came to him and he is the legal and rightful owner of the said 12 kgs gold bars and the same were not the smuggled gold bars;
- (ii)** The appellant had, through his reply dated 03.12.2023 to the supplementary show cause notice once again brought on record the facts, circumstances and relevant documents to support his claim towards the legitimacy of the 12 kgs gold bars;

- (iii)** A wrong conclusion has been drawn by the Commissioner that the documents submitted by the appellant were illegitimate and that he failed to prove the licit possession of 12kgs of gold bars;
- (iv)** The department, failed to follow the mandate of section 123(1)(a)(ii) of the Customs Act, to allow to the claimant to prove that the goods were licit and not smuggled;
- (v)** The appellant had by way of tendering material evidence, established, in high probability that he was the licit owner of 12 kgs of gold. The burden shifted on the revenue to disprove the documents and assertions made by the appellant by placing evidence or by showing inconsistency in his assertions;
- (vi)** Absolute confiscation of 12 kgs gold bars of foreign origin is unsustainable being illegal and arbitrary as the Commissioner erred in disregarding the valid documents submitted by the appellant without adducing any evidence to refute the same;
- (vii)** The Commissioner erred in raising doubt on the authenticity of the will of late Mahesh Soni without any evidence or reasoning;
- (viii)** Seizure and absolute confiscation of 12 kgs gold bars of foreign origin based on the statements recorded under section 108 of the Customs Act is illegal and unsustainable as the procedure contemplated under section 138B of the Customs Act was not followed; and
- (ix)** Absolute confiscation of Rs. 1,17,590/- seized from Manish Kumar and Rs. 1,19,820/- from Naresh Kumar

under section 121 of the Customs Act, is illegal and against the settled principles of law.

15. 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 made the following submissions.

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

17. It transpires from the facts stated above that on 19.01.2023 Manish Kumar and Naresh Kumar who were travelling from Chennai to New Delhi in a train were intercepted at Railway Station by the officials of DRI. The search of Manish Kumar and his baggage resulted in recovery of 7 gold bars weighing 7kgs and Rs. 1,17,590/- of Indian currency. The search of Naresh Kumar and his baggage resulted in seizure of 5 gold bars, weighing 5 kgs and Rs. 1,19,820/- of Indian currency. According to the department these gold bars and currency were belonging to Bharat Shantilal Shah. In Customs Appeal No. 51986 of 2024 that was filed by Bharat Shantilal Shah, it has been found that these 12 gold bars did not belong to Bharat Shantilal Shah.

18. The appellant has claimed ownership on the basis of a will dated 15.11.2022 said to have been executed by Mahesh Soni, brother of the appellant, in favour of the appellant.

19. According to the appellant, his late brother Mahesh Soni had given the 12 gold bars to Prem Singh on 02.11.2022 along with Rs. 2,40,000/- on job work basis through job-work issue order. This fact has not been accepted by the adjudicating authority for the reason that

the GSTIN of M/s. B.S. Brothers and Industries had been cancelled w.e.f. 27.04.2021 and, therefore, job work order could not have been raised on 02.11.2022. The adjudicating authority has also noticed that two more GSTIN were also registered which were also cancelled on 09.12.2019 and 01.02.2020. The adjudicating authority, therefore, held that forged documents had been prepared by the appellant to prove licit possession of 12 gold bars that were recovered from Manish Kumar and Naresh Kumar. The adjudicating authority also found that there were contradictions in the statements of Manish Kumar and Naresh Kumar.

20. This apart, the will which is at page namely 483 of the appeal memo declares the appellant as the legal heir and refers to only this 12 kgs of gold. This will is not registered. The appellant had to lead evidence to prove the alleged will but that was not done. No reliance can, therefore, be placed on the will that was filed by the appellant.

21. The adjudicating authority was, therefore, justified in holding that the appellant was not the owner of the 12 gold bars weighing 12 kgs or Indian currency of Rs. 2,40,000/-.

22. As the appellant has been found not to be the owner of the 12 gold bars, the appellant cannot claim that confiscation of the 12 gold bars and Rs. 2,40,000/- is bad in law.

23. Penalty of Rs. 1,00,00,000/- has been imposed upon the appellant under section 114AA of the Customs Act for the reason that the appellant had made an attempt to claim ownership of the seized 12 smuggled gold bars on the basis of forged documents.

24. Section 114AA of the Customs Act is reproduced below:

"114AA. Penalty for use of false and incorrect material

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.”

25. Learned counsel for the appellant not only submitted that penalty should not be imposed upon the appellant but also submitted that the penalty that has been imposed is exorbitant.

26. The contention of the learned counsel for the appellant that penalty should not have been imposed cannot be accepted. It has been found as a fact that the appellant submitted forged documents to claim ownership of the 12 gold bars. There is, however, some justification in the submission advanced by learned counsel for the appellant that the penalty should be reduced. No reason has been given in the impugned order for imposing such a high penalty. Paragraph 163.1 of the impugned only mentions that penalty should be imposed upon the appellant under section 114AA and section 117 of the Customs Act. The operative part of the order imposes a penalty of Rs. 1 crore upon the appellant under section 114AA of the Customs Act. On a consideration of the various factors it is considered appropriate to reduce the penalty from Rs. 1 crore to Rs. 10 lacs upon the appellant under section 114AA of the Customs Act.

27. Section 117 of the Customs Act, under which penalty of Rs. 2 lacs has been imposed upon the appellant, is reproduced below:

“117. Penalties for contravention, etc., not expressly mentioned

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was

his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees.”

28. On a plain reading of this section it cannot be said that there was any contravention of any provision of the Customs Act where no express penalty is elsewhere provided. The penalty under section 117 of the Customs Act, therefore, deserves to be set aside and is set aside.

29. The impugned order dated 25.06.2024 passed by the Commissioner in so far as it concerns the appellant is accordingly modified and the appeal is partly allowed. The imposition of penalty upon the appellant under section 114AA of the Customs Act is reduced 10 lacs and the imposition of penalty upon the appellant under section 117 of the Customs Act is set aside.

(Order pronounced on **08.12.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Jyoti