

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 52000 OF 2024

[Arising out of Order-in-Original No. DLI/CUS/Prev/HKP/Commr/03/2024-25 dated 25.06.2024 passed by the Commissioner of Customs (Preventive), New Delhi]

Manish Kumar

H. No. 564, Haveli Vass, Koselo,
Pali, Rajasthan, 306708

...Appellant

Versus

**Principal Commissioner of Customs
(Preventive)**

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

...Respondent

AND

CUSTOMS APPEAL NO. 51995 OF 2024

[Arising out of Order-in-Original No. DLI/CUS/Prev/HKP/Commr/03/2024-25 dated 25.06.2024 passed by the Commissioner of Customs (Preventive), New Delhi]

Naresh Kumar

H. No. 564, Haveli Vass, Koselo,
Pali, Rajasthan, 306708.

...Appellant

Versus

**Principal Commissioner of Customs
(Preventive)**

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

...Respondent

APPEARANCE:

Shri Vishwa Raj Singh and Shri Rishabh Thakur, advocates for the appellant

Shri Gurdeep Singh, Special Counsel and Shri Rakesh Kumar, authorised representative of 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's. 51832-51833/2025**JUSTICE DILIP GUPTA:**

These two appeals have been filed by Manish Kumar and Naresh Kumar¹ to assail that part of the order dated 25.06.2024 passed by the Commissioner of Customs (Preventive)² that imposes penalties of Rs. 5,00,000/- on each of them under section 112(b)(i) of the Customs Act 1962³.

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

3. On 19.01.2023, Manish Kumar and Naresh Kumar, the two appellants, 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 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

1. the appellants
2. the Commissioner
3. the Customs Act
4. DRI

colour bag. Rs. 1,19,820/- of Indian currency was also recovered from him and seized.

4. According to the appellants, these statements were forcibly recorded under section 108 of the Customs Act and they were asked to state that they were employees of Bharat Shantilal Shah and were carrying the gold on his directions, for which they were given a commission of Rs. 1,20,000/- each.

5. Both the appellants were arrested on 20.01.2023 and remanded to the judicial custody. While in judicial custody, both the appellants retracted their earlier statements made on 19.01.2023 given to the DRI under 108 of the Customs Act. They 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 jewellery and were asked to deliver the gold to the said jeweller. They also stated that their earlier statements were recorded under threat and coercion and hence they wanted to retract. Both the appellants were enlarged on bail on 20.02.2023.

6. It is, thereafter, on 17.07.2023, that a show cause notice dated 17.07.2023 was issued to 10 noticees, including the appellants. The appellants were asked to show cause why penalty should not be imposed on them under section 112(b)(i) of the Customs Act.

7. The relevant portions of the show cause notice in so far as it concerns the appellants are as follows:

"102.2 As per the statements of the concerned persons & evidences brought on record above, the

role of Sh. Manish Kumar and Sh. Naresh Kumar in the syndicate appears to be as follows:

- Sh. Manish Kumar and Sh. Naresh Kumar travelled from Mumbai to Chennai via flight and collected smuggled gold bars having foreign markings from Sh. Krishi D. Jain in Chennai. Thereafter, both of them brought these gold bars from Chennai to New Delhi on the directions of Sh. Bharat Shantilal Shah via train and were to deliver the said gold bars to Sh. Bharat Shantilal Shah in a Hotel room booked by Sh. Bharat Shantilal Shah.
- Sh. Manish Kumar and Sh. Naresh Kumar received a commission for bringing smuggled gold bars having foreign markings from Chennai to New Delhi. Further, all the travel and other expenses i.e., travel tickets, stay expenses and food expenses etc. for Sh. Manish Kumar and Sh. Naresh Kumar was borne by Sh. Bharat Shantilal Shah.

Therefore, Sh. Manish Kumar and Sh. Naresh Kumar knowingly and intentionally indulged themselves in the prejudicial activity of transporting, carrying, and dealing with smuggled gold bars having foreign markings from Chennai to New Delhi for monetary consideration.

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108. And whereas, Sh. Manish Kumar, Sh. Naresh Kumar and Sh. Krishi D Jain voluntarily admitted that they are repeat offenders and carried smuggled gold from Chennai to Delhi on earlier occasions also on the directions of Sh. Bharat Shantilal Shah.

111. And, whereas, the seized gold bars collectively weighing 12,000 grams having tariff value Rs. 5,98,48,560/- (Rupees Five Crore Ninety Eight lakh Forty Eight thousand Five hundred Sixty only) recovered and seized from the possissoon of Sh. Manish Kumar and Sh. Naresh Kumar. xxxxxxxxxxx **which were illegally and illicitly imported, contrary to**

prohibition imposed under various laws discussed on the importability of gold by way of regulation/restriction/control/order etc. are liable to confiscation under Section 111(a)/(b) and Section 111(d) of the Customs Act, 1962.

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115. And whereas, the Indian currency amounting to Rs. 1,17,590/- recovered and seized from the possession of Sh. Manish Kumar and the Indian currency amounting to Rs. 1,19,820/- recovered and seized from the possession of Sh. Naresh, which appear to be a part of the commission received by them for transportation and delivery of foreign origin smuggled gold bars are liable to confiscation under Section 121 of the Customs Act, 1962.

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131. Now therefore, Sh. Manish Kumar S/o. Sh. Nag Raj, R/o 564, Haveli Vass, Koselo, Pali, Rajasthan 306708, is hereby called upon to Show Cause to the Pr. Commissioner of Customs (Preventive), New Custom House, Near IGI Airport, New Delhi-110037 as to why:

- I. he should not be treated as a carrier of the smuggled gold;**
- II. penalty should not be imposed upon him under Section 112(b) of the Customs Act, 1962 for his acts of omission and commission as brought on record herein.**

132. Now therefore, Sh. Naresh Kumar S/o Sh Nag Raj, R/O. 564, Haveli Vass, Koselo, Pali, Rajasthan 306708, is hereby called upon to Show Cause to the Pr. Commissioner of Customs (Preventive), New Custom House, Near IGI Airport, New Delhi-110037 as to why:

- I. He should not be treated as a carrier of the smuggled gold;**
- II. penalty should not be imposed upon him under Section 112(b) of the**

Customs Act, 1962 for his acts of omission and commission as brought on record herein.”

8. Both Manish Kumar and Naresh Kumar filed replies to the show cause notice and denied the allegations made therein. They also stated that:

- (i) One Mahesh Soni, 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 vide 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 the 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 the appellants at Chennai to deliver the 12 gold bars and the cash amounting to Rs.

2,40,000/- to Mukesh Soni. He had also given the appellants 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/-.

9. The Principal Commissioner did not accept the submissions made in the replies filed by Manish Kumar and Naresh Kumar and confirmed the demand of penalty of Rs. 1.50 crores on each of them under section 112(b)(i) of the Customs Act. The relevant observations are as follows:

"143.7 Thus, in the instant case, Sh. Manish Kumar, Sh. Naresh Kumar and Sh. Bharat Shantilal Shah failed to prove licit possession of 12 Gold bars weighing 12000 Grams. In addition, the 12 Gold Bars had Foreign Marking, hence, the said Gold Bars are of foreign origin and the said Gold Bars can only be imported into India through Smuggling activity as the import of Gold is regulated by Government through Import Policy Regime and Foreign Trade (Development and Regulation) Act and the Noticee Sh. Bharat Shantilal Shah have failed to produce any licit document for the import of the said gold/bars. Therefore, on the basis of above findings, I hold that the 12 Gold Bars collectively weighing 12000 Grams recovered from the possession of Sh. Manish Kumar & Sh. Naresh Kumar and owned by Sh. Bharat Shantilal Shah was smuggled in India.

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143.14 Further, Section 111 of the Customs Act, 1962 provides for confiscation of any goods which are

imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force. "Any prohibition", referred to in this section applies to every type of "prohibition". It is well settled law that any restriction on import or export is to an extent a prohibition, and therefore the expression "any prohibition" includes restrictions. Restriction is one type of prohibition if policy condition is not fulfilled / complied. **In the instant case, I hold that the subject goods are Smuggled and deemed to be prohibited goods since they do not fulfil the conditions for their import in violation of provisions of Customs Act, 1962 and other allied Acts.**

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143.15 Therefore, from the above discussion, I find that 12 Gold Bars weighing 12000 Grams seized from Sh. Manish Kumar and Sh. Naresh Kumar and owned by Sh. Bharat Shantilal Shah were prohibited and hence, liable for confiscation under Section 111(b) and 111(d) of the Customs Act, 1962. xxxxxxxx.

143.16 Further, I find that the Indian Currency amounting to Rs. 1,17,590/- recovered and seized from the possession of Sh. Manish Kumar and Rs. 1,19,820/- recovered and seized from the possession of Sh. Naresh Kumar is none other than the monetary consideration for delivery of the foreign origin gold bars from Chennai To New Delhi. **From the above discussion, I find that 12 foreign origin gold bars were illegally imported and Sh. Manish Kumar and Sh. Naresh Kumar were knowingly acting as a carrier to transport the said 12 foreign origin gold bars from Chennai To New Delhi via train and they both received the amount seized from them vide seizure memo dated 19.01.2023 as a monetary consideration. Hence, I find that the Indian Currency amounting to Rs. 1,17,590/- recovered and seized from the possession of Sh. Manish Kumar and Rs. 1,19,820/- recovered and seized from the possession of Sh. Naresh Kumar**

is liable for confiscation under Section 121 of the Customs Act, 1962 and I hold accordingly.

143.17 xxxxxxxxxxxx. In view of the above discussion, it is already established that all 12 Gold Bars weighing 12000 Grams carried by them were of foreign origin and smuggled and hence, liable for confiscation under Section 111(b) and 111(d) of The Customs Act, 1962.

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157. xxxxxxxxxxxx. Therefore, I hold that Sh. Manish Kumar and Sh. Naresh Kumar for their acts of omission and commission of dealing, carrying, transporting of foreign origin gold bars have rendered themselves liable for penal action under Section 112(b)(i) of the Customs Act, 1962."

(emphasis supplied)

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

- (i)** Penalties could not have been imposed upon the appellant under section 112(b)(i) of the Customs Act;
- (ii)** It was obligatory on the part of the department to have ascertained and established how the gold was smuggled and mere possession of gold on a person does not justify that the gold was smuggled;
- (iii)** The burden under section 123 of the Customs Act had been discharged by the appellants and the department could not have rejected the documents submitted by the appellants in support of 12 gold bars saying that they were fake;
- (iv)** No efforts were made by the department to examine Rinkesh Kumar alias Prem Singh who had handed over the seized gold bars to the appellants in Chennai;

- (v)** The 12 gold bars were, therefore, not liable to confiscation under section 111 of the Customs Act and, therefore, penalty under section 112 of the Customs Act could not have been imposed upon the appellants;
- (vi)** No reliance can be placed on the statements made by the appellants under section 108 of the Customs Act as the procedure contemplated under section 138B of the Customs Act had not been followed;
- (vii)** In any case, the appellant had retracted the statements;
- (viii)** There is no evidence on record to even suggest that the 12 gold bars were smuggled; and
- (ix)** The confiscation of the seized amount of Rs. 1,17,590/- from the appellants is bad in law as the department could not substantiate that the said amount pertains to sale proceeds of any smuggled goods.

11. Shri Gurdeep Singh, learned special counsel appearing by the respondent 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)** Penalties under section 112(b)(i) of the Customs Act were correctly imposed upon the appellants as the 12 gold bars were of foreign origin and smuggled and hence liable to confiscation under section 111 of the Customs Act;
- (ii)** The appellants knowingly acted as a carrier to transport the 12 gold bars of foreign origin from Chennai to New Delhi; and

(iii) The appellants failed to prove licit possession of 12 gold bars.

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

13. The impugned order has treated Bharat Shantilal Shah to the owner of the 12 gold bars and for this reliance has been placed on the statements made by Bharat Shantilal Shah and the appellants under section 108 of the Customs Act. In Customs Appeal No. 51986 of 2024 (Bharat Shantilal Shah vs. Principal Commissioner of Customs (Preventive)) decided by order of date, it has been held that Bharat Shantilal Shah was not the owner of the 12 gold bars as no reliance could have been placed on the statements made by Bharat Shantilal Shah and the appellants under 108 of the Customs Act.

14. The appellants had, in their replies to the show cause notice, clearly stated that Mahesh Soni, 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. However, as Mahesh Soni was not keeping well he executed a will dated 15.11.2023 naming his brother Mukesh Soni as the inheritor of his properties, including the 12 gold bars from the stock of his firm. Mahesh Soni died on 01.12.2022 and so Rinkesh Kumar alias Prem Singh had called the appellants at Chennai to deliver the said 12 gold bars and cash amounting to Rs. 2,40,000/- to Mukesh Soni with the relevant documents. This is how the appellants explained the possession of the 12 gold bars and the cash amount.

15. This contention of the appellant has not been examined in the impugned order and even the department did not consider it necessary to examine Rinkesh Kumar alias Prem Singh to determine the veracity of the contention of the appellants.

16. This apart, in the Customs Appeal filed by the Bharat Shantilal Shah, it has been held that section 123 of the Customs Act could not have been relied upon by the department to establish that the 12 gold bars were smuggled since Bharat Shantilal Shah was not the owner of the goods. It was, therefore, held that the 12 gold bars could not have been confiscated.

17. It also needs to be noted that the evidence to justify an inference of smuggling should be one which is relevant for providing the unauthorized importation of goods and not the unauthorized possession of the goods. This view was taken by this Tribunal in **V. Muniyandi vs. Commissioner of Customs, Chennai**⁵ and **Commissioner of Cus. (Preventive), Mumbai vs. Shailesh N. C. Shah**⁶.

18. The Supreme Court in **Radha Kishan Bhatia vs. Union of India and Others**⁷ held that a mere finding of fact that a person is in possession of smuggled goods does neither imply that the Collector of Customs has considered the question of person being concerned in the commission of the offence of illegal importation of the goods nor in any way it justifies the conclusion that the person must have been so concerned. Other circumstances indicating that the person had some connection with the importation of the goods prior to their actual import

5. (2004) 167 E.L.T. 215 (Tri.- Chennai)
6. 2007 (218) E.L.T. 377 (Tri.- Mumbai)
7. AIR 1965 SC 1072

have to be established. The relevant observations of the Supreme Court are as follows:

"12. We therefore hold that a mere finding of fact that a person is in possession of smuggled goods does neither imply that the Collector of Customs had considered the question of the person's being concerned in the commission of the offence of illegal importation of the goods nor in any way justifies the conclusion that the person must have been so concerned. Other circumstances indicating that the person had some connection with the importation of the goods prior to their actual import have to be established. In the present case no such circumstances have been alleged which would connect the appellant with the importing of the smuggled gold recovered from his person. There is no mention of any such circumstances in the order of the Collector or even in the reply affidavit filed in the High Court by the Assistant Collector of Central Excise and Land Customs, New Delhi, though the appellant had said in Ground C of the writ petition that there was absolutely no material before Respondent 3 on which he could have come to a finding that the petitioner had imported the said gold."

(emphasis supplied)

19. Neither the show cause notice nor the impugned order hold that the appellants had any connection with the importation of the gold bars/ gold prior to the actual imports. It was for the department to have established conclusively, without shifting burden on the appellants, that the goods were smuggled. The case of the department is based on the statements made under section 108 of the Customs Act, which statements, as noticed above, cannot be considered as relevant as the procedure contemplated under section 138B of the Customs Act had not been followed.

20. It also needs to be remembered that it is not the case of the department that the 12 gold bars were imported by the appellants.

21. Section 120 of the Customs Act has not been invoked in the present case and nor could it have been invoked as there is nothing on the record to establish that Bharat Shantilal Shah or the appellants had smuggled the gold bars. This is what was observed by a division bench of the Tribunal in **Deepak Handa vs. Principal Commissioner of Customs**⁸. The relevant observations are:

"23. As far as the gold is concerned, there is no dispute that it is covered by section 123. As far as jewellery is concerned, the case of the Revenue is NOT that it is smuggled but that it is made from smuggled gold. Therefore, notwithstanding this change of form (from primary gold to ornaments), jewellery would be liable to confiscation under section 120. If the jewellery was allegedly smuggled and was seized under such a reasonable belief, section 123 would apply. Since jewellery is not even alleged to be smuggled, section 123 does not apply unless it can be shown that it has been made out of smuggled gold."

22. The said gold bars, therefore, could not have been confiscated under section 111 of the Customs Act, which section is applicable to goods brought from a place outside India.

23. Under section 112(b)(i) of the Customs Act, penalty can be imposed only if a person knows or has reason to believe that the goods are liable to confiscation under section 111 of the Customs Act. As the goods were not liable to confiscation, penalties could not have been imposed upon the appellants.

24. The impugned order dated 25.06.2024 passed by the Commissioner to the extent it imposes penalties upon the appellants

8. (2022) 20 GSTR-OL 378 (Tri.- New Delhi)

under section 112(b)(i) of the Customs Act cannot, therefore, be sustained and is set aside. The two appeals are, accordingly, allowed.

(Order pronounced on **08.12.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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