

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 51999 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)

Subhash Tukaram Karan

Sai Adarsh Chawl No.2, Room No. 6,
Garibichawada, Sarovar Nagar, Dombivali
West, Maharashtra-421201

...Appellant

Versus

**Commissioner of Customs,
(Preventive)**

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

...Respondent

APPEARANCE:

Mr. Rupesh Kumar Senior Advocate with Mr. Subas Chandra Acharya and Mr. Vaibhav Jain, 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. 51834/2025

JUSTICE DILIP GUPTA:

Subhash Tukaram Karan¹ 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. The appellant claims that as an employee of Bharat Shantilal Shah and working in his business i.e., M/s. Mahalxmi Chains and Jewellery, Mumbai, he used to assist Bharat Shantilal Shah in his business activities. He had, therefore, to come from Mumbai to Delhi to transport and supply gold jewellery belonging to Bharat Shantilal Shah to different jewelers in Delhi.

3. On 19.01.2023, the appellant, who was travelling from Mumbai to New Delhi by train, was intercepted by Directorate of Revenue Intelligence⁴ 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 the appellant collectively weighed 20,756.3 gm. The statements of both the appellant and Sanjay Ram were also recorded at the DRI Office under section 108 of the Customs Act. The appellant claims that he was forced to state that he knows that his employer Bharat Shantilal Shah is engaged in the business of making

4. DRI

the jewellery out of the smuggled foreign gold and he was carrying the seized jewellery on the instructions of his employer from Mumbai to New Delhi.

4. Invoice No. SG-460 accounted for gold ornaments having gross weight 1975.790 gms. Invoice No. SG-160 accounted for gold ornaments weighing 745.25 gms. The total weight comes to 18035.26 gms.

5. Bharat Shantilal Shah, who claims to have travelled to New Delhi for business purposes and for collecting the assorted gold articles weighing carried to Delhi by the appellant was intercepted by officials of the DRI on 19.01.2023 in front of Kothi No. 32, Mahadeo Road, Delhi and his statement under section 108 of the Customs Act was also recorded at the DRI Office.

6. In respect of gold jewellery weighing 20756.3 gms seized from the appellant, the Commissioner considered the statements made by the appellant and Bharat Shantilal Shah under section 108 of the Customs Act, the reply submitted by Bharat Shantilal Shah with Appendix 'A' containing the breakup of Jewellery received from job workers, and observed:

"**149.12** xxxxxxxxxx. I hold that Sh. Bharat Shantilal Shah and Sh. Anand Dasmal Shah were hand in glove in the business of manufacture/dale of Gold Jewellery covered under Invoice no. SG0460 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.

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149.14.1 Therefore, I hold for confiscation of Gold Jewellery weighing 18035.26 grams recovered from the possession of Sh. Subhash Tukaram Karan and owned by Sh. Bharat Shantilal Shah under Section 111(a)/111(b) and Section

111(d) of The Customs Act, 1962. I also hold for confiscation of Gold Jewellery covered in Invoice nos SG0460 dated 17.01.2023 and SG-160 dated 18.01.2023 collectively weighing 2721.04 grams used to cover up the other Gold Jewellery weighing 18035.26 grams (manufactured out of smuggled Gold and confiscated under Section 111 of Customs Act, 1962) under Section 119 of The Customs Act, 1962.

149.15 I also find that Gold Jewellery collectively weighing 20756.3 Grams recovered from the possession of Sh. Subhash Tukaram Karan was packed and concealed in the baggage carried by him. I find that Sh. Subhash Tukaram Karan packed and concealed the said Gold jewellery in baggage carried by him on 19.01.2023 in the manner as described in Para 5.5 to 6.1 supra. As per provisions of the Section 123 of the Customs Act, 1962, Sh. Bharat Shantilal Shah and Sh. Subhash Tukaram Karan failed to provide licit duty paying documents for procurement of the said gold from which the seized jewellery was made. **As from the above discussion, Gold Jewellery collectively weighing 20756.3 grams having tariff value as Rs. 8,31,54,318/- carried by him was already confiscated under Section 111(a)/111(b) and 111(d) of The Customs Act, 1962 and Section 119 of The Customs Act, 1962. xxxxxxxxxxxx."**

(emphasis supplied)

7. The Commissioner, thereafter, discussed penalty to be imposed on the appellant under sections 112(a), 112(b) and 114AA of the Customs Act and observed:

"158. I find that Sh. Subhash Tukaram Karan collected gold jewellery manufactured from smuggled gold bars of foreign origin from Sh. Bharat Shantilal Shah's Shop M/s Mahalaxmi Chain & Jewellery and further, he brought the said gold jewellery/article from Mumbai to New Delhi on the directions of Sh. Bharat Shantilal Shah and used to assist him in the sale of said gold jewellery/articles without any licit documents to local traders in Delhi. Sh. Subhash Tukaram Karan used to

receive monthly salary for this. All his expenses like food, stay and travel were borne by Sh. Bharat Shantilal Shah. Therefore, Sh. Subhash Tukaram Karan involved himself knowingly in the trade of smuggling of Gold and Gold Jewellery. I also find that Sh. Subhash Tukaram Karan also travelled many time to Delhi carrying the Gold Jewellery. Therefore, I hold that he is liable for penal action under Section 112(b)(i) of the Customs Act, 1962."

8. Accordingly, a penalty of Rs. 5,00,000/- was imposed on the appellant under section 112(b)(i) of the Customs Act.

9. In respect of jewellery weighing 18035.26gms belonging to Bharat Shantilal Shah out of the jewellery weighing 20,756.3 gms, Bharat Shantilal Shah filed Customs Appeal No. 51986 of 2024 which has been allowed by order of date and the penalty imposed upon Bharat Shantilal Shah under section 112(b)(i) and section 114AA of the Customs Act has been set aside. The relevant finding are as follows:

54. The case of the appellant is that the gold jewellery/ornaments were carried by Subhash Tukaram Karan on the instructions of the appellant and that the said gold jewellery was brought on behalf of the appellant to Delhi on approval basis for marketing purpose either by himself or by other jewellery manufacturers namely M/s. Swamini Creations, M/s. Falcon Gold House Pvt. Ltd., M/s. Anand Shah Jewels LLP, Khandelwal Chain Co. and R.K. Jewellers. All the said jewellery was manufactured out of gold bars purchased from bullion dealers based in Mumbai.

55. The appellant had produced **Invoice No. SG-160 dated 18.01.2023** (covering gold jewellery weighing 745.250 gms) by the M/s. Mahalaxmi Chains & Jewellery (a firm of the appellant) in the name of M/s. Khandelwal Chain Co., Delhi, **Invoice No. SG-460 dated 17.01.2023** (covering gold jewellery weighing 1975.79 gms) and **Invoice No. SG-465 & 466 both dated 18.01.2023** (covering gold jewellery

weighing 4145.190 gms) in the name of Vikash Chain Jewellery, Delhi by M/s. Anand Shah Jewellers, which pertains to the gold jewellery/ornaments forming part of the seizure from Subhash Tukaram Karan. These three invoices were rejected by the Commissioner only on assumptions and presumptions. Each the invoices were on record and the department could have checked and verified the authenticity, but that was not done.

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60. 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 [(2004) 167 E.L.T. 215 (Tri.- Chennai)]** and **Commissioner of Cus. (Preventive), Mumbai vs. Shailesh N. C. Shah [2007 (218) E.L.T. 377 (Tri.- Mumbai)]**.

61. The Supreme Court in **Radha Kishan Bhatia vs. Union of India and Others [AIR 1965 SC 1072]** 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 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. 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)

62. Neither the show cause notice nor the impugned order hold that the appellant 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 appellant, that the imported goods were smuggled or had been manufactured out of smuggled imported gold. 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.

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68. The inevitable conclusion that would follow from the aforesaid discussion is that the Commissioner could not have imposed penalty upon the appellant under sections 112 (b)(i) and 114AA of the Customs Act.

69. Accordingly, the impugned order dated 25.06.2024 passed by the Commissioner of Customs in so far as it imposes of penalty upon the appellant under

section 112(b)(i) and section 114AA of the Customs Act is set aside and the appeal is allowed.”

10. It needs to be noted that Anand Dasmal Shah also claimed to be the owner of 4440.84 gms of the total gold jewellery/gold ornaments weighing 20,756.3 gms recovered from the appellant on 19.01.2023. Anand Dasmal Shah filed Customs Appeal No. 52316 of 2024 to assail the confiscation of this gold under section 119 of the Customs Act and by an order of date, the confiscation was set aside and the appeal has been allowed. The relevant portion of the order is reproduced below:

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, Raipur (Excise Appeal No. 51148 of 2020 decided on 01.04.2025.**

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."

(emphasis supplied)

15. The decisions of this Tribunal in Customs Appeal No. 51986 of 2024 filed by Bharat Shantilal Shah and Customs Appeal No. 52316 of

2024 filed by Anand Dasmal Shah covers the entire 20,756.3gms of jewellery recovered from the appellant. Penalty of Rs. 5,00,000/- upon the appellant, therefore, cannot be sustained.

16. The impugned order dated 25.06.2024 passed by the Commissioner imposing a penalty of Rs. 5,00,000/- upon the appellant under section 112(b)(i) of the Customs Act is, therefore, 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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