

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 51998 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)

Sanjay Ram

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

...Appellant

Versus

**Principal 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. 51835/2025

JUSTICE DILIP GUPTA:

Sanjay Ram¹ 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. 2,00,000/- upon the appellant 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 he is an illiterate person and 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 jewellers in Delhi.

3. On 19.01.2023, the appellant had come to pick Subhash Tukaram Karan, who was travelling from Mumbai to New Delhi by train. Subhash Tukaram Karan was intercepted by the 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 Subhash Tukaram Karan and the appellant 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 Subhash Tukaram Karan and the appellant were also recorded at the DRI Office under section 108 of the Customs Act. The appellant claims that he was forced to state that Bharat Shantilal Shah is his employer and he used to take his assistance in supplying smuggled foreign gold bars/assorted gold jewellery to various merchants in Kuchcha Mahajani and sometimes in

4. **DRI**

Karol Bagh area. The appellant also claims that he is an illiterate person who hardly knows how to sign, but still his statement dated 19.01.2023 under section 108 of the Customs Act was recorded by the DRI in English. The appellant further contents that though the signature of the appellant is appended on the statement typed in English but the appellant did not understand the contents of his statement.

4. During the personal search, 19 notes of one rupee denomination were found with the appellant and these notes were voluntarily submitted. In this context, the statement of appellant was recorded by the DRI to the effect that such one-rupee notes were used by the appellant in delivering the smuggled gold bars or jewellery made out of it, upon the instructions of Bharat Shantilal Shah. The appellant claims that such notes were collected by the appellant as they were in great demand in the market and could be sold at higher rates.

5. The appellant was arrested by the DRI on 20.01.2023 and, thereafter, was remanded to the Judicial Custody. On 20.02.2023, the appellant was enlarged on bail by the Additional Chief Metropolitan Magistrate, Patiala House Court, New Delhi.

6. A show cause notice dated 17.07.2023 was issued to many persons, including the appellant. The charges leveled against the appellant in the show cause notice are:

“Sh. Sanjay Ram also used to assist Sh. Subhash Tukaram Karan for the security of goldl jewellery carried by him and used to help Sh. Bharat Shantilal Shah and Sh. Subhash Tukaram Karan in supply of gold jewellery to local buyers in Delhi.

Therefore, Sh. Subhash Tukaram Karan and Sh. Sanjay Ram knowingly and intentionally indulged themselves in the prejudicial activity of transporting, carrying, and

dealing with gold jewellery manufactured out of smuggled gold bars having foreign markings from Mumbai to New Delhi for monetary consideration.”

7. The appellant filed a reply to the show cause notice and denied the allegations made therein.

8. The Commissioner confirmed the imposition of penalty upon the appellant under section 112(b)(i) of the Customs Act for the following reasons:

“159. Further, I find that Sh. Sanjay Ram used to assist Sh. Bharat Shantilal Shah and Sh. Subhash Tukaram Karan for specific purpose like security and transportation of the said gold jewellery/articles made/manufactured from smuggled gold of foreign origin. I find that Sh. Subhash Tukaram Karan and Sh. Sanjay Kumar intentionally and knowingly involved themselves in dealing, transporting, carrying of gold jewellery / articles made /manufactured from smuggled foreign origin gold for monetary consideration and thus, rendered themselves liable for penalty under Section 112 (b)(i) of the Customs Act, 1962.”

9. Mr. Rupesh Kumar, learned senior counsel for the appellant assisted by Mr. Subas Chandra Acharya and Mr. Vaibhav Jain, made the following submissions:

- (i)** The penalty levied upon the appellant under section 112(b)(i) of the Customs Act is perverse and bad in law as nothing incriminating was found from the possession of the appellant;
- (ii)** The pre-requisite condition for imposing penalty under section 112(b)(i) of the Customs Act is that the goods are liable to confiscation under section 111 of the Customs Act. The said section will not be

attracted as nothing incriminating was found from the appellant;

- (iii)** The burden of proof as enshrined under section 123 of the Customs Act could not have been placed upon the appellant, as nothing incriminating was found from his possession; and
- (iv)** The DRI has entirely relied upon the statements of the noticees, including the appellant, made under section 108 of the Customs Act and the same have also been considered by the Commissioner for imposing penalty upon the appellant. These statements cannot be considered as relevant as the procedure contemplated under section 138B of the Customs Act was not followed.

10. 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.

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

12. Penalty has been imposed upon the appellant merely on the basis of the statements made by the appellant and Subhash Tukaram Karan under section 108 of the Customs Act. The statements of Subhash Tukaram Karan and the appellant 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**⁵.

13. This apart, during the personal search of the appellant, only 19 notes of one rupee denomination were found with the appellant. The prerequisite condition to impose penalty under section 112(b)(i) of the Customs Act is that the goods are liable to confiscation under section 111 of the Customs Act. The penalty levied upon the appellant under section 112(b)(i) of the Customs Act cannot be sustained as nothing incriminating was found from the possession of the appellant.

14. It also needs to be noted that Subhash Tukaram Karan had filed Customs Appeal No. 51999 of 2024 before the Tribunal to assail that portion of the order passed by the Commissioner that imposed a penalty of Rs. 5,00,000/- upon him under section 112(b)(i) of the Customs Act. This appeal has been allowed by order of date and the order imposing penalty upon Subhash Tukaram Karan has been set aside.

15. Thus, for all the reasons stated above, the imposition of penalty upon the appellant under section 112(b)(i) of the Customs Act is set aside and the appeal is allowed.

(Order pronounced on **08.11.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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5. Excise Appeal No. 51148 of 2020 decided on 01.04.2025.