

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 51997 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)

Krishi D Jain Alias Bittu

TVH Lumbini Square, 2nd Block, 7th Floor,
2072, Brickklin Road, Purasaiwakkam,
Chennai-600007

...Appellant

Versus

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

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

...Respondent

APPEARANCE:

Mr. Harsh Raj Singh and Mr. 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. 51836/2025

JUSTICE DILIP GUPTA:

This appeal has been filed by Krishi D Jain Alias Bittu¹ 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.

2. The appellant claims that he runs a business of dry fruits in Chennai and is also the nephew of Bharat Shantilal Shah.

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

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. They stated that the seized gold bars were handed over by the appellant to them at Chennai. The said statements were, however, retracted by Manish Kumar and Naresh Kumar. Based on the statements of Manish Kumar and Naresh Kumar, the DRI searched the residence of the appellant on 19.01.2023. It is stated that nothing incriminating was found or recovered.

4. The appellant claims that on 19/20.01.2023, the statement of the appellant was forcibly recorded under section 108 of the Customs Act by the DRI officers. The appellant was coerced to state that he had received some package from some unknown person on 17.01.2023 and further upon the instructions of his uncle, Bharat Shantilal Shah the

4. **DRI**

same package was handed over to Manish Kumar and Naresh Kumar by the appellant.

5. While in Judicial Custody, Manish Kumar and Naresh Kumar on 30.01.2023 retracted from their earlier statements dated 19.01.2023 given to the DRI under section 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 and some cash to Delhi and had provided them with Rs. 2,40,000/- along with the 7 plus 5 kg gold bars.

6. Manish Kumar, in his letter dated 21.06.2023, apprised the DRI that the said 12 kgs gold bars seized from him and his assistant Naresh Kumar pertains to Mukesh Soni and same was given to them at Chennai by Rinkesh Kumar alias Prem Singh, to deliver at Delhi to a jeweller and all the relevant available documents pertaining to the said gold bars were submitted.

7. A show cause notice dated 17.07.2023 was issued to the appellant alleging as:

"135. Now therefore, Sh. Krishi D Jain @Bittu, S/o Sh. Dinesh jain, R/o Flat No. 7E, 7th Floor, Chandan Bala Apartments, Prathapet Road, Vepery, Chennai - 600007 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 an active member and of beneficiary of syndicate dealing in smuggled gold and gold jewellery made/ manufactured from 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. The appellant filed a reply to the show cause notice and denied the allegations made and also stated that his statement recorded under section 108 of the Customs Act was not voluntary and that he is not involved in any kind of dealing or handling smuggled gold of foreign marking as alleged the show cause notice.

9. The Commissioner, however, by the impugned order, imposed a penalty of Rs. 5,00,000/- upon the appellant under section 112(b)(i) of the Customs Act and the relevant paragraph is reproduced below:

"160. I find that Sh. Krishi D. Jain nephew of Sh. Bharat Shantilal Shah collected smuggled gold bars having foreign markings from a syndicate in Chennai on the directions of Sh. Bharat Shantilal Shah and delivered the same to Sh. Manish Kumar and Sh. Naresh Kumar at his residence in Chennai and he also dropped Sh. Manish Kumar and Sh, Naresh Kumar at Chennai Central Railway Station. Hence, I find that Sh. Krishi D Jain knowingly and intentionally indulged himself in the prejudicial activity of transporting, carrying, and dealing with smuggled gold bars having foreign markings from Chennai to New Delhi for monetary consideration. I find that he is an active member and beneficiary of the syndicate dealing in smuggled gold and gold jewellery made / manufactured from foreign origin smuggled gold. Therefore, I hold that Sh. Krishi D. Jain due to his act of omission and commission in transporting, carrying, and dealing with foreign origin smuggled gold bars rendered himself liable for penal action under Section 112 (b)(i) of the Customs Act, 1962."

10. Mr. Harsh Raj Singh, learned counsel for the appellant assisted by Mr. Rishabh Thakur, submitted that:

- (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 or during the search conducted by the DRI at his residence;

- (ii)** The pre-requisite condition for imposing penalty upon any person under section 112(b)(i) of the Customs Act is that the person dealing with such goods should have knowledge or reason to believe that such goods are liable to confiscation under section 111 of the Customs Act. In the instant case, the appellant had never dealt with any such goods and presuming what has been alleged by the DRI, still no corroborating evidence has been produced by the DRI in order to substantiate that the appellant knowingly and intentionally dealt with such goods which were liable to confiscation under the Customs Act. Thus, the penalty imposed under section 112(2)(i) of the Customs Act is unsustainable and is liable to be set aside;
- (iii)** The burden of proof as enshrined under section 123 of the Customs Act could not be cast upon the appellant, as nothing incriminating was found from his possession or during the search conducted by the DRI at his residence; and
- (iv)** The DRI never summoned or investigated Rinkesh Kumar alias Prem Singh despite the fact that his name had come on record in the retracted statement of Manish Kumar, wherein Manish Kumar stated that the seized gold bars were handed over to him and his assistance Naresh Kumar at Chennai by Rinkesh Kumar alias Prem Singh;

- (v) The DRI never summoned or investigated Mukesh Soni during the entire investigation, despite the fact that Manish Kumar in his letter dated 21.06.2023 has specifically submitted that the 12 kgs of gold seized actually belongs to Mukesh Soni; and
- (vi) The DRI relied upon the statements of the noticees, including the appellant, recorded under section 108 of the Customs Act and the same have been solely considered by the Commissioner in fastening the guilt and imposing penalty upon the appellant. Statements recorded under section 108 of the Customs Act cannot be considered as relevant if the procedure contemplated under section 138B of the Customs Act is not followed.

11. 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.

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

13. The statements of the appellant, Manish Kumar and Naresh Kumar made under 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).

14. The order of the Commissioner has merely relied upon the statements made under section 108 of the Customs Act for imposing penalty upon the appellant. As the statements cannot be considered as relevant, the imposition of penalty upon the appellant cannot be sustained.

15. It also needs to be noticed that Bharat Shantilal Shah had filed Customs Appeal No. 51986 of 2024 for assailing the imposition of penalty upon him under section 112(b)(i) of the Customs Act and this appeal has been allowed by order of date and the imposition of penalty upon him has been set aside.

16. Manish Kumar and Naresh Kumar had also filed Customs Appeal No. 52000 of 2024 and Customs Appeal No. 51995 of 2024, respectively, for assailing the imposition of penalty upon them under section 112(b)(i) of the Customs Act. These two appeals have been allowed by order of date and the imposition of penalty upon them has been set aside.

17. This apart, nothing incriminating was recovered from the appellant or during the search conducted at his residence. The pre-requisite condition to imposing penalty under section 112(b)(i) of the Customs Act is that the person dealing with such goods should have knowledge or should have reason to believe that such goods are liable to confiscation under section 111 of the Customs Act. The department had not led any evidence to substantiate that the appellant knowingly and intentionally dealt with goods which were liable to confiscation under section 111 of the Customs Act. Penalty, therefore, could not have been imposed upon the appellant.

18. Thus, for all the reasons stated above, the imposition of penalty upon the appellant under section 112(b)(i) of the Customs Act cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **08.11.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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