

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA**

**EASTERN ZONAL BENCH: KOLKATA**

**Appeal No. C/75974/2018**

**(Arising out of Order-in-Appeal No. 161/Pat/Cus/Appeal/2018  
dated 30/01/2018 passed by Commissioner (Appeals) of CGST &  
Central Excise, Patna.)**

M/s. Ram Naresh Chaurasiya  
Vs.

Appellant (s)

Commissioner of Customs (prev), Patna

Respondent (s)

**Appearance**

Shri H. K. Pandey, Advocate for the Appellant  
Shri A. K. Singh, A.C. (A.R.) for the Revenue

**CORAM:**

**HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)**

**Date of Hearing-20.11.2018**

**ORDER NO. FO/77165/2018**

The Facts of the case in brief are that proceeding in the instant case were initiated by Show Cause Notice dated 11/07/2016 upon the appellant for illegal importation and possession of primary gold in contravention of the provisions of the Customs Act. It has also been alleged that the gold was of 3<sup>rd</sup> country origin, brought into the country from Nepal through unauthorized route.

2. On 03/12/2015, on a tip of, the Superintendent of Rail Police, Muzaffarpur, detained two persons namely Shri Sumit Goyanka and Shri Awadhesh Kumar Pandey and have recovered 4 kgs of foreign marked primary Gold in four bar forms (weighing 1 kg each) from their possession. The seized gold and the detained persons were subsequently handed over to the officers of the Customs (P) Division, Muzaffarpur. During interrogation, statement of the both the persons were recorded under Section 108 of the Act on 04/12/2015, wherein they accepted that they used to get illegal/unaccounted money through HAWALA from Shri

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Rajesh Kumar Agrawal of M/s Balaji Enterprises, New Pan Mandi, Kalyani Chowk, Distt.- Muzaffarpur (Bihar), Shri Arjun Sah S/o Late Mewa Lal Sah, Kalyani, Bara Lane, P.S.:- Towan Thana, Distt:- Muzaffarpur (Bihar) and Shri Ram Naresh Chaurasiya S/o Shri Yogendra Prasad Chaurasiya, Mohala-Kachchi Saray, Chakbasu, Ramana, Muzaffarpur (Bihar).

3. A Search was conducted at the residential premises of Shri Ram Naresh Chourasia (the appellant herein). The residential premise, where the search was conducted is owned by Shri Yogendra Prasad Chaurasiya, Father of Shri Ram Naresh Chaurasiya. The appellant, his father along with his other brother, Shri Harish Kumar Chaurasiya were residing along with their respective families in the said premises. Ram Naresh Chaurasia was not present at the time of search and it was his father Shri Yogendra Prasad Chaurasia, who was present during the search and whose statement was recorded by the Customs Officers, wherein he stated that one piece of Gold weighing 199 gms was received by his elder daughter-in-law Smt. Chhunu Devi, from her father at the time of her wedding in the year 1985 in the " Khoincha Ceremony" and the other piece of gold weighing 100 gms was received by his Grand-daughter during her Birth Ceremony in the year 1993, from her Maternal Grand-Father (Nanajee). The appellant Shri Ram Naresh Chaurasia in his statement before the Customs Officers on 11/01/2016, has also stated the same facts regarding the ownership of the gold.

SI No.	Description of the Goods	Country	Quantity	Value (INR)
1	Said to be Gold (Mark as M.R.)	3 <sup>rd</sup> Country origin	100 g	2,58,210/-

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2.	Said to be gold (Mark as 99.50)	3 <sup>rd</sup> Country origin	199g	5,13,838/-
Total				Rs.7,72,048/-

4. On 12/01/2016, for ascertaining purity of the seized gold, samples were drawn and a local Goldsmith was called, who on physical verification, certified 99.50% purity. The drawn samples were sent to Government of India, Mint, Alipore, Kolkata for purity testing of the seized gold bars. It has been observed in the Adjudication order that the test reports are awaited.

5. It is observed from the records that this Bench on 22/05/2018 had directed the Ld. DR to file a copy of the test reports as received from the Government. The case was listed on various dates but the test reports had not been filed so far. The AA ordered for absolute confiscation of the seized gold bar and imposed a penalty of Rs.50,000/- under section 112 of the Customs Act, 1962 upon the appellant.

6. On appeal, the Ld. Commissioner (Appeals) dismissed the appeal filed by the appellant. Hence, the present appeal before the Tribunal.

7. The Ld. Advocate appearing on behalf of the appellant submits that there is no evidence on record to prove that the seized gold is of foreign origin and has been illegally imported into India from Nepal. There is no mark of foreign country in the two pieces of gold. He further submits that when the purity of gold was got tested by a local goldsmith on 12/11/2016, the goldsmith reported that the pure gold stands at 99.50%. It is his submission that it is a well known fact that purity of the foreign origin gold is of 99.9% and is also marked as such. Therefore, it is

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established beyond doubt that the seized gold pieces are not of foreign origin but of Indian Origin. Through the affidavit dated 13/04/2016, Shri Paras Prasad Chourasiya Father-in-Law of Appellant's elder brother, Harish Kumar Chaurasia, wherein he has stated that one piece of gold weighing 199 gm was purchased by him at Raxaul in the year 1985 and gifted to his daughter Smt. Chunnu Devi (Wife of Shri Harish Kumar Chaurasia, brother of the appellant) on the occasion of her marriage as a customary ritual it was given in "Khoyncha". It has been further been stated in the affidavit that 100 gm was also purchased by him at Raxaul and gifted to his granddaughter (Daughter's daughter) in the year 1993 on the occasion of her birth ceremony.

8. The Ld. Advocate further submits that the above fact as available on the record of the case has neither been disputed nor denied in the Show Cause Notice. As such the allegation of illegal transportation of foreign origin gold from Nepal into India remains un-established and not proved in the instant case, at least against the appellant. He also argued that the seizure of gold bars has not been made in the Customs area or from a vehicle coming from the Nepal side of the border and it is also a non-disputed fact that the gold was recovered during search of the residential premises of the appellant's father on 09/12/2015 in the follow up action in the case of 4 kgs of gold bar of foreign origin.

9. The reason behind search of the residential premises, where the appellant is residing in joint family was that the two accused persons named him as one of the Hawala operators making money available with some Kamal Jain at Raxaul. But there is nothing in the Show Cause Notice to suggest that there was any link between the said two accused persons

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and the appellant in relation to the smuggling/accusation/possession of 4 kgs gold of foreign origin seized from them. It is his submission that the primary gold seized from the residential premises of the appellant has nothing to do with smuggling and those two lumps of primary gold were not smuggled. Accordingly, this is a case of possession of 299 gm gold in primary form.

10. Regarding lawful possession of gold, the appellant's father has consistently stated that these belonged to their family earmarked as "*Stridhan*" handed over to the daughter at the time of marriage. The Father-in-law of the appellant's Sister-in-Law (Bhabhi) had gifted it at the time of her wedding and another piece was gifted to her daughter at the time of her birth. The Ld. Advocate submitted that this is a very common scenario in the Indian society to gift gold at the time of wedding/ or birth of baby and it goes from generation to generation.

11. The Ld. Advocate also argued that since the repeal of the Gold (Control) Act, 1968, there is no legal requirement for the buyers and sellers of gold to maintain any registers, nor is there any requirement to issue invoices under any Central Act. As a result of liberalization of the Policy as regards the import of gold, it is available in the Indian market in ample. The present seizure is not made in Customs area and its ownership is duly claimed which is not refuted by the Department. As such the onus placed upon the appellant under provisions of Section 123 is discharged to the requisite extent.

13. Further, he argued that the imposition of penalty on the appellant in relation to the seizure/confiscation of the said primary gold under Section 112 of the Customs Act, 1962 without assigning any reason is not

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sustainable. In support of his submission he relied upon the following decisions.

- (1) Goutam Karmokar Vs. Commissioner of Cus. (Prev.), West Bengal 2010 (261) E.L.T. 812 (Tri.-Kolkata)
- (2) Nand Kishore Sumani Vs. Commr. Of Cus., C. Ex. & S.T., Siliguri 2016 (333) E.L.T. 448 (Tri.-Kolkata)

14. The Ld. DR appearing on behalf of the Revenue reiterates the impugned order and submits that seized gold was recovered from the residential premises and ample time was given to the appellant to produce documentary evidence thereof.

The Ld. DR further submits that Shri Paras Kumar Chaurasiya, Father-in-Law of the appellant's brother is a resident of Nepal and accordingly, there is all probability that the seized gold was bought at Nepal and not in India. It is his submission that Nepal is not a producer of Gold and therefore, it cannot be denied that the gold might have been imported from the 3<sup>rd</sup> country. He further submits that local Jeweller on verification had reported purity of 99.5% which is usually of primary gold.

15. Heard both sides and perused the appeal record.

16. I find from the records that the appellant Shri Ram Naresh Chaurasia, in support of his statement, has filed an affidavit sworn in by Shri Paras Kumar Chourasia who is the Father-in-Law of his elder brother, Shri Harish Kumar Chowrasia, wherein he has stated that he had gifted the gold bar weighing 199 gms to his daughter in the year 1985 in the "Khoincha Ceremony". It has also been stated in the affidavit that the gold bar was brought from Raxual and since it was purchased almost 30 years back i.e. in year 1985, he could not produce any document in

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support of his statement. It has also been stated by him in para 2 of his affidavit, that again in the year 1993, he gifted 100 grams of gold bar on the occasion of birth of his Granddaughter (Daughter's daughter). This gold was also purchased by him from Raxaul.

17. I find from the records that the Ld. Adjudicating Authority in his discussion and findings observed that the appellant was asked to submit legal documents of the recovered and detained primary gold weighing 199 gms and 100 gms each. Shri Yogendra Prasad Chaurasia, Father of Shri Ram Naresh Chaurasia, has submitted that one piece of primary gold weighing 199 gm, was given to his elder daughter-in-law (Wife of Shri Harish Chaurasiya) by her parents on occasion of her marriage. Another piece weighing 100 gm was given to his granddaughter again by her daughter-in-laws parent, resident of Parsa, Nepal. The same facts was reiterated by Shri Ram Naresh Chourasiya in his interrogatory statements dated 11.01.2016 and 25.05.2016.

18. I find that there is no dispute with the said two Gold Bars recovered from the residential premises owned by the appellant's father and the appellant and his brother Shri Harish Kumar Chaurasia were residing along with their respective families in the said premises. There is no dispute that the said gold bars did not have any foreign marking. No further investigation has been made by the Department thereafter. Thus, the department could not adduce any evidence whatsoever to prove that the said two gold bars were smuggled in the two countries. Therefore, the presumption regarding the smuggled nature of seized gold under section 123 of the Customs Act, is not invocable.

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19. In view of the ratio of law laid down by the Hon'ble Supreme Court in the case of Gyan Chand Vs. State of Punjab- 1983 (13) E.L.T 1365 (Supreme Court), neither seized gold could be legally confiscated under Section 111 (b) of the Customs Act, 1962 nor any penalty could be imposed on the appellant. Accordingly, the impugned orders are set aside to the extent of seizure of gold bar and penalty against Shri Ram Naresh Chaurasia. Appeal is allowed with consequential relief to the appellant.  
(Dictated and Pronounced in the Open Court)

Sd/-

**(P. K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

Pooja