IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75961 of 2021

(Arising out of Order-in-Appeal No. KOL/CUS/CCP/AKR/767-770/2021 dated 08.10.2021 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Durlav Paul **: Appellant**
Proprietor of M/s. Maa Durga Jewellery,
B.K. Road, Muslim Patty,
P.O., P.S. & District: Barpeta, PIN – 781 301

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
Custom House, 3rd Floor, 15/1, Strand Road,
Kolkata – 700 001

AND

Customs Appeal No. 75237 of 2022

(Arising out of Order-in-Appeal No. KOL/CUS/CCP/AKR/767-770/2021 dated 08.10.2021 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Kailash Kumar Jora **: Appellant**
S/o. Shri Hari Krishan Jora
Proprietor of M/s. H.K. Jewellers,
29, Burtolla Street, 3rd Floor,
Kolkata – 700 007

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
Custom House, 3rd Floor, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Amit Kumar, Advocate for the Appellant(s)

Shri Ashwini Kr. Choudhary, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 75212-75213 / 2025

DATE OF HEARING: 28.01.2025

DATE OF DECISION: 30.01.2025

ORDER: [PER SHRI ASHOK JINDAL]

Both the appellants are in appeal against the impugned order against the absolute confiscation of the gold recovered from Shri Firoze Sekh and imposition of penalty on the appellants.

2. The facts of the case are that acting on specific information, the officers of Directorate of Revenue Intelligence (DRI), Siliguri Regional Unit (hereinafter referred as DRI) intercepted Shri Firoze Sekh in the Sealdah bound (12378) New Alipurduar Sealdah Padatik Express at New Jalpaiguri Railways Station (NJP). On being asked by the officers of DRI, Shri Firoze Sekh initially denied carrying any contraband goods with him. Later, he confessed that he was in possession of two smuggled gold bars weighing around 999.500 grams each which he had concealed in the pockets of his trousers. He further informed that both the gold bars were of smuggled nature and he had no documents in support of his possessing/transporting/carrying of the said gold bars. Shri Firoze Sekh informed the DRI officers that the gold bars were smuggled from Myanmar to India through the bordering areas of Manipur and Mizoram. He also handed over his two mobile phones to the officers; one old and used black coloured Micromax X777 mobile phone having IMEI No. 911493756611625 and IMEI No. 911493757016626 fitted with SIM Cards bearing mobile number 7890589802 and one old and used steel grey coloured Mato E4 Plus android mobile phone having IMEI No. 356513084605734 and 356513084605742 fitted with SIM Cards having mobile numbers 8486988416 and 9064304195.

2.1. The said two (02) pieces of yellow colored gold bars weighing 1999.000 grams were seized under Section 110 of the Customs Act, 1962 on the allegation that the said yellow coloured gold bars were smuggled into India from Myanmar through unauthorized routes and thus making the same liable for confiscation under Section 111(b) and 111(d) of the Customs Act, 1962.

2.2. In his statement dated 27.06.2018, Shri Firoze Sekh stated, *inter alia*, that:

(i) Since the last two years, he had been working as a carrier of smuggled gold from Assam.

(ii) His mobile numbers were 8486988416, 9064304195 and 7890589802.

(iii) His uncle Md. Ajim offered him the job of carrying smuggled gold from Assam to Kolkata. Md. Azim was engaged in the gold smuggling business since long and had a number of parties of Burrabazar, Kolkata to whom his uncle supplied the smuggled gold after procuring from Assam.

(iv) Mobile numbers of Md. Azim were 9547295933, 9101344089 and 8597590351.

(v) Two years back, his uncle viz. Md Ajim introduced him to one Shri Durlav Paul of Barpeta, Assam who was long associated with smuggling of foreign origin gold from Myanmar into India through the bordering areas of Manipur and Mizoram. Shri Durlav Paul had a jewellery shop in the name and style of M/s. Maa Durga Jewellery situated at Barpeta Bazaar from where Shri Durlav Paul carried out his business activities. Shri Durlav Paul deputed a number of carriers who brought the smuggled gold from Barpeta, Assam to Kolkata and handed over the goods to the different parties of Md. Ajim.

(vi) The mobile numbers of Shri Durlav Paul were 9085616220 and 9085620289.

(vii) The seized gold was handed over to him by Shri Durlav Paul as per instructions of Md Ajim. Shri Durlav Paul informed him that the weight of each of the pieces was slightly less than 1 kg since the bars were melted and re-casted.

2.3. Shri Firoze Sekh was arrested on 27.06.2018 under Section 104 of the Customs Act, 1962 with the approval of the competent authority as he was found to be guilty of an offence that rendered him liable to be prosecuted under Section 135 of the said Act. He was produced before the Ld. Additional Chief Judicial Magistrate, Siliguri on 27.06.2018.

2.4. During investigation, the mobile numbers 9547295933 and 9101344089 used/operated by Md. Ajim were found to be registered in the name of Nurul Ajim Sekh, Makhaltala, Hotar, South 24 Parganas, PIN – 743 610.

3. In his voluntary statement recorded on 23.11.2018 under Section 108 of the Customs Act, 1962, Shri Nurul Ajim Sekh stated, *inter alia*, that: -

(i) His name was Md. Ajim @ Md. Nurul Ajim Sekh.

(ii) He dealt in silver ornaments and jewellery boxes which he procured from Barabazar, Kolkata and sold to different markets at Guwahati, Jorhat, Barpeta areas since 16-17 years.

(iii) Shri Firoze Sekh was the son of his elder brother Shri Nur Islam Sekh. Shri Firoze Sekh helped him in his business of carrying and delivering silver ornaments and was paid about 4-5 thousand per month by him.

(iv) He did not hand over any gold to Shri Firoze Sekh. Shri Durlav Paul of M/s. Maa Durga Jewellery of Barpteta had handed over the gold to Shri Firoze Sekh.

(v) He knew Shri Durlav Paul since last two years in course of delivery of silver jewellery to him.

(vi) Shri Durlav Paul had a new phone number 9085492109.

(vii) He had never dealt in gold. He only dealt in silver goods.

4. In his voluntary statement recorded on 28.11.2018 under Section 108 of the Customs Act, 1962, Shri Durlav Paul (appellant no. 1) stated, *inter alia*, that: -

(i) He knew Shri Firoze Sekh and Shri Nurul Ajim Sekh since about two years as they used to supply silver jewellery to his shop.

(ii) He had handed over the 2 pieces of seized gold to Firoze Sekh for delivery to a person at Burrabazar, Kolkata.

(iii) The gold was procured by him as old gold jewellery that he had bought at Barpeta and after melting them, the gold biscuits were made.

(iv) He had supporting documents for the same, which he had handed over to his lawyer.

(v) He claimed the ownership of the seized 2 pieces of gold.

(vi) The gold was supposed to be delivered to a person of Kolkata from whom he took goods on credit. The details are in credit note which he has handed over to his lawyer.

(vii) His mobile numbers were 9085492109 and 9954780661. He had another phone no. 9706144878 which was closed.

(viii) He did not own mobile numbers 9085616220 & 9085620289.

4.1. Shri Durlav Paul, in his statement recorded on 02.12.2018 under Section 108 of the Customs Act, 1962 has stated, inter alia, that: -

(i) The recipient of the seized gold was his relative's brother named Shri Dilip Paul. Shri Dilip Paul was engaged in a jewellery shop. Shri Dilip Paul introduced him with H. K. Jewellery at Burrabazar, Kolkata and brought gold jewellery items from the said jewellery shop on credit basis. On the credit note, the name of H.K. Jewellery, phone number, code number and address is furnished but the said document is with his Advocate.

(ii) He has GST Registration and regularly submitted GST Returns. All the documents were deposited to his advocate.

(iii) He himself was a goldsmith and he melted small quantity of old gold, refined and prepared the bars. He procured gold from his customers and he had the dice (mould) for making gold bar. This was the first time that he prepared such bars.

4.2. Further, Shri Durlav Paul, in his statement recorded on 26.02.2019 under Section 108 of the Customs Act, 1962 stated, *inter alia*, that: -

(i) By profession, he is a Goldsmith. He owns one shop in the name of M/s. Maa Durga Jewellery, B.K. Road, Muslim Patty, P.O., P.S. & Dist: Barpeta, PIN-781301.

(ii) He purchases old gold & silver ornaments and sold new gold & silver ornaments through the said shop. He also made gold and silver ornaments. Till date he had purchased new gold ornaments only once from H.K. Jewellery, 23B, Kalakar Street, Kolkata 700007 vide their Invoice No. 740 dated 19.06.2018 but till date he did not make payment of the said purchase.

(iii) He thought that his tax invoice was credit note and that is why he told the officers twice that he had credit note as supporting document of seized gold.

(iv) He had purchased 2480 gms. of new gold ornaments from one M/s. H.K. Jewellers, 23B, Kalakar Street, Kolkata 700007 vide their Invoice No. 740 dated 19.06.2018. But as he purchased the entire gold ornaments on credit and M/s. H.K. Jewellers agreed to receive gold in bullion form in lieu of cash payment, he was sending the said two gold biscuits to the said

M/s. H.K. Jewellers through Shri Firoze Sekh. Along with the said two pieces of gold, he handed over the original copy of Tax Invoice No 37 dated 26.06.2018 to Shri Firoze Sekh. He cannot say why the copy of the said Tax Invoice was not recovered by the DRI officers from Shri Firoze Sekh along with the said seized gold. It might so happen that Shri Firoze Sekh threw away the said original copy of Tax Invoice no. 37 dated 26.06.2018 en route from Barpeta to New Jalpaiguri. Till date he never inquired from him about the said Tax Invoice.

(v) During the period from 04.06.2018 to 23.06.2018 he has purchased approximately 2400.000 gms. of old gold ornaments from different persons of Assam and the same is recorded in his Purchase and Sale Register of old gold for the period from 01.04.2017 to 30.06.2018. After receiving the old gold ornaments he himself melted and refined the said old gold ornaments in his own shop.

5. During the course of investigation, the statement of Shri Kailash Kumar Jora, S/o. Shri Hari Kishan Jora, proprietor of M/s. H.K. Jewellers, 23 B, Kalakar Street, Kolkata – 700 007 (appellant no. 2) was recorded on 25.03.2019 under Section 108 of the Customs Act, 1962 wherein he stated, *inter alia*, that

(i) He looks after the affairs of sale and purchase of gold and silver ornaments/jewellery from their shop i.e., M/s. H.K. Jewellers, 29, Bartalla Street, 3rd Floor, Kolkata - 700007.

(ii) They have another shop under the same name and style M/s. H.K. Jewellers, 23B, Kalakar Street, Kolkata 700007. However, they do not conduct any business from their shop at 23B, Kalakar Street, Kolkata 700007.

(iii) His father Shri Hari Kishan Jora does not look after their family business now.

(iv) They sold finished ornaments/jewellery to Shri Durlav Paul of M/s. Maa Durga Jewellery, B.K. Road Barpeta Town, PIN - 781301 on 19.06.2018. They had purchased 2000 grams old/refined Gold from Shri Durlav Paul of Maa Durga Jewellery on 01.01.2019.

(v) They do not maintain any KYC of their sellers of Gold/Silver Bullions.

(vi) The 2000 grams of gold purchased from Shri Durlav Paul of M/s. Maa Durga Jewellery was old and refined gold.

(vii) They sold gold ornaments/jewellery (22carat) vide Invoice No. 740 dated 19.06.2018 to M/s Maa Durga Jewellery on Credit. Shri Durlabh Paul had committed to pay the amount within 10 to 15 days. They did not take any security or guarantee towards sell of the said Ornaments/Jewellery. The 2000 grams of Gold sold by M/s. Maa Durga Jewellery vide Invoice No. 37 dated 26.06.2018 (copy of the said invoice was received only on 01.012019) was adjusted against sell of the said ornaments/jewellery.

6. A Show Cause Notice was accordingly issued proposing as follows: -

(i) The seized two (02) pieces of smuggled foreign origin gold bars having a total weight of 1999.000 gms as detailed in the Inventory of Goods of the Seizure Case No. 05/CL/IMP/DRJ/SLG/2018-19 dated 26.06.2018 valued at Rs. 63,27,035/- (Rupees Sixty Three Lakhs Twenty Seven Thousands and Thirty Five) only shall not be confiscated under section 111(b) & 111(d) of the Customs Act, 1962;

(ii) Shredded pieces of carbon paper and brown colored self-adhesive tapes used for wrapping the two (02) pieces of smuggled foreign origin gold bars shall not be confiscated under section 119 of the Customs Act 1962;

(iii) Penalty shall not be imposed upon Noticee-1, Noticee-2, Noticee-3 and Noticee-4 under Section 112(a) &/or 112(b) of the Customs Act, 1962 and Noticee-3 & Noticee-4 u/s 114AA of the Customs Act, 1962 for their act of omission and commission, as discussed hereinabove.

7. Thereafter, the matter was adjudicated and vide the Order-in-Original No. 03/ADC(P)/CUS/WB/20-21 dated 08.07.2020, the gold in question was absolutely confiscated. Penalties of Rs.6,00,000/- (Rupees Six Lakhs only) under Section 112(b) and Rs.6,00,000/- (Rupees Six Lakhs only) under Section 114AA of the Customs Act, 1962 was imposed on the appellant no. 1 viz. Shri Durlav Paul. Penalties of Rs.6,00,000/- (Rupees Six Lakhs only) under Section 112(b) and

Rs.6,00,000/- (Rupees Six Lakhs only) under Section 114AA of the Customs Act, 1962 was also imposed on the appellant no. 2 viz. Shri Kailash Kumar Jora.

7.1. The appellants challenged the said order before the Ld. Commissioner of Customs (Appeals), Custom House, 15/1, Strand Road, Kolkata, who vide the impugned order has upheld the order passed by the ld. adjudicating authority.

8. Aggrieved from the said order, the appellants are before us.

9. The Ld. Counsel appearing on behalf of the appellants submits that the impugned order has been passed *ex-parte* which is in gross violation of the principles of natural justice.

9.1. On merits, he submits that no opportunity of cross-examination was granted to the them although the case is based on inculpatory statements. It is therefore contended that the findings of the ld. adjudicating authority are based on assumptions, presumptions and suspicions without any tangible evidence in support thereof on record.

9.2. It is submitted that the appellant no. 1 has sold the gold to M/s. H.K. Jewellers, Kolkata; the gold had been handed over to Mr. Firoze Sekh to take the gold and deliver the same to M/s. H.K. Jewellers. In support of this claim, he has produced the invoice dated 26.06.2018 issued by the appellant. It is stated that the appellants were in the business of gold jewellery and ornaments, they were maintaining proper records thereof; the said gold bars had been converted from old jewellery received from M/s. H.K. Jewellers on 19.06.2018 on payment of applicable G.S.T.; the appellants have also paid G.S.T. on the said gold. In these circumstances, it is the contention of the appellants that these documents have been ignored by the ld. adjudicating authority.

9.3. The Ld. Counsel for the appellant also submitted that any inculpatory statements which were recorded during the course of adjudication have been retracted by the appellants at the first available opportunity and further submits that statements cannot be relied upon when documentary evidences are available on record.

9.4. Therefore, it is the prayer of the appellants that the impugned order *qua* confiscation of the gold in question and imposition of penalties on both the appellants, be set aside.

10. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order.

11. Heard the parties and considered their submissions.

11.1. We find that in this case, two gold bars totally weighing 1999.000 grams were recovered from the possession of one Shri Firoze Sekh on 26.06.2018 when he was travelling by a Sealdah bound Train No. 12378. In his statement, Shri Firoze Sekh has stated that the gold had been handed over to him by Shri Durlav Paul (appellant no. 1 herein) for delivering the same to M/s.H.K. Jewellers, Kolkata (appellant no. 2).

11.2. We observe that when the appellants came to know about the seizure of the gold, they came forward and produced all the documents regarding ownership of the said gold. For better appreciation of the facts, the invoice dated 19.06.2018 issued by M/s. H.K. Jewellers, owned by Shri Kailash Kumar Jora (appellant no. 2 herein), wherein M/s. H.K. Jewellers has sold the jewellery to M/s. Maa Durga Jewellery, owned by the appellant no. 1, Shri Durlav Paul, for converting the same into gold bars, is extracted below: -

Subject to Kolkata Jurisdiction

HKJ

H.K. Jewellers

Wholesaler in Jewellery & Ornaments

23B, KALAKAR STREET, KOLKATA - 700 007

VAT No 19361597022 W.B.S.T. No 19361597119 C.S.T. No 19361597216

GST NO. : 19AKLPS0368L1ZG

Off: 22742196, 22740314
Fac: 22725357, 22729029
Fax: 22719994

70
291

Invoice No 740

Dated 19-Jun-2018

H.K.Jewellers
23B,Kalakar Street
Kolkata - 700 007
GSTIN/UIN 19AKLPS0368L1ZG
State Name West Bengal, Code 19

Tax Invoice
Original Buyer's / Seller's Copy

Party **Maa Durga Jewellery**
Prop - Durlav Paul
Ward No - 5, B.K.K Road, Barpeta, Assam
PAN - AMLPP 7007M
GSTIN/UIN 18AMLPP7007M1ZH
State Name Assam, Code 18

Description of Goods	HSN/SAC	Quantity	Rate	per	Amount
Gold Ornaments (22ct.)	7113	2,480.030 gms.	2,830.00	gms.	70,18,484.90
Output IGST			3	%	2,10,554.55
Less *Rounded Off*					(-)0.45
Total		2,480.030 gms.			72,29,039.00

E. & O.E

Amount Chargeable (in words)
Indian Rupees Seventy Two Lakh Twenty Nine Thousand Thirty Nine Only

HSN/SAC	Taxable Value	Integrated Tax Rate	Integrated Tax Amount	Total Tax Amount
7113	70,18,484.90	3%	2,10,554.55	2,10,554.55
Total	70,18,484.90		2,10,554.55	2,10,554.55

Tax Amount (in words) **Indian Rupees Two Lakh Ten Thousand Five Hundred Fifty Four and Fifty Five paise Only**

Company's PAN : **AKLPS0368L**

Declaration
We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.

for H.K.Jewellers

Authorised Signatory

This is a Computer Generated Invoice

11.3. After conversion into gold bars, M/s. Maa Durga Jewellery has again sent the same to M/s. H.K. Jewellers by way of issuance of the tax invoice dated 26.06.2018. The said tax invoice is also extracted below for appreciation of the facts: -

Tax Invoice
GST Tax Invoice

(ORIGINAL FOR RECIPIENT) 134

MAA DURGA JEWELLERY
B K K Road, Baroeta Town
Barpeta (Assam) PIN-781301
GSTIN/UIN: 18AMLPP7007M1ZH
State Name : Assam, Code : 18

Invoice No. 37	Dated 26-Jun-2018
Delivery Note	Mode/Terms of Payment
Supplier's Ref. 37	Other Reference(s)
Buyer's Order No.	Dated
Despatch Document No.	Delivery Note Date
Despatched through	Destination
Terms of Delivery	

Buyer
H.K. Jewellers
Kolkata
GSTIN/UIN : 19AKLPS0368L1ZG
State Name : West Bengal, Code : 19
Place of Supply : West Bengal

Sl No.	Description of Goods	HSN/SAC	GST Rate	Quantity	Rate	per	Amount
1	**Old Gold**	7108	3 %	2,000.000 gm	3,055.00	gm	**61,10,000.00**
	IGST Output						**1,83,300.00**
	Total			2,000.000 gm			₹ 62,93,300.00

E. & O.E

Amount Chargeable (in words)
INR Sixty Two Lakh Ninety Three Thousand Three Hundred Only

Declaration
We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.

for MAA DURGA JEWELLERY

Authorised Signatory

This is a Computer Generated Invoice

Recvd on 01/01/2019

Kailash ... 28/03/2019

Submitted ... copy.

11.4. From the above, we find that both the invoices are G.S.T. paid invoices. The appellants have also produced the certificate showing the payment of appropriate Tax / G.S.T. on the said invoices. Further, Form GSTR-2A is also placed on record. Further, Form GSTR 1 submitted by the appellants also shows that the said transactions had been recorded by the appellants and reported to the G.S.T. Department. As the claim made by the appellants with regard to ownership of the gold in question is supported by documentary evidence, in these circumstances, oral evidences will not prevail over the documentary evidence available on record. Therefore, we find that the statements recorded during the course of investigation are not admissible evidence.

12. Moreover, it is observed that the purity of the gold was found to be only 99.6% by weight of gold (as recorded at paragraph 37.1, page 38 of the Order-in-Original dated 08.07.2020). It is also not a case of seizure of gold from Port, Airport or International Border and the gold does not bear any marking of foreign origin.

13. In these circumstances, we hold that the gold in question cannot be confiscated. Consequently, the confiscation of the gold in question is set aside.

13.1. Accordingly, in the facts and circumstances of the case, we hold that no penalty is imposable on the appellants.

14. In the result, the appeals filed by the appellants are allowed, with consequential reliefs.

(Order pronounced in the open court on **30.01.2025**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd