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

REGIONAL BENCH – COURT NO.1

Customs Appeal No.75293 of 2025

(Arising out of Order-in-Appeal No.Kol/Cus(CCP)/KS/635-638/2024 dated 11.11.2024 passed by Commissioner of Customs (Appeals), Kolkata)

(1) Om Prakash Shah,Director of M/s Quilon Trade Commerce Pvt.Ltd.
(Premises No.07,Ganpat Bagla Road,, Kolkata-700007)

Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

WITH

Customs Appeal No.75301 of 2025

(Arising out of Order-in-Appeal No.Kol/Cus(CCP)/KS/635-638/2024 dated 11.11.2024 passed by Commissioner of Customs (Appeals), Kolkata)

(2) Prakash Kumar Shah
(Ratanpura, PO + PS-Sahapur, Bhojpur, Bihar-802165)

Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

AND

Customs Appeal No.75302 of 2025

(Arising out of Order-in-Appeal No.Kol/Cus(CCP)/KS/635-638/2024 dated 11.11.2024 passed by Commissioner of Customs (Appeals), Kolkata)

(3) Santosh Kumar Shah
(Sahapur Patty, PO + PS-Sahapur, Bhojpur, Bihar-802165)

Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

AND

Customs Appeal No.75385 of 2025

(Arising out of Order-in-Appeal No.Kol/Cus(CCP)/KS/635-638/2024 dated 11.11.2024 passed by Commissioner of Customs (Appeals), Kolkata)

(4) Prahlad Kumar Das
(Natun Bazar,Kamarpara,Chinsurah,Hooghly-712101)

Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata
(15/1, Strand Road, Kolkata-700001)

Respondent

Customs Appeal Nos.75293,75301,75302,75385 of 2025

APPERANCE :
Shri Amit Kumar, Advocate for the Appellant
Shri Ashwini Kumar Choudhary, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO…76099-76102/2025

DATE OF HEARING : 28 APRIL 2025
DATE OF DECISION : 28 APRIL 2025

Per Ashok Jindal :

The appellants are in appeal against the impugned order wherein during the course of investigation, 12 pieces of gold bars have been absolutely confiscated and penalties have been imposed on the appellants.

2. The facts of the case are that in pursuance to specific information the DRI intercepted the Appellant No.(2) & (3) on 27.03.2019 while they were moving towards Kali Krishana Tagore Street, Kolkata at about 3 pm.

2.1 Shri Santosh Kumar Shah voluntarily took out Six (6) pcs. of yellow colour metal bars belief to be gold of foreign origin wrapped with adhesive tapes from his right hand's fist, and Shri Prakash Kumar Sah took out six pcs. of yellow colour metal bars belief to be gold of foreign origin wrapped with adhesive tapes from the beneath his shoe's sole.

2.2 Shri Santosh Kumar Sah stated that the said recovered 12 pcs. of yellow colour metal bars were procured by him from Shri Nilesh Powar and were concealed in the vehicle bearing registration number WB-92-0707 (SCALA) owned by Shri Om Prakash Shah with the purpose to sell them later. At the material time, Shri Santosh Kumar Shah, Appellant No.(3), was in the position of the key of that vehicle.

2.3 On 27.03.2019, the recovered gold was taken to M/s Vijay Assay Centre Pvt. Ltd., for testing and upon testing, the said yellow coloured metal bars were confirmed as gold bars with purity 99.5%, having total weight of 1991.6 gms. However, the test report as per CRCL shows the purity of the gold is 99.7% and 99.6%. There was no foreign marking in the gold bars.

2.4 The said 12 pcs. gold bars, vehicle bearing registration number WB-92-0707 and self-adhesive tapes were seized under section 110 of the Customs Act 1962 on a reasonable belief that those were liable for confiscation.

2.5 The Appellant Nos.(2) & (3) were arrested and produced before the Ld. Chief Metropolitan Magistrate, Bank Shell Court, Calcutta on 28.03.2019 and were granted bail.

2.6 The Appellant No.(3) informed that the Appellant No.(1) is the owner of the vehicle. Therefore, the statement of Appellant No.(1) was recorded wherein he stated that he had given the key of the car to Appellant No.(3) to fit a new battery in it on 27.03.2019 and he did not assign the Appellant No.(3) to carry gold.

2.7 For further investigation, the Appellant No.(4), Proprietor of M/s Rahul Jewellers, submitted a letter dated 20.05.2019 showing stock as on 26.03.2019 as 2089.677 gm, income tax return along with balance sheet and profit and loss account for the period 2017-18 and 2018-19, trade licence of M/s Rahul Jewellers, GSTR-4 for the period 2018-19 and inter alia, stated that 12 pieces of gold totally weighing 1992 gms have been allegedly seized from the possession of Appellant Nos.(2) & (3) and were purchased by his firm under payment of GST and given the same to the Appellant No.(3) for selling in the market. It was also stated that the Appellant No.(4) initially given to the Appellant No.(3)20-25 cut pieces of gold, which were melted by him and converted those into gold bars for subsequent sale to the market.

2.8 On 27.03.2019, the Appellant Nos.(2) & (3) were intercepted and subsequently, the gold was seized.

2.9 Meanwhile, the Appellant No.(1) filed a Writ Petition before the Hon'ble Calcutta High Court for release of the vehicle, which was intercepted and the same was released against cash security of Rs.1,50,000/-.

2.10 After due process, a show-cause notice was issued to the Appellants proposing absolute confiscation of 12 pieces of gold bars weighing 1991.66 gms. and seized vehicle bearing No.WB-92-0707 and imposed penalties on the Appellants.

2.11 The matter was adjudicated. The gold was absolutely confiscated and the vehicle seized was allowed to be redeemed the same on payment of Rs.2.00 lakhs as redemption fine and penalty of Rs.1.00 lakh on the Appellant No.(3) and Rs.1.00 lakh on the Appellant No.(2) under Section 112(a)/(b) of the Customs Act, 1962 and Rs.50,000/- each on the Appellant Nos. (1) & (4) under Section 114AA of the Customs Act, 1962.

2.12 The said order was challenged before the ld.Commissioner (Appeals), who confirmed the order of the Adjudicating Authority.

2.13 Against the said order, the appellant is before us.

3. The ld.Counsel for the appellants submits that in this case, the gold has been seized at Kali Krishana Tagore Street, Kolkata and the

gold in question was not bearing any foreign markings. Moreover, the purity of the gold was also 99.5%. In that circumstances, in any stretch of imagination, it cannot be said that the gold in question of foreign origin. Moreover, the Revenue has failed to produce any documents that the gold in question is of foreign origin. There is no reasonable belief under Section 110 of the Customs Act, 1962, to show that the gold is of foreign origin. He further submitted that the Appellant No.(4) has claimed to be owner of the gold seized in question and produced the relevant documents for procurement of the said gold by the Appellant No.(4), like, Income Tax Return, Balance Sheet, Profit and Loss Account, Commercial Tax Challan and payment of GST on the said gold in question along with invoices. In that circumstances, it is prayed that the impugned order is to be set aside.

4. The ld.A.R. for the Revenue has reiterated the findings of the impugned order.

5. Heard both sides and considered the submissions.

6. We find that it is a case of town-seizure and no foreign marking on the gold and purity of the gold is also below 99.9%. In that circumstances, it is the duty of the Revenue to show the reasonable belief why the gold in question is of foreign origin. The Appellants are not required to discharge their obligation under Section 123 of the Customs Act, 1962. Moreover, the Appellant No.(4) has claimed to be the owner of the gold in question and the said owner has shown the invoices for procurement of the said gold by producing his profit and loss account, balance sheet, income tax return and payment of GST on

the said gold in question. In that circumstances, the gold in question is not liable for confiscation.

7. In view of this, we hold that the confiscation of gold in question is not sustainable. As we hold that the gold in question is not liable for confiscation and the same is to be released to the Appellant No.(4). Further, as the gold in question is not liable for confiscation, no penalties are imposable on the Appellants. Hence, the vehicle in question is also required to be released to the Appellant No.(1)

8. In view of this, we set aside the impugned order and allow the appeals filed by the Appellants with consequential relief, if any.

(Operative part of the order was pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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