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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75056 of 2017

(Arising out of Order-in-Adjudication No. 08/Cus/CC(P)/WB/2016 dated 20.05.2016 passed by the Commissioner of Commissioner of Customs (Preventive) Custom House, 3rd Floor, 15/1, Strand Road, Kolkata-700001)

M/s. Biswanath Diwan, **: Appellant**
26, Nalini Seth Road Kolkata-700007

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
Custom House, 3rd Floor, 15/1, Strand Road,
Kolkata-700001

WITH

Customs Appeal No. 75054 of 2017

(Arising out of Order-in-Adjudication No. 08/Cus/CC(P)/WB/2016 dated 20.05.2016 passed by the Commissioner of Commissioner of Customs (Preventive) Custom House, 3rd Floor, 15/1, Strand Road, Kolkata-700001)

M/s. Pintu Midya, **: Appellant**
Vill Dalapatipur p.o. Kharar,
P.S. Ghatal, Dist Midanpore, W. B. 721222

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
Custom House, 3rd Floor, 15/1, Strand Road,
Kolkata-700001

WITH

Customs Appeal No. 75055 of 2017

(Arising out of Order-in-Adjudication No. 08/Cus/CC(P)/WB/2016 dated 20.05.2016 passed by the Commissioner of Commissioner of Customs (Preventive) Custom House, 3rd Floor, 15/1, Strand Road, Kolkata-700001)

M/s. Sri Raj Kumar Ghosh , **: Appellant**
Vill. Goura, P.O. Goura P.s. Daspur
Dist. Midanopore W.B. 721146

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
Custom House, 3rd Floor, 15/1, Strand Road,
Kolkata-700001

AND

Customs Appeal No. 75057 of 2017

(Arising out of Order-in-Adjudication No. 08/Cus/CC(P)/WB/2016 dated 20.05.2016 passed by the Commissioner of Commissioner of Customs (Preventive) Custom House, 3rd Floor, 15/1, Strand Road, Kolkata-700001)

Shri Rajesh Pawar, **: Appellant**
M/s. Anish Trading Co.,
46, Sir Hariram Goanka Street
Kolkata 700007

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
Custom House, 3rd Floor, 15/1, Strand Road,
Kolkata-700001

APPEARANCE:

Shri Amit Kumar, Advocate for the Appellants
Shri F. Ahmed, Authorized Representative for the Respondents

CORAM:

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

FINAL ORDER NOs.76496-76499/ 2025

DATE OF HEARING: 04.06.2025
DATE OF PRONOUNCEMENT: 11.06.2025

ORDER: [PER SHRI ASHOK JINDAL]

The appellants are in appeal against the absolute confiscation of the gold in question and imposition of penalty on all the appellants.

2. The facts of the case are as under: -

(i) Acting on specific information, the Officers of Divisional Preventive Unit, Barasat Customs Division went to 37/1, Ground Floor, Shiv Tala Street, Kolkata-700007 at around 13.30 Hrs. on 22.08.2013 and waited there. At about 14.45 Hrs. two persons reached there and being informed by the informer the Officers apprehended them. On being questioned, one of them identified himself as Raj Kumar Ghosh, aged about 20 Yrs, S/o Shri Sital Ghosh, Vill:

Goura, P.O: Goura, P.S.: Daspur, District: Midnapore (West), West Bengal and other as Pintu Midya, aged about36 years, S/o Shri Renu Midya, Vill: Dalapatipur, P.O.. Kharar, P.S.: Ghatal. District: Midnapore (West), West Bengal. The Officers then informed Shri Raj Kumar Ghosh & Shri Pintu Midya that they are Customs Officers & they have power to search them in person and requested their persons to be searched as per provisions of the Section 101 of the Customs Acı, 1962 before beginning the search proceedings but both the persons politely declined the offer. The Officers then asked Shri Raj Kumar Ghosh & Shri Pintu Midya whether they were carrying any contraband item to which Shri Raj Kumar Ghosh & Shri Pintu Midya remained quiet. Then the Officers called two local independent witnesses and requested them to be present, to search the persons before them and remain till completion of the seizure formalities. The Officers then searched Shri Raj Kumar Ghosh & Shri Pintu Midya respectively before the said two independent witnesses and found 01 plece of "Yellow Metal" believed to be Gold bearing markings as Switerzland I KILO GOLD 995.0 MELTER ABBAYER L20141 from Sri Raj Kumar Ghosh and 01 plece of Yellow Metals believed to be Gold bearing markings as EMIRATES GOLD I KILO 995.0 EGO D 13801 from Shri Pintu Midya secreted in the pocket of their trousers. On being questioned, Shri Raj Kumar Ghosh & Shri Pintu Midya told the Officers that they were given the goods by Shri Biswanath Dewan, 26 No. Nalini Seth Road, 2nd Noor, Sonapatti, Kolkata-700007 whose residential address is at Village + P.O. Goura, P.S: Daspur, Dist: Midnapore (West) to deliver it to an unknown person holding one red coloured hand bag wearing red coloured checked shirt and black coloured trouser who will be present at ground floor at 37/1, Shib Tala Road, Dacca Patty, Kolkata-07. They also told that they worked as goldsmith under Shri Biswanath Dewan at 26 No Nalini Seth Road, 2nd floor, Sonapatti, Kolkata-700007. They were asked by the Officers whether they had any valid document of purchase/possession of the goods with them to which Shri Raj Kumar Ghosh & Shri Pintu Midya replied that they did not have any documents to substantiate the possession of goods i.e. gold bars.

(ii) As the place was not conducive for conducting the seizure formalities, the Officers decided to bring Shri Raj Kumar Ghosh & Shri Pintu Midya along with the recovered 02 [two] pcs. Yellow Metals believed to be Gold bearing foreign markings as mentioned above to the Office of the Assistant Commissioner of Customs, Barasat Customs Division [DPU], Kolkata to complete the seizure formalities. Then the two independent witnesses were requested to be present at M.S. Building, 4th Floor, Custom House, 15/1, Strand Road., Kolkata-700001 to complete the seizure formalities.

(iii) Summons were issued on 22.08.2013 to both Mr. Raj Kumar Ghosh and Mr. Pintu Midya and their statements were recorded under

Section 108 of the Customs Act, 1962 before the Superintendent of Customs (Preventive), D.P.U., B.C.D., Kolkata. Mr. Raj Kumar Ghosh in his voluntary statement recorded on 22/08/13 stated that he is a jewellery worker who makes ormaments as per the instruction received from his employer. His salary is Rs. 1500/- per month. The foreign origin gold bar recovered from his possession was given to him by his employer i.e. Mr. Biswanath Dewan to hand it over to a person at 37/1 Shibtala Street on 22/08/13 when he was apprehended by the Customs Officers of DPU, BCD. And he was not having any valid document in his possession to substantiate the legitimate possession of the gold bar recovered from him. The gold bar recovered from him was of foreign origin (Switzerland inscribed on it) and was about of approx. Rs. 3070000/- [Rupees Thirty lakh and seventy thousand)

(iv) Mr. Pintu Midya in his voluntary statement recorded on 22/08/13 stated that he works as gold chain maker at the work shop of Mr. Biswanath Dewan from a very long time. He received the gold bar of foreign origin from Mr. Biswanath Dewan to deliver it to a person at 37/1 Shibtala Street, Kolkata-700007. He gets a salary of Rs. 5000/- per month from Mr. Dewan and was to get some extra money for this delivery. The gold bar recovered from him had a bird marking and Emirates written on it.

(v) Thenthe goods were inventorised properly in the presence of two independent witnesses and the said two accused on the reasonable bellef that these Yellow Metals (believed to be Gold) bearing marks of foreign origin had been illicitly imported into India through unauthorized routes and manner without any valid document in contravention of Section 3 of the Foreign Trade (Development & Regulation) Act, 1992, read with Section 11 of the Customs Act, 1962, rendering these goods liable to confiscation under Section 111(b) and (d) of the Customs Act, 1962, the 02 [two] Pieces of Yellow Metal [believed to be Gold] of foreign origin were seized u/s 110 of the Customs Act, 1962 vide Seizure Case No.: 10/IMP/CL/GOLD/CUS/DPU/BCD/2013-14, Dated: 22.08.2013 valued at Rs.62,82,000.00 only.

(vi) Another summon u/s 108 of the Customs Act, 1962 was issued to Mr. Raj Kumar Ghosh and Mr. Pintu Midya on 22/08/13 and their voluntary statements were recorded on 23/08/2013. Mr. Raj Kumar Ghosh in his voluntary statement stated that his employer i.e. Mr. Biswanath Dewan did not give him any documents along with the gold bar on 22/08/13. He is working for about 13-14 months at the work shop of Mr. Dewan. He resides at the workshop of Mr. Dewan i.e. at 26, Nalini Seth Road, Kolkata-07 and visits once or twice in a month his home at Midnapore. It was his first work of delivery of gold bar. He did not know the person to whom the gold bar was to be delivered. He is not the owner of the gold bar; the owner of the gold bar is Mr. Biswanath Dewan. He will not claim the ownership of the gold bar in future.

(vii) Mr. Pintu Midya stated in his voluntary statement on 23/08/13 that his employer i.e. Mr. Biswanath Dewan had not given him any documents of the gold bar recovered from him. He has been working with Mr. Dewan from a long time. He resides at the workshop of Mr. Dewan and visit his home twice or thrice in a month. He works only for Mr. Dewan at his workshop. It was his first work of delivery of gold bar.

(viii) As both Mr. Raj Kumar Ghosh and Mr. Pintu Midya in their voluntary statement stated that the gold bar were given to them by their employer Mr. Biswanath Dewan, accordingly a search warrant was issued by the Assistant Commissioner of Customs, Barasat Customs Division against Mr. Biswanth Dewan, 26, Nalini Seth Road Kolkat-700007. A team headed by Mr. Subrata Kumar Biswas, Supdt. DPU, BCD visited 26, Nalini Seth Road, Kolkata-07 on 24/08/2013 and conducted search at the workshop of Mr. Dewan but no documents related to the seized gold bars [Serial no-L20141and D138010] were found.

(ix) Then both the accused namely Mr. Raj Kumar Ghosh and Mr. Pintu Midya were arrested under section 104 of the Customs Act, 1962 duly approved by the CC(P), West Bengal to unearth the racket and to nab the fountain head of the racket on 23.08.2013 at 11:30 hrs and produced both of the accused before the Chief Metropolitan Magistrate, Kolkata.

(x) Therefore a summon u/s 108 of the Customs Act, 1962 was issued to Mr.

Biswanath Dewan on 24/08/13 and his voluntary statement was recorded in which he stated that he makes gold and silver jewellery at 26, Nalini Seth Road, Kolkata-07 for the last 6-7 years. Raj Kumar Ghosh and Pintu Midya are his employees. Raj Kumar Ghosh and Pintu Midya work as gold and silver jewellery makers and also make delivery of gold and silver, and their wages are Rs. 1500/-and Rs. 5000/- per month respectively and both of them reside at his shop only. He was not present at his shop on 22/08/13 when his employees were apprehended with possession of 02 pieces of gold bars [Serial no- L20141and D138010] of foreign origin without any valid documents. He also stated that Raj Kumar Ghosh and Pintu Midya are telling lie and 02 pieces of gold bars (Serial no- L20141and D138010] of foreign origin does not belong to him. He will not claim ownership of the gold bars (Serial no- L20141and D138010) and he does not sell or purchase in gold of foreign origin and only makes gold and silver jewellery as per the order of customers.

(xi) A petition dated: 19/09/2013 from Mr. Biswanath Dewan claiming ownership of the Gold Bars (Serial no- **L20141and D138010]** was received subsequently. After going through the claim petition and the invoice submitted by him, a Search Warrant was executed by the Assistant Commissioner of Customs, Barasat Customs Division against M/s Anish Trading Co.,46, Sir Hari Ram Goenka Road, Kolkata-07. A search was conducted and documents relevant in the investigation were seized.

(xii) On scrutiny of documents discrepancies were found and a summon u/s 108 was issued to Mr. Rajesh Pawar, Proprietor M/S Anish Trading Co.,46, Sir Hari Ram Goenke Road, Kolkata-07. His voluntary statement was recorded on 03/10/2013 and in his voluntary statement he stated that M/s Anish Trading Co. is having a trade license of gold and silver ornaments and jewellery but is trading in gold and silver bullion. [A letter to K.M.C seeking whether this can be done or not has been sent but no reply has been received till date). Mr. Rajesh Pawar stated that the gold bars (Serial no- L2014land D138010) sold to Mr. Dewan on credit was procured from Edelweiss Commodities and Services Limited.

(xiii) A summon was issued to Mr. Biswanath Dewan to appear on 25/11/2013 but he failed, therefore a second summon was issued to appear on 29/11/2013 and his statement was recorded on 29/11/2013 u/s 108 of the Customs Act, 1962 before the Superintendent of Customs, DPU. BCD. In his voluntary statement he stated that he purchased the gold bars on 19/08/2013, on credit. No time/date was given to make the payment and there was no interest charged and also no other transaction was made before this with M/s Anish Trading Co. but he had known. Mr. Rajesh Pawar for long period. Raj Kumar Ghosh and Pintu Midya got the Gold Bar from M/S Anish Trading Co. but they did not know whether they had any paper or not. In West Medinipur his father has agricultural land and he has a rented shop at Burrabazzar. There is no land in his name and no other source of income. He makes jewellery but no bill is issued and he takes making charge in cash. In 2013-14 till date i.e. 29/11/2013 he has not sold or purchased gold bars.

(xiv) An enquiry was made to ascertain the truth of Mr. Rajesh Pawar's statement that the gold bars (Serial no- L20141and D138010] sold to Mr. Dewan were procured from Edelweiss Commodities and Services Limited vide letter C.No. VIII(10)/IMP/CL/GOLD/CUS/DPU /BCD/2013-14/955 dated 05/12/2013. Edelweiss Commodities and Services Limited replied that "....We would like to inform that these particular Bars are not imported and sold by us" through their letter dated 12/12/2013.

(xv) It is also to be mentioned that Mr. Raj Kumar Ghosh and Mr. Pintu Midya were both Intimated several time vide letter dated: 09/09/2013, 30/09/20013, 17/12/2013, 23/12/2013 and 08/01/2014 to appear before the Superintendent of Customs and assure their attendance before the chemical examiner for drawal of sample from the seized goods for assay but they failed to appear. A letter from Dilip Kumar Chandra, Advocate, dated 08/01/2014 was received regarding intimation for drawal of sample to Raj Kumar Ghosh and Pintu Midya that ".......It is quite evidence and clear that the seized goods i.e. Gold Bar of foreign origin having an irscription indicating is nature of foreign made as well as fineness of 995.00. So it is felt that no drawal of sample is required under this circumstance…."Therefore the sample from the seized gold bars was drawn on 16/01/2014 in presence of two independent witnesses by the chemical examiner for assay.

(xvi) Mr. Raj Kumar Ghosh and Mr. Pintu Midya were summoned to appear on 16th September 2013 but they failed to appear.

(xvii) Biswanath Dewan was summoned to appear on 25th November 2013 and 13th January 2014 before Supdt. DPU, BCD but he failed to appear. However on 13/01/2014 a letter from Dilip Kumar Chandra, Advocate was received stating that "......when my client appear before the adjudicating authority in accordance with the provision of the Customs Act, 1962 it will be superfluous to give further statement before you under section 108 of the said Customs Act, 1962."

(xviii) Rajesh Pawar, Prop- M/S Anish Trading was also summoned to appear before Superintendent of Customs on 13/01/2014 but he also failed to appear.

(xix) From the circumstantial evidences, it thus appeared that Mr. Biswanath Dewan fabricated a false story and produced fabricated documents in collusion with Mr. Rajesh Pawar and thus the gold bars [Serial no- L20141and D138010) of foreign origin recovered from Mr.

Raj Kumar Ghosh and Mr. Pintu Midya appears to be illegally imported Into India in violation of section 3(1) and 3(2) of Foreign Trade (Development and Regulation) Act, 1992 read with Section 11 of the Customs Act, 1962 and thus liable to confiscation under Section 111(b) and 111(d) of the Customs Act, 1962.

(xx) It thus appeared that Mr. Raj Kumar Ghosh, Mr. Pintu Midya, Mr. Biswanath Dewan and Mr. Rajesh Pawar Prop. M/S Anish Trading Co. and any other person/persons claiming the ownership of the seized gold bars (Serial no- L20141and D138010) are the person/persons within the meaning of section 112 of the Customs Act, 1962 and thus liable for penal action under the said section for illegal possession of goods and also Mr. Biswanath Dewan and Mr. Rajesh Pawar Prop. M/S Anish Trading Co. are liable for penalty under section 114AA of the Customs Act 1962 for submitting false and incorrect documents.

(xxi) Notice under Section 124 of the Customs Act, 1962 was issued to the noticees vide C. No.VIII(10)20/IMP/CL/GOLD/CUS/DPU/BCD/2013-14 dated 31.01.2014 to Show Cause in writing before the Commissioner of Customs (Prev.) West Bengal, Kolkata, Customs House, 15/1 Strand Road, Kolkata-700001 within 30 days (Thirty Days) from the date of receipt of the notice as to why:-

(i) The goods mentioned in the schedule should not be confiscated under Section 111(b) and 111(d) of the Customs Act, 1962.

(ii) Penalty should not be imposed upon the noticees Sl. No. Ito 4 under Section 112 of the Customs Act, 1962

(iii) Penalty should not be imposed upon the noticees Sl. No. 3 and 4 under Section 114AA of the Customs Act for submitting false and incorrect documents.

3. The appellants contested the Show Cause Notice on the ground that the appellant no. 1 viz, Biswanath Diwan,is the owner of the gold in question and he had procured the said gold from M/s. Anish Trading Company owned by the appellant no. 4, namely, Shri Rajesh Pawar and filed documents thereof. However, the ld. adjudicating authority absolutely confiscated the gold in question and imposed penalties on all the appellants.

3.1. The said order was challenged before the Ld. Commissioner (Appeals), who, by way of the impugned order, affirmed the order of adjudication.

4. Against the said order, the appellants are before us.

5. The Ld. Counsel appearing on behalf of the appellants submits that the gold in question was seized from appellant's no. 2 and 3, who were intercepted by the Inspector of Customs (Preventive), D.P.U., Barasat and they were found to be carrying one kg. of gold bar each. He submits that since the gold in question were having foreign marking on them, the gold was seized on the allegation of illegal importation of gold bars and contravention of Section 3 of Foreign Trade

(Development and Regulation) Act, 1992 read with Section 11 of the Customs Act, 1962.

5.1. It is his submission that these two gold bars are owned by the appellant no. 1, who had purchased the said gold bars from the appellant no. 4 against Invoice No. 2782 dated 19th August, 2013 whereas the seizure took place on 22.08.2013. Therefore, it is submitted that the appellant no. 1 has discharged their burden under Section 123 of the Customs Act, 1962, which indicates procurement of the gold through licit means. In these circumstances, the Ld. Counsel for the appellants submits that the appellant no. 1 is a genuine buyer of the gold, from the appellant no. 4.

5.2. It is also his submission that the respondents never made M/s. Edelweiss Commodities and Service Ltd., a party to the proceedings, who denied selling the said gold to the appellant no. 4. In this regard, he points out that no Panchnama was drawn at the time of seizure and the seizure itself has been made without following the procedures laid down under law. He submits that as there are rules to ensure authenticity of documents, which must be complied with mandatorily, for which the Panchnama should record that: -

(a) they were recovered from the searched premises, and give brief description of exact place where they were located, and from where they were seized,

(b) who had found them and exactly from where in the searched premises,

(c) they were seized by concerned officers,

(d) steps taken by seizing officer to refrain himself and persons accompanying him from causing damage to documents, avoid inference with them and their contents, and

(e) to safeguard against interference by strangers.

As no Panchnama was prepared in this case, therefore, he submits that the whole case has been made out on the basis of assumptions and presumptions.

5.3. It is his further submission that the appellant no. 1 has submitted VAT invoices, VAT Returns, Stock Register, etc., to substantiate the procurement of the seized gold by licit means, which has not been disputed by the Revenue.

5.4. He also relied on the decision in the case of *S.K. Chains v. Commissioner of Customs (Preventive) [2001 (127) E.L.T. 415 (Tri. – Mum.)].*

5.5. Thus, the Ld. Counsel for the appellants submitted that the gold in question is not liable to be confiscated and consequently, the gold be released to the appellant no. 1, who is the owner of the gold in question. It is therefore submitted that no penalty is imposable on the appellants as the said gold has been procured through licit means.

6. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order and contended that at the time of interception, the appellant nos. 2 and 3 were not in possession of licit documents, on the basis of which the gold is claimed to have been purchased by the appellant no. 1. Further, he stated that the supplier of the gold to the appellant no. 4 has denied to have supplied any gold to the said appellant no. 4 and in such circumstances, he submits that the procurement of the gold by the appellant no. 1 is

through illicit means. It is therefore his contention that the gold in question has been absolutely confiscated correctly.

7. Heard the parties and considered their submissions.

8. We find that although at the time of interception of the appellant nos. 2 and 3, they were not carrying the documents showing legal purchase of the said gold with them, they had informed the authorities inspecting them that they had been working on behalf of the appellant no. 1, who claims to be the owner of the said gold. In support of this claim, the appellant No. 1 has filed the Tax Invoice for procurement of the said gold on 19.08.2013. For better appreciation of the facts, the said invoice is extracted hereinbelow: -

Invoice No. 2782

Dated : 19-Aug-2013

ANISH TRADING CO.
46, SIR HARI RAM GOENKA STREET, KOL - 700 007
VAT NO. - 19341701061

TAX INVOICE

Party : Biswanath Diwan
20, Nalin Seth Road - Burra Bazar, Kol - 700 007.
PAN - AGVPD4183A

Description of Goods	Quantity	Rate	per	Amount
Gold Bar(9950)	2,000.000 Gms	2,945.00	Gms	58,90,000.00
1% Output VAT				58,900.00
	Total: 2,000.000 Gms			59,48,900.00

E. & O.E.

Amount Chargeable (in words)
Rs. Fifty Nine Lakhs Forty Eight Thousand Nine Hundred Only

Remarks :
The sale made on credit

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

for ANISH TRADING CO.
Authorised Signatory

8.1. Further, we observe that the said fact has been confirmed by the supplier of the gold (appellant no. 4) to the appellant no. 1. The said document is also extracted below for better appreciation of the facts: -

Anish Trading Co.
GOLD & SILVER TRADING

46, Sir Hari Ram Goenka Street
Kolkata - 700 007
Ph.: 2274-3964, 3068-0064 / 68
VAT No. 19341701061

To
Biswanath Diwan
26, Nalini Seth Road - burra Bazar
Kolkata - 700007

Dated -06/07/2015.

Sub:- Confirmation of Account for the period from 01/04/2014 to 31/03/2015.

Dear Sir / Madam,
In connection with the audit of our accounts, we hereby request you to confirm the balance according to our books. Complete confirmation copy from 01/04/2014 to 31/03/2015 is enclosed herewith.

Kindly return one copy of confirmation starting your IT PAN Duly signed(acknowledged) by authorised signatory and sealed, in confirmation of the same. Please note that if no reply is received from your end within a fortnight, it will be assumed that you have accepted our books of Accounts.

I / We hereby confirm the above

Yours Truly,

BISWANATH DIWAN

ANISH TRADING COMPANY

Authorised signatory

Authorised signatory

8.2. We also take note of the fact that the VAT Returns have been filed by the appellant no. 4 regarding sale of the gold in question to the appellant no. 1. Copy of the said Return is also extracted below for better appreciation of the facts: -

Directorate of Commercial Taxes

Department of Finance, Govt. of WB

"THE WEST BENGAL VALUE ADDED TAX RULES, 2005"
Form14e
Acknowledgement for electronic filing of return in *Form 14
[see sub-rule (2) of rule 34A]

Acknowledgement No	[illegible]	Date	[illegible]-Feb-2014
Trade Name	ANISH TRADING COMPANY		
TIN No	19341781061	Return Period	[illegible]
Charge Name	JORASANKO	Group Code	03

Abstract of return as per data transmitted electronically

Particulars	Turnover/CTP (excluding VAT)	TAX etc
Purchase of goods within West Bengal against tax invoices:		
(i)goods taxable @ 1%	67249789.00	672498.00
(ii)goods taxable @ 4%(upto 31/03/2013) / @5%(on & after 01/04/2013)	0.00	0.00
(iii)goods taxable @ 13.5 %(upto 31/03/2013) / @14.5%(on & after 01/04/2013)	0.00	0.00
Total Claim of Input Tax Credit :		672498.00
Net Tax Credit :		738744.00
Turnover of purchase not from registered dealers and tax u/s 12	0.00	
Goods purchased or received from outside West Bengal	0.00	
Aggregate of sale price (excluding VAT)	77430781.00	
Turnover of sales	77430781.00	
Break-up of turnover of sales and tax payable u/s 16 :		
(i)of goods taxable @ 1%	77430781.00	774308.00
(ii)of goods taxable @ 4% (upto 31/03/2013) / @5%(on & after 01/04/2013)	0.00	0.00
(iii)of goods taxable @ 13.5 %(upto 31/03/2013) / @14.5%(on & after 01/04/2013)	0.00	0.00
(iv)of goods on which tax is paid on MRP u/s 16(4)	0.00	0.00
(v)sales on which tax is payable u/s 16(6)		
(vi)sales on which tax is payable at any other rate	0.00	
(vii)Excess Output Tax due to Sales Return	0.00	
Contractual transfer price (CTP)	0.00	
Break-up of taxable CTP taxable u/s 18 r/w rule *30(1)/30(2):		
(i)of goods taxable @ 4% (upto 31/03/2013) / @5%(on & after 01/04/2013)	0.00	0.00
(ii)of other goods taxable @ 13.5 %(upto 31/03/2013) / @14.5%(on & after 01/04/2013)	0.00	0.00

Signature of the Dealer __________

Status __________

Site designed, hosted and maintained by National Informatics Centre. Information provided and updated by Directorate of Commercial Taxes, Govt. of WB

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9. On going through the documents produced before us, it is clear that the appellant no. 1 has procured the gold in question by way of licit means from the appellant no. 4. Admittedly, in this case, no Panchnama was drawn at the time of seizure of the gold, which creates a doubt as to the genuineness of the proceedings initiated against the appellants, as held by the Tribunal in the case of *Kuber Tobacco Products Ltd. v. Commissioner of C.Ex., Delhi [2013 (290) E.L.T. 545 (Tri. – Del.)]* wherein it has been held that mere recording of "resumption of records" after search, without mentioning anything about seizure of documents and their details/description, is

not sufficient; that this is more so in case of seizure in support of serious charges and this information is mandatory to give credibility to Panchnama, particularly when contents of seized documents and entire proceedings are challenged.

9.1. In the present case, it is a fact that no Panchanama has been drawn. In these circumstances, we hold that the proceedings against the appellants are not sustainable.

10. Further, with regard to the penalty imposed on the appellant no. 4, we find that a similar issue has been examined by the Tribunal in the case of *S.K. Chains (supra)* wherein it was observed as under: -

> *"In this background we would examine the discharge of the burden placed upon the Appellants. Shri Kothari in his statement claimed that foreign marked gold under seizure was duly recorded is the firm's stock register. He named two sources of acquisition. One was a gold dealer's firm by the name, Sanghavi Dandrup Devji & Co., and the other was one passenger by the name of Dilip Bhulchandani. The representative of the dealers deposed that 33 foreign marked gold pieces were sold by them under four invoices to the Appellants. Although the Show Cause Notice says no documents were produced by M/s. Sanghavi D. Devji & Co., to show the legal import of this gold sold to the present Appellants, curiously they have not been made the noticees to the Show Cause Notice. The Show Cause Notice does not allege that the transaction between the appellant and the dealer was fake or questionable. However, the allegation is made*

> *that the appellant, Shri Kothari failed to produce the licit importation of this gold purchased by him from M/s. Sanghavi. Therefore, it has to be held that as far as this quantity is concerned the burden of proof on the appellants stands discharged."*

10.1. Further, admittedly, the supplier, namely, M/s. Edelweiss Commodities and Service Ltd., was not made a party to the Show Cause Notice.

10.2. Accordingly, we hold that no penalty can be imposed on the appellant no. 4 alleging illegal purchase of the gold in question.

11. In view of the above discussion, we hold that the gold in question cannot be confiscated and hence, the order of confiscation of the said gold is set aside. As the confiscation of the gold is set aside, we hold that the gold is to be released to the appellant no. 1, who has claimed to be the owner of the gold in question. No penalty is imposable on the appellants.

12. In the result, we set aside the impugned order and allow the appeals filed by the appellants, with consequential relief, as per law.

(Order Pronounced in Open court on 11.06.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP