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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75781 of 2022

(Arising out of Order-in-Original No. 01/Cus/CCP/WB/2022 dated 28.06.2022 passed by the Commissioner of Customs (Prev.), W.B. Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. Bapi Das, **: Appellant**
S/o. Late Kalo Manick,
3a, Seth Bagan Gulee, Girish Park,
West Bengal, Kolkata-700 007

VERSUS

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

WITH

Customs Appeal No. 75782 of 2022

(Arising out of Order-in-Original No. 01/Cus/CCP/WB/2022 dated 28.06.2022 passed by the Commissioner of Customs (Prev.), W.B. Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. Ranjit Manna, **: Appellant**
S/o. Late Nipendra Nath,
Vill.:- Chakbatia, P.O. :- Kalsi,
P.S.:- Patashpure, Dist.:-Purba Medinipur
West Bengal-721 456

VERSUS

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

AND

Customs Appeal No. 75823 of 2022

(Arising out of Order-in-Original No. 01/Cus/CCP/WB/2022 dated 28.06.2022 passed by the Commissioner of Customs (Prev.), W.B. Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. Dipak Maharaj, **: Appellant**
S/o. Shri Bhagwan Maharaj,
207/3, M.G Road, Burrabazar,
Kolkata, West Bengal, Kolkata-700 007.

VERSUS

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

APPEARANCE:

Shri Nilotpal Chowdhary & P. Sharma, Advocate for the Appellant
Shri S. Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs.76657-76659/ 2025

DATE OF HEARING: 08.05.2025
DATE OF PRONOUNCEMENT: 24.06.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

All the three appeals have arisen out of the Order-in-Original No. 01/Cus/CCP/WB/2022 dated 28.06.2022 passed by the Commissioner of Customs (Prev.), W.B. Custom House, 15/1, Strand Road, Kolkata-700001, wherein the Ld. Commissioner of Customs (preventive), Kolkata has imposed a penalty of Rs.1,40,000/- on Shri Bapi Das (appellant 1 herein), a penalty of Rs.2,20,000/- on Ranaji Manna, (Appellant 2 herein) and a penalty of Rs.9,75,000/- on Shri Dipak Maharaj (Appellant 3 herein), all under Section 112(b) of the Customs Act, 1962. All the three appellants have filed these appeals against the penalties imposed on them in the impugned order. Appellant no 2, Dipak Maharaj has filed appeal against confiscation of gold weighing 953.100 grams from his possession.

2. The facts of the case are that on 17.10.2020 a search operation was conducted by the Customs Officers of the SRI (1&1) division, at shop of Shri. Siddhanath located at 13C, 4th floor, Shop No. 402, Digambar Jain Temple Road, Kolkata. During the course of search, Indian Currency amounting to Rs.

14,00,000/- was recovered from the personal possession of the appellant Shri Bapi Das. Four pieces of yellow metal without any foreign hallmark, weighing a total of 953.100 grams, along with Indian currency notes amounting to Rs. 48,15,250/- was recovered from the personal possession of the appellant Shri Dipak Maharaj and Indian Currency amounting to Rs. 22,02,000/- was recovered from the personal possession of Shri Ranjit Manna. All the three appellants were present in the said shop during the search operation conducted at the shop premises of M/s Shri Siddhanath Kolkata. Subsequently, the said Four pieces of yellow metal weighing a total of 953.100 grams, along with Indian currency notes totally amounting to Rs.85,17,250/- recovered from all the three appellants were seized on the reasonable belief that the said four yellow metal bars were gold bars of foreign origin smuggled into the country without payment of applicable customs duties and the said Indian Currencies were sale proceeds of gold bars of foreign origin smuggled into the country without payment of applicable customs duties.

2.2. On completion of the investigation, a SCN was issued *interalia* to the appellants proposing confiscation of the gold and Indian currencies as the appellants were not able to produce any documents for the licit purchase of the gold bars in question. On adjudication, the Ld. adjudicating authority *interalia* confiscated the gold weighing 953.100 grams recovered from the appellant 2 Shri. Dipak Maharaj and the Indian currency notes totally amounting to Rs.85,17,250/- recovered from all the three appellants.

3. In respect of the Indian Currency amounting to Rs. 14,00,000/- seized from the personal possession of Shri Bapi Das, he claimed that the seized cash belonged to his employer namely Shri Surojit Halder (One of the Director of M/s Surya Narayan Forex Pvt. Ltd.). Shri. Surojit Holder informed that he has entrusted the amount to Bapi Das, his employee for depositing the same at the ICICI Bank, Central Avenue Branch and submitted Bank deposit slips as evidence. Accordingly, he has lodged a formal representation dated 10.11.2020, submitting all relevant documentation and requesting the release of the impounded amount.

3.1. Shri Dipak Maharaj (Director of Siya Forex & Travels Pvt. Ltd), appellant 2 herein has submitted a formal representation dated 17.11.2020 (and a reminder on 07.07.2021), praying for the release of the seized gold and cash, by submitting all relevant documents in his possession to the adjudicating authority. He submitted notarized Gift Deeds dated 2nd April 2019 and 4th April 2019 for the gold ornaments, Trade License, GST and Money Exchange registrations, PAN details of M/s. Siya Forex & Travels Pvt. Ltd, Company Balance Sheet and Trial Balance Sheet as on 31st March 2020, Cash-in-hand Ledger entries, and ICICI Bank deposit advice, to establish that the gold bars were legitimately transferred from family gifted ornaments. He claimed that the Indian Currency of Rs. 48,15,250/- was bona fide company trade capital entrusted for bank deposit. Accordingly, he prayed for the release of the seized gold and Indian Currency to him.

3.2. The appellant 3 Shri. Ranajit Manna submitted that the Ld. adjudicating authority failed to consider the documentary evidences submitted by him such as, sale invoices for the gold previously sold by Shri. Rabindra Kamilya and corresponding bank credit advice demonstrating that the Rs.22,00,000/- carried by him were legitimate proceeds of sale rather than contraband entrusted by an employer.

3.3. The appellant has relied upon the decision of the Tribunal Delhi in the case of Ramachandra Vs Commissioner of Customs, reported in 1992(60) ELT 277 (Tri-Del), wherein it has been categorically held that before seizing the Indian Currency it must be established that the currency seized is related to sale proceeds of the smuggled gold. As the department could not establish that the Indian Currency seized was sale proceeds of smuggled gold, they prayed for release of the Indian Currencies seized from them.

3.4. The appellant submits that the impugned order is fundamentally flawed as the search operation carried out was a town seizure carried out in the heart of kolkata, having significant distance from international borders. Hence, the smuggling nature of the goods have not been established. Further, the proceedings have not adhered to Section 138B of the Customs Act, 1962 as no opportunity of cross examination was afforded. Further, the statements have been retracted by the concerned persons and hence they have no evidentiary value. Accordingly, the appellants submits that the impugned order confiscating the gold seized from Shri. Dipak Maharaj and Indian currencies seized from all the three appellants and imposing penalties on all the three appellants are not sustainable.

4. The Ld. A.R. reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. In the present case we observe that Indian Currency totally amounting to Rs. 85,17,250/- has been seized from all the three appellants on the ground that the said currency were sale proceeds of gold smuggled into the country without payment of customs duties. However, we observe that the investigation has not brought in any evidence to establish that the said currency were sale proceeds of which gold smuggled into the country. The department cannot assume that the Indian Currency were sale proceeds of some smuggled gold without specifying any details about the smuggled nature of the said gold. In this regard, we observe that the appellant has relied upon the decision of the Tribunal Delhi in the case of Ramachandra Vs Commissioner of Customs, reported in 1992(60) ELT 277 (Tri-Del), wherein it has been categorically held that before seizing the Indian Currency it must be established that the currency seized is related to sale proceeds of the smuggled gold. The relevant part of the said decision is reproduced below:

> 5*. It is also seen that the charges under the Gold (Control) Act has been dropped against all the persons to whom show cause notice has been issued and the charges under the Customs Act has been dropped against the other two. It would appear that the penalty of Rs. 50,000/-on the appellant has been imposed for breach of Section 121 of the Customs Act. Before violation of Section 121 is established the following ingredients must be satisfied:*

(i) there must be a sale..

(ii) the sale must be of smuggled goods.

(iii) the sale must be by a person having knowledge or reason to believe that the goods were of smuggled origin.

(iv) the seller and purchaser and the quantity of gold must be established by the Customs authorities.

6. In this case, however, none of the requisites of Section 121 have been fulfilled - no sale has been established, identity of the buyer and seller has not been established. As a consequence, the currency cannot be considered to represent the sale proceeds of the contraband goods and, therefore, no violation of Section 121 has been made out. Since the charge under Section 121 of the Customs Act has not been proved against the appellant the currency notes cannot be retained by the Department and have to be returned to the appellant. Imposition of penalty is also not legal and proper in the absence of proof of violation of any provisions of the Customs Act.

6.1. In the present case, we observe that no gold was seized from Shri. Bapi Das and Shri Ranajit Manna. Their employers have categorically stated that they have given the Indian currency to their respective employees to deposit the money in the bank. They categorically stated that the money represents bona fide trade capital belonged to the company, entrusted for bank deposit by the employers to the employees. We observe that there is no contrary finding by the adjudicating authority in the impugned order.

6.2. Regarding the currency seized from Shri Dipak Maharaj (Director of Siya Forex & Travels Pvt. Ltd), he has submitted a formal representation dated 17.11.2020 (and a reminder on 07.07.2021), praying for the release of the seized gold and cash, by submitting all relevant documentation to the adjudicating authority. He submitted notarized Gift Deeds dated 2nd April 2019 and 4th April 2019 for the gold ornaments, Trade License, GST and Money Exchange registrations, PAN details of M/s. Siya Forex & Travels Pvt. Ltd, Company Balance Sheet and Trial Balance Sheet as on 31st March 2020, Cash-in-hand ledger entries, and ICICI Bank deposit advice establishing that the gold bars were legitimately transferred from family gifted ornaments. He claimed that the Indian Currency of Rs. 48,15,250/- was bona fide company trade capital entrusted for bank deposit. Thus, we observe that the appellant 2 has submitted enough documentary evidence to establish the genuine nature of the Indian Currency seized from him.

6.3. Thus, we observe that the investigation could not establish that the Indian Currency totally amounting to Rs. 85,17,250/- were sale proceeds of gold smuggled into the country without payment of customs duties. Accordingly, we set aside the confiscation of the Indian currency and order for release of the same to the appellants from whom the said currencies were seized.

6.4. Regarding the confiscation of gold weighing 953.100 grams recovered from the appellant 2 Shri. Dipak Maharaj, we observe that he is the Director of the Firm Siya Forex & Travels Pvt. Ltd. He was in procession of valid License for trading in gold. He has submitted evidences such as notarized Gift Deeds dated 2nd April 2019 and 4th April 2019 for the gold ornaments, Trade License, GST and Money Exchange registrations, PAN details of M/s. Siya Forex & Travels Pvt. Ltd, Company Balance Sheet and Trial Balance Sheet as on 31st March 2020, Cash-in-hand ledger entries, and ICICI Bank deposit advice establishing that the gold bars were legitimately transferred from family gifted ornaments. We find that the investigation has not brought in any evidence to establish that the gold seized from him was smuggled in nature. Thus, we observe that the provisions of section 123 of Customs Act are not applicable in this case. The responsibility is on the department to establish that the gold seized from him was smuggled in nature. As the department has failed to establish that the gold was smuggled in nature, we hold that the confiscation of the said gold in the impugned order is not sustainable. Further, we find that the appellant 2 has submitted enough evidence to establish that the 953.100 grams found in his possession was legally procured and they submitted documentary evidences for licit purchase of the same. Accordingly, we set aside the confiscation of gold, *qua* seized from appellant 2.

6.5. We find that penalties to the tune of Rs. 1,40,000/- was imposed upon Shri Bapi Das, Rs. 9,75,00/- was imposed upon Shri Dipak Maharaj and Rs. 2,20,000/- was imposed upon Shri Ranajit Manna under Section 112(b) of the Customs Act, 1962. As the allegations against the appellant are not established, we hold that the appellants are not liable for penalty under section 112(b) of the customs Act, 1962 and accordingly, we set aside the same.

7. In view of the above discussions, we pass the following order:

(i) We set aside the confiscating of Indian currency totally amounting to Rs. 85,17,250/- and order for release of the said Indian currency to the appellants from whom the said currencies were seized.

(ii) We set aside the confiscation of gold weighing 953.100 grams recovered from the appellant 2 Shri. Dipak Maharaj and order for release of the same to him.

(iii) We set aside the penalties imposed under section 112(b) of the customs Act, 1962, on all the three appellants.

(iv) The appeals are disposed on the above terms.

(Order Pronounced in Open court on 24.06.2025)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP