

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75836 of 2017

(Arising out of Order-in-Original No. 51/COMMR/CUS/SLG/2016-17 dated 07.03.2017 passed by the Commissioner of Customs, Central Excise and Service Tax, Siliguri, C.R. Building, Haren Mukherjee Road, Hakim para, Siliguri – 734 001)

Shri Birendra Kumar Gupta

: Appellant

N.S. Road, Jaigaon, District: Alipurduar,
PIN – 736 182

VERSUS

**Commissioner of Customs, Central Excise and
Service Tax**

: Respondent

Siliguri Commissionerate,
C.R. Building, Haren Mukherjee Road, Hakim Para,
Siliguri – 734 001

WITH

Customs Appeal No. 75837 of 2017

(Arising out of Order-in-Original No. 51/COMMR/CUS/SLG/2016-17 dated 07.03.2017 passed by the Commissioner of Customs, Central Excise and Service Tax, Siliguri, C.R. Building, Haren Mukherjee Road, Hakim para, Siliguri – 734 001)

Shri Binod Kumar Sah

: Appellant

S/o. Late Baldeo Prasad Sah,
Dinbazar, P.O. & Dist: Jalpaiguri,
PIN – 735 101

VERSUS

**Commissioner of Customs, Central Excise and
Service Tax**

: Respondent

Siliguri Commissionerate,
C.R. Building, Haren Mukherjee Road, Hakim Para,
Siliguri – 734 001

WITH

Customs Appeal No. 75838 of 2017

(Arising out of Order-in-Original No. 51/COMMR/CUS/SLG/2016-17 dated 07.03.2017 passed by the Commissioner of Customs, Central Excise and Service Tax, Siliguri, C.R. Building, Haren Mukherjee Road, Hakim para, Siliguri – 734 001)

Shri Samir Sah

: Appellant

S/o. Shri Binod Kumar Sah,
Dinbazar, P.O. & Dist: Jalpaiguri,
PIN – 735 101

VERSUS

**Commissioner of Customs, Central Excise and
Service Tax**

: Respondent

Siliguri Commissionerate,
C.R. Building, Haren Mukherjee Road, Hakim Para,
Siliguri – 734 001

Appeal No(s): C/75836-75839/2017-DB

AND

Customs Appeal No. 75839 of 2017

(Arising out of Order-in-Original No. 51/COMMR/CUS/SLG/2016-17 dated 07.03.2017 passed by the Commissioner of Customs, Central Excise and Service Tax, Siliguri, C.R. Building, Haren Mukherjee Road, Hakim para, Siliguri – 734 001)

Shri Amod Kumar Shah

: Appellant

P.O.: Kohbarva, P.S.: Sonbarsa,
District: Sitamarhi, Bihar
(Res.: Bahubazar, Below N.S. Road, Jaigaon,
District: Alipurduar, PIN – 736 182)

VERSUS

**Commissioner of Customs, Central Excise and
Service Tax**

: Respondent

Siliguri Commissionerate,
C.R. Building, Haren Mukherjee Road, Hakim Para,
Siliguri – 734 001

APPEARANCE:

Shri Arijit Chakraborty, Advocate and Shri Nilotpal Chowdhury, both Advocates,
For the Appellant(s)

Shri Sourabh Chakravorty, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NOS. 76719-76722 / 2025

DATE OF HEARING: 17.06.2025

DATE OF DECISION: 08.07.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Customs Appeal No. 75836 of 2017 has been filed by Shri Birendra Kumar Gupta (hereinafter referred to as the "appellant no. 1") against the Order-in-Original No. 51/COMMR/CUS/SLG/2016-17 dated 07.03.2017 wherein the Ld. Commissioner of Customs, Central Excise and Service Tax, Siliguri has confiscated Indian currency amounting to Rs.30,00,000/- (Rupees Thirty Lakhs only) seized from him under Section 121 of the Customs Act, 1962 and imposed penalties of Rs.10,00,000/- (Rupees Ten

Lakhs only) on this appellant under Section 112(a)(i) and 112(b)(ii) of the Customs Act, 1962.

1.1. Customs Appeal No. 75837 of 2017 has been filed by Shri Binod Kumar Sah (hereinafter referred to as the "appellant no. 2") against the Order-in-Original No. 51/COMMR/CUS/SLG/2016-17 dated 07.03.2017 wherein the Ld. Commissioner of Customs, Central Excise and Service Tax, Siliguri has confiscated Indian currency amounting to Rs.48,00,000/- (Rupees Forty Eight Lakhs only) seized from him under Section 121 of the Customs Act, 1962 and imposed penalty of Rs.2,00,000/- (Rupees Two Lakhs only) on the said appellant under Section 112(b)(ii) of the said Act. The appellant no. 2 has also contested the order of confiscation of the "Maruti Alto" car bearing Registration No. WB-74G-6012 confiscated under Section 115(2) of the Customs Act, 1962, with an option for redemption of the same on payment of redemption fine of Rs.37,000/- in lieu of such confiscation.

1.2. Customs Appeal No. 75838 of 2017 has been filed by Shri Samir Sah (hereinafter referred to as the "appellant no. 3") against the Order-in-Original No. 51/COMMR/CUS/SLG/2016-17 dated 07.03.2017 wherein a penalty of Rs.5,00,000/- (Rupees Five Lakhs only) has been imposed on him under Section 112(a)(i) and 112(b)(ii) *ibid*.

1.3. Customs Appeal No. 75839 of 2017 has been filed by Shri Amod Kumar Shah hereinafter referred to as the "appellant no. 4") against the Order-in-Original No. 51/COMMR/CUS/SLG/2016-17 dated 07.03.2017 wherein a penalty of Rs.1,00,000/- has been imposed on him under Section 112(a)(i) and 112(b)(ii) *ibid*.

2. As all these appeals emanate from a common Order-in-Original and the issue involved is the same, all the appeals are taken up together for decision by a common order.

3. The facts of the case are that on the basis of intelligence, Officers of the Directorate of Revenue Intelligence (DRI), Siliguri, intercepted the appellant no. 1, namely, Shri Birendra Kumar Gupta along with the appellant no. 4, namely, Shri Amod Kumar Shah, on 13.01.2016, in front of Payel Cinema Hall, Sevok Road, Siliguri. On physical check, the appellant no. 1 was found to be having 03 (three) pieces of gold bars weighing one kg. each in his possession. As the appellant was not having any document to show licit purchase of the said gold, the same were seized under the reasonable belief that the said gold had been smuggled into the country without payment of applicable Customs duties. Indian currency worth Rs.30,00,000/- was also found in the possession of the appellant no. 1, which was also seized under the presumption that the said currency were the sale proceeds of smuggled gold on previous occasions. On enquiry, the appellants informed the Officers of the DRI that some of the gold was meant to be delivered to Shri Binod Kumar Sah (appellant no. 2 herein) on payment of money, who would be arriving shortly.

3.1. After some time, the appellant no. 2, Shri Binod Kumar Sah, along with his driver, namely, Suleiman Haque, arrived at the spot in a silver coloured Maruti Alto car bearing Registration No. WB-74G-6012. On verification of his car, it was found to contain Rs.48,00,000/- in Indian currency. The said Indian currency was also seized on the belief that the same were generated through sale of smuggled gold on earlier occasions.

4. Thereafter, on 13.01.2016, statement of Shri Birendra Kumar Gupta (appellant no. 1) was recorded. In the said statement, the appellant no. 1 has inter alia stated that one Shri Samir Sah (appellant no. 3 herein) had placed an order to him for supply of two kgs. of gold bars and as payment for the said gold, the appellant no. 3 had sent his father, the appellant no. 2, along with Rs.48,00,000/-, for collecting the said gold.

5. Accordingly, proceedings were initiated against all the appellants.

6. Subsequently, the appellants were arrested and produced before the Additional Chief Judicial Magistrate, who remanded them to judicial custody.

7. On completion of the investigation, a Show Cause Notice dated 08/09.07.2016 was issued to the appellants inter alia proposing confiscation of the impugned gold bars and Indian currency seized from the appellants, along with imposition of penalties on all the appellants. A proposal was also made for confiscation of the vehicles used in the alleged smuggling activities.

7.1. On adjudication, the Id. adjudicating authority, vide the impugned order dated 07.03.2017, has passed the following order: -

"5.1. I order for absolute confiscation of 03 (three) pieces FM gold bars weighing 3.000 Kgs valued at Rs.80,76,000/- (Rupees eighty lakh seventy-six thousand only) held under seizure [details as per Inventory], under Section 111(b) & (d) of the Customs Act, 1962.

5.2 I also order for confiscation of Indian currency amounting Rs.30,00,000/- (Rupees thirty lakh only) recovered from the possession of Sri Birendra Kumar Gupta held under seizure [details as per Inventory], under Section 121 of the Customs Act. 1962.

5.3 I also order for confiscation of indian currency amounting to Rs. 48,00,000/- (Rupees forty-eight lakh only) recovered from the possession of Sri Binod Kumar Sah held under seizure [details as per inventory], under Section 121 of the Customs Act, 1962.

5.4 I also order for confiscation of shredded pieces of black coloured self-adhesive tapes used to securely wrap and conceal the 03 (three) pieces of FM gold bars, under Section 119 of the Customs Act, 1962.

5.5 also order for confiscation of the vehicle (Tavera having Registration No. WB-74H-3686 (valued Rs. 8:00.000/-) under Section 115 (2) of the Customs Act, 1962. However, as per the provisions of Section 115(2) of the Customs Act. 1962. I give option to the registered owner of the vehicle (Tavera) having Registration No. WB-74H-3686 to redeem his car on payment of Redemption Fine of Rs. 4,00,000/- (Rupees four lakh only) in lieu of confiscation of the said car.

5.6 I also order for confiscation of Maruti Alto car having Registration No. WB-74G-6012 (valued Rs. 73.000/-) under Section 115(2) of the Customs Act. 1962. However, as per the provisions of Section 115(2) of the Customs Act, 1962. I give option to the registered owner of

the Maruti Alto car having Registration No. WB-74G-6012 to redeem his car on payment of Redemption Fine of Rs. 37,000/-(Rupees thirty-seven thousand only) in lieu of confiscation of the said car

5.7 I impose penalty of Rs. 10,00,000/- (Rupees ten lakh only) on Sri Birendra Kumar Gupta in commensurate to his roles played in committing the offence as mentioned here-in-before under the provisions of Sections 112(a) (i) and 112(b)(i) of the Customs Act, 1962.

5.8 impose penalty of Rs. 1,00,000/- (Rupees one lakh only) on Sri Amod Kumar Shah, in commensurate to his roles played in committing the offence as mentioned here-in-before under the provisions of Sections 112(a) (i) and 112(b)(ii) of the Customs Act, 1962

5.9 impose penalty of Rs.5,00,000/ (Rupees five lakh only) on Sri Samir Sah, in commensurate to his roles played in committing the offence as mentioned here-in-before under the provisions of Section 112(a) (i) and 112(b)(i) of the Customs Act, 1962.

5.10 impose penalty of Rs.2,00,000/- (Rupees two lakh only) on Sri Binod Kumar Sah incommensurate to his roles played in committing the offence as mentioned here-in-before under the provisions of Section 112(b)(i) of the Customs Act, 1962.”

7.2. Aggrieved by the confiscation of the impugned gold, Indian currency and the Vehicle bearing Registration No. WB-74G-6012, along with imposition of penalties, the appellants are before us.

8. The appellant nos. 1 and 4, namely, Shri Birendra Kumar Gupta and Shri Amod Kumar Shah respectively, have made various submissions, which are summarized below: -

(i)The appellant 1, from the very inception, has denied the recovery of the purported foreign origin gold from his possession and in fact, such fact was so relevant that the Department had to create an illusion of the purported recording of statement giving a backdate to bring on record as if the said statement dated 31.01.2016 was the statement of the appellant recorded in Judicial Custody and that the said statement is corroborating the statement dated 13.01.2016 when the fact as it appears from the records are itself contrary. At page 67 of the Appeal Memorandum, the purported statement dated 31.01.2016 as purportedly recorded at Siliguri Special Correctional Home, it would be evident that the said statement was interrogatory in nature and there is no sign of any officer of the Jail Authority and therefore, the said purported statement dated 31.01.2016 cannot be said to be a reiteration of the previous statement while at Judicial Custody and thereby making the statement dated 13.01.2016 as relevant for the purpose of the sustainability of the allegation. In fact, on further perusal of the said interrogatory statement dated 31.01.2016, it would be evident that at the last page i.e. page 71 of the Appeal Memorandum, although the investigating officer has signed it as 31.01.2016, the appellant has signed it as 03.04.2016 which was a proceeding under Section 108 for recording of statements after

the appellant was enlarged on bail on 09.02.2016.

(ii) Reference is also drawn by them to the seizure memo/inventory of goods/seizure list dated 13.1.2016 as whereof, it would be evident to note that though the interception was at 16:00 hrs. near Payel Cinema Hall, Sevok Road, Siliguri, the place of seizure was at the DRI Office on the same day at 21:30 hrs. which is after five and half hours from the time of interception and in fact, this creates a serious doubt about the authenticity and truthfulness and claim of the Department that at all there was any recovery of gold as alleged and therefore, on such basis, the cross-examination of the seizure witness were prayed for which was not granted or even dealt with by the Ld. Adjudicating Authority while passing the impugned Order. As such, it is submitted that when the recovery and seizure itself was doubted, penalty could not have been imposed upon the appellant without any corroborative evidence. Except the purported statements dated 13.01.2016 and 31.01.2016, there is no other evidence that can even create any iota of belief that the appellant was involved in dealing with the goods in question in the present case. Denial of cross-examination is another aspect that vitiates the entire proceeding and such denial on the part of the Ld. Adjudicating Authority creates further doubt about the nature of investigation that has been carried on against the appellant. The appellant relies upon the following decisions in this regard:

- 2019 (366) ELT 280 (Cal.) - Sampad Narayan Mukherjee -Vs- Union of India
- 2023 (386) ELT 333 (Cal.) - Ajay Saraogi -Vs- Union of India
- 2015 (324) ELT 641 (S.C.) - Andaman Timber Industries -Vs- Commissioner of Central Excise. Kolkata-II

(iii)With regard to the confiscation of the Indian currency of Rs. 30,00,000/-, it is submitted that throughout the entire proceeding, the Department has failed to adduce any single evidence that there was any sale of goods, that too of smuggled goods the buyer and the seller has been identified and that the link between the buyer and the seller has been established and that lastly the buyer and the seller had the prior knowledge or reason to believe that the transactions entered into were in relation to goods of smuggled origin and therefore, the Indian currency so confiscated by the Ld. Adjudicating Authority is also required to be quashed and the same is required to be released in favour of the appellant. Reliance is placed on the following decisions:

- 1992 (60) ELT 277 (Tri.) - Ram Chandra-Vs- Collector of Customs
- 2004 (175) ELT 441 (Tri.-Del.) - Pradeep Mahajan -Vs- Commissioner of Customs, New Delhi
- 2009 (245) ELT 820 (Tri.-Kol.) - Jugal Kishore Sadani -Vs- Commissioner of Customs (Prev.), WB

(iv)With regard to imposition of penalty under Section 112(a)(i) and 112(b)(ii), it would be evident that the Ld. Adjudicating Authority could

not specifically come to the conclusion about the role of the appellant and hence, in the absence of any evidence more particularly the non-voluntariness of the purported statements and the denial of cross-examination, the imposition of penalty in connection with the purported allegations cannot be sustainable in the eye of law. The Department has miserably failed to establish the action on the part of the appellant or his prior knowledge about the confiscability of the seized goods and as stated hereinabove the investigation altogether creates serious doubts about the nature of investigation. Hence, without any evidence to the contrary, the penalty so imposed is required to be set aside and quashed.

8.1. The appellant nos. 2 and 3, namely, Shri Binod Kumar Sah and Shri Samir Sah respectively, have also made various submissions in their favour, which are as under: -

(i)The appellant no. 2 was apprehended on 13.01.2016 by DRI, Siliguri near Payel Cinema, Siliguri while he was travelling in his private car being Maruti Alto bearing Registration No. WB-74G-6012 with his driver viz. Suleiman Haque. On interception, the first appellant was found to be in possession of cash INR amounting to Rs.48,00,000/-. He was taken to the office of DRI at Siliguri along with his car and was informed that he is implicated in a Seizure Case dated 13.1.2016 wherein there was seizure of 3 kgs. of gold from Birendra Kumar Gupta and Amod Kumar Shah since according to

apprehended Birendra Kumar Gupta, the appellant no.2 was supposed to take delivery of 2 kg. gold from him on behalf of the appellant no. 3 i.e. son of the appellant no. 2.

(ii) In statement dated 13.01.2016, the appellant no. 2 had duly stated before DRI that he has got no connection with alleged recovery of gold from Birendra Kumar Gupta or Amod Kumar Shah and he came to Siliguri to visit his daughter at her matrimonial house at Khalpara, Siliguri and after visiting her, he was heading to purchase some jewellery for his wife for which he was carrying cash of Rs.48,00,000/- with him. The appellant no. 2 was put to arrest and subsequent statement dated 19.1.2016 was recorded at Siliguri Special Correctional Home when he maintained his statement dated 13.1.2016. Again statement dated 4.2.2016 was recorded from the said appellant when also nothing adverse came. The appellant no. 2 had submitted Bank Statements and Income Tax Returns, as called for.

(iii) Apart from initial statement dated 13.1.2016 of apprehended Birendra Kumar Gupta, there is nothing on-record to implicate the appellants herein with the instant case. The Appellants duly prayed for opportunity of cross-examination of said Birendra Kumar Gupta and Amod Kumar Shah, which was neither allowed nor rejected by the Ld. Adjudicating Authority. It is submitted that such statement of co-accused cannot be sole basis of imposition of penalty upon these appellants and/or confiscation of cash in INR or private car of the appellant no. 2 since no opportunity of cross-examination was allowed in

favour of the appellants. Reliance is placed upon the following decisions in this regard:

- *Commr. of Cus., Airport & Admn., Kol v. Himadri Chakraborty* [2023 (386) ELT 418 (Cal.)]
- *Ajay Saraogi Union of India* [2023 (386) ELT 333 (Cal.)]

(iv) It is submitted that the finding with respect to the cash INR seized from the appellant no. 2 is that the same would have been used for the purpose of purchase of 2 kgs. of gold from the said Birendra Kumar Gupta. As such, admittedly, the said cash of the appellant no. 2 was not obtained by way of sale of any smuggled goods, which is pre-requisite condition for invocation of Section 121 of the Customs Act, 1962. Intention to use such cash after getting delivery of alleged smuggled goods, which were never received or obtained by the appellant no. 2, cannot be reason for invocation of Section 121 *ibid*. Hence, order of confiscation of said cash INR amounting to Rs.48,00,000/- under Section 121 *ibid* is seriously bad in law and is liable to be quashed. Reliance is placed upon the following decisions in this regard:

- *J. Shivakumar v. ADG of Revenue Intelligence, Chennai* [2015 (316) ELT 382 (Mad)]
- *Sudesh Kumar Mittoo v. Collector of Cus. & C.Ex., Jaipur* [2001 (136) ELT 100 (Tri.-Del.)]
- *Commr. of Customs, Patna v. Lalit Krishna Agrawal* [2022 (382) ELT 206 (Bom.)]
- *Ramchandra v. Collector of Customs* [1992 (60) ELT 277 (Tri.)]
- *Samir Saha v. Commr. of Cus. (Prev.), Shillong* [2020 (371) ELT 189 (Meghalaya)]

(v) At the time of interception, the first appellant was travelling in his private car being Maruti Alto and on search, nothing incrimination was found from the said car. In the present case, the private Maruti Alto car of the appellant no. 2 cannot be held liable for confiscation under Section 115 ibid since it is not the case of DRI that any smuggled goods was being transported through the said Maruti Alto car. Hence, the order of confiscation of said Maruti Alto car and imposition of redemption fine in lieu of the same, is liable to be set aside and quashed with consequential relief in favour of the appellant.

(vi) The finding against these appellants is that the appellant no. 2, on behalf of the appellant no. 3, had gone to take delivery of the smuggled gold from Birendra Kumar Gupta and Amod Kumar Shah. In other words, these appellants have been charged as intended buyers of the gold or part of the same as was seized from the possession of Birendra Kumar Gupta and Amod Kumar Shah. It is submitted that under Section 112 of the Customs Act, 1962, penalty is only imposable upon the person who has done or omitted to do any act which rendered the goods liable for confiscation under Section 111 ibid or who, with prior knowledge or reason to believe about such confiscable nature of the goods, has dealt with the same in any manner whatsoever. Intention to buy cannot be considered as dealing with the goods since admittedly, the goods never reached the appellants. Hence, even assuming, though not admitting, that the allegation of DRI is correct, the same does not render the present appellants i.e. intended

buyers for any penal consequence under Section 112 of the Customs Act, 1962. Hence, penalties so imposed upon the appellants under Section 112 ibid are liable to be set aside and quashed with consequential relief in favour of the appellants. In this regard reliance is placed upon the following: -

- *Final Order No. 75104/2025 dated 23.01.2025 passed by CESTAT, Kolkata in Customs Appeal No. 76205 of 2017 [Shri Gagan Karel v. Commr. of Cus. (Prev.), Kolkata]*

(vii) Accordingly, it is prayed that the order (i) imposing penalties upon the present appellants under Section 112 of the Customs Act, 1962; (ii) confiscating Maruti Alto car bearing Registration No. WB-74G-6012 under Section 115(2) of the Customs Act, 1962 and imposing redemption fine of Rs.37,000/- in lieu of such confiscation; and, (iii) confiscating cash INR amounting to Rs.48,00,000/- of the appellant no. 2 under Section 121 of the Customs Act, 1962, should be set aside and quashed with consequential relief in favour of the appellants.

9. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order. He submits that the appellants were not having any documents to indicate licit purchase of the gold in question and thus, the said gold has been rightly ordered to be confiscated by the ld. adjudicating authority vide the impugned order.

9.1. Regarding the Indian currency seized from the appellant nos. 1 and 2, it is the submission of the Ld. Authorized Representative of the Revenue that the appellants were habitually involved in the offence of smuggling of gold and therefore the Indian currency in question were the sale proceeds of gold which had been illegally brought in on earlier occasions. It is also his submission that the said vehicle, which was involved in the illegal smuggling activities of the appellant, is also liable for confiscation. Hence, he contends that the Indian currency and the said vehicle used in the smuggling activity have been rightly confiscated.

9.2. In support of his contentions, the Ld. Authorized Representative of the Revenue has placed reliance on various judgements, which are as follows: -

- a. Commr. of Customs (Prev.) Vs Rajendra Damani @ Raju Damani [2024 (5) TMI 730 CUSTA No. 16 of 2023--CALCUTTA HIGH COURT]*
- b. Commissioner of Customs (Export) Vs. Shri Ashwini Kumar alias Amanullah [CUS AA 37/2021 & CM APPL. 34847/2023- HIGH COURT OF DELHI]*
- c. Nidhi Kapoor & Others vs. Principal Commissioner and Addl. Secy. to GOI & Ors. [WP(C) 8902/2021,9561/2021, WP(C) 13131/2022, CM APPL. 11400/2023, WP(C) 531/2022, CM APPL 1519/2022 and W.P.(C) 8083/2023,CM APPL 31146/2023-HIGH COURT OF DELHI]*
- d. Commr. of Customs (Prev.), NCH, NEW DELHI Versus Suresh Bhosle [2024 (388) E.E.T. 90-*

CESTAT NEW DELHI-C.A.Nos. C/50934 with 51257 & 51737/2018 (DB)]

- e. Shankar Lal Goyal Vs. Commissioner of Customs, New Delhi [2023 (12) TMI 1156-CESTAT NEW DELHI-CA-50070 of 2020, F.O. No. 51685/2023]*
- f. Kashi Kumar Aggarwal vs. Commissioner of Customs (Prev.) New Delhi [C.A. No. 50536 of 2022, F.O. No. 50387/2023 CESTAT, NEW DELHI]*
- g. Sunny Kakkar vs. Principal Commissioner of Customs (Prev.), New Delhi [C.A. No. 52094 of 2018, F.O. No. 50108/2023---CESTAT, NEW DELHI]*
- h. Deepak Handa vs. Principal Commissioner of Customs (Prev.), New Delhi & Ravi Handa vs. Principal Commissioner of Customs (Prev.), New Delhi [C.A. No. 52922 of 2019 & 52923 of 2019, F.O. No. 51520-21/2021- CESTAT, PRINCIPAL BENCH, NEW DELHI]*
- i. Ashish Kumar Dutta, Goutam Saha, Ranjit Das & Partha Ranjan Saha vs. Commissioner of Customs (Prev.), Kolkata [C.A. No. 75118,75119,75120 &75121 of 2016, F.O. No. 77715-77718/2024- CESTAT REGIONAL BENCH, KOLKATA]*

10. Heard both sides and perused the appeal records.

11. It is a fact on record that, 3 kgs. of gold were seized from the possession of Shri Birendra Kumar Gupta, appellant no. 1 in this case, on 13.01.2016 by the Officers of the DRI at Siliguri. The appellant no. 1, along with the appellant no. 4, viz. Shri Amod Kumar Shah, were not having any valid documents to show licit procurement of the said gold and hence, the said gold was seized by the DRI Officers. The appellant no. 1 was also found to be in possession of Indian currency amounting to Rs.30,00,000/-, which was also seized. By his statement dated 13.01.2016, the appellant no. 1 has named one Shri Samir Sah, the appellant no. 3, to be the intended purchaser of the said gold, who had purportedly sent his father, Shri Binod Kumar Sah, the appellant no. 2, to receive the said gold on his behalf from the appellant no. 1, for a sum of Rs.48,00,000/-, which was recovered from the vehicle of the appellant no. 2 on 13.01.2016 after interception by the DRI Officers. The said Indian currency and vehicle recovered from the appellant no. 2 have also been seized.

12. We find that the appellants herein are not contesting the confiscation of the gold in question. By way of these appeals, the appellants are only contesting the imposition of penalties on them as well as the confiscation of the Indian currency seized from them, apart from the confiscation of the Vehicle bearing Registration No. WB-74G-6012.

13. Regarding the seizure and confiscation of Indian currency amounting to Rs.30,00,000/- seized from the appellant no. 1, we observe that the Department has alleged the said currency to be the sale proceeds of gold smuggled in on previous occasions. However, we do not find any evidence brought in by the Department to this extent to establish the allegation

that the appellants had brought in gold on previous occasions or that the said Indian currency was in generated through sale of such gold smuggled in earlier.

13.1. On the other hand, we find that the appellant no. 1 has claimed that the said Indian currency was financial capital for his business. Even though the appellant could not produce any evidence in respect of keeping the said Indian currency as their financial capital, we do not find any reason confiscate the currency as sale proceeds of smuggled gold brought in on earlier occasions.

13.2. We observe that the Department has failed to adduce any single evidence to establish that there was any sale of gold, that too of smuggled gold, brought on earlier occasions, or that the Indian currency of Rs.30,00,000/- seized were the sale proceeds. It is also observed that in this case, that the buyer and the seller of the gold on earlier occasions were not identified. Under these circumstances, we are of the opinion that the order of confiscation of the said Indian currency passed by the Id. adjudicating authority is liable to be quashed and the same is required to be released in favour of the appellant.

13.3. We find that the same view has been taken by the Tribunal, Delhi in the case of *Pradeep Mahajan v. Commissioner of Customs, New Delhi [2004 (175) E.L.T. 441 (Tri.-Del.)]*. Relevant portion of the said decision is reproduced below:

"9. Apart from this, there is no evidence excepting the bald retracted alleged confessional statement of the appellant that the Indian currency recovered from his Esteem car was the sale proceeds of 139 smuggled gold biscuits given to him by Puran Singh for sale to one Raja. According to the Department

the appellant in his alleged confessional statement, had admitted that 139 gold biscuits were given to him by Puran Singh on 3-9-97, for delivery to Raja and in lieu thereof the payment in Indian and foreign currency was given to him by Raja, to be delivered to Puran Singh as price of those biscuits. But Puran Singh has at no stage admitted of having given any gold biscuits to the appellant. Even his statement was not recorded. His two wives named above whose statements were recorded had shown their ignorance about these facts. Puran Singh's Counsel appeared during the adjudication proceedings before the adjudicating authority and sought cross-examination of the appellant which was allowed and in that cross-examination, he has sought to prove that Puran Singh had no such dealing with the appellant. At no stage, the adjudicating authority directed the Counsel to produce Puran Singh for recording his statement to ascertain the true facts.

10. Similarly, Raja to whom the appellant is alleged to have sold the smuggled gold biscuits and obtained the sale proceeds in Indian and foreign currency for delivery to Puran Singh, had not been examined during the investigation or adjudication proceedings. The Department has not even been able to trace him. The appellant has been booked and penalised for having worked as a courier between Puran Singh and Raja for the sale of the smuggled gold biscuits. But in the light of the above referred facts and circumstances, it could not be done for want of any tangible evidence to prove the same.

11. The alleged confessional statement could not be made the sole basis for penalising the appellant under Section 112(b) of the Customs Act. He retracted the confessional statement firstly through telegram dated 10-9-97 followed by a detailed application dated 17-9-97 before the ACMM by alleging that the same had been procured under duress and coercion from him. Even otherwise there is also no evidence on the record to corroborate his statement as observed above. Neither Puran Singh on whose behest he allegedly sold 139 biscuits to Raja had been examined, nor Raja to whom the gold biscuits were sold, had been questioned in that regard. There is no other evidence to corroborate these facts. The appellant had denied recovery of the foreign currency from his car and no evidence has been collected to prove that it was actually recovered from his car and was the sale proceeds of

the smuggled gold biscuits. The panchnama regarding this recovery was not prepared at the spot. It was rather prepared at the DRI office which was situated at a long distance from the place of his interception and both the witnesses of the panchnama named above had not come forward to prove the recovery of the foreign currency from the car of the appellant.

12. Similarly, from the recovery of one gold biscuit from the Maruti car parked at the residence of the appellant and of Rs. 90,000/- from his house, no inference could be drawn that the gold biscuit recovered was smuggled one and the currency recovered was the sale proceeds of the gold biscuits. The panchnama regarding this recovery was no doubt got attested from the wife of the appellant besides two witnesses namely Sharad Malhotra and Ms. Mala Sameer Khatri, but both these witnesses have not come forward to state that Anita Mahajan, wife of the appellant admitted that the money recovered from the house was the sale proceeds of the smuggled gold biscuits and that the gold biscuit seized from the car was also smuggled one. No statutory presumption in that regard also could be drawn.

13. In Ramchandra case (supra) referred by the Counsel, it has been ruled that for establishing the violation of Section 121, the ingredients required to be satisfied are : (i) there must be a sales, (ii) the sale must be of smuggled goods; (iii) sale must be by a person having knowledge or reason to believe that the goods were of smuggled origin; (iv) seller and the purchaser and the quantity of the gold must be established by the Customs authorities. None of these conditions in the instant case in the face of the evidence and circumstances detailed above, stands satisfied for holding that the Indian currency recovered from the Esteem car of the appellant as well as from his house along with one gold biscuit which was kept in a red pouch lying under the driver's seat of Maruti Car parked at the residence, were the sale proceeds of the smuggled gold and that the gold biscuit recovered was also smuggled one. Moreover, regarding recovery of Indian currency of Rs. 90,000/- from the residence of the appellant, his father-in-law, Babu Ram Mahajan had given an affidavit before the adjudicating authority that this amount was withdrawn by him on 7-8-97 from his account No. 015/01/29660 from the

Chartered Bank, Amritsar and that he gave the same to his daughter Anita (wife of the appellant) to make purchases for the marriage of her cousin. There is no evidence on the record to suggest that the contents of his affidavit were found to be untrue after making enquiry from the said Bank and as such could not be brushed aside. No inference from the mere talks between the appellant and Puran Singh on the mobile, as mentioned in the order-in-original on various occasions, could be drawn that the money recovered from the appellant from his car as well as from his residence along with one gold biscuit, were the sale proceeds of the smuggled gold biscuits. This was rather required to be proved by the Department by adducing cogent, convincing and tangible evidence, but had failed to do so. The ingredients laid down in Ramchandra case (supra) for proving the violation of Section 121 of the Customs Act, do not at all stand proved. Similarly no presumption that the one gold biscuit recovered from the car of the appellant parked at his residence was smuggled one could be drawn under the law.

14. In view of the discussion made above, the impugned order against the appellant, regarding confiscation of the entire Indian currency seized from his car as well as residence, one gold biscuit and his two cars (Maruti Esteem and Maruti 800) as detailed therein and the imposition of penalty on him cannot be sustained and as such, the same is set aside. The appeal of the appellant accordingly stands allowed with consequential relief, if any, permissible under the law."

13.4. A similar view has also been held in the case of *J. Shivakumar v. ADG of Revenue Intelligence, Chennai [2015 (316) E.L.T. 382 (Mad)]*.

13.5. As there is no evidence available on record to establish that the said Indian currency were sale proceeds of smuggled gold, we hold that the Indian currency amounting to Rs.30,00,000/- is not liable for confiscation. Accordingly, we order release of the said Indian currency to the appellant.

14. Regarding the seizure and confiscation of Rs.48,00,000/- seized from the appellant no. 2, we find that the allegation of the Department is that the said currency were sale proceeds of smuggled gold on earlier occasions. In this regard, we observe that no gold has been seized from the possession of either Shri Binod Kumar Sah (appellant no. 2) or Shri Samir Sah (appellant no. 3). Also, there is no evidence available on record to establish that any gold smuggled in by the above appellants were sold earlier. On the same time, we observe that the adjudicating authority has given the finding in the impugned order that the cash INR seized from the appellant no. 2 would have been used for the purpose of purchase of 2 kgs. of gold from the said Birendra Kumar Gupta. Thus, we observe that there is no consistency in the findings in the impugned order with respect to the source and usage of the Indian Currency. On the one hand it has been alleged that the said money pertains to sale proceeds of gold smuggled in on earlier occasions, but on the other hand it is claimed that the said money has been brought in for purchase of 2 kgs of gold from Shri Birendra Kumar Gupta. In this case, it is a fact that there is no evidence available on record to establish that the said cash recovered from appellant no. 2 was obtained by way of sale of any smuggled goods. Evidence to indicate that the cash recovered were sale proceeds of smuggled gold is a pre-requisite condition for invocation of Section 121 of the Customs Act, 1962. The intention to use such cash for purchase of the gold, which never happened, cannot be a reason for invocation of Section 121 and seize the Indian Currency. Hence, we find the said cash, in INR, amounting to Rs.48,00,000/- is not liable for confiscation under Section 121 *ibid*.

14.1. In support of this view, we rely upon the decision in the case of *Ramchandra v. Collector of Customs* [1992 (60) E.L.T. 277 (Tri.)], wherein the Tribunal has held that the Indian Currency recovered, under similar circumstances, are not liable for confiscation. The relevant observations of the Tribunal in the aforesaid case read as under: -

"4. At the outset it is pertinent to note that no gold was seized either from the appellant or Shri Satram Das or Shri Bhaghu Sindhi. Therefore, it is not understood as to how the currency seized from the appellant can be said to represent the sale proceeds of smuggled gold. The appellant was produced before the Chief Judicial Magistrate, Economic Affairs, Jaipur on 12-1-1987. On 10-1-1987 itself a telegram was sent to the Assistant Collector of Customs, Udaipur by the son of the appellant wherein he had stated that his father was forcibly taken to the Customs Office. Another telegram was sent on 11-1-1987 to the same effect, as the appellant was not released by them. After release on 15-1-1987 the appellant got himself examined by a Government Doctor who furnished a certificate certifying the presence of injuries like bruises on the right upper lip, left wrist and swellings and dislocation of tooth. The Doctor has certified that one of the injuries is of a grievous nature. On 20-1-1987 the appellant wrote to the Assistant Collector retracting his statement of 10-1-1987. None of this has been discussed in the impugned order which merely brushes aside the defence of the appellant for the reason that he did not complain of forcible detention and extorted statement at the earliest opportunity viz. when he was produced before the Magistrate by the Customs Officers. In addition the opportunity to cross-examine Shri Satram Das and Shri Bhaghu Sindhi and the panch witnesses has been denied to the appellant.

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."

14.2. Accordingly, by relying on the decisions cited supra, we hold that the said Indian currency of Rs.48,00,000/- is not liable for confiscation and hence, we set aside the order for confiscation and order for release of the said Indian currency to the appellant.

15. With regard to imposition of penalties on the appellant nos. 1 and 4, Shri Birendra Kumar Gupta and Shri Amod Kumar Sah, we find that gold bearing foreign marking has been seized from their possession. It is a fact that they were not having any valid documents for carrying the said gold legally. As per Section 123 of the Customs Act, 1962, the responsibility is cast on the person who is found to be in possession of such gold to provide evidence as to

legal purchase of the gold. In this case, the appellant nos. 1 and 4 have failed to produce any documents for the legal purchase of the said gold. Hence, we find that the penalties have been rightly imposed on these appellants in the impugned order. Consequently, we do not find any case being made out for our interference in this regard. The penalties imposed on the appellant nos. 1 and 4 under Sections 112(a)(i) and 112(b)(ii) of the Customs Act, 1962 are, therefore, upheld.

16. Regarding the penalties imposed on the appellant nos. 2 and 3, namely, Shri Binod Kumar Sah and Shri Samir Sah, we observe that these appellants have not committed any offence in connection with the smuggling of the said gold. It is a fact that no gold has been seized from the appellant nos. 2 and 3 in this case. The Indian currency seized from these appellants has been claimed to be their trade capital and there is no evidence brought on record by the Revenue to establish that the said currency was the sale proceeds of gold smuggled into the country on earlier occasions. Therefore, we hold that the penalties imposed on the appellant nos. 2 and 3 are not sustainable and accordingly, we set aside the penalties imposed on them.

16.1. In this regard, we find it relevant to refer to the decision rendered by this Tribunal in the case of *Shri Gagan Karel v. Commr. of Cus. (Prev.), Kolkata* [Final Order No. 75104/2025 dated 23.01.2025 passed by CESTAT, Kolkata in Customs Appeal No. 76205 of 2017], wherein it was observed as under: -

"7. We have gone through the findings recorded by the Id. adjudicating authority in the impugned order regarding the role played by the Appellant in the alleged offence. From the findings of the Id. adjudicating authority, we observe that except the

statements of Shri Pawan Prasad and Smt. Monika Yadav, there is no other corroborative evidence to establish the role of the Appellant in the alleged offence.

8. *Section 112 of the Customs Act, 1962, which deals with penalty for improper importation of goods, is reproduced below:-*

"SECTION 112. Penalty for improper importation of goods, etc. — Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [not exceeding the

difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest."

8.1. From the Section 112 of the Customs Act, 1962 reproduced above, we observe that penalty can be imposed under this section only when a person commits an act which renders the goods liable for confiscation. In the present case, we observe that the gold recovered from Shri Pawan Prasad and Smt. Monika Yadav has been ordered to be confiscated under Section 111 of the Customs Act vide the impugned order dated 31.03.2017 and penalty has been imposed on them for the role played by them in the offence. There is no other evidence available on record to implicate the appellant in the alleged offence. Thus, in the present case, we observe that the elements as mentioned in Section 112 of the Act are not available to impose penalty on the appellant. Hence, we hold the provisions of Section 112(a) and 112(b) cannot be invoked to impose penalty on the appellant. Consequently, we hold that the penalty imposed on the Appellant by invoking the provisions of Section 112(a) and (b) of the Act is not sustainable and hence we set aside the same."

17. We have also examined the various decisions which have been referred to by the Ld. Authorized Representative of the Revenue in support of his contention that penalties are imposable on the appellants. In the instant case, Shri Birendra Kumar Gupta (appellant no. 1) and Shri Amod Kumar Shah (appellant no. 4) have been found to be involved in the smuggling of gold in this case as they were unable to furnish any valid documents for licit procurement of the same. Accordingly, the penalties imposed on

these appellants have been found to be justified and thus upheld, as already observed by us in the preceding paragraphs. However, there is no evidence available on record in respect of the other two appellants (i.e., the appellant nos. 2 and 3) to the extent that they were in any way concerned with the smuggling of the gold in question. Accordingly, we find that the case-law relied upon by the Revenue are not relevant to the case of these appellants from whom no gold has been seized and against whom no evidence has been brought on record to establish their involvement in the smuggling of gold.

17.1. Regarding the seizure of Indian currencies in this case, it is seen that there is no evidence available on record to establish that the said Indian currencies were the sale proceeds of smuggled gold and hence, we find that the case-law relied upon by the Department in support of confiscation of the Indian currencies are not relevant to the facts of the present case.

18. Regarding the confiscation of the seized vehicle i.e., "Maruti Alto" car bearing Registration No. WB-74G-6012, we find that the said vehicle has been confiscated under Section 115(2) of the Customs Act, 1962, with an option for redemption of the same on payment of redemption fine of Rs.37,000/- in lieu of such confiscation, vide the impugned order. As there is no evidence regarding the usage of the said vehicle in relation to any smuggling activities, we hold that the confiscation of the said "Maruti Alto" car is not warranted. Accordingly, we set aside the confiscation of the said "Maruti Alto" car. Consequently, the imposition of redemption fine of Rs.37,000/- in lieu of such confiscation is also set aside.

19. In view of the above discussion, we pass the following order: -

- (1) The order of confiscation of Indian currency amounting to Rs.30,00,000/- under Section 121 of the Customs Act, 1962 is set aside, and the same is ordered to be released to the appellant no. 1.
- (2) The order of confiscation of Indian currency amounting to Rs.48,00,000/- under Section 121 of the Customs Act, 1962 is set aside, and the same is ordered to be released to the appellant no. 2.
- (3) The penalties imposed on the appellant nos. 1 and 4 under Sections 112(a)(i) and 112(b)(ii) of the Act are upheld.
- (4) The penalties imposed on the appellant nos. 2 and 3 under Sections 112(a)(i) and 112(b)(ii) of the Act are set aside.
- (5) The confiscation of the "Maruti Alto" Vehicle bearing Registration No. WB-74G-6012 is set aside. Consequently, the imposition of redemption fine of Rs.37,000/- in lieu of such confiscation is also set aside.

20. The appeals are thus disposed of in the above manner.

(Order pronounced in the open court on **08.07.2025**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)