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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75814 of 2017

(Arising out of Order-in-Original No.37/CUS/CC(P)/WB/2016 dated 31.01.2017 passed by Commissioner of Customs (Prev.), West Bengal, Kolkata.)

Shri Vishal Kumar Trivedi
(S/o-Shri Jayanti Lal, Godapaluta, Western Road, Sitala Mata Chowk, Dist.-Jalor, Rajasthan-307030.)

...Appellant

VERSUS

Commissioner of Customs (Prev.), West Bengal, Kolkata
.....Respondent
(15/1, Strand Road, Custom House, Kolkata-700001.)

WITH

Customs Appeal No.75815 of 2017

(Arising out of Order-in-Original No.37/CUS/CC(P)/WB/2016 dated 31.01.2017 passed by Commissioner of Customs (Prev.), West Bengal, Kolkata.)

Shri Kundan Kumar Vyas
(S/o-Shri Labh Shankar Vyas, Vill-Dujana, Tehsil-Sumerpur, Dist.-Pali, Rajasthan.)

...Appellant

VERSUS

Commissioner of Customs (Prev.), West Bengal, Kolkata
.....Respondent
(15/1, Strand Road, Custom House, Kolkata-700001.)

APPEARANCE

Shri Arijit Chakraborty, Advocate for the Appellant (s)
Shri Tariq Suleman, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 75332-75333/2026

DATE OF HEARING : 24.02.2026
DATE OF DECISION : 10.03.2026

Per : RAJEEV TANDON :

The impugned appeals arise out of a common adjudication order No. 37/CUS/CC(P)/WB/2016 dated 31.01.2017 passed by Commissioner of Customs (Prev.), West Bengal, Kolkata. Vide the impugned order the Ld.Commissioner directed absolute confiscation of 90 pieces of seized gold biscuits of foreign origin having total weight of 10,494 gms. valued at Rs.2,77,72,371/-(Rupees Two Crore Seven Seven Lakh Seventy Two Thousand Three Hundred and Seventy One only) under section 111(b) and 111(d) of the Customs Act, 1962 and for which the appellants were not in possession of any document to establish their licit import. The Ld.Commissioner further ordered imposition of a penalty of Rs.30.00 lakh on appellant Shri Vishal Kumar Trivedi and Rs.20.00 lakh on Shri Kundan Kumar Vyas respectively under 112(b) of the Customs Act, 1962.

2. The appellants herein are aggrieved by the imposition of penalty aforesaid upon them.

3. It is submitted by Shri Arijit Chakraborty, Ld.Counsel for the appellants that the two appellants were concerned with the carrying of gold jewellary packets from one shop to another for a petty consideration on per trip basis. That during the course of such working at Nellore in the jewellery market, the two appellants came in contact with Shri Rajesh Bhai who promised them better remuneration and called them over to Kolkata. The said offer was

accepted by the appellant Shri Kundan Kumar Vyas who also brought along with him his friend Shri Vishal Kumar Trivedi.

4. The two appellants herein were apprehended by Customs R & I Branch of the Commissioner of Customs (Preventive), West Bengal, Kolkata Commissionerate on 01.10.2015 and a recovery of 50 pieces of foreign marked gold biscuits from Shri Vishal Kumar Trivedi and 40 pieces of foreign marked gold biscuits from Shri Kundan Kumar Vyas was effected by the Revenue. The Ld.Counsel for the appellants has vehemently submitted that in their very first statements, the two appellants had submitted before the authorities that they were unaware of the contents of the packets seized, which they were carrying under instructions of one Shri Rajesh Bhai. It is thus their case that it was only after interception by the Customs officers and upon examination of the recovered packages, did they actually learn of the contents of the said packages viz. foreign marked gold bars.

5. The authorities carried out further investigations following the lead pertaining to Mobile No.8807272019 said to be of Shri Rajesh Bhai obtained from the two appellants herein. Investigations revealed that the said number was registered in the name of one Shri Palani of Coimbatore, though the Aadhar Card and other KYC documents were actually found to be in the name of one Shri Ashok Ghosh of Shanmugam Road, Coimbatore, which got cancelled in 2012. The records do not indicate any further enquiry/verification/investigation into the matter with respect to Shri Rajesh Bhai or their accomplices with regard to the source of procurement of gold. We also note that

apart from the initial voluntary statement recorded by the authorities from the two appellants on 01.10.2015, there appears to be no indication of further statements having been recorded by the authorities, except for the fact that when on 08.03.2016 the appellant Shri Kundan Kumar Vyas was asked to identify the telephone number of Shri Rajesh Bhai, he reiterated that he knew the number of Shri Rajesh Bhai as 8807272019. We note from the pleadings of the Ld.Counsel that there specific case is that the appellants had no knowledge about the contents of the packets given to them by Shri Rajesh Bhai and it was only after they were interdicted and the packets were opened by the authorities that they became aware of the contents thereof. The Ld.Counsel has therefore argued that in the absence of prior knowledge and/or reason to believe that the goods being carried by them were liable to confiscation under the provisions of the Customs Act, the penalty imposed upon them under section 112(b) cannot be sustained. He therefore prays for setting aside of the same.

6. The Ld.AR for the department, on the contrary submits that the appellants were actively involved in the smuggling of foreign marked gold, that they had come to Kolkata from Nellore only for the said purpose of carrying out smuggling of gold, that it is apparent that the appellants had full knowledge about the contents of the packages that they were in possession of and had personally collected under instruction of one 'Shri Rajesh Bhai", who was no more than an illusory/concocted non-existent person, whose whereabouts were unknown. He lays stress that it is more so, as the two accused have

admitted to have been well acquainted with him (Shri Rajesh Bhai) and it was only at his behest that the two accused were said to come over to Kolkata to carry out illicit trading of foreign marked bullion gold. Despite having said to have met Rajesh Bhai at Nellore, the appellants were not able to furnish any existential details of the said person.

7. It is further added by Revenue that the facts that Shri Rajesh Bhai's whereabouts could not be ascertained and the said Mobile No. 8807272019 said to be of Shir Rajesh Bhai was not so registered and was registered in the name of Palani of Coimbaore despite KYC documents being in some other person's name, are a clear pointer to the fact that the appellants were organized smugglers and had themselves actively involved in the smuggling of the said 10,494 gms. of gold. The ld.AR further contends that the fact that the case was made on the basis of specific intelligence and that despite the appellant's contention that the accused appellants claimed to have stayed at Sinthimore area, their location could not be ascertained.

8. We note that though the appellants had contended that they were accompanied to Kolkata by Shri Rajesh Bhai and that on 30.09.2015 they reached Howrah Station, from where Shri Rajesh Bhai had taken them to Sinthimore area on taxi. It defies logic as to how Shri Rajesh Bhai, so well known while at Nellore, was completely an illusive character at Kolkata, in the story so made out. Moreover, despite stating that the four packets of the seized gold were handed over to them at Ram mandir on 01.10.2015 by a person of Shri Rajesh Bhai, to which spot Shri Rajesh Bhai had only brought them, the Revenue

officers failed to identify any such person, nor could the accused furnish any details of the person(s) concerned. The chain of events therefore clearly suggest that the seized gold belonged to none else but the two accused-appellants themselves, who only as a cover up came up with the fictional character Rajesh Bhai and that there was no such actual person by name Shri Rajesh Bhai. Therefore the Revenue's contention that it cannot be held that the appellants had no prior knowledge about the contents of the packages, is very logical and sound. The goods being offending in nature were hence liable for confiscation under the provisions of the Customs Act.

9. Section 112(b) of the Customs Act warrants imposition of penalty on a person -

> *"(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,………."*

10. The reason to believe is therefore an essential ingredient for imposition of penalty under section 112(b) of the statute. In view of the large gaps in the narration so built around by the accused in the matter; the alleged fact that the accused had no knowledge about the contents of their high value packages that they were carrying and which were found to be in their possession, it cannot be accepted that the accused had no prior knowledge of the subject matter. The fact that no other ingredient of the version as put out by the two accused could be corroborated or verified and confirmed inevitably leads to the

premise of it being a made up story. The fact that the telephone number indicated to be of Shri Rajesh Bhai, was found to be registered in the name of Shri Ashok Ghosh of Shanmugam Road, Coimbatore, that the residential address at Nellore, where they were found to have lived 4-5 years earlier, that of meeting Shri Rajesh Bhai at Rammandir on 01.10.2015, that of being brought to Rammandir by Shri Rajesh Bhai and the delivery of gold being made over to them by one Shri Vyas, an employee of Shri Rajesh Bhai – with no element of the said narration including identity of S/Sri Vyas or Rajesh Bhai could actually be located or found out and such other statements given by the two accused, clearly suggest a concoction of a fancy version to save their own skin.

11. It is for this very reason that the two accused very willingly tendered their No Objection to the authorities for seizure of the foreign marked gold from their possession. It is not necessary that prior knowledge could only be established by way of a self-inculpating statement to the effect. It is obvious that the circumstantial evidence and attendant circumstances could also lead to the inference of the existence of prior knowledge. A logical question that arises in the matter is that when the gold as allegedly is stated to not to belong to the two accused, how forthcomingly they consented and gave their No Objection to the seizure of the gold recovered from their possession, without even for a moment suggesting to seek consent/direction of the alleged owner. The accused in order to mislead the authorities

deliberately indicated a Mobile Number that did not belong to the illusive Shri Rajesh Bhai.

12. We therefore find no substantiation in the arguments of the appellants. However, considering the fact that the authorities have absolutely confiscated the seized gold and the appellants have also undergone imprisonment for about two weeks and are currently facing prosecution under the Customs Act, in an appropriate Court, we feel that the ends of justice would be met if the penalty imposed is reduced to Rs.3.00 lakh (Rupees Three lakh only) and Rs.2.00 lakh (Rupees Two lakh only) on Shri Vishal Kumar Trivedi andShri Kundan Kumar Vyas respectively.

13. We order so accordingly.

(Order pronounced in the open court on 10.03.2026.)

Sd/

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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