IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 2
Customs Appeal No. 75302 of 2026

(Arising out of Order-in-Appeal No.KOL/(CUS(CCP)/DC/424/2025 dated 06.10.2025 passed by Commissioner of Customs (Prev.), Kolkata)

Shri Divakar Das, **: Appellant**
Ward No. 1, Village-Mallikpur, P.O-Tetia, P.S.-Balrampur, Dist.-Katihar, Bihar-854317.

VERSUS

Commissioner of Customs(Appeal), **: Respondent**
15/1, Strand Road, Kolkata-700 001.

APPEARANCE:

Shri Rathindra Bandyopadhyay, Advocate Ms. Sukanya Roy, Consultant & Ms. Rupsha Chatterjee, Advocate for the Appellant

Shri T.Sulaiman, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 75725/ 2026

DATE OF HEARING :22.05 .2026

DATE OF DECISION: 22.05.2026

Order : [Per Shri R.Muralidhar]

The appellant was apprehended at Jalpaiguri Railway Station, on a specific information and was found to be carrying one piece of gold weighing 586 grams. Some more persons were also found to be carrying 16 pcs of gold weighing 1895 grams. Proceedings were initiated against all the persons, which culminated in passing of the Order in Original by the Addl Commissioner. Penalty of Rs.6,00,000 was imposed on the appellant under Section 112 (a)/(b) of the Customs Act 1962. The appellant filed an appeal before the Commissioner (Appeals) which came to be dismissed by him. Being aggrieved, the appellant is before the Tribunal.

2. The Ld. Counsel appearing on behalf of the appellant submits that the Statements were recorded from the appellant by using force and coercion. Even the copy of the Statements were given to the appellant in the language [English], which is not the language known to him. He also raises the point that no foreign markings were found in the seized gold piece of 586 pcs. Hence, he submits that the Revenue officials could not have seized the goods under any suspicion of the same having been smuggled gold of foreign origin. Further, the seizure was effected in Jalpaiguri station, within the normal Indian territory. All these facts show that the appellant was implicated without any proper corroborative evidence. The appellant is a jewellery making artisan and had bought the old jewellery from various customers and had melted the same to one piece of gold weighing 586 grams. The fact that this is not the standard weight of any foreign origin gold as well as the fact that no foreign marking on the seized piece of gold, the entire proceedings are legally not sustainable. He prays that the absolute confiscation of the gold may be set aside as the appellant is the rightful owner of the gold. He also prays that the penalty imposed may be set aside.

3. The Ld. A R appearing on behalf of the Revenue takes me through the proceedings and shows the active involvement of the appellant in the movement of the gold of foreign origin. He points out that the appellant has carried out such activities on multiple occassions. It is also on record that the foreign markings were tampered to remove the logo etc. He

submits that no documentary evidence was to claim that he has purchased the jewellery to convert the same into a 586 grams piece of gold. All the statements given by him clearly show that he was aware that he was dealing with transactions amounting to carrying goods of foreign origin. Therefore, the Ld AR justifies the confiscation and the penalty imposed on the appellant.

4. Heard both the sides and the documents presented before me.

5. I find that on a specific information about the appellant, the Revenue officials reached the Jalpaiguri Station and carried out the verification process. Admittedly, the gold piece of 586 grms was found in the person of the appellant which was voluntarily handed over by him to the authorities. At the time of seizure, he neither produced any proper documents nor could he explain the source of the gold.

6. I have gone through the role the appellant, as discussed by the Adjudicating authority in the Order in Original. The relevant portion is reproduced below:

> *Shri Divakar Das appears to be another key person of the syndicate that is involved in the smuggling of foreign origin gold from Bangladesh to India through unauthorized route across the Indo-Bangladesh border adjacent to Bhogadanga Village in Golakganj , Dist.-Dhubri, Assam. He was caught red handed byt he officers of DRI, Siliguri on 06.06.2023 at New Jalpaiguri Railway Station from Seat No. 2 Coach Number –B 3 of 20505, Dibrugarh-New Delhi Rajdhani Express while he was transporting the impugned one (01) rectangular*

shaped cut piece of gold of foreign origin weighing 586.00 gms from Cooch behar to Dalkhola clandestinely concealing the smuggled gold in the pocket of his trousers.

In this occasion, on 05.06.2023, Monty requested him that he would have to go to Coochbehar for receiving smuggled gold from Biman. As per his instruction, he boarded Uttarbanga Express from Dalkhla Station at about 04.30 hrs on 06.06.2023. He reached New Coochbehar Railway Station at about 09.00 AM and then he called Biman in his mobile who told him to come near Harish Pal Chowpathy for receiving smuggled gold. After reaching Harish Pal Chowpathy he called Biman again, and after a short while Biman came and met him and handed over a packet wrapped with newspaper sheet and told him that it contained one cut piece of smuggled gold weighing about 586 gms. After receiving the smuggled gold from Biman he put the same in one of the pockets of his trousers and immediately came back to New Coochbehar Railway Station for his return journey and eventually boarded 20505 New Delhi Rajasthan Express and sealed in berth no. 2 in Coach Number B-3 of the said train.

Moreover, on scrutiny of the Call Details Record [CDR] of the mobile phone numbers 8167421960 and 7001618167 (purportedly being used by Monty as disclosed by the accused personal during the period from 29.05.2023 to 06.06.2023 and 01.06.2023 to 06.06.2023 respectively it shows that there were several calls exchanged between the mobile phone number of 8972011024 of Shri Divakar Das (recovered and seized from his possession on 06.06.2023) and the mobile phone numbers 8167421960 and 7001618167 of Monty. Likewise on scrutiny, of the Call details Record [CDR] of the mobile phone numbers

8653352166 (purportedly being used by Biman as disclosed by the acused persons) during the period from 25.05.2023 to 06.06.2023 it shows that on 06.06.2023, there were three calls exchanged between the mobile phone number of 8972011024 of Shri Divakar Das (recovered and seized from his possession on 06.06.2023) and the mobile phone number 8653352166 of Biman.

7. It is seen that the appellant at no stage has claimed that the gold piece is as a result of the jewellery melted by him. On the other hand, he has given the details of Monty who was directing him to carry out this activity. The mobile numbers and call records prove the relationship between Monty and the appellant. Even at this stage, the appellant has not brought in any evidence whatsoever towards his purported purchases. No submissions have been made about his financial strength to have purchased Rs.35 lacs worth of gold from the purported sellers of jewellers. On the other hand the statements recorded by him, clearly show that he has been acting as a 'carrier' at the behest of Monty. Hence, I am not inclined to entertain the appellant's prayer to set aside the absolute confiscation. To this extent his appeal fails.

8. Coming to the penalty imposed on the appellant, it is apparent from the factual details discussed above, the appellant is only a 'carrier', who must have taken up this work for the amounts being paid by the masterminds of the entire operation. Considering the fact the gold worth Rs.35 lacs [at the time of seizure] has been absolutely confiscated, I take the view that it would meet ends of justice, if the penalty is modified to Rs.2,00,000/-

9. Accordingly, the penalty is reduced to Rs.2,00,000 which is required to be paid by the appellant, after adjusting the pre-deposit made by him at the appellate levels.

10. Thus the appeal stands allowed partly.

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

(R.MURALIDAHR)
MEMBER (JUDICIAL)

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