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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75685 of 2020

(Arising out of Order-in-Appeal No. KOL/CUS(AIRPORT)/AKR/559/2020 dated 24.08.2020 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Uday Shankar Rai **: Appellant**
S/o. Kedar Nath Rai,
1/A, Sova Ram Bysack Street,
Kolkata – 700 007

VERSUS

Commissioner of Customs (Airport) **: Respondent**
Netaji Subhash Chandra Bose International Airport,
Kolkata – 700 052

APPEARANCE:

Ms. Atika Sumran Ahmed, Advocate,
Shri Debaditya Banerjee, Advocate,
for the Appellant

Shri Tariq Sulaiman, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NO. 75678 / 2026

DATE OF HEARING: 22.05.2026

DATE OF DECISION: 11.06.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The appeal is arising out of the Order-in-Appeal No. KOL/CUS(AIRPORT)/AKR/559/2020 dated 24.08.2020 (hereinafter referred to as the 'impugned order') passed by the Ld. Commissioner of Customs (Appeals), Custom House, 15/1, Strand Road, Kolkata – 700 001, whereby the adjudication Order No. 23/2019 ADC dated 07.03.2019 passed by the Ld. Commissioner of Customs (Airport), Kolkata has been upheld.

2. The facts of the case are that acting on a specific intelligence gathered to the effect that one person by the name of Shri Uday Shankar Rai (hereinafter referred to as the "appellant") who was coming from Guwahati via Indigo Flight No. 6E 208 on 18.01.2016 and would be carrying smuggled gold of foreign origin secreted in his body, the said person, Shri Uday Shankar Rai (appellant), along with one (01) handbag was intercepted near conveyor belt no. 03 at the Domestic Arrival Hall of Netaji Subhash Chandra Bose Airport, Kolkata on 18.01.2016. On search of his body and further interrogation, three (03) bundles collectively weighing around 996.600 grams were found to be kept concealed by the appellant inside his rectum, which were voluntarily ejected by him later. The said three (03) bundles were found to be wrapped with blue coloured carbon paper and sealed with white adhesive tapes and multi-coloured rubber sheets. The said three (03) bundles were thereafter cut open, in the presence of two independent witnesses and the appellant, subsequent to which six (06) yellow metallic melted rectangular bars, believed to be gold of foreign origin, were recovered.

2.1. The goods were examined by a government approved valuer, who opined that the six (06) yellow metallic melted rectangular bars were gold of foreign origin, of 24 Karat, collectively weighing 996.600 grams and totally valued at Rs.26,40,990/-.

2.2. The appellant/passenger could not produce any licit document in support of legal acquisition, importation or transportation of the said six (06) rectangular melted gold bars which were deeply concealed in his body cavity. Accordingly, it was alleged that there was an attempt on the part of the appellant to wilfully and intentionally smuggle the said (06) rectangular melted gold bars, by way of such concealment inside his rectum. Therefore, under the reasonable belief that the above said gold bars had been illegally imported / transported into India in contravention of the provisions of the Customs Act, 196 read with the Foreign Trade (Development & Regulation) Act, 1992, the said gold bars along with the wrapping materials thereof were seized by the Customs Officers.

3. A Show Cause Notice was issued to the appellant on 08.07.2016 on the allegation that Shri Uday Shankar Rai (appellant) had tried to import 06 (six) yellow metallic gold bars of 24 Karat, weighing 996.600 grams and totally valued at Rs.26,40,990/- (Rupees Twenty Six Lakh Forty Thousand Nine Hundred and Ninety Only) from outside India in clandestine manner, without declaring the same to the Customs Authorities and by concealing the same in ingenious way inside the rectum, which is a clear case of violation of the Section 111(d), 111 (i) and 111(l) of Customs Act, 1962 read with Foreign Trade Development and Regulation) Act, 1992. Therefore, a Notice was issued inter alia proposing confiscation of the six (06) yellow metallic gold bars under Section 111(d), 111(i) and 111(l) of the Act, along with imposition of penalty on the appellant under Section 112(a) and 112(b) ibid.

3.1. The ld. adjudicating authority thereafter passed the Order-in-Original No. 23/2019 ADC dated 07.03.2019 inter alia ordering absolute confiscation of the seized six (06) pieces of rectangular gold bars collectively weighing 996.600 grams totally valued at Rs.26,40,990/- under Section 111(d), 111(i) and

111(l) of the Customs Act, 1962. He also imposed a penalty of Rs.12,00,000/- on the appellant under Section 112(a) and 112(b) of the said Act.

3.2. On appeal, the Ld. Commissioner of Customs (Appeals), Kolkata, vide the impugned order, upheld the order of absolute confiscation of the gold bars in question as passed by the ld. adjudicating authority, along with the order of imposition of penalty thereon, thereby rejecting the appeal filed by the appellant. It was observed by the Ld. Commissioner (Appeals) that the appellant had not satisfied the conditions laid down in the Notification No. 12/2012-Cus. dated 17.03.2012 and thus no infirmity in the order of the lower authority could be found.

3.3. Aggrieved, the appellant has filed the present appeal.

4. The Ld. Counsel appearing on behalf of the appellant submits that the ld. adjudicating authority has decided the issue on the basis of the statements tendered by the appellant on 18.01.2016 and 19.01.2016. She contends that the principles of natural justice have not been followed in this case before deciding the issue since only three opportunities of personal hearing were given by the ld. adjudicating authority. It is her submission that act of carrying of the gold in question in the rectum/body cavity and failure to produce licit documents as to its acquisition/possession/transportation does not automatically mean that the seized gold is of foreign origin; that the observation of the lower authorities that the appellant has smuggled gold of foreign origin is only based on assumptions and presumptions. Hence, the Ld. Counsel for the appellant contended that the order of absolute confiscation of the gold is

unwarranted in this case. Accordingly, she prayed for setting aside the absolute confiscation of the gold in question. She also pleads that no penalty is imposable on the appellant.

5. On the other hand, the Ld. Authorized Representative of the Revenue appearing before us emphasized that the gold in question has been recovered from the body cavity of the appellant. It is his submission that if the appellant had brought the gold through legal means, then there was no need for him to conceal the same in his rectum. Hence, it is argued by the Revenue that the intention of the appellant behind transportation of such gold becomes very clear, i.e., the said bars had been ingeniously concealed in his rectum/body cavity with a view to smuggle the same into India in contravention of the provisions of the Customs Act, 1962. It is therefore argued by the Ld. Authorized Representative of the Revenue that absolute confiscation of the gold bars in question has been rightly ordered and penalty has been rightly imposed by the authorities below. He thus prayed for upholding the impugned order.

6. Heard both sides and perused the records of the case.

7. We find that the present case pertains to seizure and absolute confiscation of six (06) pieces of rectangular gold bars collectively weighing 996.600 grams totally valued at Rs.26,40,990/- in terms of Section 111(d), 111(i) and 111(l) of the Customs Act, 1962. It is a fact on record that the gold in question has been recovered from the body cavity of the appellant. In this regard, we agree with the submission of the Ld. Authorized Representative of the Revenue that if the appellant had brought the gold

through legal means, then there was no need for him to conceal the same in his rectum. The ingenious method of concealment of the gold in his rectum/body cavity clearly establishes the intention of the appellant to smuggle the gold into India in contravention of the provisions of the Customs Act, 1962. It is also a fact on record that at the time of recovery of the said gold, the appellant failed to produce any document evidencing licit purchase of the gold. There is no dispute that the gold recovered was of 24 Karat purity, which indicates that the gold is of foreign origin. Further, gold being an item notified under Section 123 of the Customs Act, 1962, the onus to prove bona fide procurement and/or possession of gold lies on the person from whose possession such gold is seized. In the present case, it is on record that the appellant has failed to discharge the liability cast upon him under Section 123 of the Customs Act, 1962.

7.1. In his voluntary statements recorded on 18.01.2016 and 19.01.2016, the appellant has inter alia indicated that he was working in 'transport line' and earned up to Rs.5,000/-. This establishes that the appellant is financially not capable of purchasing the said gold valued Rs.26,40,990/-. The statement of the appellant that he has purchased the said gold from Guwahati to sell it at a higher rate in Kolkata, has not been supported by any cogent evidence. Thus, we do not find any merit in this statement of the appellant that he has purchased the gold for sale to earn a profit.

7.2. We find that the act of ingenious concealment of the gold, in the body cavity, itself shows the appellant's efforts to transport gold of foreign origin without detection by the Customs Officers. The evidence available on record and the modus operandi in this case clearly point to the fact that the appellant has attempted to bring in gold of foreign origin without payment of appropriate duties of Customs by smuggling the same through unauthorized routes in contravention of the provisions of the Customs Act, 1962 and attempted to transport the same in the country by concealing the gold inside his body cavity. Consequently, we hold that the gold in question is liable for absolute confiscation under Section 111(d), 111(i) and 111(l) of the Customs Act, 1962, and accordingly uphold the absolute confiscation of the gold ordered by the lower authorities.

8. As regards the penalty imposed on the appellant under Section 112(a) and 112(b) of the Act, we take note of the fact that Section 112(a) is applicable to cases where there is an attempt to do or omission to do an act, with respect to goods, which would render the same liable to confiscation under Section 111. Similarly, Section 112(b) prescribes imposition of penalty in cases where any person who acquires possession of or is in any way concerned in carrying removing, depositing, harboring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which are liable to confiscation under the Act. From the facts and evidence available on record, it is categorically established the appellant has knowingly indulged in smuggling of the gold. Thus, we hold that the order of imposition of penalty under Section 112(a) and 112(b) ibid. by the lower authorities, is legal and proper. Accordingly, we do not

find any infirmity in the order passed by the lower authorities in imposing penalty on the appellant in this case and hence we uphold the same.

9. In the result, the impugned order is upheld and the appeal filed by the appellant stands dismissed.

(Order pronounced in the open court on **11.06.2026**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd