

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76528 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS/CCP/KS/114-115/2024 dated 20.02.2024 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Md. Faiyaz Alam

: Appellant

S/o. Md. Abdul Rashid,
Ansar Nagar, Bypass Road, Gondapur,
Nawada, Bihar – 805 110

VERSUS

Commissioner of Customs (Preventive)

: Respondent

3rd Floor, Custom House,
15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Ms. Atika Sumran Ahmed, Advocate, for the Appellant

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 NO. 75813 / 2026

DATE OF HEARING: 23.06.2026

DATE OF DECISION: 02.07.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The instant appeal has been directed against the Order-in-Appeal No. KOL/CUS/CCP/KS/114-115/2024 dated 20.02.2024 passed by the Ld. Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001 insofar as it pertains to upholding the order of imposition of penalty under Section 112(a) and/or Section 112(b) of the Customs Act, 1962 on Md. Faiyaz Alam, the appellant herein.

2. The facts of the case, insofar as relevant, on 24.05.2022, officers of SRI (I&I), Customs, acting upon specific intelligence, conducted a search operation at the godown of M/s. Raja Textiles situated at 151, Rabindra Sarani, near Nakhoda Masjid, Kolkata – 700 005, West Bengal. At the time of the search, the appellant, Md. Faiyaz Alam, along with one Md. Mumtaj Alam, was found present in and around the said premises. During the course of search, the officers recovered forty one (41) pieces of gold bars from the said premises/godown, which were said to belong to the above said persons. The persons present at the premises were unable to produce any licit documents evidencing lawful importation, acquisition or possession of the said gold.

2.1. The recovered gold was thereafter examined and valued by a Government-approved valuer, namely, M/s. S.K. Jewellers who, vide valuation report dated 24.05.2022, certified the same to be gold of foreign origin of 24 karat purity, collectively weighing 8087.460 grams and valued at Rs.4,19,73,917/-. The gold was accordingly seized under Section 110 of the Customs Act, 1962 on the reasonable belief that the same constituted smuggled goods liable for confiscation under the provisions of the Customs Act.

2.2. During the course of investigation, statements of the appellant were recorded on multiple occasions under Section 108 of the Customs Act, 1962. In his initial statement dated 25.05.2022, the appellant, inter alia, admitted that he was associated with the operations of M/s. Raja Textiles and stated that gold bars used to be deposited at the godown by various carriers and subsequently delivered onward. He further acknowledged that the recovered gold bars

were of foreign origin and admitted knowledge that the same had been brought into India through illicit channels. In subsequent statements, including those recorded while in judicial custody, the appellant reiterated material portions of his earlier statements and disclosed that the activities relating to the gold were being conducted under the directions of one Md. Sahnawaz alias Raja Bhai, proprietor of M/s. Raja Textiles.

2.3. Investigation further revealed, according to the Revenue, that the appellant was not a mere bystander but was actively associated with the functioning of the premises from which the gold was recovered. Statements of co-noticee, Md. Mumtaj Alam indicated that he had joined the establishment through the appellant, was paid by him and worked under his instructions. The Revenue also relied upon statements allegedly indicating that the premises of M/s. Raja Textiles were being utilised for storage and handling of smuggled gold and that the appellant was aware of such activities. The investigation additionally brought on record material relating to M/s Zaki Tour and Travels Pvt. Ltd., a concern engaged in foreign exchange-related business, in which the appellant was found to be one of the Directors. According to the Revenue, the appellant initially denied any association with foreign exchange business but subsequently admitted his directorship when confronted with documentary evidence. This circumstance was also relied upon by the Department while examining the larger modus operandi alleged in the case.

2.4. Upon completion of investigation, a Show Cause Notice dated 22.11.2022 was issued to the appellant, among others, proposing, inter alia, absolute

confiscation of the seized gold and imposition of penalties under Sections 112(a), 112(b) and 114AA of the Customs Act, 1962. By way of the said Notice, it was alleged that the appellant had knowingly assisted, facilitated and participated in activities connected with the possession, harbouring, storage and dealing of smuggled foreign-origin gold and had thereby rendered himself liable to penal consequences under the Act.

2.5. The appellant contested the allegations by filing a detailed reply to the Show Cause Notice and was also represented through his authorised legal representative during the course of personal hearing before the adjudicating authority.

2.6. Thereafter, the Additional Commissioner of Customs (Preventive), West Bengal, vide Order-in-Original No. 06/ADC(P)/CUS/WB/2023 dated 26.06.2023, inter alia, ordered absolute confiscation of the seized gold and imposed a personal penalty of Rs.8,00,000/- upon the appellant under Section 112(a) and/or Section 112(b) of the Customs Act, 1962, holding him to be indirectly involved in the smuggling activities relating to the seized foreign-origin gold, besides imposing penalties on other co-noticees/co-accused. The Id. adjudicating authority, however, refrained from imposing penalty upon the appellant under Section 114AA of the Act.

2.7. Aggrieved thereby, the appellant preferred an appeal before the Ld. Commissioner of Customs (Appeals), Kolkata, which was heard together with the appeal filed by co-noticee Md. Mumtaj Alam. The Commissioner (Appeals), vide Order-in-Appeal No. KOL/CUS/CCP/KS/114-115/2024 dated 20.02.2024, rejected the appeals and upheld the findings of the

adjudicating authority insofar as they related to the imposition of penalties.

2.8. It is against the aforesaid Order-in-Appeal dated 20.02.2024 that the present appeal has been filed before this Tribunal by Md. Faiyaz Alam, challenging the penalty imposed upon him under Section 112(a) and Section 112(b) of the Customs Act, 1962.

3. The Ld. Counsel appearing on behalf of the appellant submits that the appellant has been falsely implicated and that the seized gold was neither recovered from his possession nor claimed by him at any stage. It is contended that the gold was recovered from the premises of M/s Raja Textiles and that the appellant was merely a staff member working under the instructions of the proprietor, Md. Sahnawaz @ Raja Bhai. The appellant denies any knowledge, possession or involvement in any alleged smuggling activity and submits that there is no independent evidence linking him with the seized gold.

3.1. It is further contended that the case of the department rests entirely upon statements recorded under Section 108 of the Customs Act, 1962, which were subsequently retracted at the earliest opportunity before the competent court. According to the appellant, the said statements were not voluntary and, in the absence of corroborative evidence and compliance with Section 138B of the Act, cannot form the sole basis for penal action.

3.2. The appellant also submits that the investigation failed to identify any alleged carriers, purchasers or transactions involving the seized gold and that no documentary or other evidence has been brought on record to establish conscious involvement

in any smuggling activity. It is further argued that the seized gold did not bear any foreign markings and, being a town seizure not effected from the appellant's possession, the burden under Section 123 of the Act could not be fastened upon him. On these grounds, a prayer for waiving the penalty imposed under Section 112 *ibid.* has been made.

4. On the other hand, the Ld. Authorized Representative for the Revenue reiterated the findings contained in the impugned orders and submitted that the penalty imposed upon the appellant is fully justified in the facts and circumstances of the case. It is his contention the seized gold, weighing 8087.460 grams and valued at more than Rs.4 crore, was recovered from the premises of M/s Raja Textiles where the appellant was admittedly present and actively associated with the operations being carried out there. It was further submitted that the appellant, in multiple statements recorded under Section 108 of the Customs Act, 1962, had admitted that foreign-origin gold was being received and stored in the godown and thereafter distributed through carriers. The appellant had also acknowledged that he was working in the establishment and was aware of the activities being undertaken therein. The subsequent retraction of the statements was an afterthought and does not efface their evidentiary value, particularly when such statements were repeatedly made on different dates.

4.1. The Ld. Departmental Representative further argued that the appellant was not a mere bystander or casual employee and that the investigation revealed that he exercised a degree of control over the affairs of the premises, issued instructions to other

staff members and was closely connected with the principal noticee, Md. Sahnawaz @ Raja Bhai. The statements of co-noticees and other witnesses also corroborated his role in the activities conducted from the premises.

4.2. It is therefore contended by the Revenue that the materials available on record clearly establish the appellant's conscious association with the possession and handling of the seized gold, rendering him liable to penalty under Section 112 of the Customs Act, 1962 and thus the impugned order, insofar as it upholds the penalty upon the appellant, merits affirmation.

5. Heard both sides and perused the documents presented before us.

6. After hearing the contentions advanced by the parties, we find that the limited issue arising for determination in the present appeal is whether the personal penalty imposed upon the appellant, namely, Md. Faiyaz Alam, under Section 112(a) and Section 112(b) of the Customs Act, 1962 is sustainable in the facts and circumstances of the case, or not.

7. It is not in dispute that, acting upon specific intelligence, the officers of SRI (I&I) conducted a search operation at the godown premises of M/s Raja Textiles situated at 151, Rabindra Sarani, Kolkata. During the course of such search, forty one (41) pieces of gold bars weighing 8087.460 grams and valued at Rs.4,19,73,917/- were recovered and seized. Admittedly, at the time of the search and seizure, the appellant / Md. Faiyaz Alam and co-noticee Md. Mumtaj Alam were present at the premises and they were in custody and control of the

godown from where the impugned gold was recovered.

7.1. The investigation further revealed that no documents whatsoever were produced either at the time of seizure or subsequently in support of the lawful acquisition, possession or licit importation of the seized gold. The gold was recovered in primary bar form and was subjected to examination by a Government approved valuer as well as by the Central Revenue Control Laboratory (CRCL). The valuation report by the Government approved valuer dated 24.05.2022 certified the goods to be gold of very high purity, collectively weighing 8087.460 grams. The subsequent CRCL Test Report No. 249-257/SZD(G) dated 07.06.2022 confirmed purity levels ranging between 99.7% and 99.8%, thereby establishing the nature and character of the seized goods.

7.2. The appellant has sought to contend that the gold was not recovered from his personal possession and that he was merely a staff member working under one Md. Sahnawaz @ Raja Bhai. It has also been argued that the statements recorded under Section 108 of the Customs Act, 1962 were involuntary and subsequently retracted. We are unable to accept these submissions in their entirety. Although the gold was recovered from the godown premises and not from the physical person of the appellant, the records clearly reveal that the appellant and Md. Mumtaj Alam were found in charge of the premises at the relevant time and had access to and control over the godown from where the contraband was recovered. The appellant has also failed to furnish any material demonstrating lawful possession of the goods or explaining the circumstances under which such a substantial

quantity of gold came to be stored in the premises under his custody.

7.3. It is pertinent to note that apart from the confessional statements recorded, the culpability of the appellant is also evident from various other facts such as the complete absence of licit documents, the nature and purity of the seized goods or the appellant's inability to offer any plausible explanation regarding the source and lawful possession thereof.

7.4. The appellant has also sought to argue that the burden under Section 123 of the Customs Act, 1962 does not fall upon him. We find no merit in the said contention. Gold is a notified commodity under Section 123 of the Act. Once recovery of the notified goods is established from premises under the possession, custody or control of a person, the burden shifts upon such person to establish the licit nature of possession. In the present case, neither the appellant nor any other person connected with the premises produced any documentary evidence regarding legal importation, lawful procurement or legitimate ownership of the seized gold. Consequently, the statutory burden cast under Section 123 remained wholly undischarged.

7.5. We further note that the investigation consistently disclosed the appellant's association with the affairs of M/s Raja Textiles and his role in activities conducted from the premises. Repeated statements recorded during investigation, though subsequently disputed, indicate knowledge regarding the storage and movement of gold from the said premises. More importantly, apart from bald denials, no independent evidence has been produced by the appellant to dislodge the allegations or rebut the circumstances

emerging from the investigation. Therefore, in the absence of any evidence capable of controverting the Revenue's case, the plea of the appellant lacks merit.

7.6. At this juncture, it is useful to refer to the relevant statutory provisions. Section 112(a) of the Customs Act, 1962 provides for imposition of penalty upon any person who, in relation to goods liable to confiscation, does or omits to do any act which renders such goods liable to confiscation, or abets the doing or omission of such act. Similarly, Section 112(b) provides for penalty upon any person who acquires possession of, or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling, purchasing or otherwise dealing with goods which he knows or has reason to believe are liable to confiscation under the Act.

8. Applying the above provisions to the facts at hand, we are of the considered view that the conduct attributed to the appellant falls within the ambit of Section 112(a) as well as Section 112(b) of the Customs Act, 1962. The recovery of a substantial quantity of gold from premises under his control, coupled with the complete absence of licit documents and the attendant circumstances brought out during investigation, justify the conclusion that the appellant was concerned with the keeping, harbouring and dealing with goods liable to confiscation under the Act. The imposition of penalty upon the appellant is, therefore, legally sustainable.

8.1. However, while upholding the liability to penalty, certain mitigating circumstances cannot be ignored. We note that the seized gold admittedly did not bear any foreign markings or inscriptions on record, which, though not sufficient to exonerate the

appellant, does introduce an element of doubt that must be weighed while determining the quantum of penalty. The statements relied upon by the Department have also not been subjected to the evidentiary safeguards contemplated under Section 138B of the Customs Act, 1962. These factors, taken cumulatively, persuade us to adopt a more lenient view insofar as the quantum of penalty is concerned. Accordingly, while we uphold the finding regarding the appellant's liability for penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962, we are of the view that the ends of justice would be adequately served by substantially reducing the penalty. Accordingly, the penalty imposed upon the appellant is reduced from Rs.8,00,000/- (Rupees Eight Lakhs) to Rs.2,00,000/- (Rupees Two Lakhs only).

9. In view of the foregoing discussions, the impugned order is modified to the above extent qua the present appellant, Md. Faiyaz Alam, by upholding the imposition of penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962 but reducing the quantum thereof from Rs.8,00,000/- to Rs.2,00,000/-.

10. The appeal is partly allowed in the above terms.

(Order pronounced in the open court on **02.07.2026**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd