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

REGIONAL BENCH - COURT NO.1

**Customs Appeal No.75492 of 2022**

(Arising out of Order-in-Appeal No.KOL/CUS/CCP/AKR/186-188/2022 dated 31.03.2022 passed by Commissioner of Customs (Appeals), Kolkata.)

**1) Shri Surinder Agarwal**

(S/o Late Chandulal Agarwal, Behind Hotel Ibis, Main Road, Jaigaon, Alipurduar, Pin-736182.)

**...Appellant**

*VERSUS*

**Commissioner of Customs (Prev.), Kolkata**

**.....Respondent**

(15/1, Strand Road, Custom House, Kolkata-700001.)

**WITH**

**Customs Appeal No.75515 of 2022**

(Arising out of Order-in-Appeal No.KOL/CUS/CCP/AKR/186-188/2022 dated 31.03.2022 passed by Commissioner of Customs (Appeals), Kolkata.)

**2) Shri Naresh Agarwal**

(S/o Late Chandulal Agarwal, Behind Hotel Ibis, Main Road, Jaigaon, Alipurduar, Pin-736182.)

**...Appellant**

*VERSUS*

**Commissioner of Customs (Prev.), Kolkata**

**.....Respondent**

(15/1, Strand Road, Custom House, Kolkata-700001.)

**AND**

**Customs Appeal No.75554 of 2022**

(Arising out of Order-in-Appeal No.KOL/CUS/CCP/AKR/186-188/2022 dated 31.03.2022 passed by Commissioner of Customs (Appeals), Kolkata.)

**3) Shri Prakash Chand Baid**
(S/o Late Rup Chand Baid, Chowrahat, Ward No.13, PO+PS-Dinhata, District-Coochbehar, Pin-736135.)

**...Appellant**

*VERSUS*

**Commissioner of Customs (Prev.), Kolkata** **.....Respondent**

(15/1, Strand Road, Custom House, Kolkata-700001.)

**APPEARANCE**

Shri Arijit Chakraborty, Advocate for Appellant Nos.1 & 2 AND Shri Nilotpal Chowdhury, Advocate for Appellant No.3.

Shri A.K.Choudhary, Authorized Representative for the Revenue

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

**FINAL ORDER NO. 76040-76042/2026**

DATE OF HEARING : 04.08.2026
DATE OF DECISION : 07.08.2026

**Per : ASHOK JINDAL :**

All the appeals are arising out of a common order seeking immunity from imposing penalty of Rs.10.00 Lakh each under section 112(b) and confiscation of Mahidra Scorpio vehicle bearing Registration No.WB64C 8484 under section 115 of the Customs Act, 1962.

2. The facts of case in brief are that the appellant Shri Prakash Chand Baid was driving a private vehicle i.e. Mahindra Scorpio bearing Registration No. WB64C 8484 owned by one Smt. Lalita Baid, (a relative of the appellant to ply the said vehicle on hire). The appellant, during the course of plying of the said vehicle, on 14.06.2017 was carrying four passengers namely Shri Dipak Dey, Shri Dulan Bhattacharya, Shri Swapan Hazari, Shri Radha Gobinda Dhar. During the course of interception from the possession of the passengers namely Shri Dulan Bhattacharya, Shri Swapan Hazari, Shri Radha

Gobinda Dhar gold of 2 kg., 1 kg., 2 kg. respectively was recovered which were tested to be 99.5% purity and from one Shri Deepak Dey, one NOKIA Phone was recovered. On reasonable belief that the said gold were having foreign markings and were purportedly smuggled into India, the same were seized under section 110 of the Customs Act, 1962 on 14.06.2017. Later on, a show cause notice was issued for absolute confiscation of the gold in question and to impose penalties on the appellants. The matter was adjudicated, the gold was absolutely confiscated and penalty of Rs.10.00 Lakhs each on all the appellants were imposed under section 112(b) of the Customs Act, 1962. Against the said order, the appellants are before us.

3. The Ld.Counsel appearing on behalf of appellant Shri Prakash Chand Baid submits that the appellant was only a vehicle driver and driving the said vehicle on lease basis and he was carrying four passengers from whose custody the gold was recovered. The appellant having no knowledge about the passengers carrying or was involved in any activity of smuggling of gold. In fact, the passengers themselves were carrying the gold and it was recovered by the departmental officers during search. Therefore, penalty on the appellant is not imposable.

4. With regard to appellants namely Shri Surinder Agarwal and Shri Naresh Agarwal, the Ld.Advocate submitted that they were running a Hotel namely Hotel Ibis at Jaigaon and might be the said passengers from whose custody the gold was recovered stayed in that hotel, but that does not mean the appellants were involved in the activity of smuggling of gold. In fact the identification of the appellants could not be done by the said passengers who were carrying the gold and during the course of cross-examination, the cross-examination was not given to the appellants. Admittedly, there is no recovery from the appellants and investigation at their residence did not result in any recovery of any incriminating documents. The appellants’ case was pre-arrest

statement dated 14.06.2017 by appellant Shri Prakash Chand Baid, which is also contrary to his subsequent statements. In that circumstances, the penalty is not imposable on them.

5. On the other hand, the Ld.AR for the department reiterated the findings of the impugned order.

6. Heard the parties, considered the submissions.

7. We find that in this case the appellant Shri Prakash Chand Baid, who was plying the vehicle and in his vehicle some passengers boarded for travelling from one place to another, that does not mean that the appellant was engaged in the activity of smuggling. No corroborative statement or evidence has been placed by the Revenue on record. Merely Shri Prakash Chand Baid was carrying these passengers who were engaged in the activity of smuggling of gold cannot be said that the appellant was engaged in the activity of smuggling of gold.

8. In that circumstances, the vehicle confiscated during the course of seizure of the gold and penalty imposed on Shri Prakash Chand Baid is not sustainable. Accordingly, the penalty is dropped and vehicle is held not liable for confiscation. Consequently, the same is directed to be released to the appellant Shri Prakash Chand Baid, from whose custody the vehicle was seized.

9. With regard to appellants Shri Surinder Agarwal and Shri Naresh Agarwal, the Revenue has failed to produce any evidence on record that they were having any knowledge or relation with the activity of the persons who were apprehended and from whose custody the gold was recovered. The appellants were nowhere brought by the revenue into the picture to show that they were involved in the activity of smuggling of gold neither any evidence has been produced to that effect.

10. In that circumstances, the penalties imposed on each of the said two appellants i.e. Shri Surinder Agarwal and Shri Naresh Agarwal are not sustainable. Consequently, the penalties imposed on these appellants are dropped.

11. In these terms, the appeals are allowed with consequential relief, if any, to the appellants.

(Order pronounced in the open court on 07.08.2026.)

Sd/
**(ASHOK JINDAL)**
**MEMBER (JUDICIAL)**

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

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