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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75837 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS/CCP/KS/111-113/2024 dated 20.02.2024 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Bijay Kumar Jhunjhunwala **: Appellant (No.1)**
R/o. Ganapati Apartment,
Block-D, No. 87, Bangur Avenue,
Kolkata – 700 055

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
15/1, Strand Road,
Kolkata – 700 001

WITH

Customs Appeal No. 75838 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS/CCP/KS/111-113/2024 dated 20.02.2024 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Vikram Jhunjhunwala **: Appellant (No.2)**
R/o. Ganapati Apartment,
Block-D, No. 87, Bangur Avenue,
Kolkata – 700 055

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
15/1, Strand Road,
Kolkata – 700 001

AND

Customs Appeal No. 75839 of 2024

(Arising out of Order-in-Appeal No. KOL/CUS/CCP/KS/111-113/2024 dated 20.02.2024 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Sudip Parui **: Appellant (No.3)**
S/o. Shri Dudh Kumar Parui, Pachghara,
Paruipara, Pachghara Bazar, Chanditala,
Hooghly – 712 306

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri H.K. Pandey, Advocate, for the Appellant(s)

Shri F. Ahmed, Authorized Representative, for the Respondent

CORAM:

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

FINAL ORDER NOs. 75951-75953 / 2026

DATE OF HEARING: 02.07.2026

DATE OF DECISION: 29.07.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

These appeals have been filed against the Order-in-Appeal No. KOL/CUS/CCP/KS/111-113/2024 dated 20.02.2024 whereby the Ld. Commissioner (Appeals) upheld the Order-in-Original No.25/ADC/CUS(P)/WB/2023-24 dated 23.08.2023 passed by the adjudicating authority ordering absolute confiscation of seized 42 pieces of gold biscuits and Indian currency amounting to Rs.88,17,340/-, besides affirming the penalties imposed upon the present appellants under Section 112 of the Customs Act, 1962.

2. The proceedings emanate from an intelligence developed by the officers of the Directorate of Revenue Intelligence (DRI) to the effect that Shri Vikram Jhunjhunwala/appellant no. 2 was allegedly engaged in the transportation and dealing of smuggled gold of foreign origin. Acting upon the said intelligence, the officers of DRI intercepted appellant no. 2 on 29.10.2020 while he was travelling in a white coloured KIA motor vehicle bearing Registration No. WB 08H 2988. Upon search of the vehicle, one blue coloured bag of the brand 'Skybags' and two rectangular paper cartons wrapped with brown colour

adhesive tapes were found, from which the officers recovered 42 pieces of gold biscuits, collectively weighing 6882.84 grams, along with Indian currency amounting to Rs.53,00,000/-. The gold biscuits were believed to be of foreign origin. The appellant no. 2 failed to produce any licit documents evidencing their lawful importation, possession or transportation. The recovered gold biscuits, Indian currency and the vehicle in question, together with certain wrapping materials and items used for carrying the aforesaid items, were seized under the provisions of the Customs Act, 1962 and a Panchnama was drawn in the presence of independent witnesses.

3. Subsequently, the seized gold was examined by Shri Sanjiv Kundu, a Government Approved Valuer, who certified the same to be 24-carat gold collectively weighing 6882.84 grams. Representative samples drawn from the seized gold were thereafter subjected to chemical examination by the Customs House Chemical Laboratory, which confirmed the samples to be gold of purity ranging approximately between 99.5% and 99.7%.

4. Pursuant to the interception, further searches were conducted at the office premises associated with appellant no. 2 situated at 18, Hanspukur Lane, Kolkata – 700 007, from where Indian currency amounting to Rs. 34,23,740/-, along with some hand written notes, was recovered, and at 5A, Kannulal Lane, Kolkata – 700 007, where a further sum of Rs. 93,600/- was recovered. The aggregate Indian currency seized during the course of investigation thus amounted to Rs. 88,17,340/-.

5. During the course of investigation, statements of Shri Vikram Jhunjhunwala/appellant no. 2, Shri Bijay Kumar Jhunjhunwala/appellant no. 1 and Shri Sudip Parui/appellant no. 3 were recorded under Section 108 of the Customs Act, 1962. According to the Department, appellant no. 2 admitted to having dealt in gold allegedly smuggled into India from across the international border and to having transported and delivered such gold to various persons for monetary consideration. It was further alleged that Shri Bijay Kumar Jhunjhunwala/appellant no. 1, father of appellant no. 2, was aware of and had consciously abetted the activities of appellant no. 2, while Shri Sudip Parui/appellant no. 3, an employee of appellant no. 2, had allegedly assisted in the delivery of gold and handling of Indian currency through hawala transactions. The investigation further recorded that, during the course of follow-up proceedings, all the three appellants intimated the Department that they did not claim ownership of the seized gold or the Indian currency.

6. Upon completion of investigation, a Show Cause Notice dated 23.04.2021 came to be issued proposing confiscation of the seized 42 pieces of gold biscuits weighing 6882.84 grams under Sections 111(b) and 111(d) of the Customs Act, 1962, confiscation of the Indian currency amounting to Rs. 88,17,340/- under Section 121 of the Act, confiscation of the wrapping and concealing materials under Section 119 and imposition of penalties upon all the three appellants under Sections 112(a) and 112(b) of the Customs Act, 1962 on the allegations contained therein.

6.1. The appellants contested the proceedings by filing written submissions denying the allegations levelled in the Show Cause Notice. They also participated in the adjudication proceedings.

6.2. Upon consideration of the materials placed on record and the submissions advanced by the noticees/appellants herein, the ld. adjudicating authority concluded that the seized gold biscuits were liable to confiscation under Sections 111(b) and 111(d) of the Customs Act, 1962 and that the seized Indian currency represented the sale proceeds of allegedly smuggled gold, rendering the same liable to confiscation under Section 121 of the Act. Consequently, the ld. adjudicating authority, vide Order-in-Original No.25/ADC/CUS(P)/WB/2023-24 dated 23.08.2023, ordered absolute confiscation of the seized 42 gold biscuits collectively weighing 6882.84 grams and valued at Rs. 3,62,79,449/-, absolute confiscation of the Indian currency amounting to Rs. 88,17,340/-, confiscation of the wrapping materials. He also imposed penalties of Rs.15,00,000/- upon Shri Vikram Jhunjhunwala/appellant no. 2, Rs. 2,00,000/- upon Shri Bijay Kumar Jhunjhunwala/appellant no. 1 and Rs. 1,00,000/- upon Shri Sudip Parui/appellant no. 3, under Sections 112(a) and 112(b) of the Customs Act, 1962, while ordering unconditional release of the vehicle.

6.3. Aggrieved thereby, the appellants carried the matter in appeal before the Ld. Commissioner (Appeals), who, vide the impugned Order-in-Appeal dated 20.02.2024, affirmed the findings recorded by the adjudicating authority.

6.4. Aggrieved by absolute confiscation of the seized 42 gold biscuits in question, absolute confiscation of the seized Indian currency and the imposition of penalties as above, the present appeals have been filed by the appellants.

7. During the course of hearing, the Ld. Counsel appearing on behalf of the appellants inter alia made the following submissions: -

(i) It is submitted that there is absolutely no investigation to unearth the supplier and/or receiver side. Since it is a town seizure and the appellant has specifically named the persons who have supplied the seized gold, he cannot be implicated for smuggling thereof.

(ii) The appellant requested to examine himself before the Ld. Adjudicating Authority in accordance with the provisions contained in Section 138 B of the Customs Act, 1962 to ratify the said statement and the search witnesses as well as the person recording his statement but the Ld. Adjudicating authority did allow.

(iii) The appellant had submitted further that he was not aware of the foreign nature/ origin of the gold as it was being supplied to him by persons in India whose numbers were provided to the investigation. The suppliers were named as Appu da of Bagda-7872473831 (District 24 Parganas, West Bengal), Thakur ji-8340532165 (Kumar Anjani) and Endu-814502072. Also, the appellant had named the persons whom to the gold was to be delivered. However, the investigation skipped to locate any of the suppliers or receivers so named by the

Appellant and concluded the investigation by stating that the Appellant did not provide their verifiable details so that the chain remained in tack. As it is in records, documents found during search also contained said names and admittedly he never directly brought the smuggled gold from Bangladesh; it used to be supplied by said persons. Even the receivers were also decided by them. Assuming the allegation that the appellant was dealing in 15 Kg gold daily, how it could be that not a single receiver was identified by the investigation, it was submitted.

(iv) The appellant admits recovery of the gold and Indian currency from his possession. As it is on records, he is engaged as a broker of gold bullion and collects gold of different shape, size and purity from different Indian Nationals depending upon the buyers' requirement. The Kolkata bullion market has a multi-tier system. Gold bullion is traded through various brokers. Same is the case with money transfer also which is independent of bullion trade. In the business town of Burrabazar, various traders are coming from many parts of India. They do not bring cash with them. Instead, they pay someone in their town and get the cash from a person like the appellant in Kolkata and vice-versa. The Cash recovered from the appellant, is therefore, the money which was to be transferred to someone out of Kolkata and not the sale proceeds as alleged in the SCN. It was pointed out that the SCN names one Netaji at Bangur Avenue to whom the appellant had delivered.

But no investigation at said Netaji end has seemingly been conducted.

(v) In relation to the gold under seizure, as the appellant consistently tried to convince the Investigatng Officer, had nothing to do with smuggling. Local Bullion Traders like Appu Da (Mobile No. 9153875694 & 78724738310) Thakur ji (Mobile No. 8340532165) and Endu (Mobile No.8145020727) used to supply the gold to the size of the customer's requirement with a direction for its delivery to their customers. The appellant’s job was to collect and keep safe the gold bars till the signal from the supplier came for its delivery to a particular person. Again the delivery is not taken by the buyer directly; it is always through some other broker as named by the seller. The sale proceed is never received by the appellant. Rather he would be getting a fixed commission periodically. However, in money transfer he gets a commission at a fixed rate. In gist, the Appellant has not got the gold smuggled into India nor did he have any knowledge of its foreign origin since he dealt with the persons who are bonafide Indian nationals.

(vi) It is a fact that the seized gold are having no marking to show any foreign origin and that the recovery is well within Indian territory, the burden of proof in respect of impugned gold to be illegally imported vis-a-vis the provision of section 123 of the Customs Act, 1962 would be on the department and in failing to discharge initial burden to prove smuggled nature of the goods, the seizure is illegal and does not survives. Reliance was placed on the judgment of the Hon'ble Calcutta High Court in the case of *Commr. of Customs (Prev.), W.B., Calcutta Versus Raj Kumar Jaiswal [2006 (204) E.L.T. 561 (Cal.)]* . That the case is made out solely based on the statements of the noticees under coercion and enticement. The seizure list was prepared in the DRI office and not at the place of recovery. To the best of the noticee's understanding there was no independent witness available at the time of recovery and seizure. The appellant would like to cross examine the search witnesses so that the correct circumstances are high lightened.

(vii) That the appellant does not know anyone in Bangladesh and/or Dubai as alleged nor has he visited any foreign country. Allegation of smuggling against him is based on mere conjecture. During threadbare investigation including searches of their premises, nothing has come up in support of the hypothesis that the gold was smuggled. The only suggestion provided is that such smuggling of gold from Bangladesh to the state of West Bengal is rampant and there is no enforcement agency to stop such rampant illegal act. The appellant submits that in the given circumstances, a 'reasonable belief' cannot be formed that the questioned gold is smuggled which is the basic ingredient for shifting burden to prove its non-smuggled nature on the owner. The Appellant would like to rely on The Hon'ble High Court at Calcutta in the case of *Commr. of Customs (Prev.), W.B., Calcutta Versus Raj Kumar Jaiswal [2006 (204) E.L.T. 561 (Cal.)]*

(viii) That the seizure is made on assumption and presumption without there being any reason to believe that the goods have been illegally imported into India. The admitted fact that the seized gold are having no marking to show any foreign origin and that the recovery is well within Indian territory, the burden of proof in respect of impugned gold to be illegally imported vis-a-vis the provision of section 123 of the Customs Act, 1962 would be on the department and in failing to discharge initial burden to prove smuggled nature of the goods, the seizure is illegal and does not survives, it is respectfully submitted. The Appellant craves leave to submit that he had categorically named the person who had supplied the gold to him but there is nothing on record that the Revenue caused any inquiry at that end. This clearly shows that the Revenue could not shift its initial burden to prove smuggled nature of the gold.

(ix) The appellant would submit that Indian currency of Rs.88,17,340/- cannot be held confiscable and be retained, as no case of violation u/s. 121 of the Customs Act, 1962 has been made out. The Appellate Tribunal in the case of *Ram Chandra -vs-CC [1992 (60) ELT 277 (Tribunal)]* held that to establish currency as sale proceed (i) there must be a sale; (ii) the sale must be of smuggled goods; (iii) the same must be by a person having knowledge or reason to believe that the goods were of smuggled origin; and (iv) the seller and purchaser and quantity of gold must be established, but none of the proposition having been accomplished in the instant proceeding that the Indian currency can be held liable to confiscation and be retained. Mere non-accountal as to receipt of money is not sufficient to hold it sale proceeds of primary gold seized from a third party as has been held by the Appellate Tribunal in the case of S*. Kotteswaran -vs- CCE & C, Madras [reported in 1997 (91) ELT 435 (Tribunal)]*. Mere possession of currency note is not sufficient proof-some more evidence is required, as held by the Hon'ble High Court at Calcutta in the case of *Raj Kumar Damani -vs- U.O.I. [reported in 2010 (257) ELT 371 (Cal.)];*

(x) In the instant case, merely relying on the contradictory statements of the accused person without any prima facie cogent evidence, the confiscation of the said amount from the residence of the petitioner cannot be held to be valid that merely on the contradictory statements of somebody, the confiscation of anything from anybody is against law. The appellants would like to rely upon the CESTAT judgment in the case of *Ghissihibhai Pravinkumar v. Comm. of Customs, Mumbai [2001 (137) E.L.T. 1311 (Tri. - Mum.)]* wherein it is clearly held that to be the sale proceeds of smuggled goods - there must be a sale by a person who knows or had reason to believe that the goods are smuggled -seizure of gold from the appellant not sufficient.

(xi) It is further submitted that the gold in question was seized from the domestic area and that the officers did not derive any subjective satisfaction that the gold was of foreign origin and smuggled. The seizure inventory fails to disclose any material evidence justifying a 'reasonable belief for seizure of the gold. Mere finding of gold does not render it liable for seizure unless there is cogent and positive evidence proving its foreign origin as the first condition, as precursor to seizure. The Hon'ble Supreme Court in the case of *Tata Chemicals Ltd. v. Commissioner of Customs (Preventive), Jamnagar [(2015) 11 SCC 628=2015 (320) E.L.T. 45 (S.C.)],* explained the meaning of the phrase 'reason to believe' as under:- "reason to believe" by opining it to be not the subjective satisfaction of the officer concerned, for "such power given to the officer concerned is not an arbitrary power and has to be exercised in accordance with their strains imposed by law" and that such belief must be that of an honest and reasonable person based upon reasonable grounds.

(xii) The Hon'ble Delhi High Court in the case of *Shanti Lal Mehta v. Union of India & Ors. [1983 (14) E.L.T. 1715 (Del.)],* has elaborately dealt with town seizures and the evidences required to have the 'reasonable belief that the goods are smuggled in nature, in such cases. To quote, " Reasonable belief as required by Section 110 refers to the point of time when the goods in question are seized and not to a stage subsequent to the act of seizure. (*M.G. Abrol v. Amichand, AIR 1961 Bom. 227*). The condition precedent that there was such a reasonable belief anterior to the seizure must exist before the presumption under section 123 can be invoked."

(xiii) That the provisions of Section 123 of the Customs Act, 1962 are applicable only when it is established that the gold in question were of smuggled in nature. In the present case, the investigation has not brought in any evidence on record to establish that the gold in question was smuggled in nature. As the gold in question was seized from the domestic area, the provisions of section 123 of Customs Act, 1962 are not applicable in this case and hence the onus is on the Revenue to prove that the said gold was of smuggled in nature. The Hon'ble Supreme Court in *Ganesh Das v. Collector of Central Excise [1994 (70) ELT 441 (SC)]* wherein it was held that before the burden shifts to the person from whom the goods were seized, it must first be established that the goods were of foreign origin and mere suspicion or presence of certain disputed markings is not sufficient. Further, the Hon'ble Supreme Court in *Commissioner of Customs v. Abdul Gani [2012 (278) ELT 474 (SC)]* has reiterated that reasonable belief must be backed by sufficient evidence of foreign origin. If there are no foreign markings or documentation, the Customs authorities cannot simply assume that the gold in question were of smuggled in nature.

7.1. In view of the above submissions, the Ld. Counsel for the appellants contended that the impugned Order deserves to be set aside and the gold and the Indian currency seized from the possession of the appellant no. 2 is required to be returned to him. He also prayed for waiver of the penalties imposed on the appellants.

8. On the other hand, the Ld. Authorized Representative appearing for the Revenue reiterates the findings recorded by the authorities below and submits that the authorities below have rightly ordered absolute confiscation of the seized gold and Indian currency besides imposing penalties upon the appellants under the provisions of the Customs Act, 1962. He submits that the recovery of the gold biscuits from the conscious possession of appellant no. 2 is not in dispute and that the appellants admittedly failed to produce any licit documents in the instant case evidencing the lawful importation, acquisition or possession thereof. It is contended that the burden cast under Section 123 of the Customs Act, 1962 squarely rested upon the person from whose possession the notified goods were recovered and, in the absence of discharge of the statutory burden by the appellants, the authorities below rightly concluded that the seized gold was liable to be absolutely confiscated under the provisions of the Act.

8.1. He further submits that the statements recorded under Section 108 of the Customs Act, 1962 clearly establish the manner in which the gold was allegedly procured, transported and dealt with by appellant no. 2 and the respective roles played by appellant nos. 1 and 3 in facilitating the said activities. According to him, the statements recorded during the course of investigation are voluntary in nature and constitute substantive evidence, duly corroborated by the attendant circumstances including the recovery of the seized gold, substantial Indian currency and other incriminating materials.

8.2. It is further submitted that the Indian currency seized during the course of investigation has rightly been held to represent the sale proceeds of smuggled gold and was, therefore, correctly confiscated under Section 121 of the Customs Act, 1962.

8.3. Further, the Ld. Authorized Representative of the Revenue also contended that the cumulative circumstances emerging from the investigation unmistakably establish the conscious involvement of the appellants in dealing with smuggled goods and, consequently, the penalties imposed upon them under Sections 112(a) and 112(b) of the Customs Act, 1962 are fully justified.

8.4. He, accordingly, prays for dismissal of the appeals and for upholding the impugned Order-in-Appeal.

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

10. Having carefully considered the rival submissions advanced on behalf of the parties and perused the records of the case, we find that the dispute arising in the present appeals principally revolves around the legality of the absolute confiscation of the seized 42 pieces of gold biscuits under the provisions of the Customs Act, 1962, the confiscation of the Indian currency alleged to represent the sale proceeds of smuggled gold, and the sustainability of the penalties imposed upon the appellants under Section 112(a) and (b) of the Customs Act, 1962.

11. At the threshold, it is evident from the records that the proceedings emanate from the recovery of a substantial quantity of notified goods from the conscious possession of appellant no. 2, coupled with seizure of a considerable amount of Indian currency and other materials gathered during investigation. The Revenue has sought to substantiate the allegations in the Show Cause Notice on the strength of the said recoveries, the statements recorded under Section 108 of the Customs Act, 1962 and the attendant circumstances emerging from the investigation. Whether the statutory burden cast under Section 123 stands duly discharged by the appellants and the legal consequences flowing therefrom are issues which now fall for our consideration.

Confiscation of Gold

12. The first and foremost issue which falls for consideration is whether the seized gold biscuits have rightly been held liable to absolute confiscation under the provisions of the Customs Act, 1962. Having regard to the nature of the goods in question, the statements recorded during investigation, primarily, we proceed to examine the applicability of Section 123 of the Act.

12.1. Upon a careful consideration of the rival submissions and the materials available on record, we find ourselves in agreement with the concurrent findings recorded by the authorities below insofar as the confiscation of the seized gold is concerned. It is an admitted position that 42 gold biscuits, collectively weighing 6882.84 grams, were recovered from the conscious possession of appellant no. 2/Shri Vikram Jhunjhunwala at the time of interception. Gold being notified goods under the provisions of Section 123 of the Customs Act, 1962, the statutory burden squarely rested upon the appellants to establish the licit importation or lawful acquisition and possession thereof. However, despite adequate opportunity, no documentary evidence whatsoever has been brought on record to substantiate the lawful import, procurement or possession of the seized gold. The failure to discharge the burden cast by the statute cannot, in the facts of the present case, be lightly brushed aside.

12.2. That apart, the Department has not rested its case merely upon the statutory presumption under Section 123 of the Act. The investigation has brought on record various attendant circumstances, including the statements recorded under Section 108 of the Customs Act, 1962, the recovery effected from the conscious possession of appellant no. 2, and other materials gathered during investigation, which have consistently pointed towards the illicit nature of the seized gold. Significantly, no cogent material has been placed before us to indicate a lawful source or to satisfactorily explain the possession and transportation of such a substantial quantity of notified goods. The cumulative effect of the evidence, viewed in its proper perspective, lends due corroboration to the Revenue's case and fortifies the view taken by the lower authorities regarding absolute confiscation of the gold in question.

12.3. At this juncture, it is equally apposite to note that appellant no. 2 had, during the course of adjudication, relinquished and disowned any claim over the seized gold, which fact stands duly recorded in paragraph 43(b) of the Order-in-Original dated

23.08.2023. Therefore, a subsequent attempt to question the order of absolute confiscation, despite such unequivocal relinquishment, in our considered opinion, does not inspire confidence.

12.4. In these circumstances, we find no justifiable reason to take a view different from that adopted by the ld. adjudicating authority as affirmed by the Ld. Commissioner (Appeals). The appellants having failed to discharge the burden cast upon them under Section 123 of the Customs Act, 1962, and the Revenue having succeeded in establishing the circumstances surrounding the seizure through the materials gathered during investigation, we hold that the seized 42 gold biscuits, collectively weighing 6882.84 grams, have rightly been held liable to confiscation under Sections 111(b) and 111(d) of the Customs Act, 1962. Therefore, having regard to the facts and circumstances of the case, particularly the complete absence of any evidence establishing licit importation or lawful possession of the seized gold, we are of the considered opinion that the order directing absolute confiscation thereof calls for no interference and is, accordingly, affirmed.

Confiscation of Indian Currency

13. The next question pertains to the confiscation of the Indian currency amounting to Rs. 88,17,340/- under Section 121 of the Customs Act, 1962 on the allegation that the same constituted the sale proceeds of smuggled gold. It is also pertinent to note that the records reveal that appellant no. 2/Shri Vikram Jhunjhunwala had relinquished his claim over the seized gold and the Indian currency, as specifically recorded by the adjudicating authority in paragraph 43(b) of the Order-in-Original dated 23.08.2023.

13.1. During the course of investigation, the statements recorded from various persons revealed that Gold bullion is traded through various brokers. Same is the case with money transfer also which is a part of the bullion trade. In the business town of Burrabazar, various traders are coming from many parts of India and the sale proceeds of the gold are kept in cash. We find that the appellant's job was to collect and keep safe the gold bars and the sale proceeds. Thus, we find that the Cash recovered from the appellant was the money which was the sale proceeds of the gold sold earlier. There is no other contrary evidence brought on record by the Appellants. Further, we find that Shri Vikram Jhunjhunwala had himself relinquished his claim over the seized gold and the Indian currency. Thus, we uphold the confiscation of Indian Currency as confirmed in the impugned order.

<u>Penalty upon Shri Vikram Jhunjhunwala (Appellant No. 2)</u>

14. Insofar as the penalty imposed upon Shri Vikram Jhunjhunwala/appellant no. 2 under Sections 112(a) and 112(b) of the Customs Act, 1962 is concerned, we find that the adjudicating authority has principally founded the same upon the recovery effected from his conscious possession, the statements recorded under Section 108 of the Act, and the role attributed to him during the course of investigation.

14.1. On the basis of the investigation conducted, it has been alleged that appellant no. 2 was actively engaged in dealing with gold of illicit origin and had knowingly transported the seized gold for monetary consideration. It has further come on record that, in his statements recorded under Section 108 of the Customs Act, 1962, appellant no. 2 is stated to have disclosed the manner in which the seized gold was received, transported and delivered, besides admitting to having dealt with substantial quantities of smuggled gold over a considerable period of time. The investigation has also relied upon the recovery of substantial Indian currency, the handwritten transaction records seized during the searches, and the alleged failure of appellant no. 2 to furnish verifiable particulars regarding the persons from whom the gold was procured or to whom it was intended to be delivered, in support of the allegation that he was knowingly concerned in activities relating to the transportation and dealing of smuggled gold.

14.2. In the backdrop of the aforesaid factual matrix, we find ourselves unable to accept the contentions advanced on behalf of appellant no. 2. On the contrary, the materials brought on record during the course of investigation, viewed cumulatively, lend substantial assurance to the Revenue's case and satisfactorily establish the circumstances relied upon for invoking the penal provisions of the Act. Accordingly, we find that the appellant no. 2 is liable to be penalized for his wilful involvement in activities relating to the transportation and dealing of smuggled gold. Therefore, in view of the above findings, we uphold the penalty of Rs.15,00,000/- (Rupees Fifteen Lakhs only) imposed on Shri Vikram Jhunjhunwala / appellant no. 2, under the Sections 112(a) and 112(b) of the Customs Act, 1962 vide the impugned order.

Penalty on Shri Bijay Kumar Jhunjhunwala (Appellant No. 1)

15. We now turn to the penalty imposed upon Shri Bijay Kumar Jhunjhunwala/appellant no. 1 under Sections 112(a) and 112(b) of the Customs Act, 1962. The principal allegation against appellant no. 1 is that, being the father of appellant no. 2, he was aware of the latter's activities and had consciously abetted the alleged smuggling of gold. However, upon a careful scrutiny of the materials available on record, we find that except for the statements recorded during the course of investigation, no independent or corroborative evidence has been brought on record to establish his active involvement in the transportation, possession, concealment, sale or purchase of the seized gold or the alleged sale proceeds thereof.

15.1. Mere awareness of the activities allegedly undertaken by appellant no. 2, assuming the statements to be correct, cannot, by itself, attract the rigours of Sections 112(a) and 112(b) of the Customs Act, 1962. The said provisions contemplate a positive act or omission amounting to abetment or conscious dealing with goods liable to confiscation. In the present case, the Revenue has not been able to establish, through any cogent and independent evidence, that appellant no. 1 had played any active role in the commission of the acts alleged against appellant no. 2 or had otherwise rendered himself liable to penalty under the aforesaid provisions. The relationship of appellant no. 1 with the principal noticee, howsoever close, cannot ipso facto furnish a legal basis for fastening penal liability in the absence of evidence demonstrating conscious participation in the offending transaction.

15.2. In these circumstances, we are of the considered view that the materials available on record are insufficient to sustain the penalty imposed upon appellant no. 1 under Sections 112(a) and 112(b) of the Customs Act, 1962. The impugned order, to the extent of imposition of penalty on the appellant no. 1/Shri Bijay Kumar Jhunjhunwala under Section 112(a)/(b) of the Act, therefore, cannot be sustained and deserves to be set aside. Consequently, the penalty imposed upon Shri Bijay Kr. Jhunjhunwala/appellant no. 1 is hereby set aside.

Penalty on Shri Sudip Parui (Appellant No. 3)

16. We shall now examine the contentions advanced by Shri Sudip Parui/appellant no. 3 against the penalty imposed on him under Sections 112(a) and 112(b) of the Customs Act, 1962. The allegation against appellant no. 3 is essentially that he was employed under appellant no. 2, looked after his business establishments, and, in the course of such employment, had allegedly delivered gold and delivered Indian currency through 'Hawala' process, on the instructions of appellant no. 2. However, upon a careful scrutiny of the materials available on record, we find that the aforesaid allegations rest substantially upon the statement attributed to appellant no. 3 during the course of investigation. Significantly, no recovery of the seized gold was effected from his possession, nor has any independent evidence been brought on record to establish that he had consciously participated in or facilitated the alleged smuggling activities with the knowledge contemplated under Sections 112(a) and 112(b) of the Act.

16.1. Merely because appellant no. 3 was an employee working under appellant no. 2 and is alleged to have carried out certain acts under the instructions of his employer, it cannot, ipso facto, be inferred that he had knowingly concerned himself with goods liable to confiscation or had consciously abetted the alleged acts of smuggling. Penal liability under Section 112 is undoubtedly of a serious nature and cannot be fastened merely on surmises or on the basis of an employer-employee relationship, in the absence of cogent and corroborative evidence establishing the requisite knowledge and active complicity. The Revenue has not been able to place any independent material before us to demonstrate that appellant no. 3 had any proprietary interest in the seized gold or Indian currency or that he consciously associated himself with the alleged illicit activities beyond the ordinary discharge of his duties as an employee.

16.2. Having regard to the facts and circumstances of the case and taking a lenient view considering the limited role attributed to appellant no. 3, we are of the opinion that Revenue has failed to establish, by means of cogent or corroborative evidence, the ingredients necessary for imposition of penalty upon him under Sections 112(a) and 112(b) of the Customs Act, 1962. In view thereof, the penalty imposed upon appellant no. 3 cannot be sustained and is liable to be set aside. Consequently, the penalty imposed upon Shri Sudip Parui/appellant no. 3 is hereby set aside.

17. In view of the foregoing discussion and findings, we pass the following order: -

(i) The order directing absolute confiscation of 42 gold biscuits, collectively weighing 6882.84 grams, under Sections 111(b) and 111(d) of the Customs Act, 1962 is upheld.

(ii) The order directing absolute confiscation the Indian currency amounting to Rs.88,17,340/- under Section 121 of the Customs Act, 1962 is upheld.

(iii) The penalty of Rs.15,00,000/- imposed upon Shri Vikram Jhunjhunwala/appellant no. 2 under Sections 112(a) and 112(b) of the Customs Act, 1962 is upheld.

(iv) The penalty of Rs.2,00,000/- imposed upon Shri Bijay Kumar Jhunjhunwala/appellant no. 1 under Sections 112(a) and 112(b) of the Customs Act, 1962 is set aside.

(v) The penalty of Rs.1,00,000/- imposed upon Shri Sudip Parui/appellant no. 3 under Sections 112(a) and 112(b) of the Customs Act, 1962 is set aside.

18. The impugned order stands modified to the extent indicated hereinabove.

19. The appeals are disposed of in the above manner.

(Order pronounced in the open court on **29.07.2026**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd