CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 85451 of 2022

[Arising out of Order-in-Appeal No. PUN-CT-APPII-(VNT)-000-059-2021-22 dated 28.10.2021 passed by the Commissioner of Central Tax (Appeals-II), Pune.]

M/s Ranjita Rajendra Bane .....Appellant
Sukhawani Corner, 34/A, Akurdi,
Pune, Maharashtra – 411 035

VERSUS

Commissioner of Customs, Pune .....Respondent
E-Wing, 4th Floor, GST Bhavan,
41-A, 1st Floor, ICE House,
Sassoon Road, Opp. Wadia College,
Pune, Maharashtra – 411 001

APPERANCE:

Shri D.A. Bhalerao, Advocate for the Appellant
Shri Krishna Azad, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 86058/2026

Date of Hearing: 08.07.2026
Date of Decision: 25.08.2026

Legality of confirmation of personal penalty of ₹2,50,000/- and ₹1,00,000/- respectively confirmed under Section 112(a) of the Customs Act, 1962 by the Commissioner (Appeals) against Appellant Rajendra Bane (now deceased), then Hawaldar Customs, is assailed before this forum by his successor in interest namely Ranjita Rajendra Bane, as his widow. Since it is an issue concerning personal penalty on a Government official, who is not a passenger to be covered under Baggage Rules, the appeal is taken up for hearing by this Tribunal.

2. Succinctly stated, the issue that gives raise to this appeal has emerged out of a seizure of smuggled gold made by the DRI Customs, upon specific intelligence report, from the dustbin of the gent's toilet of the Pune International Airport and some passengers travelled by Spice Jet Flight No. SG 52 from Dubai on 16.08.2018 in the wee hour. Allegation against the Appellant's husband (now deceased) is that as a Customs Hawaldar, though on sanctioned leave and was at his native place Ratnagiri, he had facilitated such smuggling of gold in helping the smugglers, as being done on previous occasions also. Incriminating material gathered against him is in the nature of statements recorded under Section 108 of the Customs Act mainly that of the co-accused / accomplish, call record received from the telephone operator and recovery of gold from the gent's toilet and as well as from one passenger, for which show-cause notice was issued to the deceased Appellant who also suffered adjudication process and penalty under Section 112(a) as proposed in the show-cause notice, noted above has been confirmed. Appellant's (deceased) unsuccessful attempt before the Commissioner (Appeals) has brought the dispute to the present forum at the instance of his widow, successor in interest.

3. Plea of the Appellant herein is that of complete denial and innocence. While admitting about the leave taken by the deceased on the day of occurrence and his visit to his native place near Ratnagiri, defence wanted to justify that such seizure of smuggled gold was being made only upon information being transmitted by the deceased to the Superintendent on duty at Pune International Airport on that relevant night of 16.08.2018, who receipt the tip off from his source/informer, Appellant pleaded entitlement of privileged communication for further disclosure.

4. I have heard submissions from both the sides and perused the case record, as could be noticed, the defence plea is well noted in the Commissioner (Appeals) order from para 15 to para 16.1, with his justification for non-acceptance of the said plea taken by the deceased

Appellant before him, with a thread bore analysis. It is imperative to reproduce the relevant para 15 to 16.1 for better clarity.

> *"15. The appellant have contended that the statements of co-accused cannot be relied upon without evidence and also contradictory statements cannot be relied upon. Here I find that the statements of co-accused have been corroborated with the SDRs and CDRs and recovery of gold from the Gents Lavatory of Immigration Hall at Pune International Airport on 16-08-2018. Therefore, it cannot be said that the statements of co-accused cannot be relied upon in the present case. Here I rely upon the judgment of Hon'ble Supreme Court in the case of Naresh J. Sukhwani Vs. UOI [1996 (83) ELT 258 (S.C)] wherein Hon'ble Supreme Court has ordered as under:*
>
> > *"4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India……"*
>
> *Therefore I hold that the appellant's contention is not acceptable.*
>
> *16. As regards respondent observation that the appellant had given information to Shri D.G. Nandanwar, Superintendent AIU after gold was seized and concluded that this Act of the appellant*

as an afterthought and to camouflage his role and the appellant has not been able to explain source of information, the appellant contended that the appellant had called much prior to seizure in the early hours of 16-08-2018 but the said Superintendent missed the same and when he realized the same at 5 am of 16-08-2018, he called back, that, Shri D. G. Nandanwar Superintendent AIU has clearly stated that he was shown call data for period 5 am to 6 am of 16-08-2018, thus the Investigation Agency for the best reasons known to them has not produced call data prior to 5 am of 16-08-2018 and the same appears with an intent to hide records of call timing of the appellant to Shri D.G. Nandanwar, Superintendent which would have proved that the information was intended to be given much prior to seizure and that, thus the entire proceedings were been on misleading evidences. The respondent has submitted the reply in the matter as detailed at para 4(vi) above.

Here I am of the opinion that the appellant cannot be treated as innocent on the basis of the said phone call to the Superintendent, AIU at Pune International Airport in the morning hours of 16-08-2018 for the simple reason that the statements recorded under section 108 of the Act of the persons involved in the present matter, SDRs and CDRs obtained from the service provider by the Investigation Agency, the recovery of gold from the Gents lavatory of Immigration Hall at Pune International Airport on 16-08-2018 and admittance by Rakesh Tharwani regarding smuggling of 3.5 kgs gold on 16-08-2018 by way of concealing would become nugatory which are legally valid evidences, as corroborated and discussed in foregoing paras and proves the involvement of the appellant in the instant case. Therefore timing of the said phone call made by the appellant to the Superintendent AIU is not at all important and I agree with the opinion of the respondent that this act of the appellant can best be termed as an afterthought and camouflage of his role in aiding and abetting the illegal activities of smuggling.

(Underlined to emphasise)

> *16.1. In addition to above, it is worth mention here that when the Superintendent AIU realized that there was a missed call from the appellant. Superintendent AIU called him back. Here question arises that why the appellant kept silent when the Superintendent AIU did not respond to his first call? Being a departmental officer, it was his duty to immediately approach the higher officers or other officers of the department to pass on the information. However no such evidence has been brought on record that the appellant tried to approach other officers of the department when the Superintendent AIU did not respond to his call. Such an act on the part of departmental officer cannot be imagined. The act of the appellant further confirms the observation of the respondent that the said phone call was nothing but an afterthought to camouflage of his role in aiding and abetting the illegal activities of smuggling."*

5. Now going by the said finding, what is noticeable and required to be noted here is that there is finding on the basis of judgment passed by the Hon'ble Supreme Court in *Naresh J. Sukhwani* that self inculpatory statement recorded under Section 108 of the Customs Act is different from the statement recoded under Section 161 of the Criminal Procedure Code, 1973 and therefore the same statement recorded under Section 108 can be used as a substantiate piece of evidence connecting the petitioner with the alleged offence of Export of Foreign Currency. However, going by the said observation it can be said without hesitation that the said observation was made by the Hon'ble Supreme Court in an altogether different context which is at variance with the facts of the present case, since nothing incriminating nor even the SIM card allegedly issued in the name of alleged smuggler's aid was seized from the possession of the deceased Appellant during investigation or any time thereafter and therefore going by part (III) of the Indian Evidence Act dealing with burden of proof, a court has to presume that the statement of an accomplice is unworthy of credit, unless corroborated immaterial particulars (Section 114 illustration B of the Indian Evidence Act, 1972) in force

at the relevant time. Therefore, when there is a specific finding that nothing incriminating was seized from the position of the deceased Appellant, he can't be implicated solely on the basis of statement of co-accused or an accomplice.

5.1 Apart from the error, as noted in para 16 read with the statement of Superintendent Customs Pune Shri D.G. Nandanwar, as noted in para 8.3.1 of the Order-in-Appeal, it would go to further clarify that the said Superintendent have called back the present Appellant (now deceased) who informed him that gold brought in the Spice Jet on that day was dump in the gent's laboratory of Immigration Hall and being Superintendent of Customs he may seized the same. Further, investigation reveals that several calls were made between 03:04:03 A.M. and 05:33 A.M. even from deceased Appellant's son's (Prathmesh Rajendra Bane) Mobile No. 7887800711 and the call record (CDR) shown to the said Superintendent from 05 A.M. to 06 A.M. does not reveal this number which would go to justify that calls made much before the seizure was effected at 05.15 A.M., which Respondent-Department affirms that in convenience to one aid Sanjay Aswani, the design to smuggle gold into India was made, which going by the statement of the said Superintendent, Customs Pune Shri D.G. Nandanwar, as noted in para 2.8, he did not reveal the source of information, which learned Counsel for the Appellant states to be a privilege communication made by the Appellant with his informer Sanjay Aswani, who was a Customs broker.

6. Therefore, two contradictory theory exist concerning involvement of the deceased Appellant in the alleged transaction. Substituted Appellant's claim is that, being an informer on whose tip of, entire smuggle gold of more than 13 Kgs. was recovered out of which, at his instance only, 10 Kgs. was put in the dustbin of the gent's toilet that was recovered by the Superintendent after being informed by the deceased Appellant. The other theory puts the story differently and they say that deceased Appellant, in connivance with smugglers was engaged in smuggling activities and this making of telephone call

to provide the information was made after thought since DRI had a tip off about the same. However, the very fact that no seizure from passengers were made insight the Airport and even one of them had gone out with more than 3 Kgs. of gold when the other being apprehended in the retiring area because of presence of gold in his rectum that made him sick would go to reveal that DRI had got no definite information about exact transaction, which happened to have been offered by the deceased Appellant, who should never be put in the category of co-accused / accomplish so was as to impose penalty on him under Section 112(a) of the Customs Act.

7. Now coming to the observation made by the Commissioner (Appeals) in para 16.1 of his order that when the said Superintendent did not respond to his first call, Appellant (now deceased) could have alerted/approached other Higher Officers of the Department but as because no such evidence was available before him, the Commissioner (Appeals) concluded that such phone called was made as an afterthought to camouflage his role in aiding and abetting in the illegal activities of smuggling which stood proved but can't be said inconformity to any logic or reasoning for the very fact that such investigation as to if any other Officer was alerted by this Appellant had not been carried out by the Department and being a staff in the rank of Hawaldar in the hierarchical administrative system, it would be unusual for him to reach a high level official of their Department, by-passing his immediate boss, at such wee hour, when he might not be sure as to who was the officer on duty at the relevant time.

8. There is another allegation against the Appellant (now deceased) that Appellant was using another mobile number of one Krushikesh Jadhav, a member of that syndicate involved in smuggling of gold, which is denied by Appellant in his Section 108 statement and no documentary evidence or even seizure of the same from the possession of Appellant was made except an unverified evidence to the effect that the said SIM was used in the said locality where deceased informer had resided in the relevant night namely, in his

village near Ratnagiri. In the legal parlance this can only be taken as a mere suspicion / presumption without proof since it would not be unusual on the part of that Krushikesh Jadhav itself or any other person also to make call through the same mobile tower which is located near deceased Appellant's native village. Therefore, the finding of the Commissioner (Appeals) that not informing any other Higher Officer when Superintendent Customs didn't pickup his phone or that any call going from a number through the tower located closer to the native village of the Appellant can't just establish the guilt of this Appellant (now deceased) beyond all reasonable doubt, as it is a settled principle of law that suspicion how much strong it would be, can't take the place of proof. Hence the order.

THE ORDER

9. The appeal filed by successor in interest of the deceased Appellant is allowed and the order passed by the Commissioner of Central Tax (Appeals-II), Pune *vide* Order-in-Appeal No. PUN-CT-APPII-(VNT)-000-059-2021-22 dated 28.10.2021 is hereby set aside, will all consequential relief.

(Order pronounced in the open court on 25.08.2026)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad