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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75753 of 2023

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/KS/482-484/2023 dated 21.06.2023 passed by the Commissioner of Customs (Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

Shri Sanjay Kumar Shaw, **: Appellant**
S/o. Shri Suren Shaw,
75, A. K. Mukherjee Road,
Nowapara, Sreepally, P. O. Netaji Colony,
Baranagar, Kolkata-700 090

VERSUS

Commissioner of Customs (Prev.), **: Respondent**
3rd Floor, Custom House,
15/1, Strand Road, Kolkata-700001

WITH

Customs Appeal No. 75754 of 2023

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/KS/482-484/2023 dated 21.06.2023 passed by the Commissioner of Customs (Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

Shri Prasanta Adhikari, **: Appellant**
S/o. Panchu Gopal Adhikari,
39/2, Beniatola Street, P. O. Sovabazar, Kolkata-700005

VERSUS

Commissioner of Customs (Prev.), **: Respondent**
3rd Floor, Custom House,
15/1, Strand Road, Kolkata-700001

AND

Customs Appeal No. 75755 of 2023

(Arising out of Order-in-Appeal No. Kol/Cus/CCP/KS/482-484/2023 dated 21.06.2023 passed by the Commissioner of Customs (Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

Shri Asish Kumar Chakraborty, **: Appellant**
S/o. Shri Pankaj Kumar Chakraborty,
Vill Chalitpara, P.O. Ajodhya, P. S. Shyampur
Howrah-711312, West Bengal.

VERSUS

Commissioner of Customs (Prev.), **: Respondent**
3rd Floor, Custom House,
15/1, Strand Road, Kolkata-700001

APPEARANCE:

MS. Atika S. Ahmed, Advocate for the Appellant
Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NOs.76228-76230/ 2026

DATE OF HEARING: 19.08.2026
DATE OF PRONOUNCEMENT: 24.09.2026

ORDER: [PER SHRI ASHOK JINDAL]

The facts of the case are that in pursuance of information received on 16.08.2017 that gold of foreign origin in a huge quantity was going to be carried by two persons, namely, Sanjay Saw and Asish Kumar Chakraborty, appellant numbers 1 and 3 respectively, to a melting shop in Bowbazar, Kolkata, a team of Officers of Headquarter P&I Branch of the Customs intercepted the appellant number 3 near Nimtala Ghat Street.

2. On being questioned, Shri Asish Kumar Chakraborty / appellant no. 3 admitted that he was carrying nine (09) numbers of gold biscuits / bars of foreign origin wrapped in newspaper which he was taking to a melting shop at Bowbazar, Kolkata. He further informed that he is an employee of a gold shop at Nimatala Ghat Street, Kolkata.

3. Accordingly, the said shop premises was also searched, during the course of which two persons i.e., Sanjay Shaw and Prasanta Adhikari, the appellant numbers 1 and 2 respectively, found present at the said shop were interrogated. The

appellant number 1 confessed that he was also carrying two packets of gold of foreign origin wrapped in old newspaper in his trousers pocket and handed over the same to the Customs officer. All the appellants were brought to the Custom House and the packets recovered from appellant numbers 1 and 3 were opened.

4. Upon opening the two packets recovered from the possession of appellant number 3, it was found that the same contained nine (09) pieces of yellow metal believed to be gold of foreign origin with foreign marking. The other two packets recovered from appellant number 1 were found to contain thirteen (13) pieces of yellow metal believed to be gold of foreign origin with foreign marking. The total 22 pieces of yellow metal were examined by the government approved valuer who ascertained the same to be made of 24 carat gold collectively weighing 3452.170 grams and valued at Rs.99,11,180/-.

5. The purity of gold was confirmed by the Test Report obtained from the Customs Laboratory, as 99.6% to 99.99%.

6. As all the three persons failed to produce any licit document for procurement of the said gold, therefore, the gold in question was seized; statements of all the appellants were also recorded.

7. On the basis of the statements and the above facts leading to recovery of the gold, a Show Cause Notice dated 16.08.2017 was issued to the appellants for absolute confiscation of the gold recovered and to impose penalty on the appellants.

8. Thereafter, by way of the Order-in-Original No. 99/ADC(P)/CUS/WB/2022-2023 dated 30.09.2022, apart from ordering absolute confiscation of the gold, a penalty of Rs. 4,00,000/- each was imposed on appellant numbers 1 and 3 and a penalty of Rs.10,00,000/- was imposed on the appellant number 2.

8.1. The said order was challenged by the appellants before the Ld. Commissioner (Appeals), who, vide the impugned order, affirmed the order passed by the adjudicating authority.

9. Aggrieved from the said order, appellants are before us, praying for reduction in the penalties imposed on them.

10. The Ld. Counsel appearing on behalf of appellant numbers 1 and 3 submits that the said appellants were only carriers and working for a salary of Rs.7,000/- per month with the appellant number 2 and having no other means to earn. In the circumstances, stating that the penalties imposed on the said appellants are excessively high, it is prayed that the penalties be reduced.

11. With regard to appellant number 2, it is the submission of the Ld. Counsel that no recovery was made from appellant number 2 and therefore no penalty is imposable on the appellant no. 2.

12. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

13. Heard the parties and considered their submissions.

14. We find that it is a case of smuggling of gold of foreign origin, and the appellant numbers 1 and 3 herein were acting as carriers of the gold. From the investigation, it is clear that the appellant number 1 and 3 were carriers of the gold and also involved in the activity of smuggling of gold. In this regard, it is observed that the said activity is required to be checked at various points and if the carriers of the gold are not intercepted, the smuggling of gold shall continue.

15. However, we also take note of the fact that the appellant numbers 1 and 3 were carrying on this activity for earning their livelihood, of a small amount. In these circumstances, we find that the penalties imposed on the appellant numbers 1 and 3 are excessively high. Therefore, the penalty imposed on the appellant numbers 1 and 3 stands reduced to Rs. 1,00,000/- (Rupees One Lakh only) each.

16. With regard to the penalty imposed on the appellant number 2, who was running the shop, we find that the appellant numbers 1 and 3 from whose possession the gold has been seized were in fact employees of the appellant number 2. Further, it is a fact on record that when the appellant number 2 was intercepted in his shop along with the appellant number 1, from the pocket of the appellant number 1, gold of foreign origin was recovered. Considering the above, no immunity is required to be given to the appellant number 2. Therefore, the penalty imposed on the appellant number 2 of Rs. 10,00,000/- is affirmed.

17. In view of this, we pass the following order: -

(i) The penalty imposed on the appellant numbers 1 and 3 stands reduced to Rs.1,00,000/- each;

(ii) The penalty imposed on the appellant number 2 of Rs.10,00,000/- is affirmed.

18. In these terms, the appeals are disposed of.

(Order Pronounced in Open court on 24.09.2026)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP