

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH –COURT NO. 4

Customs Appeal No. 51467 of 2022

(Arising out of Order-in-Original No. DLI/CUS.PREV./SKR/Pr. Commr./13/2021-22 dated 27.10.2021 passed by the Principal Commissioner of Customs, Preventive, New Delhi)

Rajesh Sehgal

G-16, 11nd Floor, Lajpat Nagar-I,
New Delhi-110024

Appellant

Versus

**Principal Commissioner of Customs
Preventive, New Delhi**

New Customs House,
Near IGI Airport,
New Delhi-110037.

Respondent

With

Customs Appeal No. 51468 of 2022

(Arising out of Order-in-Original No. DLI/CUS.PREV./SKR/Pr. Commr./13/2021-22 dated 27.10.2021 passed by the Principal Commissioner of Customs, Preventive, New Delhi)

Sunil Sehgal

G-16, 11nd Floor, Lajpat Nagar-I,
New Delhi-110024

Appellant

Versus

**Principal Commissioner of Customs
Preventive, New Delhi**

New Customs House,
Near IGI Airport,
New Delhi-110037.

Respondent

With

Customs Appeal No. 51469 of 2022

(Arising out of Order-in-Original No. DLI/CUS.PREV./SKR/Pr. Commr./13/2021-22 dated 27.10.2021 passed by the Principal Commissioner of Customs, Preventive, New Delhi)

Sushil Kumar

G-16, 11nd Floor, Lajpat Nagar-I,
New Delhi-110024

Appellant

Versus

**Principal Commissioner of Customs
Preventive, New Delhi**

New Customs House,
Near IGI Airport,
New Delhi-110037.

Respondent

And
Customs Appeal No. 51470 of 2022

(Arising out of Order-in-Original No. DLI/CUS.PREV./SKR/Pr. Commr./13/2021-22 dated 27.10.2021 passed by the Principal Commissioner of Customs, Preventive, New Delhi)

Sandeep Sehgal
G-16, 11nd Floor, Lajpat Nagar-I,
New Delhi-110024

Appellant

Versus

**Principal Commissioner of Customs
Preventive, New Delhi**
New Customs House,
Near IGI Airport,
New Delhi-110037.

Respondent

Appearance:

Present for the Appellant: Shri D.S. Chadha & Ms. Prabjyoti K. Chadha, Advocates

Present for the Respondent: Shri V.J. Saharan, Authorized Representative

CORAM:

Hon’ble Dr. Rachna Gupta, Member (Judicial)

Date of Hearing: 27/06/2025
Date of Decision: 03/07/2025

Final Order Nos. 50965-50968/2025

Dr. Rachna Gupta:

The present appeal disposes of four appeals. The show cause notice as well as the order-in-original being common to four of these appeals. The details are as follows:

Appeal No.	Appellant’s Name	Show Cause Notice No.	Order-in-Original No.	Amount of penalty confirmed	Amount of currency seized
C/51467/2022	Rajesh Sehgal	338/2018/759 dated 02.03.2019	13/2021-22 dated 27.10.2021	Rs. One lakh	Rs. 6 lakhs
C/51468/2022	Sunil Sehgal	338/2019/759 dated 02.03.2019	13/2021-22 dated 27.10.2021	Rs. One lakh	Rs.9,50,000/-
C/51469/2022	Sushil Kumar	338/2019/759	13/2021-22	Rs. One	Rs.9,34,000/-

		dated 02.03.2019	dated 27.10.2021	lakh	
C/51470/2022	Sandeep Sehgal	338/2019/759 dated 02.03.2019	13/2021-22 dated 27.10.2021	Rs. One lakh	Rs,3,10,000/-

2. The facts in brief, which have given rise to the present adjudication are as follows:

2.1 The officers of Directorate of Revenue Intelligence¹ got an information about huge quantity of foreign origin smuggled gold to have been received at shop on 2nd floor of 34/3128 Beadon Pura, Karol Bagh. The officers reached the said premises along with two witnesses and with the search warrants. Rahul Kapoor the owner of the said shop was found available. During search Indian currency of total value of INR 1,90,000/- along with four yellow coloured metal bars weighing 1 Kg. each, 11 numbers of cut pieces of yellow metal, 150 gm bar of yellow metal all bearing description "Perth Mint Australia" were recovered from the said shop. Rahul Kapoor could not produce any document for the licit possession of the said yellow metal and the said cash. Meanwhile all the four of the above named appellants were found coming inside the shop. They all identified themselves as jewellers based in Panipat, Haryana. All of them were found in possession of Indian currency which they mentioned to be meant for purchasing the respective amount of gold i.e. Rs. 6 lakhs for buying 180 gms of gold, Rs. 9.50 lakhs for buying 300 gms of gold, Rs. 3.10 lakhs for buying 100 gms of gold and for Rs. 7 lakhs for buying 220 gms. gold respectively from Rahul Kapoor.

1 DRI

2.2 From inside the said shop further Indian currency amounting to Rs. 3,12,48,000/- and several yellow metal bars in a bag (27 bars, 3 big cut pieces and 16 small cut pieces) total weighing 31,038.46 gms yellow gold bars also got. He could not produce any document with respect to the licit possession of the said 31,038 kg. of foreign currency gold and Indian currency amounting to Rs.3,12,48,000/- also.

2.3 On the reasonable belief that the recovered foreign origin gold is illegally smuggled into India in contravention of provisions of Customs Act, 1962 that the entire amount of gold and the Indian currency recovered from the premises of Rahul Kapoor and the currency recovered from the present appellants was seized holding the same to be relatable to sale proceeds or intended sale of the foreign origin smuggled gold as being liable for confiscation. Panchnama dated 06.09.2018 was drawn. During further investigation one Del laptop was also resumed. Statements of all concerned were recorded including that of Rahul Kapoor, Monu Kapoor and Vijay Kapoor the partners of Rahul Kapoor and the documents from the respective banks were obtained. Forensic examination of digital data was also conducted. Accordingly, Section 123 of the Customs Act, 1962 was invoked. Since nothing was produced by the appellant to falsify prima facie evidence against them that the show cause notice as mentioned above was served upon 13 co-noticees including four of the appellants.

2.4 The proposal against the appellant was to confiscate the money which was recovered from their possession in terms of Section 121 of Customs Act 1962 and imposition of penalty in

terms of Section 117 of Customs Act, 1962. They allegedly being the abettors/conspirators of the offence of the smuggling of gold. The said proposal has been confirmed vide the aforementioned order in original vide which the Indian currency of the appellants was ordered to be confiscated and penalty of Rs. One lakh has been imposed on each of the appellants. Being aggrieved, the appellants are before this tribunal.

3. I have heard learned counsels for the appellant and learned Authorized Representative for Revenue.

4. Learned counsel for the appellant has submitted that the statements of all the appellants were recorded and their deposition is wrongly alleged to be an admission for conspiring with Rahul Kapoor in the act smuggling of gold. It is impressed upon that they are small scale jewellers in state of Haryana and with a view of cost cutting, while preparing jewellery for their customers, that they started purchasing gold from Rahul Kapoor four months prior the date of impugned seizure as his gold rate was comparatively cheaper though by minor difference. However, they had no knowledge about involvement of Rahul Kapoor in such illegal activities. The penalty on four of the appellants is, therefore, alleged to have wrongly been imposed. Same is prayed to be set aside. Learned counsel has relied upon the following decisions:

(i) **Samir Saha Vs. Commissioner of Customs (Preventive) Shillong²;**

(ii) **Ratan Kumar Saha Vs. Commissioner of Customs, Patna³;**

(iii) **Gopal Chandra Shil (Late) Vs. Commissioner of Customs (Prev.), Shillong⁴;**

2 2020 (371) ELT 189 (Meghalaya High Court)

3 2021 (375) RLT 435 (Tri.-Kolkata)

(iv) **Alam Vs. Commissioner of Customs, C.Ex. & ST (Appeals), Meerut-I**⁵;

(v) **Commissioner of Central Excise, Surat-II Vs. Mahadev Enterprises**⁶;

(vi) **Commissioner of Customs (Preventive), Kolkata Vs. Prabash Kumar Jalan**⁷;

(vii) **Shri Dilip Kumar Verma Vs. Commissioner of Customs (Preventive), Shillong**⁸;

(viii) **Shri Purnanand Ramchandra Mishra Vs. Commissioner of Customs (Preventive)**⁹

The learned counsel prayed for release of their money and setting aside of the imposition of penalties upon them. Decision of this Tribunal in the case of **Gurpreet Singh Alias Sonu Vs. Commissioner of Customs**¹⁰ has also been relied upon.

5. While rebutting these submissions, learned Departmental Representative has submitted that all the appellants in their statements have submitted that Rahul Kapoor used to sell gold on less prices that too without any bill or any legal document while selling the gold and by cutting it from pure gold bar. All the four jewellers are in the business of jewellery making for a long period. Hence they are wrongly pleading innocence. The act acknowledged by them in their deposition amounts to sufficient knowledge to the appellant that they were purchasing the smuggled gold. Hence four of them have rightly been penalized under Section 117 of the Customs Act. Since the currency in their hand was admittedly meant for purchasing gold from Rahul Kapoor i.e. for purchasing the smuggled gold the same has rightly been

4 2019 (370) ELT 732

5 2018 (364) ELT 392 (Tri.-All.)

6 2014 (301) ELT 150

7 Final Order No. 75700/2021 dated 27.08.2021

8 Customs Appeal No. 75315/2022 dated 04.05.2023

9 Final Order No. 75553/2024 dated 01.03.2024

10 Final Order No. 56218/2024 dated 02.08.2024

confiscated. Above all, the appellants had to follow the principles of "caveat emptor" meaning 'Buyer be aware' which the appellant have failed to observe. In the light of these submissions, no infirmity is impressed upon in the impugned order. While relying upon the decision in the case of **Sumit Anand, Partner and Anand Enterprises Vs. Pr. Commissioner of Customs. ICD TKD New Delhi**¹¹, learned Departmental Representative has prayed for dismissal of appeal.

6. Having heard both the parties and perusing the entire record, I observe that the main findings in the order in original based whereupon the penalty has been imposed upon the appellants and their currency has been seized is para 59.2 of the order in original. It reads as follows:

"I find that the principal allegation against Noticees is that Shri Rahul Kapoor along with Shri Vijay Kapoor @ Anil Kapoor and Shri Monu Kapoor entered into a criminal conspiracy with Tilak Raj @ Pankaj Dhingra to buy and sell smuggled gold of foreign origin. Said Shri Rahul Kapoor neither produced any document(s) in support of licit import and possession of the seized yellow colour metal bars & cut pieces of gold collectively weighing 35175.81 grams at the time of seizure nor at the time of investigation. The onus to prove that the seized gold was not smuggled lies on said Shri Rahul Kapoor."

It is submitted that appellants are small jewellery shop owners in Panipat, and they used to come to Delhi to purchase gold from various shop keepers in Karol Bagh. This time also they came to purchase the gold from Rahul Kapoor who has shop in Beadonpura, and it is during search in the shop, by the DRI officers, that the currency carried by the appellants was seized by the officers."

7. From these observations, it has been clear that the principal allegations are not with respect to the appellants. The onus to prove the above, observations was purely on Rahul Kapoor and not on the appellants as is otherwise recorded in para 59.2 itself.

11 Appeal Nos. 55161 & 55169/2023: FO No. 55812-55813/2024 dated 22.5.2024

Reliance has been placed on Rahul Kapoor's statement also but I observe that the appellants were some of his parties who came to him to purchase the gold. There is no whisper in the entire statement that the appellants were involved with him with an alleged act of smuggling nor there is any deposition that the appellants had any knowledge of the fact that the gold which they are purchasing from Rahul Kapoor is a smuggled gold. It is held that Rahul Kapoor's statement cannot be the basis of passing any order against the appellant for holding them the conspirator/abettor in the crime of smuggling of gold. Similarly in the statement of the partners of Rahul Kapoor viz. Vijay Kapoor and Monu Kapoor there is no allegation about the appellants to have been involved with them or to have knowledge about the gold which they were supposed to purchase to be the smuggled gold.

8. I have perused the statements of the appellants as have been recorded in the impugned order, I do not find even single deposition which may amount to the admission of the appellants being involved in the act of alleged smuggling or having any knowledge about the said activity of their vender. The forensic analysis of digital data has also not reflected anything to establish such connect between the appellants – Rahul Kapoor/his partners which may prove that the appellants had the knowledge of the alleged illegal act. Further, it is observed that original adjudicating authority has ordered confiscation of money recovered from the appellant based on findings in para 75.3 of the impugned order. The para reads as under:

"I find that Shri Rajesh Sehgal, Shri Sunil Sehgal, Shri Sandeep Sehgal, Shri Sushil Kamar and Shri Vishnu Soni informed that they had brought Rs. 6 lacs for buying 180 gms of gold, Rs. 9.50 Lacs for buying 300 gms of gold, Rs. 3.10 Lacs for buying 100 gms of gold Rs. 9.34 lakhs for buying 300 gms of gold and Rs. 7 lakhs for buying 220 gms of gold respectively from Shri Rahul Kapoor; that Rahul Kapoor informed that he sells gold to these persons without any bill and he receives payment only in cash; that the currency recovered from, Shri Rajesh Sehgal, Shri Sunil Sehgal, Shri Sandeep Sehgal, Shri Sushil Kumar and Shri Vishnu Soni was brought by all of them with the sole intention & for the purpose of buying the foreign origin smuggled gold and liable to confiscation & was rightly seized under Section 110 of the Customs Act, 1962. Further, I find that said Shri Rajesh Sehgal, Shri Sunil Sehgal, Shri Sandeep Sehgal, Shri Sushil Kumar and Shri Vishnu Soni, used to buy smuggled gold on routine basis from Shri Rahul Kapoor and started purchasing gold from Rahul Kapoor because Rahul Kapoor sells gold, on a little less price from market, which evidences that all of them have the knowledge that the gold they came to buy without any invoice was not legally procured by Shri Rahul Kapoor."

9. The perusal makes it clear that the adjudicating authority has wrongly formed an opinion that the appellants had already bought gold from Rajesh Sehgal it is coming apparent from the record also from the Panchnama that the appellant entered the shop of Rajesh Sehgal when DRI officers had already started searching the premises. The Indian currency was recovered from the appellants which they had brought along with them from Panipat to purchase the respective quantity of gold. Thus it stands established that they had not purchased the gold by the time their money got seized. The paragraph is absolutely silent about indicating any act of the appellants or any documents in their possession or recovered from the premises of the Rahul Kapoor which may establish the involvement of the appellants in the alleged act of smuggling or may establish appellant's mens rea about the alleged illegal act which would have been committed by Rahul Kapoor and his two partners.

10. In the light of above observations, it is held that presumptions and assumptions can never be the basis for imposition of penalty. I draw my support from the decision of Hon'ble Apex Court in the case of **Hindustan Steels Ltd. Vs. State of Orissa**¹² wherein it has been held that *penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law and was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. The Hon'ble Court further held that even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to invoke penalty when there is a technical or venial breach of the provisions of the Act or where the breach flows from the bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Thus, on the same analogy, the party are not liable for any penal action and so the penal proceedings initiated in the show cause notice merits to be dropped.*

11. In the light of entire above discussion, it is held that appellants are wrongly have been involved in the act of smuggling for which Rahul Kapoor and his partners might be responsible. Appellants are found to not to even have any knowledge of the alleged illegal act of smuggling of gold. Mere act of purchasing gold without bill is highly insufficient to confirm the grave allegations of conspiring the act of smuggling of gold. Accordingly, the order imposing penalty on the appellants and confiscating their money is held not sustainable. The order is accordingly, hereby set

12 1978 (2) ELT J159 (SC)

aside. Appellants are held entitled to get their respective money back. With these observations, all the four appeals are hereby allowed.

(Pronounced in open Court on 03.07.2025)

(Dr. Rachna Gupta)
Member (Judicial)

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