



2025:AHC-1 KO:842ES-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CUSTOM APPEAL No. - 16 of 2025

Commissioner Of Customs (Preventive) Lucknow

.....Appellant(s)

Versus

Shri Rajesh Kumar

.....Respondent(s)

Counsel for Appellant(s)	:	Dheeraj Srivastava, Anindya Shastri
Counsel for Respondent(s)	:	Shravan Kumar

Court No. - 3

**HON'BLE SHEKHAR B. SARAF, J.
HON'BLE MANJIVE SHUKLA, J.**

1. Heard learned counsel appearing on behalf of the parties.
2. The present appeal has been filed under Section 130 of the Customs Act, 1962, wherein the following substantial questions of law have been raised by the revenue:-

"a. Whether the Hon'ble CESTAT was justified in relying upon new documentary evidences (invoices and family settlement), not presented before by the Respondent at the time of adjudication and first appellate level (Commissioner (Appeals)), which is in contravention of the settled legal principles laid down by Supreme Court in Commissioner of Cus. & C. Ex., Goa Vs. Dempo Engineering Works Ltd. (2015 (319) E.L.T. 359 (S.C.)) and Sanghvi Reconditioners Pvt. Ltd. Vs. Union of India (2010 (251) E.L.T. 3 (S.C.))?

b. Whether CESTAT has erred in not placing reliance upon the statement recorded under Section 108, which is a substantive piece of evidence in view of the decision of Hon'ble Supreme Court in Naresh J. Sukhwani Vs Union of India in SLP (C) No. 23708 of 1995, decided on 06.11.1995 reported in 1996 (83) E.L.T 258 (S.C.)?

c. Whether applying the precedent in Neeraj Agarwal (17.04.2024) (Tribunal) by relying solely on gold purity levels below 99.9% to conclude the gold was not of foreign origin and ignoring the admission of tampering to conceal foreign markings and specific intelligence of smuggling, thereby holding that the seized gold is not smuggled goods under Section 2(39) and therefore confiscation under Section 111 of

the Customs Act, 1962 is not tenable?

d. Whether the Hon'ble CESTAT erred in law by setting aside the confiscation of ₹1,01,25,600 as proceeds of smuggled goods under Section 121 of the Customs Act, 1962, despite Respondent admission and corroborative evidence from carriers statements, and without completely appreciating its lawful source under the Customs Act?

e. Whether the CESTAT is justified in setting aside the confiscation of (a) the seized gold, (b) Indian currency which is admitted to be sale proceeds and (c) setting aside the imposition of penalty of Rs 20,00,000/- by holding that the seized goods is not a smuggled goods as the burden of proof as provided under Section 123 of the Customs Act, 1962 has been discharged by the Respondent is contrary to provisions of the Customs Act?

f. Whether the CESTAT was justified in releasing the seized gold to the Respondent, which was claimed by the Respondent before the Tribunal for the first time and not claimed at time of adjudication and Commissioner (Appeals) level?

g. Whether the Hon'ble CESTAT's decision to set aside confiscation on the basis of not providing an fine option under Section 125 of the Customs Act, 1962, despite the adjudicating authority's finding of absolute confiscation based on smuggling, involves misinterpretation of statutory provisions and appellate powers?"

3. Shri Dheeraj Srivastava, learned Senior Standing Counsel appearing on behalf of the Customs has stated that the respondent herein for the first time had placed certain documents claiming ownership of the gold before the Tribunal. He further submits that these documents have not been produced either before the adjudicating authority or before the Commissioner (Appeals).

4. He, accordingly, submits that the time granted by the Tribunal of two weeks was not sufficient and revenue could not rebut the existence of these documents before the Tribunal. He, however, submits that it is very clear from the appeal filed by the respondent before the Commissioner (Appeals) that the respondent has categorically denied ownership of the goods as provided in the grounds of appeal at paragraph No.A.1 and the submissions made at page No.15 of the said appeal.

5. In light of the same, it is clear that the respondent had changed his stance, that was taken before the Adjudicating Authority and the Commissioner (Appeals), before the Tribunal without providing any cogent reasons for the changed stance. Furthermore, the Tribunal did not address the issue with regard to the changed stance of the respondent and passed its order without considering the same.

6. Upon perusal of the order passed by the Tribunal, we are of the view that the Tribunal did not examine in detail the contrary stand taken by the respondent, and accordingly, the finding of the Tribunal is perverse and based on extraneous materials.

7. In view of the above, we are of the view that the matter is required to be once again examined by the Tribunal so that the respondent can explain the changed stand and the revenue has an opportunity to rebut the same.

8. In light of the same, the impugned order of the Tribunal is quashed and set aside with a direction upon the Tribunal to *de novo* hear the matter and grant fresh opportunity of hearing to both the parties.

9. We direct the Tribunal to expeditiously decide the matter, as it has been pending for a very long time.

10. With the above directions, the appeal is allowed.

(Manjive Shukla,J.) (Shekhar B. Saraf,J.)

December 16, 2025

Ashutosh