**IN THE HIGH COURT AT CALCUTTA**
**SPECIAL JURISDICTION [CUSTOMS]**
**ORIGINAL SIDE**

**CUSTA 12 OF 2026**

**IA NO: GA 1 OF 2026**

**PRINCIPAL COMMISSIONER OF CUSTOMS PREVENTIVE**
**VS**
**SHRI LITAN KARMAKAR**
**PROPRIETOR OF MS LITAN KARMAKAMAR**

**BEFORE:**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ**
**AND**
**THE HON'BLE JUSTICE UDAY KUMAR**

*For the Appellant* : *Mr. Kaushik Dey, Ld. Adv.*
*Mr. K.K. Maiti, Ld. Adv.*

*For the Respondent* : *Mr. Nilotpal Chowdhury, Ld. Adv.*
*Mr. Prabir Bera, Ld. Adv.*

*Hearing concluded on* : *02.04.2026*

*Judgment on* : *09.04.2026*

***Uday Kumar, J:-***

***ADMISSION AND SCOPE OF APPEAL***

**1.** This appeal appears before us for admission. It has been preferred by the Appellant-Revenue, against the Miscellaneous Order dated July 4, 2025, passed by the Learned Customs, Central

Excise & Service Tax Appellate Tribunal (CESTAT), East Zonal Bench, Kolkata.

**2.** The Learned Counsel for the Appellant submitted that the Tribunal, while dealing with a Stay Application involving the seizure of 2755.200 grams of foreign-origin gold, rejected the same without assigning any independent reasons. It is contended that the Tribunal failed to consider the statutory presumption under Section 123 of the Customs Act, 1962, and ignored the Department's findings regarding fabricated documents.

**3.** Upon hearing the Learned Counsel for the Appellant at length and perusing the Memorandum of Appeal, we found that the matter raised a substantial question of law concerning the adjudicatory obligations (necessity of a "speaking order") of a quasi-judicial body.

**4.** Accordingly, the appeal was admitted on the following question:

> *"Whether the Learned Tribunal was legally justified in dismissing a stay application involving significant revenue and serious allegations of smuggling through a summary, non-speaking order, without providing independent reasoning or addressing the statutory mandate of Section 123 of the Customs Act, 1962?"*

**5.** With the consent of the appearing parties, the appeal is taken up for final disposal.

### ***THE FACTUAL MATRIX AND CONTROVERSY***

**6.** The dispute originates from a search conducted on March 28, 2019, by the Customs (Preventive) unit at the Respondent's business premises, resulting in the recovery of three gold bars weighing 2755.200 grams. These bars, valued at approximately Rs. 89,87,462/-, were prominently embossed with foreign markings (SUISSE, PAMP).

**7.** Acting on a reasonable belief that the bullion had been smuggled into India via unauthorized routes, the officers effected a seizure under Section 110 of the Act. The subsequent investigative trajectory revealed a series of shifting defenses adopted by the Respondent. Initially, it was asserted that the gold had been acquired from *M/s Swansukha Jewellers Pvt. Ltd.*—a claim categorically refuted by the purported seller. Thereafter, the Respondent introduced an alternative theory of a "gold exchange" with his brother, *Shri Shyamlal Karmakar*; however, this transaction had found no reflection in the statutory Ledger Accounts for the financial year 2018-19.

**8.** While the Adjudicating Authority originally ordered absolute confiscation due to the Respondent's failure to discharge the burden of proof, the Commissioner (Appeals) reversed this finding on November 8, 2024. The Revenue’s subsequent motion for a stay before the Tribunal resulted in the summary rejection now under challenge.

***SUBMISSIONS OF THE PARTIES***

**9.** Mr. Kaushik Dey, Learned Counsel for the Appellant-Revenue primarily relied on the mandatory presumption enshrined in Section 123 of the Act. He submitted that for "notified goods," such as foreign-marked gold, the burden of proving licit importation lies squarely upon the possessor. He argued that any breach of import conditions constitutes a "prohibition" under the ratio of *Sheikh Mohd. Omer Vs. Collector of Customs [1983 (13) ELT 1439 (SC)]*, rendering the goods liable for confiscation. The Revenue further characterized the Tribunal’s summary rejection as a patent jurisdictional error.

**10.** Mr. Nilotpal Chowdhury, Learned Counsel for the Respondent, while denying the smuggling charges and asserting that the gold had been acquired through domestic channels, emphasized the financial hardship caused by the prolonged seizure. However, in light of the procedural infirmities highlighted during the hearing, the Learned Counsel consented to a remand for a fresh hearing on the merits.

## ***ANALYSIS AND FINDINGS***

**11.** We have scrutinized the impugned order dated July 4, 2025, specifically Paragraph 2, which reads:

> *"Prima facie, we find that the impugned order... is not ex facie, illegal or without jurisdiction. Consequently, the stay petitions filed by the Revenue are rejected, being devoid of merit."*

**12.** We find force in the Appellant's contention that this is a "non-speaking order." It is a fundamental tenet of administrative law that reasons are the "live links" between the mind of the adjudicator and the controversy at hand; an order devoid of such reasoning is a "shell without a kernel." The Tribunal's conclusion that the lower order is "not ex facie illegal" lacks the necessary premise to sustain it. It fails to engage with the Revenue's evidence regarding the refuted procurement documents or the statutory reversal of the burden of proof under Section 123. In matters involving foreign-origin bullion, this presumption is a pivotal legal factor, and the Tribunal's failure to address it indicates a non-application of mind. Such a cryptic approach is not a judgment but a mere fiat, depriving this Court of the opportunity to understand the rationale behind the refusal of a stay in a high-stakes revenue matter.

## ***ORDER***

**13.** In view of the foregoing observations, the following order is passed:

a) The impugned order dated July 4, 2025, passed by the Learned CESTAT, Kolkata, is hereby set aside.

b) The matter is remanded to the Learned Tribunal for a fresh, *de novo* consideration of the Stay Application and the main appeal on their respective merits.

c) The Tribunal is directed to pass a reasoned and speaking order after affording both parties a fair opportunity of being heard, within six weeks from the date of communication of this judgment.

d) Interim Protection: Pending the fresh decision by the Tribunal, the operation of the Order-in-Appeal No. KOL/CUS(CCP)/KS/628-630/2024 dated November 8, 2024, shall remain stayed, and the seized gold shall remain in the custody of the Department.

**14.** CUSTA 12 of 2026 is accordingly disposed of.

**15.** GA 1 of 2026 is also disposed of accordingly.

**16.** Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

***I AGREE***

***(RAJARSHI BHARADWAJ, J.)*** ***(UDAY KUMAR, J.)***