

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

PRINCIPAL BENCH - COURT NO. 1

**CUSTOMS RECTIFICATION OF MISTAKE APPLICATION NO.
51514 OF 2025**

(filed by the appellant)

IN

CUSTOMS APPEAL NO. 52001 of 2024

Mukesh Kumar Soni

Plot No. 3, Janta Colony, Sikar Road
Jaipur, Rajasthan - 302 013
New - 110 029

.....Applicant

VERSUS

Principal Commissioner of Customs (Preventive) ...Respondent

New Customs House
Near IGI T-3 Terminal
New Delhi - 110 037

APPEARANCE:

Shri Rupesh Kumar, senior advocate assisted by Shri Harsh Raj Singh,
advocate for the appellant

Shri Gurdeep Singh, special counsel for the department

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

MISC. ORDER NO. 50283/2026

**Date of Hearing : 29.04.2026
Date of Decision : 30.04.2026**

JUSTICE DILIP GUPTA :

This application has been filed for rectification of mistake in the order dated August 13, 2025 rejecting Miscellaneous Application No. 50361 of 2025 filed by the appellant for bringing on record additional documents as also for rectification of mistake in the Final Order dated December 08, 2025 passed in Customs Appeal No. 52001

of 2024.

2. It appears from the records that the appellant had filed the appeal against the order dated June 25, 2024 passed by the Principal Commissioner of Customs (Preventive), New Delhi¹. During the pendency of this appeal, the appellant filed Customs Miscellaneous Application No. 50361 of 2025 for placing on record additional documents. This application was rejected on August 13, 2025 and the order is reproduced below :

“The documents that are sought to be brought on record were not filed during the adjudicating proceedings and no good reason has been stated as to why the same could not be filed at that stage. The application is, accordingly, rejected.”

3. Customs Appeal was ultimately decided by a Final Order dated December 08, 2025.

4. The issue that was raised in the appeal by the appellant was in connection with the 12 gold bars in respect of which the appellant had claimed ownership on the basis of a Will dated November 15, 2022 said to have been executed by late Mahesh Soni, brother of the appellant, in favour of the appellant. According to the appellant, the gold bars were the property of his brother late Mahesh Soni, proprietor of M/s B.S. Brothers and Industries, Jaipur and as his brother was suffering from multiple serious health issues and was informed by medical experts that his life expectancy was limited, his brother executed a Will on November 15, 2022 bequeathing the said gold bars in his favour. Though the Will in question and some other

1 the Principal Commissioner

documents had been placed by the appellant before the adjudicating authority, but the appellant filed a Miscellaneous Application before the Tribunal for bringing on record certain other documents which were not available with the appellant during the course of adjudication or at the time of filing of the appeal to substantiate his claim that the gold bars belonged to his brother late Mahesh Soni.

5. The relevant paragraphs 4, 5 and 7 of the Miscellaneous Application are reproduced below :

"4. That, the documents sought to be placed on record by the present application were not available to the Appellant at the time of filing of the appeal or during the SCN proceedings before the Principal Commissioner of Customs (Preventive). Despite this, the Appellant has made significant efforts to gather the necessary documents to substantiate his claim that the gold bars belonged to the late Sh. Mahesh Soni's proprietary concern, M/s B.S. Brothers and Industries, Jaipur.

5. That, it is submitted that the Appellant has tried to gather the documents, detailed hereinafter, from the concerned parties who supplied the gold to M/s B.S. Brothers and Industries and in gathering all the additional documents, a considerable time has been taken. It is submitted that the said additional documents have been obtained by the Appellant after a considerable effort. Thus, if the Appellant is not allowed to place the said additional documents on record, his effort will go in complete vain and grave injustice will be caused as the documents prima facie show rightful ownership of the Appellant of the gold bars and non-involvement of the Appellant in the present Case No. DRI/HQGI/338/V/ENQ-3/INT-NIL/2023.

7. Reasons for Seeking to File Additional Documents:

That the documents which the Appellant wishes to place on record clearly shows that the entire gold bars and silver bars were supplied by the aforementioned parties to M/s B S Brothers & Industries. The detailed descriptions of all the additional documents are provided hereunder:

GSTR 2A of B S Brothers & Industries: Table of GSTR 2A for the month of January 2021 and February 2021 showing details of purchases made by the B S Brothers & Industries from the following suppliers:

1. Sh. Lalit Goyal, Proprietor of M/s Rainbow International.
2. Sh. Om Prakash, Proprietor of M/s Royal Impact.
3. Sh. Raghuveer Singh Shekhawat, Proprietor of M/s Muskan Trader.
4. Sh. Maheshwar Dayal Agrawal, Proprietor of M/s Shree Balaji Impex.

Form GSTR 1: Form GSTR1 showing details of outward supplies of goods (particularly gold) made by the parties to M/s B S Brothers & Industries.

Form GSTR 3B: Form GSTR 3B of the suppliers showing payment of tax collected from M/s B S Brothers & Industries.

Receiver-wise summary in Form GSTR 1: Receiver-wise summary in Form GSTR 1 of M/s Muskan Traders, Shree Balaji Impex, M/s Shivansh Traders, M/s Royal Impex, M/s Rainbow International, M/s D.S. Brothers, wherein GSTIN 08GNMPS2050H2ZN of M/s B S Brothers & Industries is appearing which shows that all the said parties had made outward supplies to M/s B S Brothers & Industries and declared the said outward supplies in their GST Returns.

Party ledgers: Party ledgers of M/s Muskan Traders, Shree Balaji Impex, M/s Shivansh Traders, M/s Royal Impact, M/s Rainbow International, M/s D.S. Brothers showing accounting record of all the transactions with M/s B S Brothers & Industries.

Tax Invoices: Tax Invoices issued by M/s Muskan Traders, Shree Balaji Impex, M/s Shivansh Traders, M/s Royal Impact, M/s Rainbow International, M/s D.S. Brothers to M/s B S Brothers & Industries clearly showing purchase of the claimed quantity of gold i.e., 12 kgs.

Affidavit of Sunil Kumar: Sunil Kumar, proprietor of D S Brothers solemnly affirmed in his affidavit that DS Brothers had sold the gold bars weighing 7,654.520 grams to B S Brothers & Industries under the GST Invoice no. DSB/20-21/635 dated 22.01.2021.

Affidavit of Raghuveer Singh Shekhawat: Raghuveer Singh Shekhawat, proprietor of M/s Muskan Traders solemnly affirmed in his affidavit that Muskan Traders had sold gold bars weighing 2000.00 grams under GST Tax Invoice no. MT/20-21/622 dated 02.02.2021; gold bars weighing 500.00 grams under GST Tax Invoice MT/20-21/633 dated 05.02.2021; sold gold bars weighing 739.260 grams under GST Invoice no. MT/20-21/634 dated 02.03.2021 to B S Brothers & Industries.

Affidavit of Lalit Goyal: Lalit Goyal, proprietor of M/s Rainbow International Solemnly affirmed in his affidavit that Rainbow International had sold gold bars weighing 2000.00 grams to BS Brothers under GST Invoice no. RI/20-21/578 dated 22.01.2021; sold gold bars weighing 967.780 grams to BS Brothers under GST Invoice no. RI/20-21/583 dated 03.02.2021.

Affidavit of Sh. Om Prakash: Om Prakash, proprietor of M/s Royal Impact solemnly affirmed in his affidavit that M/s Royal Impact had sold gold bars weighing 604.851 grams to B S Brothers & Industries under GST Invoice no. RI/538 dated 30.01.2021.

Affidavit of Sh. Deepak Kumar Sharma: Deepak Kumar Sharma, proprietor of Shivansh Traders solemnly affirmed in his affidavit that Shivansh Traders had sold gold bars weighing 1048.411 grams under GST Tax Invoice no. ST/478 dated 28.01.2021.

Affidavit of Sh. Maheshwar Dayal Agrawal: Maheshwar Dayal Agrawal, proprietor of Shree Balaji Impex solemnly affirmed in his affidavit that Shree Balaji Impex had sold gold bars weighing 430.178 grams to B S Brothers & Industries under GST Invoice no. 2020-21/SBI/546 dated 10.02.2021.

Declaration under Letter Heads: Declarations of proprietors of M/s Rainbow International, M/s D S Brothers, M/s Muskan Traders, M/s Shivansh Traders concerning the authenticity of the outward supplies of Gold Bars made to M/s B S Brothers & Industries."

6. The additional documents that were sought to be filed by the appellant relate to GSTR-2 of M/s B.S. Brothers and Industries showing details of purchases made by M/s B.S. Brothers and Industries from certain suppliers; Form GSTR-1 showing details of outward supply of gold made by the parties to M/s B.S. Brothers and Industries; Form GSTR-3B of the suppliers showing payment of tax collected from M/s B.S. Brothers and Industries; party ledgers showing transactions with M/s B.S. Brothers and Industries; tax invoices showing purchase of 12 kg gold by M/s B.S. Brothers and Industries;

and certain affidavits. The appellant, therefore, prayed :

“Therefore, it is humbly submitted that it is evident from the documents that the entire gold in question were originally procured by Late Sh. Mahesh Soni, a proprietor of M/s B.S. Brothers. Further, it is submitted that for deciding the legality of the impugned order passed by the Principal Commissioner of Customs (Preventive) New Customs House New Delhi - 110037, against the Appellant, it is imperative that the proposed documents shall be considered for the adjudication of the present matter on merits.”

7. As noticed above, this application was rejected by order dated August 13, 2025 for the reason that the documents sought to be brought on record were not filed during the adjudication proceedings and no good reason had been stated as to why the same could not be filed at that stage.

8. Shri Rupesh Kumar, learned senior counsel appearing for the applicant assisted by Shri Harsh Raj Singh submitted that there is an error apparent on the face of the record in the order dated August 13, 2025 rejecting the Miscellaneous Application filed by the applicant for bringing on record additional documents and this error has consequentially led to an error in the Final Order dated December 08, 2025. Learned senior counsel pointed out that not only the reasons stated for not bringing on record the additional documents as additional evidence in the pending appeal escaped the attention of the Tribunal, but even otherwise the ground stated in the order is not a ground to be examined for deciding the application. In this connection, learned senior counsel placed reliance on rule 23 of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules,

1982² that deals with 'production of additional evidence'. Learned senior counsel also placed reliance upon certain decisions to which reference shall be made at the appropriate stage. Learned senior counsel also pointed out that the additional documents that were sought to be placed on record were vital and necessary for a just and final decision in this appeal. It is for this reason that the learned senior counsel also contended that a consequential error apparent on the face of the record crept in the final order.

9. Shri Gurdeep Singh, learned special counsel appearing for the department, however, submitted that the application for rectification of mistake in the Miscellaneous Order dated August 13, 2025 rejecting the Miscellaneous Application and the Final Order dated December 08, 2025 is misconceived. Learned special counsel pointed out that in the order dated August 13, 2025 the Tribunal had specifically noticed that no good reason had been stated by the appellant as to why the documents could not be filed during the course of adjudication and there is no error apparent on the face of the record in this order. To support his contention, learned special counsel placed reliance upon the judgment of the Tribunal in **Commissioner of Central Excise, Belapur, Mumbai vs RDC Concrete (India) P. Ltd.**³. Learned special counsel also pointed out that there is no error apparent on the face of the record in the Final Order dated December 08, 2025.

10. The submissions advanced by Shri Rupesh Kumar, learned senior counsel for the appellant and Shri Gurdeep Singh, learned

² the 1982 (Procedure) Rules

³ 2011 (270) ELT 625 (SC)

special counsel for the department have been considered.

11. The first issue that needs to be decided is whether there is an error apparent on the face of the record in the order dated August 13, 2025 by which the application filed by the appellant for bringing on record additional evidence was rejected.

12. To consider this issue, it will be necessary to examine rule 23 of the 1982 (Procedure) Rules that deals with 'production of additional evidence' and the relevant portion of the rule is reproduced below :

"RULE 23. Production of additional evidence — (1) The parties to the appeal shall not be entitled to produce any additional evidence, either oral or documentary, before the Tribunal, but if the Tribunal is of opinion that any documents should be produced or any witness should be examined or any affidavit should be filed to enable it to pass orders or for any sufficient cause, or if adjudicating authority or the appellate or revisional authority has decided the case without giving sufficient opportunity to any party to adduce evidence on the points specified by them or not specified by them, the Tribunal may, for reasons to be recorded, allow such documents to be produced or witnesses to be examined or affidavits to be filed or such evidence to be adduced.

(2) The production of any document or the examination of any witness or the adducing of any evidence under sub-rule (1) may be done either before the Tribunal or before such departmental authority as the Tribunal may direct.

(3) Where any direction has been made by the Tribunal to produce any documents or to examine any witnesses or to adduce any evidence before any departmental authority, the authority shall comply with the directions of the Tribunal and after such compliance send the documents, the record of the deposition of the witnesses or the record of evidence adduced, to the Tribunal.

(4) The Tribunal may, of its own motion, call for any documents or summon any witnesses on points at issue, if it considers necessary to meet the ends of justice."

13. A perusal of the aforesaid rule indicates that a party to an appeal shall not be entitled to produce any additional evidence before the Tribunal, but if the Tribunal is of the opinion that any document should be produced to enable it to pass orders **or** for any sufficient cause, then the Tribunal may, for reasons to be recorded, allow such document to be produced.

14. Section 129B of the Customs Act, 1962⁴ deals with 'orders of Appellate Tribunal' and sub-section (2) deals with rectification of mistake apparent from the record. It is reproduced below :

"129B. Orders of Appellate Tribunal

(2) The Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub section(1) and shall make such amendments if the mistake is brought to its notice by the Principal Commissioner of Customs or Commissioner of Customs or the other party to the appeal:

PROVIDED that an amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the other party shall not be made under this sub section, unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard."

15. It is clear from the aforesaid provisions of sub-section (2) of section 129B of the Customs Act that the Tribunal has the power to rectify any mistake apparent from the record, if the mistake is pointed out by the Principal Commissioner of Customs or the other party to the appeal.

16. This section is *para materia* to section 254(2) of the Income Tax Act.

17. In **Laxmi Electronic Corporation Ltd.** vs **Commissioner of Income Tax**⁵ the Allahabad High Court, while examining the provisions of section 254(2) of the Income Tax Act held:

".....By way of illustration, take a case where an assessee files an appeal raising four grounds, which he urges at the hearing of the appeal. The Tribunal, however, dismisses the appeal only on ground No. 4. Would it not be open to the assessee in such a case to ask for reopening and rehearing of the appeal on the ground that the first three contentions urged by him have not been noticed or discussed by the Tribunal? We think that such power must be held to be inherent in the Tribunal, since it would be a case where the party has suffered prejudice for no fault of his but on account of a mistake or error on the part of the Tribunal. It is a well-settled proposition that an act of court (which, in the context, means and includes a Tribunal of the nature of the Income-tax Appellate Tribunal) should not prejudice a party. In such a case, it would not be just to drive the party to a reference under section 256. It must be left to the Tribunal to reopen the appeal if it finds that it has omitted to deal with an important ground urged by the party. We are not persuaded to agree that the expression "record" in the phrase "mistake apparent from the record" in section 254(2) means only the judgment. The record means the record before the Tribunal."

18. It would be seen that the Allahabad High Court held that there is an inherent power in the Tribunal to rectify a mistake where the party has suffered prejudice on account of mistake or there is an error on the part of the Tribunal. The Allahabad High Court also held that the expression 'record' in the phrase 'mistake apparent from the

record' means record before the Tribunal.

19. In **Abdul Gaffar vs Commissioner of Customs**⁶, this Tribunal after examining the provisions of rule 23 of the 1982 (Procedure) Rules held that the requirement for examining an application filed for production of additional evidence is that such documents should enable the Tribunal to pass orders or for any sufficient cause. In this connection, the Tribunal placed reliance upon the judgment of the Calcutta High Court **In the goods of Premchand**⁷, wherein it was held by the High Court that the admissibility of additional evidence determines whether the appellate court requires the evidence to enable it to pronounce judgment or for any other substantial cause. The words 'or for any substantial cause' was also examined by this Tribunal and in this context the decision of the Privy Council in **Parsotim vs Lal Mohan**⁸ was referred to and it was held that these words refer to the requirement of the Court.

20. It would be seen that in the order dated August 13, 2025, the Tribunal failed to advert to the principles enunciated in rule 23 of the 1982 (Procedure) Rules, which principles have been enumerated above. The documents sought to be produced as additional evidence in the application are documents which may enable the Tribunal to pass orders as they relate to gold bars in respect of which penalty was imposed upon the appellant.

21. The decision of the Supreme Court in **RDC Concrete** relied upon by the learned special counsel for the department does not

6 1992 (SCC OnLine CEGAT 435

7 (1894) 21 Cal. 484

8 AIR 1931 Privy Council 143

help the department in this case. This decision holds that 'mistake apparent from the record' cannot be something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions. Such is not the factual position in the present case as in the present case long drawn process of reasoning on points which may have two opinions is not required.

22. The decision of the Calcutta High Court in **Commissioner of Customs (Preventive), Kolkata vs Shri Anil Kumar Soni**⁹ relied upon by the learned special counsel for the department will not come to the aid of the department, as it does not deal with the powers of the Courts to rectify any error apparent on the face of the record.

23. The order dated August 13, 2025, therefore, deserves to be recalled and is recalled. Customs Miscellaneous Application No. 50361 of 2025 is, accordingly, allowed.

24. The Final Order would, therefore, also have to be recalled as the documents may now have to be examined. It is made clear that the impact of these documents would have to be considered by the Bench while deciding the appeal afresh and it should not be taken that any view has been expressed on these documents in this order. The Final Order dated December 08, 2025 passed by the Tribunal is, accordingly, recalled.

25. The Rectification of Mistake application stands disposed of.

26. **List the appeal for hearing before the regular bench dealing with Customs Appeals on May 05, 2026.**

(Order pronounced on 30.04.2026)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)**

Golay