



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % *Reserved on: 28th October, 2025*
Pronounced on: 20th May, 2026
 + **CRL.A.1503/2025**

UNION OF INDIA

Through the Department of Customs,
 Assistant Commissioner of Customs (Law),
 IGI Airport, New Delhi.

.....Petitioner

Through: Mr. Pramod Bahuguna, SPP with
 Ms. Yachi and Ms. Debora Daimari,
 Advocates.

versus

HEMANT KUMAR ISHWAR DASS SINGHVI

S/o Shri Ishwar Das Madan Lai Singhvi,
 R/o 32, Naroain Dabholkar Road, Flat No.1402,
 Behhur Apartments, Mumbai.

.....Respondent

Through: Ms. Aishwarya Dwivedi, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Petition under Section 378 (v) of the Code of Criminal Procedure, 1973 (Cr.P.C) for Special Leave to Appeal against the Judgment of acquittal dated 26.09.2018 passed by learned CMM, New Delhi, punishable for the offences Under Section 132 and 135(1)(a) of the Customs Act,1962, C.C.No.19115/19 has been preferred.
2. Appeal under Section 378(1) of Cr.P.C has been filed on behalf of the Appellant challenging the Judgment dated 26.09.2018 whereby the learned



ACMM, New Delhi has *acquitted the Respondent in Complaint Case under Section 132 and 135(1)(a) of the Customs Act, 1962 (hereinafter referred to as the Act).*

3. The prosecution/Appellant had filed a Criminal Complaint No. 19115/19 against the Respondent, Hemant Kumar Ishwar Das Singhvi, under Sections 132 and 135(1)(a) of the Customs Act, 1962.

4. The *case of the Prosecution in brief*, is that on 11.02.1991, the Respondent arrived at IGI Airport, New Delhi from London by flight No.BA-147 and was intercepted on suspicion, by the Customs Officer. On his personal search, gold biscuits weighing 3496.400 Grams, having value of Rs.12,23,470/- (present value approximately Rs.1,39,00,000/-) were recovered, which he concealed in his waist belt, having 15 pouches (two biscuits in each pouch). He was arrested by the Customs officer and thereafter, produced in the Court, where he was remanded to judicial custody.

5. On 15.02.1991, after conclusion of investigations, the Complaint was filed against the Respondent by the Customs Officer for offence punishable under Sections 132 and 135(1)(a) of the Act.

6. *The learned ACMM, New Delhi took cognizance on the Complaint, on 25.02.1991.*

7. The Prosecution examined *three pre-charge witnesses*. **PW-1 Sh. R. C. Mahajan, Superintendent**, has proved the voluntary statement of Respondent under Section 108 of the Act, 1962, as Ex. PW-1/A.

8. **PW-2 Sh. M. S. Manjunath**, Customs Officer, has proved the Complaint Ex. PW-2/A; sanction and authorization accorded under Section



137 of the Act Ex.PW-2/B; Certificate issued by Gold Smith Ex.PW-2/C; *Panchnama* Ex.PW-2/D; travel documents Ex.PW-2/E1 to E5; Application under Section 110(1)(B) of the Act; Ex.PW-2/F, proceedings under Section 110(1)(B) of the Act; Ex.PW-2/H, paper slip Ex.PW-2/J. Concealing materials, i.e. Belt Ex.-P1 and adhesive tape, are Ex.-P2.

9. ***PW-3 Kuldeep Sugandh***, Gold Smith, had examined recovered metal, which was gold and issued purity Certificate Ex. PW-2/C.

10. **Thereafter, charges were framed under Sections 132 and 135(1)(a) of Customs Act, 1962, to which the Responded pleaded not guilty.**

11. During pendency of the trial, an Application under Sections 110(1A), (1B) and (1C) of Customs Act, 1962, for early disposal of the Gold / case property, was filed before learned ACMM, which was assigned to learned MM for disposal. The case property was produced by learned MM and inventory i.e. *Panchnama*, was certified as correct.

12. Thereafter, ***PW-3 Kuldeep Sugandh*** was recalled for cross-examination on 18.01.2002.

13. **Statement of Respondent was recorded under Section 313 Cr.P.C. on 06.01.2003**, wherein Respondent denied all the incriminating evidence put to him.

14. **He, examined himself as DW-1, in his defence.**

15. During trial, Respondent moved an Application under Section 137 of Customs Act, 1962 for compounding of the offence, but the same was dismissed on the ground that Respondent had not made full and true disclosure of the facts of case.



16. Thereafter, Respondent stopped appearing and exemptions from personal appearance were sought from 04.09.2003 till 24.05.2004. Thereafter, non-bailable warrants were issued against him, which remained unexecuted. *Process under Section 82 Cr.P.C. was issued on 25.09.2006, which was followed by process under Section 83 Cr.P.C. Thereafter, Respondent was declared Proclaimed Offender, on 13.09.2012.*

17. On 17.12.2013, Respondent again moved an Application for pleading guilty, but failed to appear. Thereafter, he appeared only on 28.10.2014, after 12 years, after he had been declared Proclaimed Offender. He then, applied for plea bargaining, but that also did not succeed.

18. *Learned MM, after hearing final arguments, acquitted the Respondent vide Judgment dated 26.09.2018.*

19. Aggrieved by the acquittal, ***Union of India has*** filed the present Appeal. The **grounds of challenge** that it has not been appreciated that the connotation of the word 'made' under Section 132 of the Customs Act, 1962, herein includes "oral declaration" that he was carrying Gold on his person, as required under Section 77 of the Customs Act, 1962, to the concerned officer for the purpose of clearing it.

20. The Respondent has also been wrongly acquitted for the offence under Section 135(1)(a) of the Customs Act, 1962, as the learned Trial Court has decided the case on incorrect footing, by observing that it was a case of attempt to export, when in fact, it was a case of import. It has also not been appreciated that in terms of the Government Notification dated 23.12.1997, Application under Sections 110(1A), (1B) and (1C) of the Customs Act, 1962, was modified for early disposal of the case property, i.e. Gold.



21. Learned MM had given due notice to the Respondent and conducted the proceedings Ex.PW-2/G. Case property, i.e. Gold, was produced before learned MM and inventory i.e. *Panchnama* was certified as correct. Respondent never disputed the recovery of Gold or the proceedings Ex.PW-2/G, despite which the learned Trial Court has given benefit of non-production of the case property during trial, to the Respondent. The proceedings under Sections 110(1A), (1B) and (1C) of the Customs Act, 1962, were wrongly held to be erroneous, since the learned MM was never a witness of prosecution and had conducted the procedure, in terms of the Government Notification.

22. The testimony of PW-3 Kuldeep Sugandh, Gold Smith, has also not been appreciated in the right perspective, who had appraised the Gold in its purity, weight and value and had issued Certificate of Purity. Learned Trial Court failed to consider that the Respondent had neither disputed the Gold nor had cross-examined PW-3 Kuldeep Sugandh, on his qualifications.

23. Likewise, the finding that no public witness had been associated with the recovery is incorrect, as *Panchnama* Ex.PW-1/D was self-explanatory, which reflects that it had been drawn in presence of two public witnesses. Further, error was committed in presuming and giving benefit to the Respondent that Belt Ex. P-1 which the Respondent was wearing, may not be the same since the record of concerned Department has not been produced, despite the fact that Respondent/accused never disputed it during evidence. Moreover, contraband in this case, is Gold and not belt.

24. It is further asserted that learned Trial Court incorrectly observed that no evidence has been produced to show that the accused had travelled in



Flight No.BA-147, even though the documentary evidence i.e. boarding pass issued to the Respondent by Air Lines and other travel documents were recovered from his possession, which had been proved on record. Moreover, red-handed arrest of the Respondent at the Airport at the relevant time on the given date, is strong evidence, which has not been disputed by Respondent.

25. Vital piece of evidence i.e. the statement of the Respondent under Section 108 of the Customs Act, 1962, Ex.PW-1/A, has also not been considered. The Respondent admitted that Statement Ex.PW-1/A was in his hand-writing and had his signatures. It is well-settled law that the statement made before the Customs Officer, is admissible in evidence and can be treated as extra-judicial confession and the accused could be convicted solely on the basis of said statement.

26. It has not been appreciated that under the Customs Act, a statutory presumption of culpable mental state on the part of the Resopndent should have been drawn in favour of the prosecution, in terms of Section 138A of Customs Act.

27. Respondent had taken contradictory defence in his Bail Application, in cross-examination of prosecution witnesses and suggestions put to the witnesses. In the Statement recorded under Section 313 Cr.P.C., the Resopndent claimed that he has been falsely implicated in this case on account of altercation on the question of payment of duty and evaluation of goods with the Customs Officer, while he had made true declaration of the goods.

28. Complaint was filed by the Public Servant in discharge of his official duties and by no stretch of imagination recovered Gold in such huge



quantity, could be presumed to have been planted upon the Respondent. There was no previous enmity with the Respondent and there was no basis to assume that Customs Officers would falsely implicate the Respondent.

29. A Prayer is therefore, made that impugned Judgment dated 26.09.2018 be set aside and the Respondent be convicted.

30. Detailed Reply has been filed on behalf of the Respondent, wherein it is submitted that the Department has cheated the Respondent, who is a 71 years old person, having severe cardiac issues. Furthermore, present Petition is filed after expiry of limitation period, as the judgment was pronounced on 26.09.2018, while the Special Leave Petition was filed on 23.09.2019 i.e. after 01 year. Section 378(v) of Cr.P.C. specifically states that 'no Application under sub-Section (4) for grant of special leave to Appeal from an Order of acquittal shall be entertained by the High Court after the expiry of six months, where the Complainant is a public servant and sixty days in every other case, computed from the date of Order of acquittal.

31. On merits, it is submitted that the learned Trial Court has rightly observed that Respondent had no intention to smuggle the Gold, but he wanted to declare the same in Red channel, but had been apprehended much prior to that and taken to the room, where his involuntary statement was recorded. The Respondent had already declared the Gold at British Airport and paid VAT, as has been deposed by him in his defence.

32. It has been rightly held by learned Trial Court that PW-3 Gold Smith was not having the expertise for measuring the purity of Gold. Moreover, no qualifications of the witness were proved to this effect.



33. It is therefore, submitted that present Appeal is without merit and is liable to be dismissed.

34. **Union of India in its Rejoinder** has reiterated the submissions made in the Appeal.

Submissions heard and record perused.

35. The case of the Prosecution is that Respondent failed to declare 30 Gold biscuits of 24 Karat purity, weighing 3496.400 Grams, having value of Rs.12,23,470/-, which were recovered from his possession after arriving at IGI Airport, Delhi from London by British Airways Flight on 11.02.1991 and were seized. He thereby, committed an offence under Section 132 of the Act.

36. To understand if any offence under S. 132 was committed, it is reproduced as under:

“132. False declaration, false documents, etc.—Whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to 1 [two years], or with fine, or with both.”

37. Section 132 of Customs Act therefore, makes a false declaration statement or documents etc. relating to customs, knowing it to be false, is an offence punishable for imprisonment for a term, which may extent to two years.

38. It was also asserted that he knowingly was involved in fraudulent evasion / attempt at evasion of the prohibition imposed on the import of



Gold and thereby committed offence under Section 135(1)(a) of Customs Act, 1962. Section 135 of Customs Act deals with evasion of duty or prohibitions, its relevant part read as under:

135. Evasion of duty or prohibitions. — [(1) Without prejudice to any action that may be *taken* under this Act, if *any person*—

(a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 or Section 113, as the case may be; or

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under Section 113; or

(d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods,

he shall be punishable,”

39. The facts of the present case may thus, be considered to ascertain if the Prosecution was successful in proving the offence under Sections 132/135 of the Act, 1962.



40. The most material witness examined is PW-2 Sh. M. S. Manjunath, Air Customs Officer, IO, DRI, who deposed that on 11.02.1991, Respondent arrived at IGI Airport, New Delhi from London by Flight No.BA-147 and after completing immigration formalities, he came to **Customs Arrival Hall**. He was stopped and enquired if he had any Gold, Silver, watches etc. on his person or in his baggage, to which he replied in negative. Then two independent witnesses were called. The accused was taken inside the Arrival Hall, and in presence of the two witnesses, his personal search was conducted by hands as well as by metal detector, which gave falsity indication of presence of some metallic substance in the waist portion of the Respondent.

41. On checking, it was found that he was wearing a waist belt under his pants and underwear, which had 16 pouches and 15 of them were closed with adhesive tape, on one side. On removing the adhesive tape from 15 pouches, they were found to contain two pieces of yellow metal each. They were taken out and were 30 in number.

42. A Certified Goldsmith (PW-3) was called to test these recovered pieces of yellow metal. He gave a Certificate Ex.PW-1/C certifying that the purity of the Gold biscuits was found to be 24 Karats weighing 3496.400 Grams, valued at Rs.12,23,470/-. The Certificate was proved by PW-3 Kuldeep Suagandh, Goldsmith.

43. PW-2 further deposed that on demand, accused failed to produce any documentary evidence for lawful import of the recovered Gold, which was then seized *vide* Memo Ex.PW-1/D, in the presence of two witnesses. A *panchnama* was prepared Ex.PW-2/D, two Air Tickets, Boarding Card, four



Custom Clearance Card Ex.PW-2/E1 to E5, were also seized in the presence of those two witnesses.

44. PW-2 in his cross-examination, explained that after the Immigration clearance, the passenger is required to get the Customs Clearance. For this the prescribed procedure was that there is one Red Channel and one Green Channel. Admittedly, PW-2 intercepted the Respondent immediately after immigration clearance, when he was found carrying three check-in baggage and two hand baggage.

45. From the testimony of PW-2 and his admission, it is evident that it is after the Immigration Clearance, the Respondent was required to obtain the Customs Clearance, which was to either pass through the Red or Green Channel, as the case may be.

46. The interception of the Respondent was made prior to his being able to proceed for the Customs Clearance. In these circumstances, it cannot be said that the Respondent either made any false declaration, as none could be done by him, as he yet had not reached the stage of Customs clearance, due to his prior apprehension. In the circumstances, it cannot be said that there was any endeavour or attempt by him, to evade the Custom Duty. Had it been a case where the Respondent had tried to walk out of the Airport without going through the Customs Clearance, it may have been a case for fraudulent evasion of the Customs Duty, but in the present circumstances, his apprehension was prior to his availing the opportunity of getting the Customs Clearance.

47. It cannot be overlooked that the Respondent had concealed 3496.400 Grams of Gold in his waist belt, which he was wearing under his pants and



underwear, which creates a suspicion about his intention to evade the Custom Duty. However, this being a criminal prosecution, it had to be established beyond reasonable doubt that indeed, he had indulged in fraudulent tax evasion. It can be said that the Respondent may have reached the stage of preparation for committing the offence, but before any act of attempt or commission could have been done, he had been apprehended.

48. In these circumstances, Learned ACMM rightly observed that the preemptive action was taken by the Customs Officers even before Respondent could get the Customs Clearance and therefore, it cannot be said that he committed the offence under Section 132 or 135 of Customs Act.

49. Another significant aspect is that the Respondent in his testimony as DW-1, had deposed that on 11.02.1991, he was wearing a white shirt and a black jacket. He had been apprehended by the Customs Officer, before he could leave the Red Channel. Immediately thereafter, he was taken to a room where he was forced and tortured into making an involuntary statement, which was recorded under Section 108 of the Act, by PW-1 Sh. R. C. Mahajan.

50. The Respondent deposed that he wanted to declare the Gold at the Red Channel, but did not get the opportunity. He further explained that he had purchased his Gold in England and had paid Gold Value Added Tax ('VAT') at the Airport. While leaving for India, he had declared his Gold, at the British Airport. He produced the Certificate submitted at Heathrow Airport, London on 11.02.1991, while leaving for India, as Mark DW-1. He further deposed that he was carrying goods in three separate packets.



51. In his cross-examination, he admitted that he had brought the Gold to India, and that his Statement under Section 108 of Customs Act and other documents, including DW-1/C Goldsmith's Certificate, bear his signatures, but he claimed that his statement made to PW-1, was not voluntary.

52. It is therefore, proved that while the Respondent had brought Gold in India, but he was apprehended before he could get the customs clearance. There is no false declaration or false documents, etc. submitted by the Respondent and therefore, no offence under Section 132 of Customs Act is made out.

53. In so far as Section 135(a) and (b) of Customs Act is concerned, it deals with misdeclaration of value of any Gold or any fraudulent evasion of duty or carrying any goods, which he knows are liable to confiscation under Section 111 or 113 of Customs Act. However, in the present case, it has emerged that Respondent may have come prepared or had an intention, but he was apprehended before any attempt of fraudulent evasion of the Custom Duty, was made by him, as has been by observed by Kerala High Court in the case of Vigneswaran Sethuraman vs. Union of India, 2014 (308) ELT 394 (Ker).

54. The Respondent was indeed found in presence of the Gold. There is no prohibition on import / export of Gold, either in U.K. or in India, and at best the Custom Duty could have been imposed upon the Respondent, but no other criminal action, is sustainable against the Respondent. The prosecution failed to prove the fraudulent evasion of the Customs Duty.

55. Therefore, learned ACMM has rightly acquitted the Respondent, under Sections 132 and 135 of Customs Act.

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56. There is no merit in the present Appeal, which is hereby, **dismissed**, along with pending Applications.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 20, 2026/R