



\$~74 to 78 & 16 to 17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

74

CNR No. DLHC010233472026

+ CUSAA 47/2026, CM APPL. 34988/2026 & CM APPL. 34989/2026

PRINCIPAL COMMISSIONER OF CUSTOMS
(PREVENTIVE)

.....Appellant

Through: Mr. Aditya Singla, SSC, CBIC with
Ms. Arya Suresh Nair, Adv.

versus

SH BHARAT SHANTILAL SHAH

.....Respondent

Through: Mr. Rupesh Kumar, Sr. Adv. with Mr.
Subas Acharya, Mr. Harsh Raj Singh,
Mr. Chanakkya, Mr. Ayushman &
Ms. Sathwika, Adv.

75

CNR No. DLHC010393312026

+ CUSAA 105/2026, CM APPL. 56692/2026, CM APPL. 56693/2026
& CM APPL. 56694/2026

PRINCIPAL COMMISSIONER OF CUSTOMS
(PREVENTIVE)

.....Appellant

Through: Mr. Aditya Singla, SSC, CBIC with
Ms. Arya Suresh Nair, Adv.

versus

KRISHI JAIN @ BITTU

.....Respondent

Through: Mr. Rupesh Kumar, Sr. Adv. with Mr.
Subas Acharya, Mr. Harsh Raj Singh,
Mr. Chanakkya, Mr. Ayushman &
Ms. Sathwika, Adv.

76

CNR No. DLHC010400202026

+ CUSAA 109/2026, CM APPL. 57552/2026, CM APPL. 57553/2026
& CM APPL. 57554/2026



PRINCIPAL COMMISSIONER OF CUSTOMS
(PREVENTIVE)

.....Appellant

Through: Mr. Aditya Singla, SSC, CBIC with
Ms. Arya Suresh Nair, Adv.

versus

SH. SUBHASH TUKARAM KARAN

.....Respondent

Through: Mr. Rupesh Kumar, Sr. Adv. with Mr.
Subas Acharya, Mr. Harsh Raj Singh,
Mr. Chanakkya, Mr. Ayushman &
Ms. Sathwika, Adv.

77

#

CNR No. DLHC010315972026

+

CUSAA 65/2026, CM APPL. 46250/2026 & CM APPL. 46251/2026

PRINCIPAL COMMISSIONER OF CUSTOMS
(PREVENTIVE)

.....Appellant

Through: Mr. Aditya Singla, SSC, CBIC with
Ms. Arya Suresh Nair, Adv.

versus

SH. MANISH KUMAR

.....Respondent

Through: Mr. Rupesh Kumar, Sr. Adv. with Mr.
Subas Acharya, Mr. Harsh Raj Singh,
Mr. Chanakkya, Mr. Ayushman &
Ms. Sathwika, Adv.

78

#

CNR No. DLHC010343542026

+

CUSAA 78/2026, CM APPL. 49548/2026 & CM APPL. 49549/2026

PRINCIPAL COMMISSIONER OF CUSTOMS
(PREVENTIVE)

.....Appellant

Through: Mr. Aditya Singla, SSC, CBIC with
Ms. Arya Suresh Nair, Adv,

versus

SH. NARESH KUMAR

.....Respondent

Through: Mr. Rupesh Kumar, Sr. Adv. with Mr.



Subas Acharya, Mr. Harsh Raj Singh,
Mr. Chanakkya, Mr. Ayushman &
Ms. Sathwika, Advs.

16

CNR No. DLHC010398622026

+ CUSAA 107/2026, CM APPL. 57372/2026, CM APPL. 57373/2026
& CM APPL. 57374/2026

PRINCIPAL COMMISSIONER OF CUSTOMS (PREVENTIVE)

.....Appellant

Through: Mr. Aditya Singla, SSC, CBIC with
Ms. Arya Suresh Nair, Adv.

versus

SANJAY RAM

.....Respondent

Through: Mr. Rupesh Kumar, Sr. Adv. with Mr.
Subas Acharya, Mr. Harsh Raj Singh,
Mr. Chanakkya, Mr. Ayushman &
Ms. Sathwika, Advs.

17

CNR No. DLHC010398642026

+ CUSAA 108/2026, CM APPL. 57376/2026, CM APPL. 57377/2026
& CM APPL. 57378/2026

PRINCIPAL COMMISSIONER OF CUSTOMS (PREVENTIVE)

.....Appellant

Through: Mr. Aditya Singla, SSC, CBIC with
Ms. Arya Suresh Nair, Adv.

versus

SH. PAWAN SONI

.....Respondent

Through: Mr. Rupesh Kumar, Sr. Adv. with Mr.
Subas Acharya, Mr. Harsh Raj Singh,
Mr. Chanakkya, Mr. Ayushman &
Ms. Sathwika, Advs.



CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MS. JUSTICE SHAIL JAIN

ORDER
% **28.09.2026**

CM APPL. 56694/2026 In CUSAA 105/2026
CM APPL. 57554/2026 In CUSAA 109/2026
CM APPL. 57374/2026 In CUSAA 107/2026
CM APPL. 57378/2026 In CUSAA 108/2026

1. These applications are filed for condonation of delay in re-filing the appeals.
2. For the reasons mentioned therein, the applications are allowed. The delay in filing the appeals is condoned.

CUSAA 47/2026, CM APPL. 34988-34989/2026
CUSAA 105/2026, CM APPL. 56692-56693/2026
CUSAA 109/2026, CM APPL. 57552-57553/2026
CUSAA 65/2026, CM APPL. 46250- 46251/2026
CUSAA 78/2026, CM APPL. 49548- 49549/2026
CUSAA 107/2026, CM APPL. 57372-57373/2026
CUSAA 108/2026, CM APPL. 57376- 57377/2026

3. Learned counsel for the appellant *inter alia* contends that it is not the case of violation of Section 138B of the Customs Act, 1962 and Section 123 was given a wrong interpretation in the facts of the case.
4. Issue notice.
5. Learned counsel for the respondents accept notice.
6. After assistance of learned counsel for the parties the following substantial question of law are framed:-
 - a) Whether the learned CESTAT was correct in law in holding that the mandatory presumption under Section 123 of the Customs Act, 1962,



does not apply to a "mastermind" or "financier" who exercises constructive possession and effective control over smuggled goods through his employees, when the goods are seized from the physical possession of those employees, and whether the concept of "possession" under Section 123 of the Act includes not only physical possession but also the power to control and dispose of the goods?

- b) Whether the learned CESTAT's interpretation of Section 138B of the Customs Act, 1962, as requiring the examination of every Section 108 witness before the adjudicating authority for the statement to be "relevant" in adjudication proceedings, is legally sustainable in light of Section 138B(2) of the Act, which applies the provision to proceedings before a court, and in light of the recent judgment of the Delhi High Court in *Sushil Aggarwal vs. Principal Commissioner Of Customs (2025) 30 Centax 482 (Del.)*, which held that the right to cross-examination under Section 138B is not an unfettered right in all cases?
- c) Whether in the facts and circumstances of the case the seized gold jewellery could be confiscated on the allegation that goods were manufactured from smuggled gold and if so the onus of proof lies on department or not?

7. Put up for hearing on 28.01.2027.

AVNEESH JHINGAN, J

SHAIL JAIN, J

SEPTEMBER 28, 2026/‘ha’