

OD 3 to 5

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA  
SPECIAL JURISDICTION  
ORIGINAL SIDE

CUSTA/51/2025  
IA NO: GA/1/2025  
COMMISSIONER OF CUSTOMS (PREVENTIVE), KOLKATA  
VS  
M/S DHARMENDER KUMAR JHA

CUSTA/52/2025  
IA NO: GA/1/2025  
COMMISSIONER OF CUSTOMS (PREVENTIVE), KOLKATA  
VS  
M/S. GEETANSHU AGGARWAL

CUSTA/53/2025  
IA NO: GA/1/2025  
COMMISSIONER OF CUSTOMS (PREVENTIVE), KOLKATA  
VS  
M/S TIRLOK SINGH

BEFORE:

The Hon'ble JUSTICE RAJARSHI BHARADWAJ  
AND

The Hon'ble JUSTICE UDAY KUMAR

Date: 7<sup>th</sup> January, 2026.

*Appearance:*  
*Mr. K.K. Maiti, Adv.*  
*...for the appellant*

*Mr. Sudhir Malhotra, Sr. Adv.*  
*Mr. B. Sengupta, Adv.*  
*...for the respondent*

The Court: We have heard learned advocates on either side.

The appeal is admitted on the following substantial questions of law for consideration.

I. Whether the DRI Officer had reasons to believe that the recovered Gold were smuggled in nature and has rightly confiscated the said goods under Section 111(b) and (d) of the Customs Act, 1962 read with Section 120 of the said Act and the seized cash under Section 121 of the Customs Act, 1962 ?

II. Whether the Learned Tribunal is rightly considered that the provisions of Section 123 of Customs Act, 1962 is not applicable in the present case and the burden of proving that the gold seized is not of smuggled in nature is not on the appellants where the said Section 123 provides that the burden of proving shall be on the person, from whose possession the goods were seized or who claims to be the owner of the goods so seized and this section applies to gold and manufactures thereof, therefore, in view of the same, the onus in the instant case for proving that the seized 15 (fifteen) pieces of gold of foreign origin total weighing 3152.900 gms are not of smuggled nature, lie on the respondents ?

III. Whether the Learned Tribunal is correct in considering the purported evidences submitted by the three persons belatedly only during the adjudication proceedings and not during the course of investigation which established that the said documents are manufactured, fabricated and after thought process making the tribunal's order perverse ?”

As the appellant as well as the respondent are agreeable on the issue that the matter can be heard on the existing papers filed along with the application for stay being GA 1 of 2025, formality of preparing paper books are dispensed with. However, the respondent is requested to file supplementary affidavit, if any, within two weeks from date.

Settlement of index and all other formalities are also dispensed with.

Since the respondent is represented, service of notice of appeal stands dispensed with.

Let this matter appear in the monthly list of February, 2026.

Let this matter appear again along with CUSTA/52/2025 and CUSTA/53/2025.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)