

OD – 5

IN THE HIGH COURT AT CALCUTTA  
Special Jurisdiction [Customs]

ORIGINAL SIDE

CUSTA/56/2025  
IA NO: GA/1/2025, GA/2/2025  
COMMISSIONER OF CUSTOMS (PREV.), KOLKATA  
VS  
SHRI NARESH KUMAR AGARWALLA

BEFORE :  
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ  
And  
THE HON'BLE JUSTICE UDAY KUMAR  
Date : 21<sup>st</sup> April, 2026

*Appearance :*  
*Mr. Kaushik Dey, Adv.*  
*Ms. Sretapa Sinha, Adv.*  
*...for appellant.*

*Mr. S. Bhattacharya, Adv.*  
*...for respondent.*

The Court : There is a delay of 16 days in filing the appeal. We are satisfied with the explanation offered for not preferring the appeal within time. Therefore, the delay is condoned.

The application being IA NO: GA/1/2025 is allowed.

Heard learned counsel appearing for the respective parties.

The appeal is admitted on the following substantial questions of law :

*“(i) Whether the learned Tribunal erred in law by not appreciating that the burden of proof is on the respondent to establish licit transactions regarding the gold; but in the instant case, the respondent has reasonably failed to discharge its statutory burden of proof, thereby making the gold in question liable for confiscation?*

*(b) Whether the Learned Tribunal committed an error of law in failing to consider that the seizure of gold ornaments without supporting documents, coupled with the*

*categorical denial of vouchers by the carrier Shri Atu Dutta, constituted strong and cogent circumstantial evidence of smuggling under Section 123 of the Customs Act, 1962?"*

The appellant is directed to file requisite number of informal paper books prepared out of court enclosing therein all relevant papers and documents used before the learned trial court within 10 (ten) weeks from date by serving copies thereof to the learned Advocate for the respondent. Leave is granted to the respondent/assessee to file supplementary affidavit in the form of paper book, if required, in the meantime.

Settlement of index and all other formalities are dispensed with.

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

Let this matter appear in the Monthly List of July 2026.

GA/2/2025 stands disposed of.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

sd/