

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT No.II

Customs Appeal No.70576 of 2025

(Arising out of Order-in-Appeal No.92-95-CUS/APPL/LKO/2025 dated 23/04/2025 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

Shri Akash Jha,Appellant-I

(Patel Marriage Garden,
Singh Pura Road, Morar, Gwalior)

VERSUS

Commissioner of Customs (Pre.), Lucknow....Respondent

(Commissionerate, Lucknow)

WITH

I. Customs Appeal No.70577 of 2025 (Mr. Abhishek Agrawal)Appellant-II

II. Customs Appeal No.70578 of 2025 (Mr. Harkanth Singh)Appellant-III

III. Customs Appeal No.70579 of 2025 (Mr. Umesh Kumar Agrawal)Appellant-IV

(Arising out of Order-in-Appeal No.92-95-CUS/APPL/LKO/2025 dated 23/04/2025 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

APPEARANCE:

Shri Vikas Sarin, Advocate &
Shri Ayush Mittal, Advocate for the Appellants
Shri Santosh Kumar, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NOS.70888-70891/2025

DATE OF HEARING : 14 October, 2025
DATE OF PRONOUNCEMENT : 18 December, 2025

SANJIV SRIVASTAVA:

These appeals are directed against Order-in-Appeal Nos.92-95-CUS/APPL/LKO/2025 dated 23/04/2025 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow. By the impugned order following has been held:-

"5.16 In view of the foregoing discussion, I find no reason to interfere with the impugned Order-In-Original No. 20/ADC/2024-25 dated 06.05.2024. The findings regarding the confiscation of gold, vehicle, and packing material, and the imposition of penalties on Shri Harkanth Singh (Appellant No. 1), Shri Umesh Kumar Agrawal (Appellant No. 2), Shri Akash Jha (Appellant No. 3), and Shri Abhishek Agrawal (Appellant No. 4) are upheld.

5.17 The appeals filed by Shri Harkanth Singh, Shri Umesh Kumar Agarwal, Shri Akash Jha, and Shri Abhishek Agrawal are hereby rejected."

2.1 Acting on specific intelligence that two persons carrying smuggled gold in a Kia Seltos bearing Registration No.MP-07-CG-9015 towards Gwalior from New Delhi via Yamuna Expressway and would dispose the smuggled gold to some person(s) in Gwalior. The Officers of Directorate of Revenue Intelligence (DRI) along with the Panchas reached the Jewar Toll Plaza around 6 pm on 11th September 2023 and kept discreet surveillance of the vehicles coming from Delhi which were about to cross Jewar Toll Plaza.

2.2 At around 6:15 pm, a vehicle matching the description of the vehicle coming from the Delhi side was identified and intercepted at the entrance at Jewar Toll Plana on Yamuna Expressway. The DRI officers noticed that at the time of Interception, the above said White Colour Kia Seltos car bearing Reg. No.MP-07-CO-9015 was occupied by two persons, one in the driver seat and the other is the passenger seat in front.

2.3 The officers asked them for the identity of the person who was driving the vehicle. Driver stated his name as Mr. Harkanth Singh (Appellant-III), aged around 34 years (Driving Licence

no.MP0720100023192 and Aadhaar Card Number 720135489950). The person sitting in the passenger seat, next to Appellant-III, introduced himself as Akash Jha (Appellant-I), aged around 30 years (Aadhaar Card Number 656797025000).

2.4 When asked about smuggled foreign-origin gold bars in their car, persons, or baggage, they replied in the negative. On being asked about the owner of the car, they informed that the car owner is Shri Abhishek Agarwal (Appellant-II).

2.5 Thereafter, officers served a notice under Section 107 of the Customs Act, 1962 to Appellant-I and Appellant-III respectively, for the search of their person and the baggage being carried by them. Another notice under Section 106 of the Customs Act, 1962 was served on the driver for the search of said vehicle as the owner of the vehicle was Appellant-II as revealed by the Certificate of Registration bearing No-5312322015469362 was not present in the car.

2.6 Appellant-III and Appellant-I admitted that they had foreign origin smuggled gold in the vehicle which was hidden in a specially constructed cavity in the car. They requested that the search proceedings be conducted at the office premises of DRI, as the place of interception was a busy highway and was a public place having lot of people around and was thus not conducive for taking search. Taking note of the request made in writing on their respective notices the vehicle along with the persons were taken to DRI Office.

2.7 Personal search and search of the baggage resulted in recovery of the gold as detailed in table below:-

Sl. No.	Type of metal piece	Marking/St. No given by the DRI officer for identification	Weight (grains)	Remarks
1.	1 Small gold piece along with 2 snippets	3	49.74	Recovered from the Pant pocket of Shri Akash Jha

2.7 During the search of the Vehicle it was noticed that the bolts of the front passenger seat were loose. When the bolts of the front passenger seat were opened, it was found that there

was an empty space concealed under the seat i.e. a cavity as told by both the persons to DRI officers in front of Panchas. On opening the cavity beneath the front passenger seat, one rectangular-shaped item wrapped in a newspaper and another packet wrapped with brown tape were recovered. Further on being searched, another cavity was noticed beneath the driver's seat. Nothing incriminating was found in this cavity. Search of remaining parts of vehicle was conducted and nothing objectionable object was found.

2.8 From the first packet which was wrapped with the help of a rubber band two (02) rectangular-shaped pieces of yellow colour metal were recovered along with two (02) paper bearing the description "Gold Testing Report" dated 11.09.2023 with Sl.No. 69 & 70 issued by Kalash Computerized Tunch Centre, 32/3193, Beadon Pura, Karol Bagh, New Delhi. The DRI officer gave markings 1 and 2 on these yellow metal pieces for identification purposes.

2.9 From the second packet which was wrapped with brown tape assorted jewellery of yellow metal (Rings, Earrings with Chain and pendants) were recovered.

2.10 Statement of Appellant-I was recorded under Section 108 of the Customs Act 1962 on 11/09/2023 wherein he replied to the questions before him as under:-

(i) मैं आकाश झा पुत्र श्री जीतेंड आ, उम्र ३० वर्ष, निवासी पटेल मैरिज गार्डन, सिंघ पुर रोड अखाड़े के पास मोरार ग्वालियर मध्य प्रदेश 474006 का स्थायी निवासी हूँ। मैं उपरोक्त पते पर अपने माता पिता, छोटे भाई अपनी पत्नी और दो बड़े जिसमें से एक डार्ड वर्ष का बेटा एवम 15 दिन कि बेटी है के साथ रहता हूँ। मैं शासकीय उत्तर माध्यमिक विद्यालय न० २ ग्वालियर से बारहवीं मन 2011 में पास किया है। मैं मोहित ज्वेल्स जो कि ग्वालियर के सराफा बाजार में स्थित है में नौकरी करता हूँ।

(ii) मैं M/s मोहित ज्वेल्स में सेल्स का कार्य देखता हूँ और मैं करीब डार्ड वर्ष से मोहित ज्वेल्स में कार्य कर रहा हूँ उसके पूर्व में में. जैनम ज्वेल्स सराफा बाजार ग्वालियर के यहाँ कार्य करता था।

(iii) मै. मोहित ज्वेल्स में मेरे अलावा लगभग 15 और कर्मचारी कार्य करते हैं। मुझे प्रति माह रुपये 15000/- नगद मानदेय प्राप्त होता है तथा वेतन कि कोई रसीद नहीं दी जाती है।

(iv) मै. मोहित ज्वेल्स के मालिक का नाम श्री उमेश अग्रवाल है। उनकी उम्र लगभग 55 वर्ष है साथ ही उनके बड़े पुत्र श्री अभिषेक अग्रवाल है जिनकी उम्र लगभग 28 वर्ष एवम उनके छोटे पुत्र श्री मोहित अग्रवाल है जिसकी उम्र लगभग 25 वर्ष है भी साथ में व्यवसाय करते हैं। श्री उमेश अग्रवाल का मोबाइल न 9009599993 एवम श्री अभिषेक अग्रवाल का मोबाइल न 9009599992 है। श्री उमेश अग्रवाल मकान न 108, ग्रुप 8 आनियाना अपार्टमेंट ग्वालियर में अपने परिवार के साथ रहते हैं।

(v) मैं आज सुबह दिनांक 11.09.2023 को श्री अभिषेक अग्रवाल की कार किया सेल्टोस (Kia Seltos) संख्या MP07C09015 से लगभग दोपहर 1:00 बजे गाड़ी के चालक हंकंठ सिंह के साथ दिल्ली के करोल बाग इलाके में रेगर् पुरा गली. न. 8 में अपने मालिक श्री उमेश अग्रवाल कहने पर विदेशी मूल का सोना लेने गया था। वहाँ पहुँचने पर मैंने श्री उमेश अग्रवाल को फोन किया उसके बाद एक व्यक्ति जिसका नाम मुझे छोटू पता है, ने मोबाइल नं +919654198492 से मुझे संपर्क किया और रेगर् पुरा गली न. 8 के एक मकान में बुलाया। वहाँ पर छोटू ने लगभग 2kg विदेशी मूल का सोना जो कि दो बार (gold bars) में थे, 3 सोने का छोटे टुकड़े जिनका वजन लगभग 50 ग्राम था तथा कुछ स्वर्ण आभूषण जो कि लगभग 118 ग्राम वे मुझे सौंप दिए। सोने कि वस्तुओं कि प्राप्ति कि सूचना मैंने श्री उमेश अग्रवाल को उनके मोबाइल फोन पर फोन करके दी थी।

(vi) मै छोटू के बारे में ज्यादा नहीं जानता हूँ पर उसका एक और मोबाइल नं. +447477196599 जिसमे वो कभी कभी बात करता है। इसके अलावा छोटू से सम्बंधित सब जानकारी श्री उमेश अग्रवाल ही दे सकते हैं।

(vii) इन वस्तुओं के विदेशी मूल के सोने के होने की बात थी उमेश अग्रवाल ने मुझे खुद बताई थी। इसके अलावा मैं म दुकान में बैठता है तो दुकान के मालिक श्री उमेश अग्रवाल फोन से बात करते हैं और उनकी बातचीत से पता चलता है कि सीना कहीं बाहर के देश से मंगाया गया है। उम विदेशी मूल के सोने के देश में आ जाने के बाद उसको पिचला कर दोबारा से उसकी सीने की बार बने जाती है और उसे लेने के लिए श्री उमेश अग्रवाल मुझे दिल्ली भेजते हैं।

(viii) मेरे द्वारा न हि छोटू न हि उसके सहयोगी को कोई धन या रुपये नहीं दिया गया। मेरा कार्य केवन ग्वालियर से दिल्ली जाकर सोना सेना होता है पर जहाँ तक मेरी जानकारी है श्री उमेश अग्रवाल, श्री छोटू को हवाला के माध्यम से सोने कि कीमत का पैसा भेजते हैं। मैं लगभग ढाई वर्ष से हफ्ते में एक बार सोना लेने दिल्ली

आता हूँ। जब गोल्ड बार लेना होता है तो मुझे रैगर पुरा गली न 8 में भेजा जाता है जहाँ पर चोटू गोल्ड बार देता है। और कई बार सोने के आभूषण लेने भी आता हूँ जिसे मैं ये० गोविंद ज्वेलर्स, गली में 17 रैग् पुरा विष्णु मंदिर के पास से नेता हूँ। मैं मैं० मोहित ज्वेल्स के सेल्स काउन्टर में बैठा हूँ तो कई बार मै. मोहित ज्वेल्स के मालिक श्री उमेश अग्रवाल को फोन में बातें करता सुनता हूँ जिसमें वो चोटू को हवाला के माध्यम में सोने के बदले रूपए भेजने कि बात करते हैं।

(ix) जिस किया मेल्टोम (Kia Seltos) संख्या MP07CG9015 कार में मैं सोना लेने आता हूँ उसके अगले बाये तरफ कि सीट के नीचे एक खाली जगह (Cavity) बनायी गयी है जिसमें सोना छिपा कर के ले जाता है। वे कार श्री उमेश अग्रवाल के बड़े पुत्र श्री अभिषेक अग्रवाल के नाम पर है और मुख्य रूप से सोने के परिवहन के लिये प्रयुक्त होती है। चोटू द्वारा। नीचे गए दोनों गोल्ड बार और जेवरात के पैकेट को कैविटी में मैंने छिपा दिया तथा 50 ग्राम के मोने के 3 छोटे टुकड़े मैंने अपनी जेब में रख लिए थे। इसके बाद ग्वालियर के लिए रवाना होने से पहले अपने चलने कि सूचना श्री उमेश अग्रवाल को देकर हम दोनी ग्वालियर के लिए रवाना हो गए। जब भी हम इस तरह दिल्ली से सोना लेकर जाते हि तो श्री उमेश अग्रवाल हमे समय समय पर फोन करके हमारी लोकेशन पूछते रहते हैं और निर्देश देते रहते हैं। मेरे पास उपरोक्त विदेशी मूल के सोने से सम्बंधित कोई भी कागज नहीं है तथा न ही मुझे दिल्ली से चलते वक्त ऐसा कोई कागजात सौंपा गया।

(x) जब भी आपके द्वारा दिल्ली में ग्वालियर सोना ले जाया गया है, मुझे कोई भी क्रय विक्रय से सम्बंधित कोई भी कागजात नहीं दिया जाता है। ज्यादातर में ही ग्वालियर से दिल्ली मोना लेने आता हूँ परंतु मेरे अलावा कभी कभी दुकान के अन्य कर्मचारी विरेंद्र बौरमिया, रोशन परिहार भी आते हैं। जी में उपरोक्त तथ्य से अवगत हूँ कि विदेशी मूल का मोता जो कि विना वैध दस्तवेज के आप अपने साथ परिवहन कर रहाथा कानूनन अपराध है।

(xi) उपरोक्त मोने कि वस्तुएँ जो कि किया सेल्लोम (Kia Seltos) संख्या MP07CG9015 कार में बरामद हुद है पी उमेश अग्रवाल जो कि मैं मोहित ज्वेल्स के सररर्फा बाजार, ग्वालियर के मालिक हैं को सौंपनी थी और ये उन्हीं की हैं। दिनांक 11.09.2023 को चोटू द्वारा दोनों गोल्ड बार मुझे सौंपने से पहले उनकी शुधता Kalash Computerized Tunch Centre, 32/3193 बीडन पूरा, करोल बाघ नई दिल्ली में करवाई थी। दोनों बार की शुद्धता इन दोनों Gold Testing Report S.No. 69 और 70 दिनांक 11.09.2023 के द्वारा प्रमाणित कि गयी थी। चोटू ने सम्बंधित गोल्ड टेस्टिंग रिपोर्ट सुबता के प्रमाण के तौर पर उस गोल्ड बार के साथ लपेट कर, गोल्ड बार मुझे सौंप दिए थे। मैंने उक्त दोनों

रिपोर्ट को देखने के स्वरूप में आज कि तारीख में दिनांक सहित अपने हस्ताक्षर कर दिए हैं। मेरे फ़ोन से किये गए कॉल्स छोड़ जो कि करोल बाघ निवासी है को किये गए हैं और दुबई का नंबर +447520673418 भी छोड़ का ही है जोकि वह सिर्फ whatsapp कालिंग के लिए इस्तेमाल करता है।

2.11 Statement of Appellant III was also recorded on 11.09.2023 under Section 108 of the Customs Act' 1962 wherein he inter-alia stated as under:

(i) मैं हरकंठ सिंह पुत्र श्री राम सिंह, उम्र वर्ष 35, निवासी मरघट पहाड़ी, सिंधिया नगर, हरिशंकरपुरम गिर्द ग्वालियर मध्य प्रदेश 474001 का स्थायी निवासी हूँ। मैं उपरोक्त पते पर अपनी पत्नी और तीन बच्चे जिममें से 10 वर्ष का पुत्र. एक 7 वर्ष की पुत्री एवम एक 5 वर्ष की पुत्री के साथ रहता हूँ। मैं ग्वालियर जिले में स्थित डबरा नामक कस्बे में तक (फल) पड़ा है। मैं मोहित ज्वेल्स जो कि ग्वालियर के सरफि बाज़ार में स्थित है मैं नौकरी करता हूँ।

(ii) मैं करीब महिने 8 से मोहित ज्वेल्स के मालिक श्री उमेश अग्रवाल के ड्राइवर का कार्य कर रहा हूँ उसके पूर्व मैं माधव नगर में रहने वाले दिवंगत चिकित्सक श्री विजय कुमार सेंगर के यहाँ ड्राइवर था।

(iii) मैं मोहित ज्वेल्स में मेरे अलावा 3 ड्राइवर और दुकान में लगभग 16 कर्मचारी कार्य करते हैं। मुझे प्रति माह रुपये 10,000/- नगद मानदेय प्राप्त होता है वेतन कि कोई स्मीद नहीं दी जाती है मैं मोहित ज्वेल्स के मालिक का नाम थी. उमेज अग्रवाल है उनकी उम्र लगभग 55 वर्ष है, साथ ही उनके बड़े पुत्र अभिधिक अग्रवाल जिनकी उम्र लगभग 28 वर्ग एवम उनके छोटे पुत्र मोहित अग्रवाल उम्र लगभग 25 वर्ष है, भी साथ में व्यवसाय करते हैं। श्री उमेश अग्रवाल का मोबाइल न 9009599993 एवम श्री अभिपेक अग्रवाल का मोबाइल न 9009599992 है। श्री उमेश अग्रवाल मकान न० 110/108, ग्रुप B आसियाना अपार्टमेंट ग्वालियर में अपने परिवार के साथ रहते हैं।

(iv) मैं आज सुबह दिनांक को 11.09.2023 श्रीअभिधिक अग्रवाल जो कि श्री उमेश अग्रवाल के बड़े पुष हैं, की कार किया सेल्टोस (Kia Seltos) संख्या MP07CG9015 से लगभग दोपहर 1 बजे दुकान के कर्मचारी श्री आकाश झा के साथ दिल्ली के करोल बाग इलाके में रैगर् पुरा गली न० 8 में अपने मालिक श्री उमेश अग्रवाल के कहने पर सोना लेने आया था।

(v) मैं अब तक तीन बार श्री उमेश अग्रवाल के परिवार कि गाड़ी लेकर आया है जिसमें मैं थी आकाश आ. के माथ तस्करी का सोना ले कर खालियर गया हूँ। जैसा कि

में बता चुका हूँ कि श्री उमेश अग्रवाल के यहाँ मेरे अतिरिक्त और ड्राइवर हैं इसके पूर्व वहीं ड्राइवर जिनका नाम रोशन, नरेश, लाखन है दिल्ली सोना लेने आते रहे हैं।

(vi) एक व्यक्ति जिसका नाम छोटू ने मोबाइल से श्री आकाश झा से संपर्क किया और रैगर् पुरा गली न8 के एक मकान में बुलाया। वहाँ पर छोटू ने लगभग 2kg विदेशी मूल का सोना जो कि दो बार (gold biscuits) में थे 3 सोने का छोटे टुकड़े जिनका वजन लगभग 50 ग्राम था कुछ स्वर्ण आभूषण जो कि लगभग 118 ग्राम थे श्री आकाश झा की मेरे सामने सौंपा था। हम दोनों ने मिलकर 2kg विदेशी मूल का मोना जो कि दो बार (gold biscuits) में थे और स्वर्ण आभूषण जो कि लगभग 118 ग्राम का पैकेट हमने गाड़ी में बनी खाली जगह (Cavity) बिषा दीया। 3 सोने का छोटे टुकड़े जिनका वजन लगभग 50 ग्राम या आकाश ने अपनी pant कि जेब में रख लिया और हम दोनो ग्वालियर के लिये चल पड़े।

(vii) मुझे जानकारी थी कि ये सोना अवैध रूप से छिपा करके करोल बाग, दिल्ली से ग्वालियर ले जाया जा रहा है इसलिये उक्त सोने को कार कि आगे कि पैसेंजर सीट के निचे बनायी गयी खाली जगह (Cavity) में छिपाया गया था। सोने कि डिलेवरी श्री आकाश झा ने ली थी और उसी ने मुझे बताया कि सोने का वजन जिसमें से 2 kg के दो बार (gold biscuits) में थे, 3 सोने का छोटे टुकड़े जिनका वजन लगभग 50 ग्राम था कुछ स्वर्ण आभूषण जो कि लगभग 118 ग्राम कि थी को लेकर हमें ग्वालियर जाना था।

(viii) जी मुझे पता है कि उक्त वस्तुवे विदेशी मूल के सोने से बनायी गयी हैं। न ही मेरे पास और न हि श्री आकाश झा पास उपरोक्त सोने से सम्बंधित कोई भी कागज थे और न ही छोटू ने सोने कीड उक्त वस्तुएं सौंपते वक्त दीये गये थे।

(ix) जिस किया सेल्टीम (Kia Seltos) संख्या MP07CG9015 कार में मैं सोना लेने आया था उसके अगले बाये तरफ कि सीट के नीचे एक खाली जगह (Cavity) बनी हुई है, जिसमें सोना छिपा कर के श्री आकाश झा और मैंने मिल कर रखा। ये कार श्री उमेश अग्रवाल के बड़े पुत्र श्री अभिषेक अग्रवाल के ताम पर है।

(x) में उपरोक्त तथ्य से अवगत हूँ की बरामद हुई पीली धातु कि वस्तुएं जिन्हें में और आकाश ने सोने कि बताया है. और जिसे बिना वैध दस्तावेज के अपने साथ परिवहन कर रहे थे, एक कानूनन अपराध है। बरामदकी गयी सोने कि वस्तुएँ श्री उमेश अग्रवाल जो कि मैं, मोहित ज्वेल्स के सराफा बाजार, ग्वालियर के मालिक हूँ को सौंपनी थी और वे उन्हीं की है।

2.12 Summons were issued to both Appellant-I and Appellant-III for appearance in the DRI Noida office on 12.09.2023 to

tender their Voluntary Statement under Section 108, of Customs Act 1962.

2.13 On 12.09.2023, at ACC Export IGI Airport New Delhi, the appraisalment was conducted by the Jewellery Appraiser in the presence of the Panchas and Appellant-III and Appellant-I. The details of the Appraisalment Report is as below:-

S. No.	Description of Gold Articles	Weight in Gramas	AVG Purity	Tariff Value Appraised (Rs)	Marker Value (Rs)
1.	Gold bar bearing S.no.1 S.no. 2 & Gold Piece Bearing no 3 (Along with 2 small gold Snippets)	2050	995	1,07,90,513/-	1,26,35,345/-
2.	Assorted Jewellery (Pendent, rings & Earrings with chain)	117	82.90	5,13,104/-	
	Total	2167		1,13,03,617/-	1,26,35,345/-

Appellant I in Statement recorded on 12.09.2023 in inter-alia stated as under:

(i) मैं अपने द्वारा दिनांक 11.09.2023 को दिए गए मीमा शुल्क अधिनियम, 1962 की धारा 108 के अंतर्गत दिए गए अपने बयान पर कायम हूँ और पुनः दोहराता हूँ। कल Kia Seltos कार जिसमें की में और हरकंठ दिल्ली में ग्वालियर जा रहे थे जेवर टोन के पास अधिकारियों ने हमारी कार को रोका और फिर हमारी एवं कार कि तलाशी हमारे आग्रह पर DRI कार्यालय में ली गयी। तलाशी के दौरान कार में बनी विशेष कैविटी में लगभग 2kg विदेशी मूल का सोना दो गोल्ड बार (gold bars) के रूप में तथा कुछ स्वर्ण आभूषण जिनका वजन लगभग 118 ग्राम था बरामद किये। इसके अलावा मेरे पास से, 3 सोने का छोटे टुकड़े जिनका वजन लगभग 50 ग्राम था भी बरामद किये। इन वस्तुओं की धातु एवं शुद्धता तथा वजन कि पुष्टि के लिए हम अधिकारी एवं पंचगन के साथ Jewellery Appraiser श्री मनीष सेन के द्वारा करवाने के लिए, ACC Export IGI Airport दिल्ली गए श्री मनीष सेन ने वस्तुओं का परिक्षण एवं आंकलन हमारी मौजूदगी में किया और अपने हस्ताक्षर से Appraisalment Report दिनांक 12.09.2023 जारी की। उनकी रिपोर्ट के अनुसार बरामद कि गयी वस्तुएं निम्न तालिका के अनुसार पाई गयी:

S. No.	Description of Gold Articles	Weight in Gramas	AVG Purity	Tariff Value Appraised (Rs)	Marker Value (Rs)
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1.	Gold bar bearing S.no.1 S.no. 2 & Gold Piece Bearing no 3 (Along with 2 small gold Snippets)	2050	995	1,07,90,513/-	1,26,35,345/-
2.	Assorted Jewellery (Pendent, rings & Earrings with chain)	117	82.90	5,13,104/-	
	Total	2167		1,13,03,617/-	1,26,35,345/-

(ii) Jewellery Appraiser ने वस्तुओं के सोने का होने कि पुष्टि के साथ साथ मैं उपरोक्त दिए गए शुद्धता एवं मूला का आंकलन मही है और मैं इससे सहमत हूँ। अपनी महमति के स्वरुप में आज दिनांक 12.09.2023 कि तारीख सहित हस्ताक्षर भी कर रहा है।

(iii) Jewellery Appraiser द्वारा वस्तुओं के सोने के होने कि पुष्टि के उपरांत अधिकारियों ने मुझसे पुनः उनसे सम्बंधित कागजात के बारे में पूछताछ की और उनको प्रस्तुत करने के लिए कहा। मैं पुनः दोहराता हूँ की इन सोने की वस्तुओं से सम्बंधित न तो कोई कागज़ मेरे पास उपलब्ध हैं और नाही इनको सौंपते वक्त दिल्ली में छोटू के द्वारा दिए गए। मैं और हर्कट सिंह जी की Kia Seltos कार (MPO7 CG 9015) का ड्राइवर था, बिना किसी दस्तावेज या कागजात के इन सोने की वस्तुओं को लेकर ग्वालियर जा रहे थे जब DIRI अधिकारियों ने हमें जेवर टोल पर टोक लिया था।

[iv] इसके बाद अधिकारियों ने मुझे सीमा शुल्क अधिनियम 1962 की धारा 123 के प्रावधान के बारे में समझाया और उसका संज्ञान लेने का आग्रह किया, जिसके अनुशार जिस व्यक्ति के पास से मोने कि बरामदगी होती है उसी के ऊपर साबित करने की जिम्मेदारी (Burden of Proof) होती है कि यो साबित करे कि सोना तस्करी का नहीं है। उक्त प्रावधानों के मध्ये नजर रखते हुए मुझसे दोबारा पुछा गया की क्या आपके पास बरामद कि गयी नोने कि वस्तुओं से संबंधित खरीद के कागजात है जिसके उत्तर में मैंने बताया की मैंने सीमा शुल्क अधिनियम 1962 की धारा 123 के प्रावधानों को समझ लिया है और मैं दुबारा दोहराता हूँ के मेरे पास बरामद कि गयी सोने कि वस्तुओं से संबंधित खरीद, विक्री के कोई भी कागजात नहीं है और न ही इन सोने कि वस्तुएँ को दिल्ली में सौंपते वक्त मुझे दिये गये थे। मुझे यह भी पता है कि चूंकि यह मोने कि वस्तुएँ तस्करी कि है इसलिये इनसे संबंधित खरीद, विक्री के कोई भी कागजात दिल्ली में मुझे नहीं दिये गये थे। पर मुझे यह पता है कि वे सोना

दुबई में तस्करी करके लाया गया है जोकि मेरे मानिक श्री उमेश अग्रवाल ने मुझे बताया था और मैंने इस बारे में उनकी फोन पर बात करते हुए भी सुना है।

(v) मैं अवैध रूप में तस्करी द्वारा लाए गए मोने कि वस्तुओं को बगैर वैध कामजात के परिवहन करनेके जुर्म को कबूल करता हूँ और बचन देता है कि आगे ऐसे किसी भी इस प्रकार कि गैर कानूनी गतिविधि में शामिल न होने का वचन देता है।

(vi) मैं पुनः दोहराता हूँ की मोने कि वस्तुएँ जो कि किया मेल्टोम (Kia Seltos) संख्या MP07CG9015 कार एवं मेरे पास से बरामद हुई हैं उन्हें मैं श्री उमेश अग्रवाल जो कि मैं मोहित ज्वेल्स के सराफा बाजार, ग्वालियर के मालिक हूँ को ग्वालियर में सौंपनी थी और ये उन्हीं की है।

2.14 Appellant III in his Statement recorded under Section 108 of the Customs Act, 1962 on 12/09/2023, Shri Harkanth Singh inter-alia stated as under:-

(i) मैं अपने द्वारा दिनांक 11.09.2023 को दिए गए सीमा शुल्क अधिनियम, 1962 कीधारा 108 के अंतर्गत दिए गए अपने बयान पर कायम हूँ और पुनः दोहराता हूँ कि कल Kia Seltos कारजिसको चलाकर आकाश झा के साथ दिल्ली में ग्वालियर जा रहाथा जेवर टोल के पास DRI अधिकारियों ने हमारी कार को रोका और फिर हमारी एवं कार कि तलाशी हमारे आग्रह पर DRI के कार्यालय में ली गयीतलाशी के दौरान कार में बनी विशेष कैविटी से लगभग 2kg विदेशी मूल का सोनादी गोल्ड बार (gold bars) केरूपमें तथा कुछ स्वर्ण आभूषण जिनका वजन लगभग ग्राम 118 था, बरामद किये। इसके अलावा आकाश झा के पास से 3, सोने का खोटे टुकड़े जिनका वजन लगभग 50 ग्राम था, भी बरामद किये। इन वस्तुओं की धातु एवं शुद्धता तथा बजन कि पुष्टि के लिए हम अधिकारी एवं पंचगन के साथ Jewellery Appraiser श्री मनीष सेन के द्वारा करवाने के लिए, ACC Export IGI Airport दिल्ली गए श्री मनीष सेन ने वस्तुओं का परिक्षण एवं आंकलन हमारी मौजूदगी में किया और अपने हस्ताक्षर से Appraisal Report दिनांक 12.09.2023 जारी की। उनकी रिपोर्ट के अनुसार बरामद कि गमी वस्तुएँ निम्न तालिका के अनुसार पाई गयी:

S. No.	Description of Gold Articles	Weight in Gramas	AVG Purity	Tariff Value Appraised (Rs)	Marker Value (Rs)
1.	Gold bar bearing S.no.1 S.no. 2 & Gold Piece Bearing no 3 (Along with 2 small gold Snippets)	2050	995	1,07,90,513/-	1,26,35,345/-

2.	Assorted Jewellery (Pendent, rings & Earrings with chain)	117	82.90	5,13,104/-	
	Total	2167		1,13,03,617/-	1,26,35,345/-

(ii) Jewellery Appraiser ने वस्तुओं के सोने का होने कि पुष्टि के साथ साथ में उपरोक्त दिए गए शुद्धता एवं मूल्य का आंकलन सही है और मैं इससे सहमत है। अपनी सहमति के स्वरूप में आज दिनांक 12.09.2023 कि तारीख सहित हस्ताक्षर भी कर रहा है।

(iii) Jewellery Appraiser द्वारा वस्तुओं के सोने के होने कि पुष्टि के उपरांत अधिकारियों ने मुझसे पुनः उनसे सम्बंधित कागजात के बारे में पूछताछ की और उनको प्रस्तुत करने के लिए कहा। मैं पुनः दोहराता हूँ की इन सोने की बरतुओं से सम्बंधित कोई कागज़ मेरे पास उपलब्ध नहीं हैं। मैं श्री उमेश अग्रवाल के लिए कार (KIA SELTOS MP07CG9015) बताता हूँ और दिनांक 11.09.2023 को आकाश के साथ सोने की वस्तुओ को लेकर दिल्ली से ग्वालियर जा रहे थे जब DFI अधिकारियों ने हमें जेवर टोल पर रोक लिया था।

[iv] इसके बाद अधिकारियों ने मुझे सीमा शुल्क अधिनियम 1962 की धारा के प्रावधान 123 के बारे में समझाया और उसका संज्ञान लेने का आग्रह किया, जिसके अनुशार जिम व्यक्ति के पास में सोने कि बरामदगी होती है उसी के ऊपर साबित करने की जिम्मेदारी (Burden of Proof) हंति है कि वो साबित करे कि सोना तस्करी का नहीं है। उक्त प्रावधानों के मद्दे नजर रखते हुए मुझसे दोबारा पुछा गया की क्या आपकीकार से बरामद कि गयी सोने कि वस्तुओं से संबंधित खरीद के कागजात हैंजिसके उत्तर में मैने बतायाकीमैने सीमा शुल्क अधिनियम 1962 की धारा 123 के प्रावधानों को समझ लिया है और मैं दुबारा वोहराता हूँ के मेरी कार (KIA SELTOS MP07CG9015) ने बरामद की गयी सोने कि वस्तुओं से संबंधित खरीद, बिक्री के कोई भी कागजात नहीं है और न ही इन सोने कि वस्तुएँ को दिल्ली में सौंपते वक्त आकाश झा को कोई कागज दिये गये थे। मुझे यह भी पता है कि चूंकि यह सोने कि वस्तुएँ तस्करी कि हैं इसलिये इनसे संबंधित खरीद, बिक्री के कोई भी कागजात दिल्ली में बकाश झा को नहीं दिये गये थे।

(v) मैं अवैध रूप से तस्करी द्वार लाए गए मोने कि वस्तुओं को बगैर वैध कागजात के परिवहन करनेके जुर्म को कबूल करता हूँ और वचन देता हूँ कि आगे ऐसे किसी भी इस प्रकार कि गैर कानूनी गतिविधि में शामिल न होने का भी बचत देता हूँ। मैं पुनः दोहराता हूँकी सोने कि वस्तुएँ जो कि किया मेल्टोम (Kia Seltos) संख्या MP07CG9015 कार एवं आकाश झा के पास से बरामद हुई हैं, वे वस्तुार श्री

*उमेश अग्रवाल जो कि में. मोहित ज्वेलम के सराफा बाजार, ग्वालियर के मालिक हैं
को ग्वालियर में सौंपनी थी और ये उन्हीं की हैं।*

2.15 As Appellant I and Appellant III could not produce any document showing licit import, possession and transportation of above said gold pieces and gold jewellery recovered from their possession. Hence, the recovered two bars of gold, assorted gold jewellery and three irregular gold pieces weighing 2167 grams were seized by the DRI officer under Section 110 of the Customs Act, 1962 on a reasonable belief that the same were liable for confiscation under the provisions of the Customs Act, 1962. The newspaper and brown colour adhesive tape used for packing and concealing the seized gold, which were kept in an A-4 yellow envelope sealed with DRI seal were also seized under Section 110 of the Customs Act, 1962 for contravention of provisions of Section 119 of the Customs Act, 1962, on a reasonable belief that the same were liable to confiscation under the provisions of Section 111 of the Customs Act, 1962. The White Colour Kia Seltos car bearing Reg. No.MP 07 CG 9015 being used in the carriage and concealment of smuggled gold were also seized under Section 110 of Customs Act, 1962 for contravention of provisions Section 115 of the Customs Act, 1962 on a reasonable belief that the same is liable for confiscation under the Act.

2.16 As Appellant-I and Appellant-III appeared to be involved in acquiring, possession of and were concerned in carrying, removing, depositing, harbouring, keeping, concealing, dealing with the goods (smuggled Foreign Origin Gold) which they knew or had reason to believe, are liable to confiscation under Section 111. They thus appeared to have committed offence under Section 135(1)(a) and 135(1)(b) of the Customs Act and, therefore appeared liable for arrest under Section 104 of the Customs Act, 1962, as the said offense is cognizable and non-bailable. Both were arrested vide respective Arrest Memos dated 13/09/2023 and were produced before the Hon'ble Special CJM, Meerut on 13/09/2023 who remanded them to judicial custody.

2.17 Later on, a search was conducted at the premises of M/s Kalash Computerized Tunch Centre, 32/3193, Beadon Pura,

Karol Bagh, New Delhi on 06.10.2023. At the time of the search, Shri Vitthal Jagannath Salunkhe Proprietor of the firm was present. He was shown the slips of gold testing bearing no 69 and 70 dated 11.09.2023 issued by M/s Kalash Computerised Tunch Centre. Shri Vitthal after perusal of the said slips accepted that the said slips were indeed issued by his Tunch Centre and also put his dated signature in this regard. The Officers then asked him about the persons who had brought the said gold bars for testing at his Tunch Centre for which both the slips had been issued. Shri Vitthal informed that on average they conduct 400 purity tests in a day and as such it is difficult to recollect or remember who exactly brought the said gold bars for testing to their Tunch Centre. He however stated that since both the reports bear the exact time of generation of the report, he can identify the person from the persons who were present in the shop at the said time with the help of CCTVs installed in the shop. Shri Vitthal Salunkhe then showed them the video recording of the said particular time and identified the two persons from the recording, who according to him brought the gold bars to the shop for testing. A screenshot of the said two persons who were identified by Shri Vitthal Salunkhe was also taken. A printout of the screenshot was also taken out on which Shri Vitthal Salunkhe and the panchas put their signatures. On being asked about the details of both the persons identified by Shri Vitthal, he expressed his inability and stated that he does not have the personal details or the phone number relating to both the said persons. However, he undertook to provide the details as and when they come again for testing of gold if they come to the shop again in the future. The Officers then conducted a systematic search of the shop, in order to recover any possible document/receipt which could be relevant to the investigation. However, nothing incrementing was found during the search. Proceedings were recorded under Panchnama, dated 06.10.2023.

2.18 On the basis of the identification of the said person who has brought the gold bars for testing of purity by Shri Vithhal

Jagannath Salunke and after completing the formalities at M/s Kalash Computerised Tunch Centre, at around 19:30 hrs, one person matching the description was noticed by the Officers who ho identified himself as Sh. Raj Kumar Soni. Summon was issued to him for appearance in the office of DRI on 06.10.2023

2.19 In his statement Shri Raj Kumar Soni inter-alia submitted as under-

(ii) M/s PCS Tunch, गलीनंबर 31 वैडेपुरा करोल बाघ, नई दिल्लीमें हैं तथा वे सने कि खरीद देव एवं शुद्धता जाँच में पिछले 5 माल सेकार्यरत हैं। श्री प्रिंस मोनी M/s PCS Tunch के मालिक हैं और मेरी जानकारी के अनुसार वे बलबीर नगर, शहादरा, दिल्ली में रहते है। M/s PCS Tunch मँमुझेमिलाकर कुल 8 लोग काम करते हैं। पी प्रिंस सोनी, दुकान के मालिक मुझे Rs. 10,000/- का मासिक वेतन नगद देता है।

(iii) मैं M/s PCS Tunch में खरीदे या बेचे जाने वाले सोनेया सोने कि वस्तुए को शुद्धता दुसरी टंच कीदुकातोसे करवाने का काम करता हूँ। इसके अलावा में सोने या मोने कि वस्तुओकी डिलीवरी, श्री प्रिंस सोनी के कहेअनुसार भी करता हूँ। मैंने कलश टंच सेण्टर द्वारा जारी की गयी मोना टेस्ट रिपोर्ट जिसकी संख्या 69 एवं 70, दिनांक 11.09.2023 देख ली है और में पुष्टि करता है कि इसमें उल्लेखित दोनों गोल्ड बार का टंच मैंने ही करवाया था।

(iv) मैंने कलश टंच मेण्टर से दोनों ही सोने कीबारकीशुद्धता जाँच करवाने के उपरान्त मैंने श्री प्रिंस सोनीको सौंप दी थी। जैसा की मैंने आपको बताया की मैंने सोने की शुद्धता जाँच करवाने के उपरांत सोना वापस श्री प्रिंस सोनी जी को सौंपदिया था। अतः वो ही बता सकते हैं कि उक्त मोना उन दो व्यक्तियों थी आकाश आ एवं श्री हरकंठ सिंह को किसनेदिया।

(v) श्रीप्रिंस मोनी जी जो भी सोना जाँब के लिए भेजते हैं उसपर ग्राहक के आगे नाम NC JI ही लिखवाने को कहते हैं। पर ये किम व्यक्ति या फर्म में ताल्लुक रखता है इसके बारे में थी प्रिंग जी ही बता सकते हैं। जी में जानता है कि ऐसा करना अपराध है और में आपको वचन देता हूँ कि मैं भविष्य में सावधान रहूँगा और ऐसे गलती या अपराध नहीं करूँगा।

2.20 In compliance of the summons dated 06.10.2023 Shri Vithhal Jagannath Salunke appeared in the office of DRI on 09.10.2023. In his statement he inter-alia submitted as under-

“(ii) M/s Kalash Computerised Tunch Center, गली नंबर 32/3193 वैडेपुरा करोल नाम, नई दिल्ली में लगभग 15 साल पहले बोला था।

यहा पर सोने की शुद्धता की जाँच की जाती है। जाँच के लिए 5 टंच मशीन या करातोमीटर लगे हुए है जिनसे सोने की शुद्धता की जाँच की जाती है। मेरे टंच सेंटर पर 7 लड़के काम करते है जोकि सोने की शुद्धता की जाँच करते हैं। उनका औसतन वेतन 15000/-रुपए है।

(iii) M/s Kalash Computerised Tunch Center में लगभग 400 ग्राहकों के सोने का टंच शुद्धता की जाँच करता है। मेरे सेंटर पर कजा मोना, पक्का मोना, बार एवं आभूषण का टंच/शुद्धता की जाँच की जाती है। सिर्फ सोने की शुद्धता की जाँच करनी हो तो हम 20 रुपया पर अगर अन्य धातु और पूरी रिपोर्ट लेनी हो तो उसके 40 रुपये लिए जाते है। हमारे यंहा सभी पेमेंट नकद ऑनलाइन लिया जाता है। ग्राहक अपने से सम्बंधित जानकारी मौखिक रूप से काउंटर पर बैठे लड़को को देते है जिसे रिपोर्ट में शामिल कर दिया जाता है। हमारे कार्य सिर्फ सोने की शुद्धता तक सिमित है। जो लोग सोने का टंच कराने आते है वो सोने के कम एवं विक्रय से सम्बंधित कागजात ना तो लाते है और ना ही हम उनसे मांगते है।

(iv) जैसा की मैंने प्रशन 3 के उत्तर में कहा था कि दिन में औसतन 400 लोग सोना या सोने की वस्तुओं की शुद्धता कि जाँच कराने मेरे टंच सेंटर पर आते है इसलिए ये याद रखना मुश्कील होता है कि कौन सी रसीद का सीना या सोने की वस्तु कौन व्यक्ति टंच कराने लेकर आया था। पर रसीद जारी करते समय हम समय उसपर जो नाम वो बताता है ग्राहक के नाम के आगे अंकित कर देते हैं। इसके अलावा हमारे टंच सेंटर पर CCTV भी लगे हुए है। इन दोनों के आधार पर मैंने CCTV का स्क्रीनशॉट दिया था जिसमे एक व्यक्ति दिखाई दे रहा है जो मेरे हिसाब से उक्त Sr. No. 69 एवं 70 जोकि दिनांक 11.09.2023 में सम्बंधित सोना जाँच कराने के लिए मेरे टंच सेंटर पर लेकर आया था। मैं पुनः पुष्टि करता हूँ कि उक्त दोनों पर्चियों से सम्बंधित सोना यही व्यक्ति लेकर आया था।

(v) मैं NCJI नाम के व्यक्ति एवम फर्म को व्यक्तिगत रूप से नहीं जानता। जैसा मैंने प्रशन 6 के उत्तर में कहा था कि ग्राहक का नाम व विवरण सोने कि शुद्धता कराने के लिए आया हुआ व्यक्ति स्वयं देता है और हम इसका सत्यापन नहीं करते है। जो भी ग्राहक टंच करने के लिए आता है ग्राहक नाम में जो विवरण देता है हम वो ही रसीद में भर देते हैं।"

2.21 A search was conducted on 20.10.2023, at the shop of M/s Mohit Jewels in Sarafa Bazar, Lashkar, Gwalior. At the time of the search, Shri Vinay Agrawal, who was the Manager of the showroom was available there. He informed that three firms namely M/s Mohit Jewels, M/s K.C. Gold and M/s Kailash Chand & Sons operated from the said premises and were involved in

sale and purchase of gold and silver jewellery and articles. On entering the premises, it was found to be a showroom of Gold and Silver Ornaments, measuring about 1200 to 1400 Sqft. Shri Vinay Agrawal informed that

- M/s Mohit Jewels (GSTIN 23BUPPA4643H1ZR) was proprietorship concern of Sh. Mohit Agrawal S/o Shri Umesh Agrawal and was in the business of sale and purchase of gold jewellery.
- M/s K.C. Gold was proprietorship concern of Sh. Abhishek Agrawal, (Appellant II) S/o Sh. Umesh Agrawal and was in the business of sale and purchase of gold jewellery.
- M/s Kailash Chand and Sons (GSTIN-23AFGPA9760E1ZQ) was the proprietorship concern of Shri Umesh Agrawal (Appellant IV) and was in the business of silver jewellery and articles.

He tendered copies of printouts of GST registration in support of his submissions that all three firms operating from the said showroom only, under his dated signature. He clarified that he was working as a manager of M/s Kailash Chand and Sons, from where he was drawing a salary of Rs. 50,000/- per month. However, he admitted that he supervises the work of the entire showroom. The setting of the showroom which housed all three firms related to each other by virtue of being father/sons/brother confirmed that the premises were being used run as a family affair and the common space including the infrastructure was being shared for conducting family business from there.

The Officers then enquired about the status of Sh. Akash Jha and Sh. Harkanth Singh, to which he informed that they both were employees of M/s K.C. Gold. Proceedings were recorded under Panchnama drawn on the spot in the presence of independent witnesses.

2.22 A search was conducted at the residence of Appellant IV in his presence. On being asked about his family and his business, Shri Umesh Agrawal informed that he and his sons were engaged in the business dealing in gold/silver jewellery and bullion. Nothing incriminating was recovered during the search.

Summons were issued to Appellant II and Appellant IV for appearance on 20/10/2023.

2.23 Search was also conducted at the shop of M/s Abhishek Jewellers Sarafa Bazar, Lashkar, Gwalior, on 20.10.2023. Shri Ajay Goel, Manager of the firm was present at the shop. On entering the shop, it was found to be a showroom of Gold Jewellery. Shri Ajay Goel informed that

- Ms Anita Agarwal W/o Sh. Umesh Agrawal was the proprietor of M/s Abhishek Jewellers.
- even though the firm was in the name of Ms Anita Agarwal, Shri Umesh Agarwal actually looked after all the business of M/s Abhishek Jewellers.
- he was drawing a salary of Rs. 15,000/- per month from the firm and including him there are a total of three employees working in M/s Abhishek Jewellers.

Nothing ncriminating was recovered during the search.

2.24 In his statement dated 21.10.2023 recorded under Section 108 of Customs Act'1962, Appellant-IV inter-alia stated as under:-

- (i) कैलाश चंद एंड मन्म वह चाँदी के आभूषण एवं वस्तुओं का व्यापार होता है। मेरी दुकान कैलाश चंद एंड सन्स ग्वालियर के सराफा बाजार में स्थित है एवं उसका GST नंबर 23AFGPA9760E12Q है। यह शोरूम मैंने सन 2017 में अपने नाम से खरीदा था एवं इसी शोरूम में घुसते ही दायें हाथ का काउंटर एवं उसके पीछे का हिस्सा कैलाश चंद एंड सन्स का है। जहाँ से हम बाँदी का व्यापार करते है।
- (ii) मेरी फर्म कैलाशचंद एंड संस के अलावा मेरे बड़े बेटे अभिषेक अग्रवाल की फर्म के सी गोल्ड इस शोरूम में घुसते ही बाएँ हाथ के केविन से ऑपरेट होती है। यहाँ से वह अपने सोने के आभूषणों का व्यापार करता है तथा शोरूम में घुसने पर दाएँ हाथ के केविन से मेरा छोटा बेटा मोहित अग्रवाल जो की अपनी फर्म मोहित ज्वेल्स का बापार वहाँ से करता है। तथा मैं इन दोनों से मासिक किराया लेता है।
- (iii) जी हाँ मेरी तीनों फर्म GST में इसी पते पर रजिस्टर्ड है। तथा मैं यह भी बताना चाहूंगा कि KC गोल्ड इससे पहले नेवल मॅशन जोकि सामने वाली चिल्डिंग में है वहाँ से ऑपरेट होती थी एवं जून 2022 में जिसे बेच दिया

गया इसलिए अब वह भी यहीं पर स्थित है। क्यों यह फर्म एक पारिवारिक फर्म है इसलिए तीनों कर्म का व्यापार इसी जगह से होता है।

- (iv) हालाँकि मेरे दोनो बच्चों के नाम भी दो कर्म रजिस्टर्ड है पर फिर भी क्यूकी ये एक पारिवारिक व्यवसाय है। इसलिए तीनों फर्म का व्यापार मेरी ही निगरानी एवं देख रेख में होता है। कैलाश नंद एंड संस में कुल मिलाकर तीन कर्मचारी काम करते हैं जिनके नाम क्रमशः श्री अन्नू, रिकु एवं विनय अग्रवाल हैं। में इन तीनों कर्मचारियों को क्रमशः श्री अन्नू को 12 हजार, श्री रिकु को नौ हजार एवं श्री विनय अग्रवाल को पचास हजार का मासिक वेतन देता हूँ। इसमें से मैं श्री रिकु की उसका मासिक वेतन नगद देता हूँ। मैं चाँदी के आभूषण एवं वस्तुएँ आगरा, राजकोट, मथुरा एवं बम्बई के विभिन्न ज्वेलर्स से खरीदतेजैसा कि मैंने पहले भी बताया कि यह एक पारिवारिक व्यवसाय हैं तो के नी गोल्ड का मारा काम भी मेरी ही निगरानी में होता है। KC गोल्ड में सोने के आभूषणों का व्यापार होता है।
- (v) श्री आकाश झा एवं श्री हरकंठ सिंह मेरे बेटे श्री अभिषेक अग्रवाल की फर्म KC गोल्ड में काम करते हैं। श्री आकाश झा एवं श्री हरकंठ सिंह केसी गोल्ड के लिए, दिल्ली में मोना एवम सोने के जेवरात कार में ग्वालियर लाने का काम करते है तथा उन्हें क्रमशः 15 एवं 10 हजार मासिक वेतन नगद भुगतान किया जाता है। श्री आकाश झा एवं हरकंठ सिंह को दिल्ली से तेवर सोना लाने ले जाने के लिए में बोलता हूँ। वे दोनों ही मेरे निर्देशानुसार कार्य करते हैं।
- (vi) श्री आकाश झा एवं श्री हरकंठ सिंह दिल्ली में SR बुलियन एवं RK बुलियन जिनकी दुकाने दिल्ली के चाँदनी चौक के कूचा महाजनी इलाके में हैं, से मेरे कहने पर सोना लाते हैं। जी हाँ, 11 सितम्बर 2023 को श्री आकाश झा एवं श्री हरकंठ सिंह मेरे निर्देशानुसार दिल्ली से जेवर और मोना लेने गए थे।
- (vii) मैंने श्री आकाश झा एवं श्री हरकंठ सिंह के पास से KIA सेल्टोस कार संख्या MP07CG9015 से बरामद दो किलो सोने की बार, जो कि कलश टंच सेंटर की रसीदों (संख्या 69 एवं 70, दिनांक 11.09.2023) के साथ पाया गया था एवं अम्मा जेवरात, जिसकी बरामदगी का उल्लेख पंचनामा दिनांक 11/12.09.2023 में दर्ज है को देख लिया है एवं अपने हस्ताक्षर कर दिये हैं। तथा में पुष्टि करता है कि यह वहीं सोना है जिसे लेने के लिए मैंने श्री आकाश एवं हरकंठ को दिल्ली भेजा था।
- (viii) श्री आकाश झा एवं श्री हरकंठ सिंह के पास से बरामद हुआ सोना दिल्ली से एक छोट्ट उर्फ रवि बदरी नामक व्यक्ति जिसका मोबाइल नो-

9654198492 ने इन दोनों को कूचा महाजनी में दिया था और वही में इसे ग्वालियर लाया जा रहा था रवि बद्री उर्फ छोटू ने आकाश झा को सोना देते समय उसे कोई कागज एवं e-way बिल नहीं दिया। क्योंकि सोना बिना किसी वैध कागजात के ब्ररीदा गया था इसलिए रवि बद्री उर्फ छोटू ने उस सोने के संबंध में कोई काराज नहीं दिये। मुझे भली भाँति मालूम है कि बिना कागजात के सोने की खरीद फरोख्त का व्यवसाय करना उचित एवं न्याय संगत बात नहीं है परंतु टैक्स एवं ब्यूटी बचाने के लिए हम ऐसा करते हैं।

- (ix) मेरी जानकारी के अनुसार रवि बदरी उर्फ छोटू की दुकान कूचा महाजनी दिल्ली में स्थित है मगर उसका सही पता एवं नाम मुझे नहीं पता। हमें जब भी उसे सोना खरीदना होता है तो उसे कैश में पेमेंट करते हैं और वह अपनी बताई जाए जगह पर हमें सोना डिलिवर करता है। क्योंकि यह रवि ना टैक्स एवं ब्यूटी बचाने के लिए बिना कागजात के ब्ररीदा जाता है इसलिए इसे हम रवि बद्री उर्फ छोटू अब जैसे लोगों से खरीदते हैं जिनका कोई प्रॉपर व्यवसायिक स्थान नहीं है।
- (x) जेवर टोल से पकड़े गये सोने का मैंने 1 करोड़ 22 लाख रुपये का भुगतान नगद में श्री आकाश द्वारा बदरी उर्फ छोटू को किया। यह धनराशि KC गोल्ड में हुई सोने के आभूषणों की बिक्री से आयी नगद राशि से प्राप्त हुई थी उसी धनराशि में हमने आगे छोटू को भुगतान किया था। अब इस बारे में श्री हरकंठ सिंह एवं श्री आकाश झा अपने अपने बयान दिनांक 11.09.2023 एवं 12.09.2023 में बता चुके हैं तथा मैं इससे सहमत है।
- (xi) KIA सेल्टोस कार संख्या MP07CG9015 मेरे बड़े बेटे अभिषेक अग्रवाल की है जो की KC गोल्ड का प्रोप्राइटर है। KIA सेल्टोम कार संख्या MP07CG9015 श्री आकाश एवं श्री हरकंठ की दिल्ली से सोना लाने के लिए मैंने ही दी, ताकि उसमें दिल्ली से सोना लाया जा सके। जी हाँ अभिषेक अग्रवाल को पता था कि उसकी गाड़ी KIA सेलटॉस कार संख्या MP07CG9015 का इस्तेमाल दिल्ली में अवैध रूप में सोना लाने के लिए किया जा रहा है उसको बता कर ही मैंने श्री आकाश एवं श्री हरकंठ को इस गाड़ी में भेजा था।
- (xii) जैसा कि आपको विदित है कि हमारा सोने एवं चाँदी के आभूषणों का काम है तथा इन्हें दिल्ली से ग्वालियर लाने ले जाने की सुरक्षा हेतु ही वे विशेष रूप से निर्मित कैबिटी कार में बनवायी गयी थी।

(xiii) मैंने धारा 123 के प्रावधानों को देख लिया है। मैं फिर से दोहराऊँगा की इस बारे में स्थिति रवि बदरी उर्फ छोट्टू ही स्पष्ट कर सकता है। मेरा पुत्र श्री अभिषेक अग्रवाल फिलहाल जयपुर घूमने गया है और अभी वह वहीं है।”

2.25 Summons were also issued to Appellant II for an appearance on 21.10.2023, he failed to appear on the said date. Another summons were again issued to him on 25.10.2023 for an appearance on 31.10.2023, but again he did not appear in compliance of the same.

2.26 Based on the facts of the case, investigations conducted and submissions made by Appellant I, Appellant III, Shri Mohit Agrawal and Appellant IV, it appeared that Appellant IV committed offence under Section 135 (1) (a)/(b) punishable under section 135 (1) (1) (A) of Customs Act, 1962 and appeared liable for arrest under Section 104 of Customs Act, 1962. He was arrested on 21 10.2023 under the Arrest Memo dated 21.10.2023 and was remanded to judicial custody on 22.10.2023.

Shri Prince Soni named by Sh Raj Kumar Soni never joined the investigations.

2.27 A Show Cause Notice dated 08.11.2023 was issued to the appellants alongwith Sh. Prince Soni, PCS Assay and Hallmarking and Sh. Raj Kumar Soni asking them to show cause, as to why:

- (i) *A total quantity of 2167 grams of gold having a market value of Rs.1,26,35,345/- (Rupees One Crore Twenty-Six Lakhs Thirty-Five Thousand Three Hundred and Forty-Five only) comprising of two gold bars & Gold Piece (Along with 2 small gold Snippets), Assorted Jewellery (Pendent, rings & Earrings with chain) recovered from Sh. Akash Jha and Sh. Harkanth Singh, who were intercepted while travelling in a white Kia Seltos car bearing no MP07CG9015 registered in the name of Shri Abhishek Agrawal and the gold being seized vide Seizure Memo dated 12/09/2023 should not be confiscated under Section 111(b) and Section 111(d) of the Customs Act, 1962.*

- (ii) *The seized car, a white KIA Seltos bearing registration no MP07C09015 should not be confiscated under Section 115 of the Customs Act, 1962 as it was used for carrying and transporting the seized illicit Foreign-Origin-Gold.*
- (iii) *The seized packing material i.e.newspaper, plastic pouch, brown colour tape, used to conceal the seized Foreign Origin Gold, should not be confiscated under Section 118 and Section 119 of the Customs Act, 1962.*
- (iv) *Penalty should not be imposed upon the noticees under Section 112 (a) and/or 112(b) of the Act.”*

2.28 The show cause notice was adjudicated as per the Order-in-Original dated 06.05.2024 holding as follows:-

"ORDER

- i. I order for absolute confiscation of seized foreign smuggled gold, comprising of two gold bars & Gold Piece (Along with 2 small gold Snippets), Assorted Jewellery (Pendent, rings & Earrings with chain) recovered from Sh. Akash Jha and Sh. Harkanth Singh, weighing 2167.00 grams valued at Rs.1,26,35,345/- (Rupees One crore Twenty Six Lakhs Thirty Five Thousand Three Hundred and Forty Five only) under the provisions of Section 111 (b) & 111(d) of the Act.*
- ii. I order for confiscation of the seized white KIA Seltos bearing registration no MP07CG9015 registered in the name of Shri Abhishek Agrawal valued at Rs.7,61,400/- under Section 115(2) of the Act. However, I order for its redemption to its lawful owner as envisaged U/s 125 of the Act on payment of redemption fine of Rs.3,00,000/- (Rupees Three Lakh Only) in lieu of confiscation in terms of section 125(1) of the Act. Further, I order that prior to release of said vehicle, the cavity shall be removed by the legal owner at his own expenses and shall submit a certificate from the*

authorized service centre that the cavity has been removed from the said vehicle.

- iii. I order for absolute confiscation of seized packing material ie newspaper, plastic pouch, brown colour tape which have been used for concealment of the smuggled goods under the provisions of Section 118 & 119 of the Act.*
- iv. I impose penalty of Rs.5,00,000/- (Rupees Five upon Sh. Umesh Agrawal, S/o Kailash Chandra Agrawal under Section 112(b) of the Act.*
- v. I impose penalty of Rs.5,00,000/- (Rupees Five Lakh Only) upon Sh. Abhishek Agrawal S/o Sh. Umesh Agrawal under Section 112(b) of the Act.*
- vi. I impose penalty of Rs 5,00,000/- (Rupees Five Lakh Only) upon Sh. Akash Jha S/o Shri Jitendra Jha under Section 112(b) of the Act.*
- vii. I impose penalty of Rs.5,00,000/- (Rupees Five Lakh Only) upon Sh. Harkanth Singh S/o Shri Ram Singh under Section 112(b) of the Act.*
- viii. I impose penalty of Rs.5,00,000/- (Rupees Five Lakh Only) upon Sh. Prince Soni, PCS Assay and Hallmarking under Section 112(b) of the Act.*
- ix. I impose penalty of Rs.5,00,000/- (Rupees Five Lakh Only) upon Sh. Raj Kumar Soni, S/o Bal Kishan under Section 112(b) of the Act.*

2.29 Aggrieved appellants have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.30 Shri Raj Kumar Soni and Shri Prince Soni did not filed any appeal before the first appellate authority or before this authority.

2.31 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Vikas Sarin & Shri Ayush Mittal learned Counsel appearing for the appellants and Shri Santosh Kumar learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- The seized gold is not smuggled foreign-origin gold but is lawful stock of M/s. KC Gold, owned by the Appellant. Supporting documents include:-
 - Detailed stock registers
 - Purchase bills from Aggarwal Jewellers and D.S. Jewellers with payment details
 - Melting report from M/s JBR Gold Testing & Refinery dated 10.09.2023 confirming conversion of 2725.670gms of 18KT ornaments into 2048.140 gms of 995 purity bullion (ANNEXURE A-8) Pg. 191.
 - 117.960 gms of jewellery issued as design samples
- The cavity in the Kia Seltos was made only for safe storage during transit, not for concealment of contraband.
- No foreign markings were found on the seized gold; appraisal report only confirmed weight and value, not foreign origin.
- The seized gold matches with lawful stock as per stock registers and books of accounts.
- Statements of Appellant I, II and IV and were obtained under coercion and later retracted through affidavits dated 07.02.2024.
- No incriminating material was recovered during search of appellant's shop, residence or associated premises.
- The authorities failed to verify or consider the documentary evidence provided, thereby violating principles of natural justice.

Expanded Tabular Synopsis

S. No.	Allegations in OIO / SCN	Findings in OIO / OIA	Appellant's Contentions / Rebuttal
1	DRI seized 2 gold bars, 3 small snippets, and assorted jewellery from Kia Seltos, alleging smuggling of foreign-origin gold.	Held to be smuggled foreign gold under Sections 111(b) & 111(d) of Customs Act. Gold valued at Rs. 1.26 crore ordered for absolute confiscation.	Gold is lawful stock of M/s KC Gold, supported by stock registers, purchase bills, and melting reports. No foreign markings were found; appraisal only confirms weight & value.
2	Kia Seltos car used to conceal smuggled gold in a specially built cavity.	Vehicle confiscated under Section 115(2), but redemption allowed on payment of Rs. 3,00,000/- fine.	Cavity was a precautionary measure for safe transport of valuable stock. No evidence to prove smuggling use. Car

			registered in appellant's name and used in ordinary course of business.
3	Statements of Appellant I, III & IV implicating appellants in gold smuggling.	OIO/OIA relied heavily on these statements to confirm confiscation and penalty.	Statements were obtained under coercion, later retracted on 07.02.2024. Retracted statements cannot form sole basis for adverse findings. Principles of natural justice violated as no Section 138B compliance.
	Failed to establish FOREIGN ORIGIN		No foreign markings found on the gold Appraisal report confirms Gold's weight & value, does not indicate foreign origin Statement of Noticee 5 & 6 suggest purity of gold does not match foreign origin
	Penalty of Rs. 5,00,000 imposed under Section 112(b).	Authority held appellant knowingly dealt with smuggled goods.	No mens rea established. Appellant lawfully procured gold with invoices & registers. Burden of proof under Section 123 lies on Department. Failure to prove foreign origin negates penalty.
	Allegation that documents (stock registers, bills, melting reports) are afterthought/fabricated.	OIO/OIA rejected documentary evidence without verification.	Appellant consistently produced authentic documents. Authorities ignored them instead of verifying. Documents prove lawful stock. Rejection without examination is arbitrary.
	Appellant IV implicated for instructing his employees to retrieve gold from Delhi. OIO suggests his action contributed to smuggling		His role for managerial, did not directly partake in any physical act of smuggling. His business practices such as purchasing gold without formal receipts (a method used to avoid excessive tax \duty) though legally debatable, are standard in the industry and should not automatically imply illicit activity. His business records and stock registers that corroborate the legal procurement of gold. His appeal also highlights the retraction filed on 07.02.2024, clarifying that earlier statements (made

		under pressure) were not reflective of actual practices.
As per the OIO & SCN, Appellant I recorded statement implicated him in the smuggling process.		Orders- He was merely a salaried employee, acting on direct orders from the senior management, had no independent decision making authority regarding procurement or transport. Noticee 3 contends that his initial statement was given under coercion and has since been retracted. This retraction is crucial in his appeal as it undermines the basis of the evidence used against him. No additional documentary evidence links him personally to any wrongful conduct
OIO Includes Appellant III statement as evidence of his involvement in the alleged smuggling activity.		He functioned as a driver, followed his employer's instructions.
SCN Allegation		An amount of Rs.1,22,00,000/- cash was given to Noticee 3 (Aksh Jha) by Sh. Umesh Jha (Noticee 1)

➤ Reliance is placed on the following decisions:-

- Commissioner of Customs, Kolkata Vs Bajrang Ingole [2024(387) E.E.T. 434(Tri- Kolkata)];
- Sarvendra Kumar Mishra Vs Commissioner of Customs 2021 SCC Online CESTAT 2587;
- Kogatam Sadik Basha Vs Commissioner of Customs Preventive, Vijayawada 2024 (29) Centax 24 (Tri.-Hyd);
- Suresh Chand Garg V. Principal Commissioner of CGST, Jaipur-I 2023 (386) ELT 613 (Tri.-Del.);
- Ajit Bhosle Vs CC, Kolkata 2023 (9) Centax 112 (Tri.-Cal)
- Aadil Maneed Banday V CC, Amritsar 2021 (378) ELT 540 (Tri.-Chan.);
- Shri Monirul Mallick V. CC, Customs Appeal No.75757 of 2021;

3.3 Authorised Representative reiterates the findings recorded in the orders of the lower authorities.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 Impugned order records as follows:-

"5.2 The core issue in these appeals is whether the impugned order correctly held that the seized gold weighing 2167 grams was smuggled, liable for absolute confiscation under Section 111(b) & (d) of the Customs Act, 1962 (hereinafter referred to as 'the Act'); whether the vehicle used for transport, a Kia Seltos Car No. MP-07-CG-9015, was liable for confiscation under Section 115(2) of the Act; and whether penalties imposed on the appellants under Section 112(b) of the Act are justified.

5.3 The appellants have raised several grounds challenging the impugned order, primarily contending that:

- i. The statements recorded under Section 108 of the Act were obtained under duress and were subsequently retracted.*
- ii. The seized gold was not of foreign origin or smuggled, lacking foreign markings, and was part of the legitimate stock of M/s K.C. Gold (proprietor: Appellant No. 4).*
- iii. Appellant No. 4 had provided documents (purchase invoices, stock registers, melting reports) proving the licit source of the gold, which were allegedly ignored.*
- iv. The gold was being transported from Gwalior to Delhi by Appellant No. 3 and Appellant No. 1 (employees of Appellant No. 4) for making jewellery, and the return journey occurred because making charges could not be agreed upon with 'Suraj Gold' in Delhi.*
- v. The cavity in the car (owned by Appellant No. 4) was made for the safety of the gold during*

- transport, not for concealment of smuggled goods.*
- vi. The burden of proof under Section 123 of the Act was not discharged by the department, and the seizure being a town seizure, the presumption of smuggling does not apply.*
 - vii. There is no corroborative evidence apart from the retracted statements, and the alleged supplier 'Chotu' and the alleged cash payment were never traced.*
 - viii. Appellants No. 1 and 3 were merely employees acting on instructions and should not be penalized.*
 - ix. Appellant No. 2's role is not directly established concerning this specific transport.*
 - x. Reliance was placed on certain case laws regarding the absence of foreign markings and the burden of proof.*

I shall address these grounds systematically:

5.4 Admissibility and Reliability of Statements under Section 108: The appellants (No. 1, 2, and 3) claim their initial statements admitting the smuggled nature of the gold and the modus operandi were involuntary and later retracted. The Adjudicating Authority correctly noted in Para 5.2.30.a of the impugned order that these retractions were significantly delayed (filed in Feb 2024, nearly 5 months after the seizure in Sep 2023). There is no record of the appellants complaining of duress before the Magistrate when produced for remand (Appellants 1 & 3) or at any earlier opportunity. Statements recorded under Section 108 of the Act hold significant evidentiary value, unlike statements under Section 161 CrPC, and are admissible unless proven to be involuntary beyond doubt. A delayed retraction, without immediate complaint to judicial authorities appears to be an afterthought aimed at escaping liability. Furthermore, these statements were not

made in isolation; they were corroborated by substantial evidence:

- i. The recovery of gold meticulously concealed in a specially constructed cavity within the vehicle.*
- ii. The initial denial by Appellants 1 and 3 upon interception, followed by admission only after notices under Sections 102 & 106 were served.*
- iii. The complete absence of any licit documents for possession or transport of gold worth over Rs. 1.26 Crores.*
- iv. Call Detail Record (CDR) analysis, as detailed in Para 5.2.26 of the O10, showing numerous calls exchanged on 11.09.2023 between Appellant No. 2 (Umesh Agrawal, using mobile no. 9009599993), Appellant No. 3 (Akash Jha, using mobile no. 9131449563), and Appellant No. 4 (Abhishek Agrawal, using mobile no. 9009599992) throughout the day, particularly during the time Appellant 3 and Appellant 1 were travelling from Delhi towards Gwalior. This pattern of communication strongly indicates coordination and active monitoring of the transport operation by Appellants 2 and 4.*
- v. Appellant No. 2's own statement dated 21.10.2023 admitting he instructed Appellants 1 & 3, acknowledging the gold was procured without documents from 'Chotu (mobile no. 9654198492) to evade taxes/duties, and confirming Appellant No. 4's knowledge and the use of his car.*
- vi. The recovery of Gold Testing Reports (Sl. No. 69 & 70 dated 11.09.2023 from Kalash Computerized Tunch Centre) along with the gold bars, which were later linked through investigation (CCTV identification by Shri Vitthal Salunkhe and statement of Shri Raj Kumar Soni) to Shri Raj Kumar Soni getting the bars tested at the behest of Shri Prince Soni. This contradicts the narrative of the gold being old stock from Gwalior and points to a recent transaction/handling in Delhi before departure.*

vii. The initial attempt by Appellants 1 and 3 to mislead investigators by stating they worked for M/s Mohit Jewels, when they were actually employees of M/s K.C. Gold (proprietor: Appellant No. 4), as noted in Para 5.2.26 of the O10. Therefore, the Adjudicating Authority rightly relied on these corroborated statements. The claim of duress is unsubstantiated and rejected.

5.5 Nature of Gold and Burden of Proof (Section 123): The appellants argue the gold lacked foreign markings and was licitly procured. Section 123 of the Act squarely applies to gold. Once goods specified under Section 123 are seized under the reasonable belief that they are smuggled, the burden shifts to the person from whose possession they were seized (and any claimant) to prove they are not smuggled. The 'reasonable belief was well-founded based on specific intelligence, recovery from a purpose-built cavity, absence of documents, and initial admissions. The appellants failed to discharge this burden at the time of seizure or during the initial investigation. The absence of foreign markings is not conclusive proof of non-smuggled origin, especially given the common practice of melting and recasting smuggled gold to obliterate markings and disguise its origin, as admitted by Appellant No. 3. The purity level (995) is also not inconsistent with standard gold bars, whether licit or illicit. The Adjudicating Authority correctly held that the burden was on the appellants, which they failed to discharge.

5.6 Claim of Legitimate Procurement and Transport for Jewellery Making: Appellant No. 4 claims the gold was part of his firm's (M/s K.C. Gold) stock, derived from melting old jewellery (purchased via invoices listed in GoA) and was being taken to Delhi for making new jewellery, along with samples. This entire narrative surfaced much later in the proceedings (defence replies/appeal grounds) and contradicts the initial, corroborated statements of Appellants 1, 2, and 3.

5.7 The story of purchasing jewellery, melting it into bullion (on 10.09.2023), and immediately sending it to Delhi (11.09.2023) for remaking jewellery appears highly contrived and presented post-facto. The documents (invoices, melting report, stock entries) submitted months after the seizure, which were never mentioned or produced during the initial search or investigation despite opportunities, lack credibility and are reasonably considered an afterthought designed to create a defence. The Adjudicating Authority's finding that this is a cooked-up story is well-reasoned.

5.8 The explanation that the trip back from Delhi with the gold was due to non-negotiation of making charges with 'Suraj Gold' is implausible. It defies commercial logic to transport gold worth over Rs 1.26 Crores over a long distance without first finalizing critical aspects like making charges, especially when such negotiations could easily occur via phone/email. This story lacks credence and reinforces the view that the gold was illicitly procured in Delhi, as initially stated by Appellants 1 and 3.

5.9 Crucially, Appellant No. 2 (Umesh Agrawal) himself admitted in his statement that the gold was procured without documents from Chotu' in Delhi to evade taxes/duties and that he paid Rs 1.22 Crores in cash. This directly refutes the legitimate sourcing claim made by Appellant No. 4 (Abhishek Agrawal).

5.10 The appellants claim the cavity in the Kia Seltos car (owned by Appellant No. 4) was for safety. However, the nature of the cavity specially constructed under the passenger seat, accessed by loosening bolts points strongly towards concealment for illicit purposes rather than mere safety. Legitimate transport of valuable goods typically involves standard security measures, not hidden compartments requiring tools to access. Appellant No. 2 admitted the cavity was made for security during transport from Delhi to Gwalior, implicitly linking it to the known

route of illicit procurement. The use of such a cavity is a classic modus operandi in smuggling operations.

5.11 Roles and Culpability of Appellants:

- i. Appellants No. 1 (Harkanth Singh) & No. 3 (Akash Jha): They were admittedly employees of Appellant No. 4 (M/s K.C. Gold) and were caught red-handed transporting the gold concealed in the cavity. Their initial statements clearly outlined their knowledge of the gold being foreign/smuggled and their role as carriers acting on instructions from Appellant No. 2. Their claim of being mere employees unaware of the illegality is contradicted by their own detailed initial admissions and the manner of concealment. They were directly involved in acquiring, possessing, carrying, and concealing goods they had reason to believe were liable to confiscation.*
- ii. Appellant No. 4 (Abhishek Agrawal): As the owner of the car specifically modified with a cavity and the employer of Appellants 1 & 3, his involvement is clearly established. His car was knowingly provided for the transport of the illicit gold. CDR analysis confirms his communication (using mobile no. 9009599992) with Appellant No. 3 (using mobile no. 9131449563) during the transit. His attempt to provide documents months later appears to be a deliberate effort to shield himself and his father (Appellant No. 2). His non-cooperation with the investigation by failing to appear despite repeated summons. further points towards his culpability and an attempt to evade scrutiny.*
- iii. Appellant No. 2 (Umesh Kumar Agrawal): The evidence overwhelmingly points to him being the mastermind. Appellants 1 and 3 consistently stated they acted under his instructions. He*

admitted instructing them, arranging the procurement from 'Chotu, paying in cash, knowing the gold was undocumented, and monitoring their journey via phone (using mobile no. 9009599993, confirmed by CDRs showing calls to Appellant 3's mobile no. 9131449563). He supervised the entire operation, including the business activities of his sons' firms.

5.12 Given the established facts the recovery of gold without licit documents, concealed in a specially built cavity, the corroborated admissions of its smuggled nature and procurement method (linked to 'Chotu' in Delhi), the failure to discharge the burden under Section 123, the corroborative CDR evidence, the presence of recent testing slips from Delhi, and the clear roles played by each appellant in the conspiracy the Adjudicating Authority correctly concluded that the gold was smuggled and liable to absolute confiscation under Section 111(b) & (d) of the Act. The vehicle, being used for transporting and concealing smuggled goods with the knowledge and involvement of the owner (Appellant No. 4) and the mastermind (Appellant No. 2), was rightly held liable for confiscation under Section 115(2), with an option for redemption under Section 125. The packing materials used for concealment were correctly held liable for confiscation under Sections 118 & 119.

5.13 The penalties under Section 112(b) are justified as all four appellants were knowingly concerned in carrying, removing, keeping, concealing, or otherwise dealing with goods (the smuggled gold) which they knew or had reason to believe were liable to confiscation under Section 111. Their actions and omissions directly rendered the goods liable to confiscation. The quantum of penalty imposed on each appellant appears commensurate with their respective roles in the smuggling operation.

5.14 The case laws cited by the appellants primarily deal with situations where the 'reasonable belief for invoking Section 123 was weak or where there was a complete lack of corroborative evidence beyond a retracted statement. In the present case, the reasonable belief was strong (intelligence, cavity, no documents), and the statements were amply corroborated by circumstantial evidence (cavity, CDRs, testing slips, actions of appellants). Therefore, the cited precedents are distinguishable on facts and do not aid the appellants' case.

5.15 Based on the detailed analysis of the evidence on record, the statements recorded under Section 108 of the Act, the circumstances of the seizure, the corroborative evidence including CDR analysis and testing slips, and the admissions made, I find that the appellants were actively involved in a well-planned operation to smuggle foreign-origin gold procured illicitly in Delhi. The grounds raised in the appeals are found to be without merit and appear to be attempts to obfuscate the facts established during the investigation and adjudication proceedings. The narrative presented regarding legitimate procurement and transport for jewellery making is an unconvincing afterthought, contradicted by the appellants' own initial admissions and the circumstances of the case. The Adjudicating Authority has passed a well-reasoned order based on the evidence."

4.3 The first question that needs to be answered is whether the gold recovered from the personal possession of Appellant-I and from the activities carried in KIA Seltos is of smuggled gold or not?

4.4 Evidences and statement of the persons examined have been recorded above state that as the gold is a notified item in terms of Section 123 of the Customs Act the burden to prove licit possession of the same is on the person claiming ownership of the same. Further, Hon'ble Supreme Court in the case of Collector of Customs, Madras and Others Vs M/s D. Bhoormull 1983 (13) ELT 1546 (SC) have held as follows:-

"23. *Goods found to be smuggled can, therefore, be confiscated without proceeding against any person and without ascertaining who is their real owner or who was actually concerned in their illicit import.*

24. *Section 178 empowers an officer of the Customs or anti-smuggling staff to seize anything liable to confiscation.*

25. *Section 178A provides for burden of proof. It says :*

"(i) Where any goods to which the section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods were seized.

(2) This section shall apply to gold, gold manufactures, diamonds and other precious stones, cigarettes and cosmetics and any other goods which the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every notification issued under sub-section (2) shall be laid before both Houses of Parliament as soon as may be after it is issued."

26. *Large scale smuggling of gold or other goods into India may pose a threat to the economic and fiscal interests and policies of the State. Such illicit trade is often carried on by organized international smugglers in the secrecy of the under-world. The more it is organized, the less are the chances of its detection, and greater the difficulty of proving the offences relating thereto. Laws have therefore been enacted in most countries, which mark a partial or wholesale departure in matters relating to smuggling, from the general principle of penal law, viz., that it is for the State or its Department to prove the offence against the accused or the defendant. Thus in England, Section 290(2) of the Customs and Excise Act,*

1952 provides that where in any proceeding relating to Customs or Excise any question arises as to the place from which any goods have been brought or as to whether or not any duty has been paid or any goods have been lawfully imported etc., then the burden of proof shall lie upon the other party to the proceeding. In India Parliament inserted Section 178A by the Amending Act 10 of 1957, but it did not in its wisdom, go as far as Section 290(2) of the English Act. Section 178A in terms applies to "gold, gold manufacture, diamonds and other precious stones, cigarettes and cosmetics". With regard to these specified goods if seized under this Act in the reasonable belief that they are smuggled goods, the burden of proof that they are not such goods shall be on the person from whose possession, they are seized. But with regard to any other goods, the rule in sub-section (1) of Section 178A would not apply unless the Central Government had specifically applied the same by notification in the Official Gazette. It is common ground that at the material time, no such notification applying the Section to the categories of the goods in question had been issued. In respect of such goods the provisions of the Evidence Act and the Code of Criminal Procedure, do not, in terms, govern the onus of proof in proceeding under Section 167(8) of the Act. In conducting these penal proceedings, therefore, the Collector of Customs is to be guided by the basic canons of criminal jurisprudence and natural justice.

27-30

31. *The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered to use the words of Lord Mansfield in *Blatch v. Archar* (1774) 1 Cowp. 63 at p. 65 "According to the Proof which it was in the power of one side to prove and in the power of the other to have contradicted". Since it is exceedingly difficult, if not absolutely impossible for the prosecution to*

prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.

32. *Smuggling is clandestine conveying of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the Preventive Department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the person concerned in it. On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned : and if he fails to establish or explain those facts, an adverse inference of facts may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result prove him guilty. As pointed out by Best in `Law of Evidence' (12th Edn. Article 320, page 291), the "presumption of innocence is, no doubt, *presumptio juris* : but every day's practice shows that it may be successfully encountered by the presumption of guilt arising from the recent (unexplained) possession of stolen property," though the latter is only a presumption of fact. Thus the burden on the prosecution or the Department may be considerably lightened even by such presumption of fact arising in their favour. However, this does not mean that the special or peculiar knowledge of the person proceeded against will relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue. It will only alleviate that burden to discharge which very slight evidence may suffice.*

33. *Another point to be noted is that the incidence, extent and nature of the burden of proof for proceedings for confiscation under the first part of the entry in the 3rd column of clause (8) of Section 167 may not be the same as in proceedings when the imposition of the other kind of*

penalty under the second part of the entry is contemplated. We have already alluded to this aspect of the matter. It will be sufficient to reiterate that the penalty of confiscation is a penalty in rem which is enforced against the goods and the second kind of penalty is one in personam which is enforced against the person concerned in the smuggling of the goods. In the case of the former, therefore, it is not necessary for the Customs authorities to prove that any particular person is concerned with their illicit importation or exportation. It is enough if the Department furnishes prima facie proof of the goods being smuggled stocks. In the case of the latter penalty, the Department has to prove further that the person proceeded against was concerned in the smuggling.

34-36.....

37. *In the view that the initial onus of proof on the Department can be sufficiently discharged by circumstantial evidence, we are supported by the decision, of this Court in Issardas Daulat Ram's case, (1962) Supp. (1) SCR 358. There, on September 14, 1954, that is, long before insertion of Section 178A in the Act, a quantity of gold to a refinery in Bombay was sent for the purpose of melting. The Customs authorities seized this gold when it was being melted. The gold was found to be of foreign origin and had been imported into India in contravention of the Foreign Exchange Regulation Act, 1947. The Collector of Customs confiscated it under Section 167(8) of the Act. The legality of confiscation was challenged by a petition under Article 226 of the Constitution before the High Court, on the ground that there was no evidence before the Collector to show that the gold had been imported into India after restrictions had been imposed in March 1947 on its importation. The High Court rejected this contention and dismissed the petition. The same argument was advanced before his Court in appeal by special leave. This Court also negatived this contention. While conceding that*

there was no direct evidence that the gold had been smuggled after March 1947, it was held that a finding to that effect could be reached by referring to "the conduct of the appellant in connection with (a) the credibility of the story about the purchase of this gold from three parties, (b) the price at which the gold was stated to have been purchased which was less than the market price and (c) the hurry exhibited in trying to get the gold melted at the refinery with a small bit of silver added so as to reduce the fineness of the gold and thus approximate the resultant product to licit gold found in the market".

40. *In the case before us, the circumstantial evidence suggesting the inference that the goods were illicitly imported into India, was similar and reasonably pointed towards the conclusion drawn by the Collector. There was no violation of the rules of natural justice. The Collector had given the fullest opportunity to Bhoormull to establish the alleged acquisition of the goods in the normal course of business. In doing so, he was not throwing the burden of proving what the Department had to establish, on Bhoormull. He was simply giving him a fair opportunity of rebutting the first and the foremost presumption that arose out of the tell-tale circumstances in which the goods were found, regarding their being smuggled goods, by disclosing facts within his special knowledge.*

44. *These fundamental principles, shorn of technicalities, as we have discussed earlier, apply only in a broad and pragmatic way to proceedings under Section 167(8) of the Act. The broad effect of the application of the basic principle underlying Section 106, Evidence Act to cases under Section 167(8) of the Act, is that the Department would be deemed to have discharged its burden if it adduces only so much evidence, circumstantial or direct, as is sufficient, to raise a presumption in its favour with regard to the existence of the fact sought to be proved. *Amba Lal's case, (1961) 1 SCR 933 = 1983 E.L.T. 1321,**

was a case of no evidence. The only circumstantial evidence viz. the conduct of Amba Lal in making conflicting statements, could not be taken into account because he was never given an opportunity to explain the alleged discrepancies. The status of Amba Lal viz. that he was an immigrant from Pakistan and had come to India in 1947-before the customs barrier was raised-bringing along with him the goods in question, had greatly strengthened the initial presumption of innocence in his favour. Amba Lal's case thus stands on its own facts."

4.5 From the above, it is in the frame work as laid down by the Hon'ble Apex Court in the above decision, the facts of the present case needs to be examined. We find that a specific intelligence was received to DRI in respect of the smuggled gold by the persons in KIA Seltos bearing registration No. MP-07-CG-9015 which was intercepted and on search of the vehicle the gold under confiscation was recovered. The persons from who the gold was recovered were not in position to produce any document in respect of licit question/procurement of the said gold. Further, on the basis of recoveries made from the said vehicle and disclosures made in their statement by the two persons from whom the investigation carried out. In his statement recorded under Section 108 of the Customs Act, Appellant-IV admitted that the said gold was procured by him from a person in Delhi and was purchased illicitly within India. The value of the statement recorded cannot be in dispute. We also note that the statement made by the appellant-IV was not retracted till the time of the adjudication proceedings to an specific query made during the course of argument. In respect of restriction for production of the document at the time of arrest and bail proceedings before the Court of Magistrate and thereafter, Counsel replies in negative. When asked to produce the copy of decision of the Courts, the reply was also negative. In the case of M/s K.I. Pavunny 1997 (90) ELT 241 (SC) after referring to earlier decisions Hon'ble Supreme Court has observed as follows:-

"26. In *Naresh J. Sukhawani v. Union of India* - [1996 \(83\) E.L.T. 258](#) (S.C.) = 1995 Supp. 4 SCC 663 a two-Judge Bench [to which one of us, K. Ramaswamy, J., was a member] had held in para 4 that the statement recorded under Section 108 of the Act forms a substantive evidence inculcating the petitioner therein with the contravention of the provisions of the Customs Act as he had attempted to export foreign exchange out of India. The statement made by another person inculcating the petitioner therein could be used against him as substantive evidence. Of course, the proceedings therein were for confiscation of the contraband. In *Surjeet Singh Chhabra v. Union of India* - [1997 \(89\) E.L.T. 646](#), decided by a two-Judge Bench to which one of us, K. Ramaswamy, J., was a member the petitioner made a confession under Section 108. The proceedings on the basis thereof were taken for confiscation of the goods. He filed a writ petition to summon the panch (mediator) witnesses for cross-examination contending that reliance on the statements of those witnesses without opportunity to cross-examine them, was violative of the principle of natural justice. The High Court had dismissed the writ petition. In that context, it was held that his retracted confession within six days from the date of the confession was not before a Police Officer. The Custom Officers are not police officers. Therefore, it was held that "the confession, though retracted, is an admission and binds the petitioner. So there is no need to call Panch witnesses for examination and cross-examination by the petitioner". As noted, the object of the Act is to prevent large-scale smuggling of precious metals and other dutiable goods and to facilitate detection and confiscation of smuggled goods into, or out of the country. The contraventions and offences under the Act are committed in an organised manner under absolute secrecy. They are white-collar crimes upsetting the economy of the country. Detection and confiscation of the

smuggled goods are aimed to check the escapement and avoidance of customs duty and to prevent perpetration thereof. In an appropriate case when the authority thought it expedient to have the contraveners prosecuted under Section 135 etc., separate procedure of filing a complaint has been provided under the Act. By necessary implication, resort to the investigation under Chapter XII of the Code stands excluded unless during the course of the same transaction, the offences punishable under the IPC, like Section 120B etc., are involved. Generally, the evidence in support of the violation of the provisions of the Act consists in the statement given or recorded under Section 108, the recovery panchnama (mediator's report) and the oral evidence of the witnesses in proof of recovery and in connection therewith. This Court, therefore, in evaluating the evidence for proof of the offences committed under the Act has consistently been adopting the consideration in the light of the object which the Act seeks to achieve.

27-30

31. *It is seen that the contraband of 200 gold biscuits of foreign marking concealed in a wooden box and kept in the pit in the compound of the appellant was recovered at 9.00 a.m. on December 6, 1980 in the presence of Panch (mediator) Witnesses including PW-3. This is proved from the evidence of PWs 2, 3 and 5. There was nothing for PW-3 to speak falsehood against the appellant who is a friend of him. PWs 2 and 5 also withstood the grueling cross-examination. There is nothing to disbelieve their evidence. The appellant herein made statement under Section 108 at 1 p.m. on December 6, 1980, i.e., after four hours. It is unlikely that during that short period PW-2 and 5 would have obtained the retracted confession under Ex. P-4 in his own hand-writing running into 5 typed pages under threat or duress or promise. No doubt the wealth of details by itself is not an assurance of its voluntary character. The totality of the facts and circumstances would be taken into*

account. On a consideration of the evidence, the High Court accepted that Ex. P-4 is a voluntary and true confessional statement and accordingly it convicted the appellant of the offences. It is seen that Ex. P-4 was given in furtherance of the statutory compulsion and the appellant made statement in unequivocal terms admitting the guilt. It is seen that in Barkat Ram's case, this Court accepted the retracted confessional statement and upheld, on that basis, the conviction. In Vallabhdas Liladhar's case and also in Rustom Das's case the retracted confessional statement found basis for conviction and in the latter the recoveries were relied as corroborative evidence. In Haroom Abdulla's case, this Court used the evidence of co-accused as corroborative evidence."

4.6 Appellant has referred to certain documents such stock registers, purchase bills and melting reports. To claim the the gold confiscated was the law full stock of M/s K C Gold. M/s K C Gold is proprietorship concern of Appellant II. We find that none of these documents were found at the time of search in the business premises of M/s K C Gold. Neither any of these documents were tendered by Appellant II when called for to appear before the investigating officers on 21.10.2023 and 31.10.2023 for which summons were duly issued. Appellant IV who is father of Appellant II, has in his statement recorded on 21.10.2023 and proprietor of M/s Kailash Chand and Sons, specifically admitted work in the three firms i.e. M/s Kailash Chand and Sons, M/s K C Gold, & M/s Mohit Jewels (proprietor Shri Mohit Aggarwal son of Appellant IV and brother of Appellant II) located in common premises in Sarafa Bazar Gwalior is undertaken in his supervision. He in his statement did not referred to any document which appellant's are now referring to claim legal ownership of the gold. On the contrary he gave all the details about the illicit procurement of gold intercepted from the possession of Appellant I & Appellant III. (please refer para 2.24 above for the statement of Appellant IV).

4.7 We also note that statements of appellants No I, III, & IV were recorded under section 108 of Customs Act, 1962. All three of them were arrested and produced before the judicial magistrates. Even when arrested and produced before the magistrates who remanded them to judicial custody, appellants never made any claim towards legal acquisition/ possession of gold seized from KIA Seltos intercepted at Jewar Toll Plaza. Neither had they made any such claim while being in judicial custody. Even the statements made were never re-traced till 07.02.2024, much after issuance of Show Cause Notice on 08.11.2023. Hon'ble Madras High Court has in the case of K. Rahuman Sait [2021 (376) E.L.T. 476 (Mad)] observed as follows:

*25. Considering the facts and circumstances of the present case, more particularly, when the present case arises under the provisions of the Act, the appellant cannot place reliance on the decision in the case of Capt. M. Paul Anthony, which was the matter concerning the service condition of the appellant therein. The said decision is wholly inapplicable to the case on hand. The Tribunal, which is the last fact finding forum, has re-appreciated the factual matrix and rendered a finding that on the date when the officers of the Department conducted search operations in the godown at Tuticorin, the appellant was present and the cartons, which were lying in the godown, when opened, were found to contain sandalwood concealed along with Mangalore Roofing Tiles. **Further, the admissibility of the statement recorded under Section 108 of the Act from the appellant on 11-3-1998, was considered by the Tribunal and it was held that the said statement is admissible and the belated retraction was rightly rejected by the Adjudicating Authority. ...***

In the case of Pradeep Master Batches Pvt. Ltd [2017 (348) E.L.T. 692 (Tri. – Mumbai)] Mumbai Bench observed as follows:

8. We find that the retraction has numerous loopholes. First of all, when the containers were recalled, he claims to have been approached by an unknown person who threatened him. If that was true, he should have reported the same to DRI/police, which he failed to do. DRI has recorded his statement more than once. He could have retracted the same when he was produced before the Additional Chief Metropolitan Magistrate. If he was coerced to give statement, he should have clearly stated before the Additional CMM who is a judicial authority. He was again produced before the Magistrate on 11-7-2000 when he was released on bail, where he had another opportunity of placing on record the threat and coercion. It has been alleged that he was threatened by an inmate in the jail where he had the opportunity of informing the Jailer or DRI officers. It can be seen from the above that he had ample of opportunities to retract his statements but he did not do so. In these circumstances, the retraction made 37 days after his release from jail and more than two months after his first statement dated 13-6-2000 cannot be considered as true. In these circumstances, the Commissioner has rightly relied on these statements.

Hon'ble Gujarat High Court has in case of Kishan Manjibhai Gadhesariya [(2023) 2 Centax 63 (Guj)] observed as follows:

95. The veracity of the facts admitted in the statements dated 21-4-2009, 29-4-2009, 24-6-2009 and 27-6-2009 respectively by Sanjay also find support from the statements of others/accomplices and the evidence which were found pursuant thereto, during the investigation. Although the said statements later came to be retracted by subsequent statement recorded on 4-7-2009 before the JMFC in the Criminal Proceedings under the NDPS Act, 1985, yet, the statements recorded under section 108

*have evidentiary value and constitute substantive evidence. **A belated retraction after considerable length of time would not have the same efficacy in law as the retraction made at the earlier point of time from the day of the statement.***

In the case of Kallatra Abdul Khader Haji And Others [1987 (32) E.L.T. 479 (Kerala)] Hon'ble Kerala High Court has observed as follows:

"15. Accused 3, 6, 7 and 8 respectively gave Exts. P2, P5, P6 and P7 statements under Section 108 of the Act to the Customs Officers. There is nothing on record to show that these statements were retracted, But the Magistrate proceeded on the assumption that these statements were retracted and the record evidencing this fact are missing in the case records. If so he ought to have enquired into the matter and traced out the records. He over-looked the fact that even if they were retracted, belated retractions will not be of much value because it could only be taken as the result of afterthought or advice. In fact there was no retraction and if at all there was retraction it was only when questioned under Section 313 of the Code."

4.8 Thus we do not find any merits in the submissions made by the appellants in respect of legal acquisition/ possession of the gold confiscated on the basis of the documents which they have produced belatedly or in respect of the belated retraction of statement done. In a similar case relating to smuggling of gold, where similar stand has been taken by the appellant, rejecting all the arguments advanced by the appellant in respect of confiscation of the gold Hon'ble Patna High Court in the case of CC, Patna Vs Shri Rajendra Sethiya 2024 (17) Centax 207 (Patna) have held as follows:-

"13. With this bare and simple admitted facts, we first look at the valuation carried out by the Department on interception and detection of goods, which is at page 73 of the appeal memorandum. The valuation was done by a

government registered valuer and it indicates markings on both the gold bars, which are as follows: -

"Valcambi Suisse (995) CHI Essayeur Foundeur"

These markings available in both the gold bars; found on the person of the employee of the respondent, intercepted by the DRI officials. The gold bars, with the recital thereon, is admitted to be that entrusted by the respondent to his employee; the person intercepted. The seizure memo of 24-7-2017, which was prepared at the DRI Regional Unit Patna Office, clearly indicated violation of Sections 7, 46 and 47 of the Act, as the reasons to believe. Section 7 speaks of appointments of customs ports, airports etc. Section 46 requires entry of goods on importation by presenting a bill of entry for home consumption or warehousing as prescribed and Section 47 speaks of clearance of goods for home consumption. Hence, the reason to believe is very clear from the violations alleged and in the present case, there can be no challenge to the goods being sourced from outside the country, which is evident from a mere visual inspection; the Swiss markings were crystal clear to even a layman who does not have any expertise in the matter. The gold bars apparently, from the mere inspection were not sourced from India.

14. *Now, we come to the statement recorded under section 108. The learned Counsel for the respondent specifically urged that it is impossible that the seizure memo and the sworn statement were witnessed by the very same person. We cannot but observe that there can only be alleged an improbability and not an impossibility. When any person is called as a witness by the officials and directed to accompany the officials, especially since the interception was at a far-away place, the citizen would definitely agree; more out of fear of official retaliation. Rather than discard the statement merely on the ground of impossibility raised by the respondent, we are of the*

opinion that the statement and its retraction are to be looked at.

15. *It is from the statement under section 108 itself that the identity of the person intercepted was revealed, which was found to be verified and correct by the Assistant Commissioner (Preventive) in the office of the Principal Commissioner, Central Goods and Service Tax and Central Excise, Tikrapara Dhamtari Road, Raipur by communication dated 2-8-2017, which is produced in the memorandum of appeal at page 76 along with the documents in support of the notice issued, produced at Annexure-A. The identity of the owner of the gold seized from the intercepted person also was revealed from the statement. The statement also admitted the person having boarded Howrah-Mumbai Mail Express, and that he was travelling to Raipur; in the course of which, some persons in civil dress woke him up and introduced themselves as officers of DRI, Patna. They searched his body and during the course of search, the smuggled gold kept hidden and covered inside the pants, was detected. So much of the statement has not been retracted from.*

16. *The person intercepted had also disclosed the name of the person from whom he had received the gold bars at Kolkata, who had directed him to hand over the same to the respondent, who was his employer. The statement indicated the intercepted person having confessed to his knowledge, that the gold was smuggled from Bangladesh, as told to him by one Sonu, who handed over the gold bars for onward transmission to his employer, the respondent. The statement disclosed the mobile number of Sonu and the respondent. He confessed that he did not have any document relating to the gold. Hence, the intercepted person from whose body the gold was seized had categorically admitted to the possession of the gold which was clearly imported, going by the markings on it. Even if*

we ignore the inculpatory statement of receipt of gold bars smuggled from Bangladesh, which statement was retracted, the fact remains that he admitted to the possession of two gold bars with Suisse markings; which definitely was sourced from outside India. That the gold bars were in his possession for onward transmission to the respondent; who had later accepted its ownership, also is admitted.

17. *We have already noticed that the reason to believe under which the seizure was made, was also the lack of any document to show that import was made in accordance with Sections 7, 46 and 47 of the Act. It is very pertinent that even the retracted statement merely states that the documents and the bill voucher which accompanied the goods were forcibly taken from him and destroyed by the DRI officials, who carried out interception. It was also stated that there was an assault made and the officials forcefully made him sign many documents.*

18. *We notice that the retraction, which is produced at Annexure-R/F, was made while the intercepted person was in judicial custody. He retracts from his earlier statement that he was carrying the gold from Kolkata to Raipur, as entrusted to him by Sonu at Kolkatta. In the retraction, he states that he had commenced his journey, from Raipur with the gold bars entrusted to him by his employer, and took it to Kolkatta for the purpose of manufacturing ornaments and since the goldsmith could not be traced, he was returning by the Howrah-Mumbai Mail Express. The retraction admits the possession of the gold bars at the time of interception. The description of which, as is found with the DRI, is also admitted to be that which was seized.*

19. *We would, for the present, assume that the story, as stated in the retracted confession, is correct. Even then it has to be established that the gold, which even on a visual*

inspection, is clearly discernible as sourced from outside the country, is imported in accordance with the Act, specifically Sections 46 and 47 read with Section 7 of the Act. There is no escape from this, even if, we fail to reckon the statement of the person intercepted that in his knowledge the gold was smuggled from Bangladesh. We reiterate, at the risk of repetition, that the fact of possession of the gold bars, which was seized by the DRI official from his person and that he was carrying it in the Howrah-Mumbai Mail Express, stands clearly established. Whether it was first taken from Raipur or it was obtained in Kolkata, are irrelevant facts; when looking at the aspect of importation and the validity of seizure, by reason of the belief entertained by the DRI official that the gold bars were not imported in accordance with the provisions of the Act.

20. *On the above admitted facts, we have looked at the decision in Ganpati Overseas (supra) and the principles deduced by the learned Judges from the judicial pronouncements in Naresh J. Sukhawani and K.I. Pavunny (both supra). We specifically extract Paragraph-53 from Ganpati Overseas (supra): -*

"53. Thus, what is deducible from an analysis of the relevant legal provisions and the corresponding judicial pronouncements is that a customs officer is not a police officer. Further, the person summoned and who makes a statement under section 108 is not an accused. However, a statement made by a person under section 108 of the Customs Act before the customs officer concerned is admissible in evidence and can be used against such a person. Object underlying Section 108 is to elicit the truth from the person who is being examined regarding the incident of customs infringement. Since the objective is to ascertain the truth, the customs officer must ensure the truthfulness of the statement so recorded. If the statement

recorded is not correct, then, the very utility of recording such a statement would get lost. It is in this context that the customs officer who is empowered under section 108 to record statement, etc. has the onerous responsibility to see to it that the statement is recorded in a fair and judicious manner providing for procedural safeguards to the person concerned to ensure that the statement so recorded, which is admissible in evidence, can meet the standard of basic judicial principles and natural justice. It is axiomatic that when a statement is admissible as a piece of evidence, the same has to conform to minimum judicial standards. Certainly, a statement recorded under duress or coercion cannot be used against the person making the statement. It is for the adjudicating authority to find out whether there was any duress or coercion in the recording of such a statement since the adjudicating authority exercises quasi-judicial powers."

21. *Applying the said principles to the instant case, we find that even if the allegation of coercion is accepted, we have to eschew from consideration, only the statement made by the person intercepted that, to his knowledge, the gold was smuggled from Bangladesh, as told to him by the person who delivered it to him in Kolkata. The delivery in Kolkata, as stated by the person intercepted, also would have to be eschewed. We are left with the admitted statement of the ownership, the possession and the interception as also the description of the seized contraband. There is no escape from the fact that the contraband was imported as revealed from a mere visual inspection, which discloses the markings on the gold bars. Now, the question arises as to whether the alleged owner of the goods referred to as Noticee No. 2, the respondent herein, had obtained valid possession through a legal import made by him.*

22. *At this juncture, we look at the Original and the appellate orders which the respondent seeks to sustain. The order of the Tribunal extracts the reasoning of the First Appellate Authority, which reasoning and further findings by the Tribunal, are challenged as perverse by the appellant herein. The Department placed reliance on the fact that none of the cars owned and used by the noticee Nos. 3 and 4, son and father, who allegedly sold the gold bars to Noticee No. 2, had travelled from Bhilai to Raipur. This is in the context of the specific statement made by Noticee No. 3; a dealer located at Bhilai, that he had delivered the goods to Noticee No. 2; with his business at Ranchi. Investigation revealed that none of the cars, owned by the Noticee Nos. 3 and 4, the numbers of which were supplied to the DRI, crossed the Kharun Toll Plaza. The goldsmith 'Subh', to whom the gold bars were allegedly sent for conversion into ornaments, whose mobile number was revealed by the respondent and the person who is alleged to have introduced the Karigar to the owner, one Mukesh Ganatra had both declined to support the contention of the owner. Mukesh Ganatra in his statement categorically stated that though he had acquaintance with the respondent, Noticee No. 2, he had not introduced any Karigar to the respondent. The person who held the mobile number allegedly possessed by Subh also refused to support the case of the respondent. In which circumstance, the original authority found that the respondent failed to discharge the burden of proof under section 123 of the Act.*

23. *The First Appellate Authority found that the entire case of the Department spins around the confessional statement of the intercepted person. The First Appellate Authority found that the statement recorded under section 108 was specifically stated to be under duress and there was a finding by the Original Authority that he had not retracted the statement; while, in fact, the statement was*

specifically retracted. It was found that Section 108 of the Act, though is substantive evidence, some corroboration has to be available before acting upon it, which can be the slightest corroboration. Having found the intercepted person to have retracted his statement and there being no corroboration, it was held to be incapable of any reliance. Reliance was placed also on the retracted statement of the person intercepted that he was, in fact, carrying valid documents, which were destroyed by the DRI official who intercepted and later on arrested him. The retracted statement was found to have absolutely no evidentiary value

24. *It was found that M/s Saheli Gems & Jewelers Pvt. Ltd., a dealership owned by the Noticee No. 4, had produced relevant bills and stock register to clearly indicate the supply of the said gold bars and also substantiated the entire payments received by the seller. It was held that the Department had not gone beyond the door steps of the seller to reveal the source of the said gold bars, so as to dislodge or disprove the claim of the owner about the purchase of the gold bars from another dealer. The authenticity and genuineness of the said transactions cannot be questioned merely on presumptions that the said gold bars with foreign markings were smuggled into India, especially when the statement under section 108 was retracted and was not corroborated by any material evidence. It was also found that there was no attempt by the Department to trace out the whereabouts of Sonu and Chandan Malik, the former of whom was referred to, in the retracted statement, as the person who handed over the smuggled goods. There was no attempt made by the customs authorities to trace out the entire chain of the alleged smuggling of gold. The absence of description of the gold bars in the invoice produced to support the sale and purchase was held to be irrelevant in the liberalised economy, post repeal of the Gold Control Act;*

which does not remain to be a legal requirement. The Tribunal accepted the findings of the First Appellate Authority.

25. *We have already referred to the admitted position that the two gold bars recovered were sourced from abroad; which is undisputed. The possession of the person intercepted also is admitted and the ownership is said to be on the respondent in the present appeal. Section 123 (2) of the Act specifically makes it applicable to gold and when gold is seized under the Act, as per sub-section (1) on a reasonable belief that it is smuggled, the burden of proof rests entirely on the person from whom the seizure was made or on such person who claims to be the owner.*

26. *We have found that the description of the gold bars itself indicate that it is imported. Further probe on the investigative exercise though inconsequential, since it has been faulted by the appellate authorities, we looked at the manner in which the investigation was proceeded with. The statement under section 108 revealed that one Sonu of Kolkata had handed over the gold to the person intercepted, who also passed on the information that it was smuggled into the country from Bangladesh. Two mobile numbers were indicated to be that of Sonu, which on procurement of consumer application forms (CAF) was found to be belonging to one Shri Chandan Malik and Shri Sachin Gupta. Summons were issued to them and both denied any connection with the seizure, one by a communication directly from him and the other through an advocate. We notice these facts, only for completion, since we have already found that the statement under section 108 insofar as the receipt of gold from Kolkata can be eschewed. However the authority who seized the goods cannot be faulted for not having investigated the facts disclosed in the case.*

27. Then we come to the 'Karigar Issue Slip' raised as against one Sohan Verma @ Subh Karigar, which is available along with the relied upon documents, produced at Page 79 of the memorandum of appeal. The name of the Karigar is shown as 'Subh', in the said document dated 22-7-2017. The summons was issued on the Karigar, but the same was returned undelivered with the endorsement "the addressee moved". Again, a summons was issued and a response was received from an advocate that Shri Sohan Verma did not know the respondent herein. As per the statement of the respondent; one Shri Mukesh Ganatra introduced him to Sohan Verma, whose mobile number was also furnished by the respondent. The voluntary statements of Sohan Verma and Mukesh Ganatra recorded on 15-12-2017 clearly demolished the story set up by the respondent that he had issued a Karigar Slip and sent the gold bars through the person intercepted for the purpose of manufacturing ornaments. Sohan Verma specifically said that he does not know Mukesh Ganatra or the respondent or the person intercepted and that the person intercepted never called him over telephone. Mukesh Ganatra who was also carrying on the business of gold jewelry, feigned ignorance about Subh Karigar @ Sohan Verma. He admitted to have known the respondent with whom he had no business relations and he denied that he introduced any person by name of Subh Karigar to the respondent.

28. We have also looked at the statements of the Noticee Nos. 2 to 4, as extracted in Annexure-A. Noticee No. 2, the respondent herein, was summoned thrice and the statements were recorded on 4-8-2017, 5-8-2017 and 18-8-2017. The respondent at the first instance, produced the photocopy of the invoice dated 21-7-2017 issued from Saheli Gems and Jewellers Pvt. Ltd. for purchase of 2 kilograms of gold bar valued at Rs. 58,80,000/- along with stock details and sale and purchase invoices from January 2014 to January 2017. He also produced the original of the

Karigar Issue Slip which was received and signed by the respondent and a faded copy of Letter No. 2702/2017 in the letter-head of Sri Adinath Jewellers addressed to Shubh. Both the Karigar slip and letter addressed to Shubh are of no consequence since already it has been found that Shubh did not exist in the manner in which he was portrayed to be; as a Karigar.

29. *The invoice produced was of 21-7-2017, before the interception and seizure of the gold bars, but there was nothing produced to indicate payment of any amounts for the gold purchased at any time before the interception. There was an amount of Rs. 5,50,000/- paid on 2-8-2017 through RTGS to Saheli Gems and Jewellers by the respondents. On 18-8-2017 when he gave a statement, the respondent had stated that the original copy of the invoice was with him and that he had not brought it by mistake. If the original copy of the invoice was with him, we wonder as to what was the document which was accompanying the goods as stated by Noticee No. 1. Here, we have to observe that Noticee No. 1 did not have a case in the retracted statement that the original invoice was with him. The vague statement was that there were documents which were destroyed by the officers, who intercepted him. Even Noticee No. 2 does not say that he had given the original invoices to Noticee No. 1, who was carrying the gold to Kolkata and back to Ranchi, as was the story set up by Noticee Nos.1 and 2.*

30. *Noticee No. 3 was one of the Directors of Saheli Gems and Jewellers Pvt. Ltd. and so was Noticee No. 4, who was the founder of Saheli Gems and Jewellers and the father of Noticee No. 3. According to them, the payment for the seized gold was made in installments of Rs. 5,50,000/- on 2-8-2017, Rs. 32,00,000/- on 28-8-2017 and Rs. 11,00,000/- on 31-8-2017. The last two of such installments having been made after the three statements*

of Noticee No. 2, the owner/respondent, was recorded by the DRI. Noticee No. 3 deposed that he had delivered the goods at the shop premises of Sri Adinath Jewellers on 21-7-2017 along with his father. He produced two sets of bills books from one of which, 5 bills were issued between 1-5-2017 to 10-5-2017. Bill books from Serial No. 1-6 pertains to gold sale between 1-4-2017 to 10-9-2017 and bill books from Serial No. 1-9 pertains to bullion sale from 5-4-2017 to 20-8-2017. Hence, the sales were not made serially and there was absolutely no mode by which the genuineness of the sale invoice issued on 21-7-2017 of 2 kilograms of gold to Adinath Jewellers, could have been established as that issued on the date shown therein. Both Noticee Nos.3 and 4 informed the DRI officials that they were not well acquainted with Noticee No. 2, but asserted that they had given 2 kilograms of gold on credit; highly suspicious.

31. *The First Appellate Authority and the Tribunal had entirely relied on the invoice dated 21-7-2017 produced by Noticee No. 2 to hold that the seized gold bars were purchased from Saheli Gems and Jewellers Pvt. Ltd. We cannot but hold that the reliance placed is wholly irrelevant since the two sets of bill books produced requires further evidence to establish the transactions between Saheli Gems and Jewellers and Adinath Jewellers having occurred on the day it is said to have occurred; prior to the interception and seizure, especially since no payment was made for the purchase. Viewed in this context, it is pertinent that the invoice does not contain the description of the gold bar sold, thus, making it impossible to identify the gold sold, to be the very same gold recovered from the person of Noticee No. 1. Then again, if the gold recovered, from its physical appearance itself did not disclose its source; probably the invoice would have had a semblance of evidentiary value, even if the payments were made after the seizure of the gold; which discounts the evidentiary*

value of the invoice and the genuineness of the transaction.

32. *As is the present position, the invoice even if found to have established the transactions between Saheli Gems and Jewellers and Adinath Jewellers, it does not discharge the burden of proof insofar as the import having been done in accordance with the Customs Act. If Saheli Gems and Jewellers had imported it by a proper bill of entry filed and the same received from a notified entry point for the purpose of home consumption, then and only then would the burden of proof under Section 123 be discharged and the goods seized from Noticee No. 1 be absolved of the confiscation proceedings under the Customs Act. The falsity of the story projected by the owner of the gold bars, is one another circumstance standing against the claim raised by the owner and in favour of the confiscation proceedings.*

33. *The invoice dated 21-7-2017 cannot be accepted as genuine for the very many reasons pointed out by us. If the gold bars belonged to Noticee No. 2 and he purchased it from Noticee No.'s 3 & 4; as is the story put forth, then it was purchased without due caution. In that circumstance when the gold bars are seized under the Customs Act and proceedings for confiscation is initiated, it is for the purchaser; Adinath Jewellers, or the seller; Saheli Gems and Jewellers, to prove that the gold was validly imported into the country from abroad, in accordance with the provisions of the Customs Act. Whoever be the owner, the gold being one manufactured outside the country, if it is seized in the same form, the owner who raises a claim for release of the said gold should establish unequivocally before the Authority that it had been brought into India duly in accordance with the provisions of the Customs Act. This is the rigor placed on the person possessing or the owner of the seized goods, by Section 123, which puts the*

burden of proof squarely on the person from whose possession or the owner who has entrusted the said gold to the person possessing it, to establish the source from which it has been received."

4.9 We also note that submissions of the appellant to the effect that it is common knowledge that the gold jewellery in India is not of 24 karats but of 18 to 22 karats. The submission of appellant to the effect that gold of 99.5 purity (24 karats) was obtained after melting the gold jewellery goes contrary to this common knowledge available. Further, we do not find any merits in the above submission as to why for making jewellery again of 18 to 20 karats someone first purify the gold obtained by melting of the jewellery to this purity and thereafter re-add impurities for making the jewellery. On a specific query raised during the course of argument after doing some research in the Court with regards to process of purification, Counsel for the appellant submitted that there is some Aquaregia process by which impure gold could have been purified. We do not find any merits in the said submission because that was never even stated by the person at Kailash Tunch Center who specifically deal with regard to testing of the gold purity. We do not find any merits in this argument. In case of Gudipati Subba Reddy [2023 (385) E.L.T. 394 (Tri. – Hyd)] Hyderabad bench observed as follows:

7.8 *I also observe that gold of Indian origin is generally of 916 purity (22 carat). Bureau of Indian standards has certified BIS 916 22 carat, BIS 958 23 carat, BIS 750 18 carat, the 999 quality is the 24 carat gold. It is 22 carat gold which is used in ornaments. Hence for India, the most popular quality of gold is BIS 916 instead of 999. Admittedly the recovered gold was of 999 quality. Apparently the melters of the gold have acknowledged that FT gold that is the gold received after melting the ornaments is generally of 95 to 99.5 purity. One of the melter has apparently gone to the extent of admitting that FT gold can never have 999 purity. None of the appellants*

have placed on record any evidence showing as to how the gold recovered from them was having 999 purity. On the contrary, the gold of foreign origin is always of 999 purity. In any case, since it was under the reverse burden policy that the appellants had to prove for the recovered gold to not to be the smuggled one but no evidence is produced on the record which may discharge the said burden of the appellants. Hence, I find no reason to differ with the findings of the adjudicating authority below that all the appellants had full knowledge of the impugned gold to be the gold of foreign origin and knowingly they were dealing with the same for monetary benefits. Their act gets definitely covered under section 111 of the Act making the recovered gold liable for confiscation. It is accordingly held that confiscation of recovered/seized gold is rightly ordered.

4.10 Hon'ble Kolkata High Court has in case of Rajendra Kumar Damani @ Raju Damani [(2024) 19 Centax 224 (Cal)] observed as follows:

22. With regard to the effect of an alleged retractive statement and its evidential value, the department referred to several decisions which include the decision of the Hon'ble Supreme Court in Percy Rustomji Basta v. State of Maharashtra 1983 (13) E.L.T. 1443 (SC) and Surjeet Singh Chhabra v. Union of India and Others 1997 (89) E.L.T. 646 (SC) = 1996 taxmann.com 71 (SC). The learned tribunal in paragraphs 17 records that during the course of investigation, it was found that there was no mark on the gold seized and the purity of the gold was found to be 99.5% and not 99.9% and during the course of investigation, the respondent has made a statement stating that the source of procurement of the said gold is made from old jewellery purchased in exchange of cash during the long period of time and due to the stock of gold was melted through the said old jewellery and converted into gold bars. The tribunal holds that this fact has not

been verified by the revenue. After recording such a finding, the tribunal has referred to certain decisions and holds that the noticees have explained the source of procurement of gold which is not denied by the revenue and further having no mark on the gold and purity of the gold is not in conformity of the foreign gold, the benefit of doubt goes in favour of the noticees.

23. Further the tribunal holds that the statements recorded during the investigation was retracted by the respondent and other two co noticees and they are not admissible in absence of corroborative evidence. After referring to certain decisions, the tribunal hold that the currency seized from the respondent and the other two co noticees were not established by the revenue with corroborative evidence to show that the same are the sale proceeds of smuggled gold and then proceeds to refer to a certain decision and has recorded its conclusion in paragraph 26 holding that the respondent and the two co noticees have submitted that the smuggled/procured gold in question is made out of old gold jewellery purchased in cash and the said fact has not been denied by the revenue by any cogent evidence, therefore the gold in question is not liable for confiscation and the same is required to be released. Further the tribunal holds that the revenue has failed to establish the fact that the cash recovered from the respondent and the two co noticees are the sale proceeds of the smuggled gold and therefore the cash seized cannot be confiscated and the same is required to be released. Further the tribunal holds that no penalties are imposable on the respondent and the two co noticees.

24. What is important to note is that though the respondent took a plea that the gold bars was made out of old gold jewellery purchased in cash it was a very faint plea which was raised by the respondent and the co noticees. Assuming such a plea was required to be considered, the onus is on the respondent and the co

noticees to establish with documents that the gold which was seized was from and out of the old gold jewellery purchased by cash. This aspect of the matter was never established by the respondent and the co noticees. Therefore, the learned tribunal erroneously shifted the burden on the department stating that the same has not been denied. The question of denial will come only if the onus is discharged by the respondent and the co noticees as required under section 123 of the Act. Thus, without any document placed by the respondent and the co noticees, the tribunal could not have come to the conclusion that the department did not establish the same by cogent evidence. This finding is absolutely perverse and contrary to the scheme of Section 123 of the Act.

*25. The respondent and the other co noticees would contend that the purity of the gold not been 99.9%, it is established that it is not smuggled gold. Such conclusion cannot be arrived at in the absence of any proof to show that the gold was from and out of the gold jewellery which was purchased for cash. That apart, merely because the statement is said to have been retracted, it cannot be regarded as involuntary or unlawfully obtained. In this regard, the revenue has rightly placed reliance on the decision of the Hon'ble Supreme Court in *Vinod Solanki v. Union of India and Others 2009 (233) E.L.T. 157 (SC)*. If the learned tribunal was of the view that the statement recorded under section 108 of the Act was not admissible on account of the retraction, that by itself cannot render the statement as involuntary. It is the duty casts upon the court to examine the correctness of the validity of the retraction, the point of time at which the retraction was made whether the retraction was consistent and whether it was merely a ruse. These aspects have not been examined by the learned tribunal resulting in perversity. The mobile phones which were recovered and the call details record which were obtained have all been elaborately discussed*

by the adjudicating authority. This aspect has not been dealt with by the learned tribunal. The seizure cannot be denied by the respondent since the seizure list was drawn in the presence of two independent witnesses and the DRI officers and copy of which was handed over to the respondent and the other two co noticees. Further we find there was nothing on record before the learned tribunal to hold that mere melting of old gold jewellery will yield gold of less purity and considering the quantity which has been seized, it can never be the case of the respondent or the other two co noticees that they have done the melting process at their residence as such melting requires expertise and also use of several chemicals. Thus, the observations of the tribunal have to be held to be without any basis or foundational facts or documents.

This decision has been affirmed by the Hon'ble Supreme Court as reported at [2025 (394) E.L.T. 46 (S.C)]

4.11 We also find that Delhi Bench of this Tribunal in similar cases constantly taking similar views in favour of the confiscation of the seized gold. Some of the decisions are as follows:-

- Suresh Bhonsle [(2024) 14 Centax 241 (Tri.-Del)]

"21. *Much emphasis has been laid by the appellant on the veracity of the test report by the jewellery appraiser and the request for re-testing. In this regard we find that the appellant had approached the Delhi High Court for re-testing in Writing Petition No. 9174/2017 which was disposed of vide order dated 17-10-2017, granting liberty to the appellant to agitate the issue before the adjudicating authority. As per the common practice, jewellery appraiser is called immediately at the spot and he on the basis of touchstone test ascertain as to whether the metal bar seized is gold and also to large extent its quality/purity. The same practice was followed here at the time of seizure. We also find that on the request made by the appellant, the Jewellery Appraiser, Shri Vikram Bhasin was called and cross examined by Sh. Deepak Choudhry,*

Advocate for the appellants. We find that on being asked about the margin of accuracy of purity, which could be drawn by using the touchstone method, Shri Bhasin replied that in that particular case, the margin of accuracy was almost 100% as they were gold bars cut pieces. He further added that consistency level will remain almost the same as gravity of the gold bar remains the same. It is also pertinent to note that on being asked as to whether the method of analysis adopted by him is capable of ascertaining whether the gold bar is made up from melting jewellery or it is a virgin bar, Shri Bhasin replied in affirmative. All this would reveal that fair opportunity has been granted to the appellants and the plea of re-testing was nothing but delaying tactics as it would not really make any difference if the gold recovered was less pure. Purity of the gold, in the instant case is not really relevant in view of the peculiar circumstances, i.e., the voluntary statements of all the persons recorded under section 108 of the Act which reveals the conspiracy in executing the smuggling of gold, the manner of concealment of gold in such large quantity when recovered, its transportation and the use of fake challans along with the phone call details clearly establish the role and involvement of all the persons involved . The appellant by taking such plea is indeed trying to mislead but the fact is that the goods smuggled, even if they change their form by melting, they still remain smuggled goods which are liable to confiscation under the Act. Reliance is also placed on the decision of the Kerala High Court in Mammu & Anr. v. Asst Collector of Central excise 1984 (17) E.L.T. 54 (Ker.) = 1981 taxmann.com 56 (Ker.) where it has been held that since no definite tests have been prescribed under law, whether an article is gold of particular quality and purity, it has to be borne in mind that the opinion of an expert on this point is relevant under section 45 of the Evidence Act.”

➤ Rakesh Luthra [(2024) 14 Centax 255 (Tri.-Del)]

9. It is also seen that once there is an admission by the appellant himself, nothing further is required to be proved to the contrary. The Supreme Court in *Surjeet Singh Chhabra v. Union of India* [1997 (89) E.L.T. 646/1996 taxmann.com 71 (S.C.)] held that confession made by the appellant binds him. We also place reliance on another decision in *Commissioner of C. Ex. v. M/s Systems and Components Pvt. Ltd.* [2004 (165) E.L.T. 136 (SC)/2004 taxmann.com 1156 (SC)] where it has been held that it is a basic and settled law that what has been admitted need not be proved. In view of the above, we are convinced that there is sufficient corroborative evidence to demand the duty on gold said to have been brought by the appellants during the previous visits. Consequently, the demand is confirmed for the extended period.

➤ Sunny Kakkar [(2023) 5 Centax 261 (Tri.-Del)]

33. Section 123 shifts the burden of proof from the Department to the person from whom the goods have been seized in respect to gold and certain other goods which are notified. Undisputedly, the bars in question were of gold and they had foreign markings and were packed in a bag with the address of the jeweller in Dubai. The bars were examined by an expert and were held to be foreign origin gold of 995 purity. All these gave the officers reasonable belief that the gold bars were of foreign origin. Since import of gold is restricted, if foreign origin gold bars were legally imported it was incumbent upon the importer and any other person to whom they may have been sold to show documents that the gold was legally imported. This responsibility is cast upon the appellant as per Section 123. The gold was seized and after its assessment statements of the appellant were recorded in which he explained that he procured the gold from one Shri Harish of Dubai who told him that Shri Ahadees would contact him and give him the gold bars and accordingly, he was waiting at Rajeev Chowk Metro Station whether transaction took place. He had, at no point of time, produced any

document to show that the gold was legally imported. According to his statement, the arrangement which he had with Shri Harish was that he would send gold through one of his persons (Shri Ahadees in this case) and after selling the gold he would pay Shri Harish. At the time of receiving the gold he would pay only some amount to the person handing over the gold. In this case, the amount which he paid in a pink polythene bag was Rs. 5,45,000/- to Shri Ahadees. These statements were corroborated by the statement of Shri Ahadees. Neither Shri Ahadees nor the appellant have at any point of time produced any document to show that the gold was legally imported by them or that it was purchased by them from somebody who had legally imported it.

34. *Learned counsel for the appellant submitted that on 8-12-2015 the appellant had retracted his statement and, therefore, it cannot be relied upon. We have gone through the statements made before the learned CMM by the appellant in his application for bail which is at page 109 to 112 of the appeal book. The application only states that the statement was not made by the appellant. However, there is nothing in the statement made before the learned CMM explaining the nature of the gold seized from the appellant. In the absence of any other explanation, the statements made by the appellant and Shri Ahadees before the officer must be accepted as correct. These statements corroborate each other and with the panchnama. The cross-examination of Shri Ahadees by the learned counsel for the appellant also confirm the facts pertaining to this seizure and also that on previous two occasions smuggled gold was transacted between the appellant and Shri Ahadees. The mobile phone recovered from the appellant and which was used to communicate with Shri Ahadees was also obtained in the name of Shri Kaskyrbayev a Kazakhi national who was not even in India at the time the SIM card was issued which corroborates*

the clandestine nature of the transaction in the confiscated gold.

35. *Thus, the seizure of the gold from the possession of the appellant as recorded in the Panchnama and admitted in the statement which is also affirmed the appeal before us by the appellant itself is undisputed. It is also undisputed that it had foreign markings and has been certified by the jewellery expert to be of foreign origin. The only question which remains is if it was legally imported or smuggled and the burden of proving that it was legally imported rests upon the appellant. There is not even an assertion in the application before the learned CMM by the appellant that he had legally imported the gold. Therefore, we find no force in the submission of the appellant that his statement under section 108 cannot be relied upon.*

**** 35.** *The other submission made by the learned counsel for the appellant is that nature of the gold is that he had requested Shri Ahadees to supply legally imported gold and, therefore, it should be considered so. This submission cannot be accepted for the reason for the simple reason that there was no documents at the time of seizure to show that the gold was legally imported. No documents have been produced till date to show that the gold was legally imported. The circumstances under which the transaction took place in a car without any bills at the gate of the Metro Station further buttress the view that the gold was not legally imported. In view of the above, we find that the undisputed gold is of a foreign origin and was reasonably believed to be smuggled by the officers and was seized and the appellant had not discharged his burden to show that it was not smuggled gold. Therefore, the absolute confiscation of the disputed gold needs to be upheld.*

4.12 In view of the above discussions and findings we do not find any merits in the submissions made by the appellant claiming that gold was not liable for absolute confiscation.

4.13 With regards to role played by the appellants in relation to seized and confiscated gold there is no doubt that these persons were knowingly involved in handling, transportation and possession the gold held liable for confiscation under Section 111 of the Act. Hence, the penalties imposed upon under Section 112 (b) are also justified. In case of Gudipati Subba Reddy, referred earlier, Hyderabad bench observed as follows:

From the entire above discussion of facts, evidences and circumstances, it is clear that the appellants in this case had acquired possession of such gold which they could not prove to be of India origin. There has been no denial that they were purchasing the gold at the cheaper rate which rather corroborates that they were in possession of smuggled gold. Section 112(b) of the Act is wide enough to penalise even a person acquiring possession or in any way dealing with the goods which he knows or has reason to believe are liable for confiscation under Section 111. Thus it is held that the appellants had rendered them liable for imposition of penalty. I do not find any infirmity in the findings of the adjudication authorities below while imposing penalty upon the appellant. Even with respect to the appellant Shri Atluri Ramanjaneya Reddy, the owner of the Hyundai Xcent in question, I do not find any reason to differ from the findings arrived at by Original Adjudicating Authority in Para 17.6 of the Order-in-Original under which have been upheld by the Commissioner (Appeals).

8.1 *Such a narrow construction of this expression, in my opinion, will emasculate these provisions and render them ineffective as a weapon for combating gold smuggling. As was pointed out by the Hon'ble Apex Court in the case of Balkrishna Chhaganlal Soni v. State of West Bengal (1974) 3 SCC 567: AIR 1974 SC 120 = 1983 (13) E.L.T. 1527 (S.C.), Rule 126 P(2)(i) (present Section*

112(b) of the Act) penalizes a person who has in his possession or under his control any quantity of gold in contravention of any provision of this Part, and the court cannot cut back on the width of the language used, bearing in mind the purpose of plenary control the State wanted to impose on gold, and exempt smuggled gold from the expression 'any quantity of gold' in that sub-rule. These provisions have, therefore, to be specially construed in a manner which will suppress the mischief and advance the object which the Legislature had in view. In a subsequent decision by Hon'ble Supreme Court in the case of Superintendent and Remembrancer of Legal Affairs to Government of West Bengal v. Abani Maity AIR 1979 SC 1029; (1979) 4 SCC 85, 90/1979 taxmann.com 60 (SC), the law is stated in the following terms :

"19. Exposition ex visceribus actus is a long recognized rule of construction. Words in a statute often take their meaning from the context of the statute as a whole. They are, therefore, not to be construed in isolation. For instance, the use of the word 'may' would normally indicate that the provision was not mandatory. But in the context of a particular statute, this word may connote a legislative imperative, particularly when its construction in a permissive sense would relegate it to the unenviable position, at it were, 'of an ineffectual angel beating its wings in a luminous void in vain'. 'If the choice is between two interpretations', 'the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

Later in the case of Mohan Kumar Singhania v. Union of India reported as AIR 1992 SC 1, the law is stated as :

"while interpreting a statute the consideration of inconvenience and hardship should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, we are bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules as the case may be, so far as possible, to make a consistent enactment of the whole statute or series of statutes/rules/regulations relating to the subject-matter. Added to this, in construing a statute, the court has to ascertain the intention of the law making authority in the backdrop of the dominant purpose and the underlying intendment of the said statute and that every statute is to be interpreted without any violence to its language and applied as far as its explicit language admits consistent with the established rule of interpretation."

In case of Sunny Kakar referred earlier, following was observed:

37. *The last question to be answered is regarding the penalty under Section 112(b)(i) of Rs. 50 lakhs imposed upon the appellant. We find that as per Section 112(b) any person who 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 is liable to penalty. In case of prohibited goods this penalty shall not exceed the value of the goods or Rs. 5000/- whichever is greater. In this case, it is undisputed that the appellant was in possession of the confiscated gold. Even in the appeal before us, the appellant is not disputing this fact. Therefore, he is squarely covered by Section 112(b)(i). The value of the confiscated gold is Rs. 1,84,16,505.68. The penalty imposed is only Rs. 50 lakhs.*

In the factual matrix of this case, we find that this amount of penalty is reasonable and calls for no interference.

4.14 We find against value of confiscated gold of Rs.1,84,16,505.68/- Delhi bench has upheld the penalty imposed of Rs 50 Lakhs under Section 112 (b). In the present case against the value of confiscated gold of Rs 1,26,35,345/- penalties imposed on the four appellants are as follows:

- Appellant I Rs. 5,00,000/-
- Appellant II Rs. 5,00,000/-
- Appellant III Rs. 5,00,000/-
- Appellant IV Rs. 5,00,000/-

Thus we find that penalties imposed upon the appellant though on lower side are reasonable. Revenue has not filed any appeal for enhancement of the penalties imposed.

4.15 In view of discussions as above, we find no infirmity in the impugned order and the same is upheld.

5.1 Appeals are dismissed.

(Order pronounced in open court on-18 December, 2025)

(P. DINESHA)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)