CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70037 of 2026

(Arising out of Order-in-Appeal No.173-CUS/APPL/LKO/2025 dated 30.05.2025 passed by Commissioner (Appeals) Customs GST & Central Excise, Lucknow)

Shri Chandra Prakash, **.....Appellant**
(Jain Colony, Near Dewal Bhawan, Sector-5
Shardapuram, Ward No.59 Rathodi Kuwa,
Nagaur, Rajasthan-341001)

VERSUS

Commissioner of Customs, Lucknow **....Respondent**
(3/194, Vishalkhand-3, Gomti Nagar, Lucknow-226010)

APPEARANCE:

Shri Kartikeya Narain, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.- 70098/2026

DATE OF HEARING : 16.02.2026
DATE OF PRONOUNCEMENT : 15.04.2026

P. K. CHOUDHARY:

The present appeal has been filed by the Appellant assailing the Order-in-Appeal No.173-CUS/APPL/LKO/2025 dated 30.05.2025 passed by the Ld. Commissioner (Appeals) Customs, CGST & Central Excise, Lucknow by which the appeal filed by the present Appellant has been rejected and the Order-in-Original No.146/ADC/2023-24 dated 15.02.2024 passed by the Additional Commissioner, Customs (P) Commissionerate, Lucknow has been upheld. By the said Order-in-Original No.146/ADC/2023-24 dated 15.02.2024, the learned Additional Commissioner ordered for absolute confiscation of 04 bars & 01 small piece of gold weighing 699.000 grams valued cumulatively at Rs.39,86,580/- under Section 111(b) & (k) and has imposed penalty of Rs.5,00,000/- on the present Appellant under Section 112 (b) of the Customs Act, 1962.

2. Brief facts of the case are such that on specific intelligence that the present Appellant was carrying foreign origin gold smuggled into India and travelling in Jodhpur Express train from Howrah to Jaipur, a team of DRI officers apprehended the Appellant, whereupon the Appellant admitted to carry gold with him. The Appellant was then deboarded from the train and was subjected to search, during which 04 bars & 01 small piece of yellow colored metal was found in his possession. On making further investigation, the Appellant informed that on the instructions of one Mr. Shri Prakash, he was carrying the gold from Kolkata to Jaipur, *in lieu* of which he would get Rs.20,000/- along with travelling expenses. The said 04 gold bars. & 01 piece of gold was then seized under Section 110 of the Act on reasonable belief that the same are smuggled into India and therefore liable to confiscation.

3. Statement of the Appellant was then recorded on 13.01.2023 whereby he stated that he is a resident of Nagaur, Rajasthan, where he has a shop of silver & artificial jewellery, Mr. Shri Prakash is the owner of recovered gold and on his instructions, he went to Kolkata, where on 11.01.2023, he met Mr. Shri Prakash who said that the recovered gold was smuggled from Bangladesh to Howrah and he was told to deliver the same to his father Shri Laxmi Narain at Jaipur. The Appellant further stated that he was lured into this business by Mr. Shri Prakash, who has done smuggling of foreign origin gold earlier also, first time he was successful but on the second time he was caught by the DRI officers. During the follow up proceedings, enquiry was made at the residential address of the Appellant, wherein the residential address and rented shop of the Appellant was found to be correct and no criminal record of the Appellant was found.

4. In the meanwhile, sample was also drawn and sent for testing and Chief Examiner, C.R.C.L. New Delhi, in his report dated 15.02.2023, confirmed that the sample is in the form of

yellow colour metallic piece and mainly composed of gold having the gold content 99.78% by weight.

5. During further investigation, CDR details of phone nos. of Appellant, Mr. Shri Prakash and Shri Laxmi Narain was obtained and it was found that all the three persons were in contact with each other from 02.01.2023 to 13.01.2023. Enquiry was also made at Jaipur, however in absence of house no./plot no., address of Shri Laxmi Narain could not be traced out. Enquiries were also made at Kolkata to find out Mr. Shri Prakash but despite issuance of two summons, the first summon was delivered late, as intimated by Mr. Shri Prakash by his letter dated 24.04.2023, whereas the second summon was returned by Postal Authority with remarks "addressee left without instructions'.

6. Show Cause Notice[1] dated 23.06.2023 was then issued alleging that the Appellant was caught red handed while carrying foreign origin smuggled gold and the Appellant in his statement has categorically admitted carrying of smuggled gold received from Mr. Shri Prakash and he also denied having any relevant/valid document with respect to purchase/import of the recovered gold. The SCN thus proposed confiscation of recovered gold under Section 111(b) & (k) and imposition of penalty on the Appellant under Section 112(a) & (b) of the Act.

7. The SCN was contested by the Appellant who submitted that the recovered gold was not of foreign origin, apart from statement recorded on the date of seizure, there is no evidence including any statement of Mr. Sri Prakash Toshwar to support the charge made in the SCN, there was no foreign markings on the recovered gold and purity was also found to be 99.78% and not 99.99%.

8. The SCN was adjudicated by Order-in-Original dated 15.02.2024, wherein it was held that the foreign origin of seized gold has been accepted by the Appellant in his voluntary statement dated 13.01.2023 and it was also accepted that the supplier namely Mr. Shri Prakash told him that the seized gold

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[1] SCN

was smuggled into India from Bangladesh. The Adjudicating Authority therefore held that the statement recorded under Section 108 are admissible in evidence and therefore, in absence of any valid document, the recovered gold would be considered as 'foreign origin smuggled gold' in terms of Section 123 and further be considered as 'prohibited goods' in terms of Section 2(33) & Section 11 of the Act. The Adjudicating Authority thus ordered for absolute confiscation of gold with imposition of penalty of Rs.5,00,000/- on the Appellant.

9. On further appeal, the adjudication order has been upheld by the impugned Order-in-Appeal, which is the subject matter of challenge in the present appeal.

10. Shri Kartikeya Narain Ld. Counsel for the Appellant submitted that a completely false case has been set up against the Appellant. He submitted that the correct facts are that the Appellant is engaged in the business of silver and artificial jewellery, his cousin brother Mr. Shri Prakash resides at Kolkata, his cousin brother told the Appellant that he has some old ancestral family jewellery which belongs to his family, wife and mother, under fear of theft his cousin brother got the old jewellery melted into four bars and one piece and requested the Appellant to deliver the same to his father Shri Laxmi Narain at Jaipur, on being apprehended he told the correct facts to the officers but he was forced to state the version dictated by the officers and due to fear of arrest, neither his cousin brother nor his father could come before the officers and join the proceedings. The Ld. Counsel would then submit that the entire case set up by the Revenue is devoid of merits in absence of any evidence regarding foreign origin smuggled gold bars and mere statement of Appellant, which was not voluntary, cannot form the basis of confiscation of gold and imposition of penalty on the Appellant.

11. *Per contra*, Ld. Authorized Representative for the Revenue supported the allegations made in the SCN and findings recorded in the impugned order.

12. Heard both the sides and perused the appeal records.

13. The allegation in the SCN is that the gold seized from the Appellant is of foreign origin and smuggled into India. The first issue that requires to be decided is whether the gold is of foreign origin. Admittedly, the gold does not have any foreign markings. It is the case of the Revenue that the Appellant in his statement dated 13.01.2023, has voluntarily admitted that the subject gold was of foreign origin and was smuggled into India from Bangladesh. Additionally, the Revenue relies on the call records and report of C.R.C.L.

14. Though, there cannot be any dispute that statement recorded under Section 108 is admissible in evidence, as consistently held by Hon'ble Supreme Court in ***Ramesh Chandra Mehta vs. State of W.B AIR 1970 SC 940***, ***Naresh J. Sukhawani vs. Union of India AIR 1996 SC 522***, ***K.I. Pavunny vs. Collector (1997) 3 SCC 721*** and ***Union of India vs. Padam Narain Aggarwal (2008) 13 SCC 305***. After considering these judgments and also Section 24 of the Evidence Act, 1982, the Hon'ble Supreme Court in ***Commr. of Customs vs. Ganpati Overseas (2023) 10 SCC 484***, held that the object underlying Section 108 is to ascertain the truth and therefore, it is for the Adjudicating Authority to find out whether there was any duress or coercion in the recording of statement since the Adjudicating Authority exercises quasi-judicial power. From the perusal of the adjudication order, it transpires that the exercise contemplated by ***Ganpati Overseas (supra)*** has not been conducted by the Adjudicating Authority in the present case and the Adjudicating Authority proceeded to adjudicate the SCN by treating the statement as a voluntary statement. Thus, it will not be safe to uphold the impugned order solely on the basis of statement recorded under Section 108.

15. This takes me to the statement of the Appellant, reproduced in the SCN and also enclosed with the appeal memo. On going through the statement regarding foreign origin and smuggling of subject gold, I find that statement is not on the basis of personal knowledge of the Appellant but on the basis of knowledge of Mr. Shri Prakash, who told him that the subject

gold was brought to Kolkata through smuggling from Bangladesh and then forwarded inwards illegally. It is further recorded in the statement that other than this, he has no knowledge about the subject gold. Thus, clearly the statement was based on hearsay knowledge of the Appellant and therefore, the evidence relied upon by the Revenue is a hearsay evidence, which is admissible only in presence of any corroborative evidence and not otherwise.

16. Hearsay evidence and its admissibility has been considered by Hon'ble Supreme Court in ***Neeraj Dutta vs. State (NCT of Delhi) (2023) 4 SCC 731*** as under:-

> *"52. Again, oral evidence can be classified as original and hearsay evidence. Original evidence is that which a witness reports himself to have seen or heard through the medium of his own senses. Hearsay evidence is also called derivative, transmitted, or second-hand evidence in which a witness is merely reporting not what he himself saw or heard, and not what has come under the immediate observation of his own bodily senses, but what he has learnt in respect of the fact through the medium of a third person. Normally, a hearsay witness would be inadmissible, but when it is corroborated by substantive evidence of other witnesses, it would be admissible vide Mukhtiar Singh [Mukhtiar Singh v. State of Punjab, (2017) 8 SCC 136 : (2017) 3 SCC (Cri) 607] .*
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> *57. Section 60 of the Evidence Act requires that oral evidence must be direct or positive. Direct evidence is when it goes straight to establish the main fact in issue. The word "direct" is used in juxtaposition to derivative or hearsay evidence where a witness gives evidence that he received information from some other person. If that person does not, himself, state such information, such evidence would be inadmissible being hearsay evidence. On the other hand, forensic procedure as circumstantial or*

inferential evidence or presumptive evidence (Section 3) is indirect evidence. It means proof of other facts from which the existence of the fact in issue may be logically inferred. In this context, the expression "circumstantial evidence" is used in a loose sense as, sometimes, circumstantial evidence may also be direct."

17. Therefore, hearsay evidence is a derivative, transmitted and secondhand evidence in which a witness is merely reporting not what he himself saw or heard but what he learned from a third person and therefore, hearsay evidence is inadmissible except when it is corroborated by substantive evidence. In the present case, since the seizure, that subject gold is of foreign origin and was from Bangladesh, is not based on the personal knowledge of the Appellant but what was told to him by Shri Prakash, hence statement of Appellant is inadmissible in evidence unless corroborated by substantive evidence.

18. To corroborate the statement of the Appellant, the Revenue relies upon the call records of the Appellant, Mr. Shri Prakash and Shri Laxmi Narain to demonstrate that they were having regular phone calls between 02.01.2023 to 13.01.2023 and therefore, all the three persons were actively involved in the smuggling of foreign origin gold bars. In my opinion, the call records do not corroborate the case of the Revenue. The call records only demonstrates that the three persons talked with each other a number of times during the period 02.01.2023 to 13.01.2023, but on the basis of the same it cannot be concluded that the subject gold is of foreign origin and was smuggled into India by the three persons, unless the subject matter of conversation in call records is brought on record, which admittedly has not been done in the present case. A bench of this Tribunal in ***Shafeek P.K. vs. Commissioner of Cochin 2015 (325) E.L.T. 199 (Tri-Bang.)*** has held that it is the subject matter of conversation and not the call records itself, which is material to prove the charge, as under: -

> ***"11.3.*** *Otherwise also, we find that the entire case of the Revenue rests upon the sole retracted statement of Shri Antony Morris. Even if according to the Revenue, the said retraction was only a mechanical retraction and as an afterthought, inasmuch as no force was used to obtain the same, we find that as per the settled law, statement of a co-accused cannot be held as sufficient to nail another person, unless there is an independent corroborative evidence to that effect. The adjudicating authority has nowhere doubted that the appellant was in Dubai during the period of seizure and had only visited India during the last week of July, 2012. However he has relied upon the call data records showing telephonic talks between the appellant with Shri Kannan and Shri Antony Morris. What was the subject matter of the conversations during the call records has not come on record. Merely on the basis of such call records, it cannot be concluded that the appellant was the kingpin of smuggling operations, as concluded by the adjudicating authority. It may be observed here, even at the cost of repetition, that except Shri Antony Morris, no other person has named the appellant in the detailed statements recorded by the Revenue. If the goods were meant for the appellant, admittedly the other concerned and connected accused persons would have known about him and would have disclosed the name of the appellant. Not even Shri Kannan, who according to the Revenue, is the kingpin of smuggling operations in India, had mentioned about the appellant. As such, we agree with the learned advocate that the retracted statement of a co-accused cannot be adopted as an evidence to conclude against the appellant, without any other independent corroborative evidence."*

19. I also find from records that the subject gold was recovered and seized from the Appellant at a public place, which is a railway station. Though the Appellant named Mr. Shri Prakash as the owner of the subject gold and on whose

instructions he was carrying gold from Kolkata to Jaipur and also who informed him that the subject gold was smuggled into India from Bangladesh, however the investigation failed to find out either Mr. Shri Prakash or his father Shri Laxmi Narain and therefore, this event chain starts with a loose link and nothing can be concluded against Mr. Shri Prakash or Shri Laxmi Narain.

20. Even the C.R.C.L. report does not advance the case of the Revenue of foreign origin gold as the report states 99.78% gold content by weight and not 99.99%.

21. Thus, I find that apart from the statement of the Appellant, there is no corroborative evidence on record to suggest that the subject gold was of foreign origin and was smuggled into India. The Revenue has not brought any evidence on record to corroborate the statement of the Appellant. Thus, in absence of any corroborative evidence, the hearsay evidence in the form of statement of the Appellant, is not admissible in evidence and cannot be relied upon to prove foreign origin and smuggled nature of subject gold.

22. At this stage, Ld. Authorized Representative has relied upon judgment dated 12th March, 2026 of Hon'ble Delhi High Court in W.P.(C) No.15864/2022 in *Sh. Gautam Jain vs. Union of India & Ors* to contend that the statement of Appellant recorded under Section 108 is admissible in evidence and therefore impugned order is to be upheld on the basis of Appellant's statement. In **Sh. Gautam Jain (supra)**, the Hon'ble Delhi High Court held that the three statements of the passenger recorded under Section 108 were consistent and that he has smuggled gold at the behest of the petitioner therein and the other noticee in his statement has also implicated the petitioner therein. On these facts, the Hon'ble Delhi applied ***Naresh J. Sukhawani (supra)*** and held as under:-

> *"21.In the aforesaid background, it can be noticed that not only the statement of the said passenger under Section 108 of the Customs Act incriminates the petitioner, but*

also there is other collateral material connecting the petitioner to the said act of gold smuggling."

23. Facts of the present case are clearly different from the facts in ***Sh. Gautam Jain (supra)***, as statement in the present case is hearsay statement without any corroborative material, as against three consistent statements along with other collateral material in ***Sh. Gautam Jain (supra)***. Thus, the judgment relied upon by Ld. Authorized Representative does not advance the case of Revenue and is distinguishable on facts. The question here is not about admissibility of statement as evidence but about the contents of the statement itself, being hearsay in nature.

24. I also find that the Revenue has invoked Section 123 of the Act which reads as under: -

123. Burden of proof in certain cases –

(1) Where any goods to which this 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 –

(a) in a case where such seizure is made from the possession of any person –

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also, on such other person

(b) in any other case, on the person, if any who claims to be owner of the goods so seized.

25. I find that in absence of foreign markings, there should be some cogent evidence to establish that the gold is of foreign origin. In the case of ***Sarvendra Kumar Mishra vs. Commissioner 2021 (9) TMI 405***, the facts are almost similar

wherein the only evidence relied by the revenue was the statement of Shri Kishan Kumar Dhuria. The gold in that case did not have any foreign markings and it was held by the Tribunal that the onus would be on the Department to prove the smuggled nature of the goods. The Tribunal observed as under:-

> *"15. Further, the only evidence relied upon by the Revenue is the statement of Shri Kishan Kumar Dhuria, wherein he stated that the gold may be of foreign origin, as according to his knowledge gold is smuggled through Bangladesh into India, which he received at Kolkata. We find that other then the statement of Shri Kishan Kumar Dhuria, no evidence is brought forth by Revenue to conclude that the impugned gold has been smuggled. We have perused the statement of Shri Dhuria and find that the information about the gold being smuggled from Bangladesh is very general in natue. We find that nowhere Shri Dhuria has confessed that the impugned Gold is smuggled from Bangladesh. It is not open for the department to draw conclusions from a general statement to particularise about the impugned goods. As admittedly, the gold having no foreign markings, the onus would be on department to prove the smuggled nature of the same. The onus was not discharged. Moreover, the provisions of Section 138B of the Customs Act have not been complied with and therefore, the sanctity of the statement recorded under section 108 has been lost and consequently, it cannot be conclusively relied upon.*
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> *16. The expert valuer has not subjected the gold to any analysis as to find out the purity of the Gold, which is also one of the determining factors. It is not clear as to how he has reported the purity of the gold without testing. The original authority comes to the conclusion that the impugned gold is of foreign origin by alluding to a website which said that purity can be 995 onwards. Valuer is expected to arrive at the purity and value of the Gold in a*

scientifically established manner. If his services were required only to value the Gold, the same can be arrived on the basis of day-to-day Bullion rates announced by various exchanges. In addition to the above, fact remains that the Gold did not have any foreign markings; it has not been established that the same has been smuggled. The circumstances would certainly create reasons to believe that the impugned gold could be a smuggled one necessitating further probe. It does not constitute reasonable belief to seize the goods under section 123 of the Customs Act, 1962. We find Tribunal in the case of Ram Nath Sah 2007 (219) E.L.T. 546 (Tri - Kol) held that:-

> *I find that the seizure report does not indicate any foreign marking on the gold. The purity is also not of 999 generally found with the foreign origin gold. The seizure report also does not indicate the individual weight of the gold pieces. As such, this is a case where the benefit of doubt requires to be extended to the Appellants as there is no conclusive proof that the gold is of foreign origin and smuggled."*

(*Emphasis supplied*)

26. Thus, in view of ***Sarvendra Kumar Mishra (supra)*** and in absence of any foreign markings found on the subject gold, I hold that the recovery of seized gold from the Appellant at a public place, which is not a Customs port (Airport, Seaport or LCS), may create reasons to believe that the subject gold may be smuggled one necessitating further probe, but the same does not constitute reasonable belief to seize the goods. Moreover, the seizure is not made at any point of import. The reasonable belief is based only on the so called specific information and the said information has no evidentiary value unless established with evidence. Thus, burden is on the person from whose possession goods are seized only when the revenue, at least *prima-facie,* proves that the goods were of foreign origin. In the present

case, the Revenue has failed to prove the same and therefore Section 123 cannot be applied.

27. At this stage, it is necessary to consider that the Appellant has put forward the contention that the seized gold belongs to his cousin brother Mr. Shri Prakash, who obtained the same after melting of old and ancestral jewellery, which contention has not been discarded in the impugned order and has been tested only against the statement dated 13.01.2023, which is clearly hearsay. Having not found any foreign markings and allegation of foreign origin being only hearsay, not admissible as evidence, I find that the revenue ought to have considered the explanation of the Appellant instead of brushing it aside, by relying on the statement.

28. After examining the facts and evidence discussed above, I am of the view that the conclusion arrived and reasoning given in the impugned order cannot be sustained. Accordingly, the issue on merits of confiscation is decided in favour of the Appellant and against the revenue. For the same reasons, when confiscation is not found to be legally sustainable, there cannot be any reason to confirm the imposition of penalty and as such the same is also set-aside.

29. As to the question of Appellant's entitlement to release of subject gold, I note that in the present case, though the records refer to Mr. Shri Prakash as the owner, however he has neither claimed ownership in the present proceedings nor he was made a party to the present proceedings. Also, the question of his ownership cannot be decided at this stage. At the same time, in the present case seizure of goods, which culminated into confiscation is found to be bad in law, hence principle of restitution is to be applied and the Appellant is required to be placed at the same position, at which he was prior to seizure. Therefore, in view of principle of restitution, I direct for release of subject gold in favour of Appellant from whose possession the same were seized. The Customs Act also does not prohibit release of goods to the person from whose possession the same were seized where the owner is not known or does not come

forward, as is apparent from Section 110(2) and Section 125(1). Thus, the Appellant is entitled to release of subject gold.

30. Accordingly, the appeal is allowed with consequential relief to the Appellant.

(Order pronounced in open court on - **15.04.2026**)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

LKS