CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70656 of 2021

(Arising out of Order-in-Original No.02/Commr/2021-22, dated 18.08.2021 passed by Commissioner of Customs, Lucknow)

Shri Rajan Kumar Sahani, **.....Appellant**
(R/o Jharwa Bargo, Ramgarh Taal, Gorakhpur)

VERSUS

Commissioner, Customs (Preventive)
Lucknow **....Respondent**
(5^{th} Floor, Kendriya Bhawan, Sector-H,
Aliganj, Lucknow)

WITH

(i) Customs Appeal No.70657 of 2021 (Shri Avinash Kumar Dwivedi Alis Pandit);

(ii) Customs Appeal No.70658 of 2021 (Shri Santosh Kumar);

(iii) Customs Appeal No.70659 of 2021 (Shri Ramesh Chand);

(iv) Customs Appeal No.70660 of 2021 (Manoj Kumar Nisad);

(v) Customs Appeal No.70661 of 2021 (Sarad Chand Agrahari);

(Arising out of Order-in-Original No.02-Commr-2021-22, dated 18/08/202 passed by Commissioner, Customs, CGST & Central Excise, Lucknow)

APPEARANCE:

Shri Vineet Kumar Singh, Advocate & Shri S.A. Khan, Consultant for the Appellant
Shri Santosh Kumar & Shri Jaishankar Prakash Upadhayay, Authorized Representatives for the Respondent

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

FINAL ORDER NOs.- 70395 - 70400/2026

DATE OF HEARING : 11.08.2026
DATE OF PRONOUNCEMENT : 15.09.2026

<u>K. ANPAZHAKAN:</u>

The present appeals have been taken up for decision on the basis of the direction issued by the Hon'ble High Court of Allahabad. The specific direction given by the Hon'ble High Court regarding applicability of Section 138-B of the Customs Act, 1962 in their order dated 28.01.2026 is reproduced below:-

> *"11. Upon a perusal of Section 138-B of the Act, 1962, it is clear that there is no specific requirement for allowing cross-examination. Furthermore, the law established by the Hon'ble Supreme Court and various High Courts as discussed above is that in the event, any material is relied upon by the authorities, any witnesses are examined by the authorities, upon a request made by the show cause noticee, the said relied upon documents are to be provided to the noticee and the witnesses that have been examined and whose statements are being relied upon by the authorities shall be subject to cross-examination by the noticee. The law does not mandate that in each and every case, cross-examination is required to be provided. We are of the view that it is incumbent upon the noticee to seek cross-examination of the witnesses, and if such a request is made, it is mandatory for the authorities to provide such cross-examination. In the event, such cross-examination is not possible, the adjudicating authority in his order has to specifically note down the reasons as to why the witnesses could not be subjected to cross-examination. Such reasons could be as specified in Section 138-B such as death of the witness, the witness being incapable of giving evidence, the witness not being traceable, amongst others.*
>
> *12. The judgements relied upon by respondents/noticees do not come to their assistance as in each of the cases it is categorically mentioned that it would be open to the assessee to seek permission to cross-examine the persons whose statements have been relied upon and only if upon such request being made and the same not being complied with, then there would be a violation of the principles of natural justice. Even in such cases, as indicated above at paragraph 11, if the witnesses are not available to be cross-examined, the adjudicating authority would mention the reason for not providing such cross-examination to the respondent/noticees.*

13. In the present case, the Appellants have categorically submitted that at no point was a request made for cross-examination of two witnesses, and therefore, there was no question of violation of the principles of natural justice. This particular fact has not been answered specifically by the Tribunal, and without answering the said question as to whether a request "was made for cross-examination, the finding of the Tribunal that the principles of procedure established under Section 138-B of the Act, 1962 have been vitiated, in our view is against the principles established in law It was incumbent upon the Tribunal to first come to a finding as to whether a request was made by the noticee. If the answer was in the affirmative, then only the Tribunal could have held that the procedure prescribed under Section 138-B of the Act, 1962 was not followed. However, if the answer to the above question were to be in the negative, we are of the view that the finding of the Tribunal that the procedure prescribed under Section 138-B of the Act, 1962 was not followed, would be incorrect.

14. Though, the Appellants have herein brought on record certain documents to indicate that no request for cross-examination was made, we are of the view that since the Tribunal is the last fact finding body, this issue should be decided by the Tribunal upon calling for the records of the adjudicating authority and other relevant records.

15. In light of the same, we quash and set aside the order dated April 24, 2025 and direct the Tribunal to come to an appropriate finding with regard to the issues raised in the present judgment.

16. In light of the aforesaid, all the Custom Appeals are allowed and the Tribunal is directed to de novo hear the matter expeditiously, preferably within a period of three months from the date of receipt of certified copy of this judgment."

2. From the above, it is evident that the Hon'ble High Court has observed that the Tribunal has to come up with the findings that the Appellants have made a request for cross examination or not. If the Appellants have sought for cross examination then only the Tribunal could have held that the procedural prescribed

under Section 138-B of the Act was not followed by the learned Adjudicating Authority. However, if the Appellants have not asked for the cross examination then the findings of the Tribunal with procedural prescribed under Section 138-B of the Customs Act, 1962 was not followed, would be incorrect. During the course of the hearing the learned Counsel appearing on behalf of the Appellants submitted that they have not made any specific request for cross examination before the learned Adjudicating Authority. Thus, we find that the Appellants have not sought for cross examination in this case. Accordingly, we hold that finding of the Tribunal that the Adjudicating Authority has not followed the provisions of Section 138-B cannot be considered as amounting to not following the principle of natural justice. Accordingly, we hold that the grounds taken by the Tribunal in the Order dated 24.04.2025, that the learned Adjudicating Authority has not followed the procedure prescribed under Section 138-B, cannot be adopted as ground for setting aside the order passed by the learned Adjudicating Authority. Thus, we proceed to decide the appeals on de novo, on merits without going into the relevancy of statements recorded in this case.

3. The facts in brief leading to the passing of the order dated 24.04.2025 by this Tribunal are as follows:-

> *"2. Briefly stated the facts of the case are that acting upon an intelligence, that the officers of DRI, LZU, intercepted two persons, in the intervening night of 04-05/09/2020, travelling in BUS No UP-22AT-0568, from Gorakhpur to Delhi, and found 3998.83 grams of gold valued at Rs 2,12,79,096, allegedly of foreign origin and seized the same under the reasonable belief that the same was smuggled. The two persons identified as Shri Manoj Kumar Nishad & Shri Rajan Kumar Sahni, stated that they were carrying gold, under Voucher No 644 dated 03/09/2020 & Voucher No 645 dated 03/09/2020, issued by M/s Bajrang Bullion Traders Hindi Bazar Gorakhpur; they work for M/s Bajrang Billion Traders owned by Shri Sharad Chand Agrahari; they were going to deliver the smuggled gold to*

M/s Mahaveer Bullion Karol Bagh New Delhi; they did not have any valid document regarding purchase or import of said gold; earlier they delivered, on 21/08/2020, to M/s Mahaveer Bullion Karol Bagh New Delhi on the instructions of Shri Sharad Chand Agrahari. Both Shri Manoj Kumar Nishad & Shri Rajan Kumar Sahni were arrested under the belief that they liable for punishment under Section 135(1)(i)(A) of the Customs Act 1962.

2.1. Search of the premises of Bajrang Bullion Traders, Gorakhpur, on 04/09/2020 was conducted and statement of Sri Sharad Chand Agrahari was recorded. He stated that he is in Jewelry business; he had purchased gold weighing 9525.010 gm from registered traders of gold bullion through licit manner and payment of such purchases were made through banking channel; both Shri Manoj Kumar Nishad & Shri Rajan Kumar Sahni are his employees; the gold carried by them was backed by Voucher No 644 & 645 dated 03/09/2020. M/s Mahaveer Bullion Traders New Delhi, after perusing the Invoices in question, stated that they placed an order for purchase of 4 kg gold from M/s Bajrang Bullion; however, the signature on sale invoices produced by M/s Bajrang Bullion is not his signature. Shri Bhuvanesh Chand Agarwal, of M/s Shriji Traders, Lucknow, stated that invoices produced by the Bajrang Bullion, were issued by him but signatures on such invoices is not his signature. The investigation culminated with the issue of the impugned Show Cause Notice dated 23.02.2021, which was adjudicated by the impugned order, proposing to confiscate the seized Gold under Section 111 of the Customs Act 1962 and to impose penalty under Section 112, ibid. hence, these appeals."

4. Learned Advocate Shri Vineet Kumar Singh appearing for the Appellants submits that they had purchased the gold in question from legal sources has been accepted by the sellers i.e. M/s Mahaveer Bullion Traders, New Delhi and M/s Shriji Traders, Lucknow; however, they said that the signatures on invoices are not theirs; the seized gold had no foreign marking or serial number; the purity of the gold was 99.92, 97.81,99.26 & 89.34, and not 99.9%, as evidenced by the CRCL Report dated 21.09.2020; there is no such evidence available to prove that the gold bars were of foreign origin and smuggled into India;

reasonable belief formed by the officers that that the gold was of foreign-origin and smuggled has no basis.

5. Learned Counsel submits that to form a 'reasonable belief' that the gold is smuggled from Nepal or Bangladesh, there must be irrefutable evidence to prove the allegation; Hon'ble supreme Court held in Assistant Collector of Customs Vs Charan Das Malhotra 1983 (13) E.L.T. 1477 (SC), reasonable belief is to be relevant and not extraneous and it must be supported with other independent corroborative evidences; Hon'ble supreme Court held also in Kewal Krishan Vs State of Punjab, 1993 (67) E.L.T. 17 (SC) that confiscatory power based on 'reason to believe' has to be exercised only on the satisfaction based on certain objective material; Reasonable belief' must be at the time when the gold are seized and not subsequent to seizure; when the gold is accounted for in the books of accounts & submitted to the DRI at the time of search, Department cannot term it as Smuggled; as there was no reasonable belief, as per above facts, Section 123 does not apply to the case; no presumption could be raised under Section 123; there was no obligation on the Appellant to prove that the gold were not smuggled; the burden of proof was wrongly cast on the Appellant and thus, the proceedings are vitiated. He further relies on the following cases.

- Final Order No.75553/2024 dated 01.03.2024 of the Kolkata Bench of this Tribunal in the case of Purnanand Ramchandra Mishra
- Final Order No. 75678-681 dated 17.04.2024, of the Kolkata Bench of the Tribunal in the case of Neeraj Agarwal vs. Commissioner of Customs Kolkata, Final Order.
- Balanagu Naga Venkata Raghavendra Vs CC Vijayawada 2021 (378) ELT 493 (Tri-Hyd).
- *Krishnakumar Dhandhania* [2007 (219) ELT 736 (Tri.-Kol).
- *CC* v. *Golak Chandra Kamila* [2006 (205) E.L.T. 665.
- *S.K. Chains* v. *CC, Mumbai* [2001 (127) E.L.T. 415].

6. Learned Counsel submits in addition that the only evidence that the Department has against the Appellant is the statements

of Shri Manoj Kumar Nishad & Shri Rajan Kumar Sahni on 04/09/2020, wherein it was informed that the gold under seizure was locally purchased after payment of GST; the invoices submitted by the Appellant was not negated by the Department. It is a well-settled proposition of law that confessional statements need independent corroboration; in the instant case, the voluntary character of the statements themselves being in doubt, the same cannot be the basis of holding the guilt against the Appellants, more so, as the purity of the gold is below 99.99%. He submits that the Appellants have substantiated the licit purchase of the seized gold by submitting Invoices, stock Register & purchase register of the gold; the Appellant has discharged the burden of proof under Section 123. The statements relied upon by the Appellants should be held to be not reliable; it was held in Puni Dhapa Lokeswara Rao 2009 (248) ELT 141 (Cal.) that circumstantial evidence proves that the statement recorded under section 108 of the Customs Act 1962 was not voluntary; the onus to establish that the gold seized from the Appellant was smuggled into India shifts to the Department.

7. Learned Counsel submits also that the Department made a detailed inquiry from the seller of the gold bullion but nothing incrementing came from the inquiry; none of the documents which were produced by the Appellants have been discredited by the Department; Department proceeded on unwarranted assumptions, presumptions, surmises and conjectures and the entire proceedings lacks legal sustainability. He relies on the following.

- Sitaram Sao v. State of Jharkhand - 2007 (12) SCC 630.
- Mridul Agarwal v. Commissioner of Customs, Lucknow, 2018 (362) E.L.T. 847 (Tri. - All.).
- Shantilal Mehta v. UOI and Others, 1983 (14) E.L.T. 1715 (Del.).

- CCC (P) v. Prabhash Kumar Jalan, CESTAT, Kolkata Bench, Final Order No.75500/2021, dated 27-08-2021.
- Shri Sarvendra Kumar Mishra v. Commissioner of Customs Vide Final Order Nos.70198-70199/2021, dated 06-09-2021.
- Nand Kishore Modi v. Commissioner of Customs (Preventive), West Bengal, 2015 (325) E.L.T. 781.
- Rajesh Pawar v. UOI, 2014 (309) E.L.T. 600 (Cal.).
- Commissioner of Customs (Prev.) Kolkata v. Ashok Kumar Agarwal, 2017 (348) E.L.T. 555 (Tri. - Kolkata).

8. Learned Counsel submits further that Department has failed to discharge the obligation cast upon it; it is the case of the Department that the gold is smuggled; to prove the same, Department has not extended the investigation to reach the root of the matter and thus, completely failed to show as to how the gold were smuggled; on the contrary, the Appellant submitted sufficient documents in support of the licit acquisition of seized gold and discharged the burden under Section 123 of Customs Act, 1962; therefore, the impugned order needs to be set aside. He submits that the entire case has been made by the Department based on the confessional statements recorded under duress by the Custom officers; such a statement was retracted by the Appellant on the very first opportunity; therefore such a confessional statement does not have any evidentiary values in the eyes of law when the documentary evidence is contradictory to the such statement which proves that the statement was recorded under duress; it is established law that the confessional statement does not have any evidentiary value unless there is cogent evidence as held in the Saakeen Alloys Pvt. Ltd. 2014 (308) E.L.T. 655 and Kisan Ratan Singh 2020 (372) E.L.T. 714; burden to show that confession was voluntary and not obtained as an outcome of

threat is on the Department as held by Apex Court in the case of Vinod Solanki vs. Union of India 2009 (233) E.L.T. 157; it was held by the apex Court in the case of Sevvantilal Karsondas Modi Vs State of Maharashtra & Another 1979 SCC (2) 58 that "*confession made before Customs officer as a result of coercion cannot be basis of conviction under section 135(1) (a) (b) of the Customs Act. That at any rate, it was incumbent upon the opposite party to corroborate the confession from independent sources, which has admittedly not been done in the present case"*; he relies also on Mohtesham Mohd. Ismail vs. Spl. Director 2007 (220) E.L.T. 3 SC.

9. He submits that in the impugned case, Revenue has not been able to substantiate the charge of smuggling save and except by the statements recorded under Section 108; such statement also loses its evidentiary value as Revenue has failed to examine the persons in the course of adjudication proceedings, as held Supreme Court in the case of Andaman Timber Industries 2015 (324) E.L.T. 641 (SC). The documentary evidence regarding licit procurement of gold bars through GST paid invoices submitted by the Appellant would prevail over the oral evidence, which is retracted. There is also no confession by the Appellant that the gold was smuggled; he relies on *Imtiaz* Iqbal Pothiwala - 2019 (365) E.L.T. 167 (Bom.).

10. Learned Counsel submits that there is no material available on record to show that the invoices placed by the Appellant were false or fabricated; there is no allegation to that extent either; Department has either to accept the documents or to negate it but the Department has not done either of the two, which is not permissible; apparently, the invoices contained GST number and PAN; the Department has never doubted the genuine nature of documents produced by the Appellant; hence, documentary evidence prevails over the oral statement as held in Gopal Prasad 2020 (371) E.L.T. 243 (Pat). He further submits that penalty cannot be imposed based on hearsay evidence, or the incriminating statement of other co accused as held in *Vinod Solanki* v. *Union of India* 2009 (233) E.L.T. 157 (SC).

11. Learned Counsel submits that the gold in question has been procured from domestic sources there is no evidence available on record to establish the smuggled nature of the gold. Further, the purity of the gold is not 99.99% which is normally associated with the imported gold. Further, the Appellant has submitted documentary evidence regarding local purchase of the gold from domestic sources. The seller has paid GST and filed GST return evidencing the sale of the gold. The documents submitted for local purchase of the gold has not been found to be fake. Under such circumstances learned Counsel submits that the gold in question is not liable for confiscation. Accordingly, he prayed setting aside the impugned order confiscating the gold and imposing penalties on various persons.

12. Learned Authorized Representative reiterated the findings of the impugned order it is his submissions that the sale of the gold as submitted that he has not issued challans submitted by the Appellant. Accordingly, he submits that there is no evidence submitted by the Appellants for local procurement of the gold from the domestic sources. In view of the above, he submits that the gold has been rightly confiscated by the learned Adjudicating Authority.

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

14. We find that the power bestowed in Section 110 of the Customs Act, 1962, places a pre-condition for such seizure. The essential pre-condition being that the proper officer should have reasons to believe that that such goods are liable to confiscation under the Act; once such seizure is done, Section 123 of the Customs Act, 1962 shifts the burden of proof to prove that goods are not smuggled on the person from whom the goods are seized. The jurisprudence distilled on the such seizures, particularly outside the Customs Area or specified areas, envisages that

- Reasonable belief is a pre-requisite for seizure; the proper officer should have reasons to believe that the goods are smuggled goods before seizing them under Section 110;

- the reasonable belief cannot be based on presumption; a case of suspicion or speculation is not one of reasonable belief; Section 123 kicks in only when Section 110 is satisfied and that "reasonable belief" exists and can be explained before the adjudicating authority or tribunal or court, as the case may be
- if Revenue fails to prove reasonable belief, then the goods would not be liable to be seized in the first place;
- If there was no reasonable belief, then the onus cannot be shifted on the person from whom the goods were seized;
- wrong invocation of Section 110, leaves no scope to invoke section 123;
- It would then be incumbent on the Customs authorities to prove that the seized goods are liable for confiscation; in the event of failure to prove so, there is no question of confiscation and penalty.

15. We find that the impugned Gold was seized from Shri Manoj Kumar Nishad & Shri Rajan Kumar Sahni, travelling by Bus No UP-22AT-0568, on 04-05/09/2020, from Gorakhpur to Delhi. Understandably, seizure took place at a place far away from Customs Station, Air or Sea port, in an area not specified under a Section 111(H), as notified under Section 6 of the Customs, Act, 1962; there were no foreign markings on the gold pieces seized; the purity was found to be 99.92, 97.81, 99.26 and 89.34 and not 99.99 % by weight. It was not established that the persons apprehended were coming to India, form as place outside India. Under the circumstances, we are of the considered opinion that the authorities failed to establish that there was reasonable belief, before affecting the seizure.

16. We find that Hon'ble Delhi High Court in the case of Shanti Lal Mehta v. UOI and Others reported in 1983 (14) E.L.T. 1715 (Del.). The Hon'ble High Court reviewed the jurisprudence on the matter till then and set aside the confiscation and penalty on the ground that there was lack of reasonable belief on part of the proper officer before the seizure was affected and section 123 was not to be invoked. Hon'ble High Court observed that:-

54. The other question which was argued before me was that the customs officer did not act on any reasonable belief when he searched the petitioner's premises on 15 12-1967 and seized the goods. Section 110 opens with the words "if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods". What is the meaning of "reasonable belief"? Did the officer entertain reasonable belief in the facts and the circumstances of this case? This is the other question to be decided. The Supreme Court has said that reasonable belief is a pre-requisite condition of the power of seizure that the statute confers on the officer. (See Collector of Customs v. Sampathu Chetty, AIR 1962 S.C. 316). The preliminary requirement of Section 110 is that the officer seizing should entertain a reasonable belief that the goods seized were smuggled.

55. Reasonable belief as required by Section 110 refers to the point of time when the goods in question are seized and not to a stage subsequent to the act of seizure. (M.G. Abrol v. Amichand, AIR 1961 Bom. 227). The condition precedent that there was such a reasonable belief anterior to the seizure must exist before the presumption under Section 123 can be invoked. Section 123 says.

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56. In Babulal Amthalal Mehta v. Collector of Customs, AIR 1957 S.C. 877, while considering the provisions of Section 178A of the Sea Customs Act, 1878, it was observed;

"Though the word `smuggling' is not defined in the Act, it must be understood as having the ordinary dictionary meaning, namely, carrying of goods clandestinely into a country."

Where Section 123 cannot be invoked it would be for the customs authorities to prove that the goods were imported after the restrictions against import were imposed. (Amba Lal v. Union of India, AIR 1961 S.C. 264. In Pukhraj v. D.R. Kohli, AIR 1962 S.C. 1559 the Supreme Court said that when the court was dealing with the question as to whether the belief in the mind of the officer who effected a seizure, was reasonable or not, the court was not sitting in appeal over the decision of the said officer. All that it could consider was whether there was any ground which prima facie justified a reasonable belief. That the officer had reasonable belief must be stated in the notice to show cause. It must be adjudicated upon by the authorities under the Act. At the stage of appeal or revision from the orders of the officer adjudging confiscation each successive appellate or revisional authority has also to address itself to this requirement of reasonable belief. The seizing officer either by his own evidence or other materials placed before the adjudicating authority, has to prove to its satisfaction that there was ground for him to reasonably believe that the goods were smuggled goods, that is to say that the goods were imported into the country and imported at a time and place when they were restricted or prohibited from being imported. If the adjudicating authority is not satisfied that the goods were seized on a reasonable belief Section 123 cannot be invoked and in that event it would be for the customs authorities to prove that the goods were smuggled and Section 123 in that event would have no application. If, therefore, Section 123 is wrongly applied and the presumption thereunder is raised, without the condition precedent thereunder having been satisfied, the entire inquiry and the order passed therein would be vitiated. In Collector of Customs v. Sampathu Chetty (supra) the Supreme Court under the old Sea Customs Act of 1878 said:

"The entire evidence in the possession of the seizing officer would be and has to be before the officer adjudicating the confiscation under Section 182 of the Sea Customs Act. No doubt, on the language of Section 178A the presumption of the goods being smuggled arises only when the seizure is made by an officer entertaining a reasonable belief that the goods are smuggled, and in that sense the reasonable belief of the seizing officer is a pre-requisite for the statutory onus to arise. It is also true that at the stage of adjudication the reasonableness of the belief of the officer effecting the seizure that the goods are smuggled would be the subject-matter of investigation by the adjudicating officer. Nevertheless, it is manifest that at the stage of the adjudication (when only the rule of evidence laid down by the section comes into operation) the very facts which led the seizing officer to effect the seizure, as distinguished from their significance as affording a reasonable belief for the seizing officer to hold that the goods are smuggled, are before the adjudicating officer. These facts which justified

the seizing officer to reasonably believe that the goods were smuggled would certainly import a rational connection between the facts on which the presumption is raised and the fact to be proved, so that whatever other constitutional infirmity might attach to the impugned provision, the lack of rational connection is not one of them."

It would be necessary, therefore, before any person could be called upon to prove that the goods seized from him were not smuggled goods, that the customs officer making the seizure must proceed upon the foundation of a reasonable belief inspired in him by some definite material by way of some definite information or otherwise so that he could be said to have seized the goods in a reasonable belief that they were smuggled goods. (Bapalal v. Collector of Central Excise, AIR 1965 Gujarat 135). The question is whether the record before me shows that there was a reasonable belief in the mind of the seizing officer that the goods were smuggled goods. It does not appear to me that he had entertained any reasonable belief at the time of seizure. Neither the board on appeal, nor the Central Government applied their mind to this question.

Two reasons:

57. Applying the principles of these cases to the facts of the present case what do we find? Two reasons were given in support of the reasonable belief. One is that the customs authorities received some information. What is that information? It was never disclosed to the petitioner. Nor was it disclosed to the adjudicating authorities. Very vague words such as `on information received' are used in the show cause notice. The information on which the customs authorities act must be definite information. No one suggests that they must disclose the name of the informant. That would be detrimental to investigation and against public interest. The least they can do is to give the gist of the information so that the person from whom the goods are seized knows the nature of the information received by the customs. To hold otherwise would mean that the customs officer can act on any information, wishy-washy though it may be, received from the underworld the nature of which the man in the over-world will not be entitled to know. The words "reasonable belief" used in Section 110(1) are intended to check the exercise of the powers given to the customs officers arbitrarily and without any foundation at

all, to the harassment of the general public. The customs officer must have some definite materials by way of some definite information to form the foundation of his reasonable belief (M.G. Abrol supra).

58. The second reason for entertaining a reasonable belief is that the seized goods were not accounted for by the petitioner on 15-2-1967 when the officer seized the goods from his possession. The seized goods consisted of 20 items of ornaments and diamonds. Out of these six items were released before the show cause notice was issued. One item was released at the adjudication stage. Six items were released by the Board on appeal. Only 7 items have been confiscated. These consist of 2 packets of diamonds and 5 ornaments. The petitioner claimed that they belonged to the queen mother of Nepal. A letter was written to queen mother. On her behalf a reply was received that she had given certain ornaments to the petitioner for polishing, remaking etc., though not for sale. But this was done later on. The letter was written on 3-7-1967. The reply was received on 24-7-1967. But at the time of seizure all that the officer had before him were 2 packets of diamonds and 5 ornaments. Neither the diamonds nor the ornaments had any foreign markings or label to suggest to the customs that these were smuggled goods. In the search list these two packets of diamonds are described as "appearing to be diamonds". This shows that the customs officer did not believe them to be diamonds on any reasonable ground. The ornaments had no foreign label or making. They were ordinary ornaments as are worn in this country. There was nothing peculiar about them. Nothing extraordinary. On this material could any reasonable man entertain a belief that these were smuggled goods?

59. The belief must be such as any reasonable man in the circumstances of the case would entertain about the existence or non-existence of a thing. Simply because the goods were not accounted for at that time does not necessarily mean that the goods were smuggled goods. Unaccounted goods may be stolen goods. Reasonable belief could be entertained either on the basis of some external indicia or on the basis of some internal information that the goods had been illegally imported into India from Nepal or some other foreign country either without

payment of duty or in contravention of any restriction or prohibition imposed by statute. There was nothing to suggest the foreign origin of the goods. There was nothing to suggest the illegal importation of the goods into the country.
60. The goods must be smuggled goods. The word `smuggled' means that the goods were of foreign origin and they had been imported from abroad. Only then does the presumption under Section 123 arise. The goods themselves did not suggest that the petitioner was an old smuggler or a dealer in smuggled goods. If there was such information with the customs, they ought to have disclosed it. The goods themselves did not suggest any illicit importation. Nor was there any inscription on the goods which could be the basis of the reasonable belief that the goods were of foreign origin. There was nothing in the appearance of the goods to suggest that they had been newly manufactured and brought into this country very recently from another country. In a word there was nothing absolutely from which inferences about their origin or recent import could arise. It was not a case where large quantity of gold with foreign markings was found hidden in the trousers of the accused as happened in Hukma v. State of Rajasthan, AIR 1965 S.C. 476. 61. In fact there is a finding by the Board in favour of the petitioner supporting his contention that there could be no reasonable belief in the mind of the officer when he seized the goods. On the penalty of Rs. 25,000/- imposed on the petitioner the Board observed: "there is no definite evidence to show that the Appellant knew or had reason to believe that those items were smuggled. In the absence of this evidence the penalty imposed is not justified. The Board accordingly remits the personal penalty in full". If the petitioner did not know that the goods were smuggled, how could the customs officer reasonably believe that the goods were smuggled. The petitioner knew better. 62. The customs officer merely thought that as the goods had not been accounted for these are smuggled goods. At the time of seizure what happened was this. The petitioner was present at the shop. He told the customs officer that they were duly entered in his account books but his accountant had gone to the income tax officer. The officer did not wait for the man to arrive to explain the entries to him. He seized the goods and took them away. This was not a case of reasonable belief. It was a case of

> suspicion. A case of speculation. A case of guess work. 63. As a result, Section 123 did not apply to the case. There was no reasonable belief. No presumption could be raised under Section 123. There was no obligation on the petitioner to prove that the goods were not smuggled. The burden of proof was wrongly cast on him. The entire inquiry was vitiated. 64. For these reasons the writ petition is allowed. The order of confiscation of the goods is set aside. The order of the Addl. Collector of Customs dated 14-08-1968 the order of the Central Board of Excise and Customs dated 18-9-1971 and the order of the Central Government dated 30-5-1972 are quashed. The respondents are directed to return to the petitioner items 6 to 11 and 16 of the search lists forthwith. The parties are left to bear their own costs.

17. We find that Tribunal in the case of Balanagu Naga Venkata Raghavendra Vs CC Vijayawada 2021 (378) E.L.T. 493 (Tri.-Hyd.) held that the burden under section 123 will not shift on the Appellants when the seizure of gold without foreign markings is seized from city. Tribunal held as follows:-

> "14. The confiscation of the gold by the adjudicating authority was set aside by the Tribunal and on appeal by the Revenue the Hon'ble High Court of Kerala, in the above factual matrix, has overturned the decision of the Tribunal. Therefore, it was not merely the purity of the gold in question but also the statements made during the investigation which formed the basis of the reasonable belief of the officers. In the present case, none of the statements recorded by the Department admit to or even suggest that the gold was smuggled gold. It has also not been brought out in the show cause notice that the purity of the seized gold is such that it could only have been of foreign origin. It is true that the conduct of the Appellants was suspicious inasmuch as the gold pieces were being carried in newspapers and a letter was found written to one Shri Vijay in Trissur for requesting the gold to be handed over to the bearer of the letter. It is also confirmed by the DCM, Railways that the Appellants had travelled from Trissur to Vijayawada by train. However, we note that Trissur is not even a port in itself. The gold was apparently collected from one Shri Vijay in Trissur.

> There were also several contradictions between different statements as recorded in para 16 of the show cause notice. All these would show that Shri Kanaka Ratnam (Appellant in Appeal No. 30496 of 2017) wrote a letter to Shri Vijay of Trissur to hand over gold to the bearer of the letter and both the letter and the gold were recovered from his son Shri Naga Venkata Raghavendra (Appellant in Appeal No. 30495 of 2017). Both the Appellants had travelled by train from Trissur to Vijayawada. Naga Venkata Raghavendra was acting suspiciously when the Officers approached him. Subsequent statements were contradictory to each other. These factors by themselves cannot, in our considered opinion, constitute the basis for forming a reasonable belief that the seized gold was smuggled. Therefore, the Officers did not have a reasonable belief in the first place to assert that the seized primary gold was smuggled gold which is essential to shift the burden on to the accused under Section 123. The case of Om Prakash Khatri (supra) was different inasmuch as in that case while the foreign markings were missing on the gold in that case the carriers had admitted that they were carrying smuggled gold for Shri Khatri and that it was smuggled through Kerala and they were carrying it to Bombay and marks and numbers have been deleted to avoid being caught. They also admitted that they avoid air travel as there is a high risk of being caught. Coupled with these statements was the fact the gold of very high purity. The ratio of this judgment does not apply to the present case and the facts are quite different.
>
> 15. In view of the above, we find that the officers of the Department had no reasonable belief that the gold was smuggled and therefore they have not discharged their responsibility of forming reasonable belief under Section 123 without which the burden of proof will not shift to the person from whom the gold is seized."

18. We further find that the Tribunal in the case of Principal Commissioner of Customs (Prev.), Delhi Vs. Ahmed Mujjaba Khaleefa [2019 (366) E.L.T. 337 (T) dismissed the appeal of Revenue holding that jewelry not bearing any foreign marking and in the absence of any evidence other than statement of Shri Manoj Kumar Nishad & Shri Rajan Kumar Sahni, who retracted

them later the officers of DRI could not establish that there are sufficient grounds to establish that the 'reasonable belief' as contemplated in Section 110 of the Customs, Act, existed in the case, before effecting the seizure. We find that the percentage of purity as per CRCL was 99.92, 97.81,99.26 and 89.34, which would not make any prudent person to accept that the impugned gold pieces were of foreign origin and were smuggled in to India. Not even a semblance of evidence appears to have been gathered to ascertain where did the gold come from? Who smuggled it? What was the modus of bringing in to India? Where and how was it handed over to the Appellants or their agents. Therefore, the claim of reasonable belief is nothing but a presumption or at best a figment of imagination. It is not supported by any corroborative evidence. There is no document available on record to establish that gold bars/pieces were smuggled into India from a place outside India. The analysis of CDR only indicates that Shri Sharad Chandra Agrahari was in touch with Shri Manoj Kumar Nishad & Shri Rajan Kumar Sahni at various places and on various dates in India. Understandably, Shri Manoj Kumar Nishad & Shri Rajan Kumar Sahni are working for Shri Sharad Chandra Agrahari and therefore, no great piece of evidence comes forth by establishing that they were in touch with each other. Importantly, not even a single call record to indicate that either Shri Sharad Chandra Agrahari or Shri Manoj Kumar Nishad or Shri Rajan Kumar Sahni or any other person concerned was in touch with any person from abroad or any Indian who was abroad at or about the relevant date, was established. The impugned order has concluded that the said gold bars/pieces were smuggled into India only on the basis of retracted statements without any concrete evidence to substantiate this claim. Hence, we hold that material evidence available on record that establishes that the officers had reasonable belief to seize the goods.

19. In view of the above, question No. (i) framed above is answered in the negative. When reasonable belief was not established before seizure, provisions of Section 123 are not

attracted. Even if assuming that it does, we find that search of Search of the premises of Bajrang Bullion Traders, Gorakhpur and statement of Sri Sharad Chand Agrahari on 04/09/2020, revealed that he had purchased gold weighing 9525.010 gm from registered traders of gold bullion through licit manner and payment of such purchases were made through banking channel; the gold carried by Shri Manoj Kumar Nishad & Shri Rajan Kumar Sahni was covered by Voucher No 644 & 645 dated 03/09/2020. The investigation conducted at M/s Mahaveer Bullion Traders New Delhi, revealed that they are in business contact with Shri Sharad Agrahari; they placed an order for purchase of 4 kg gold from M/s Bajrang Bullion. However, they stated that the signature on sale invoices produced by M/s Bajrang Bullion is not his signature. He also handed over the copies of invoices issued by them. Similar were the results of enquiry conducted at Shri Bhuvanesh Chand Agarwal, of M/s Shriji Traders, Lucknow.

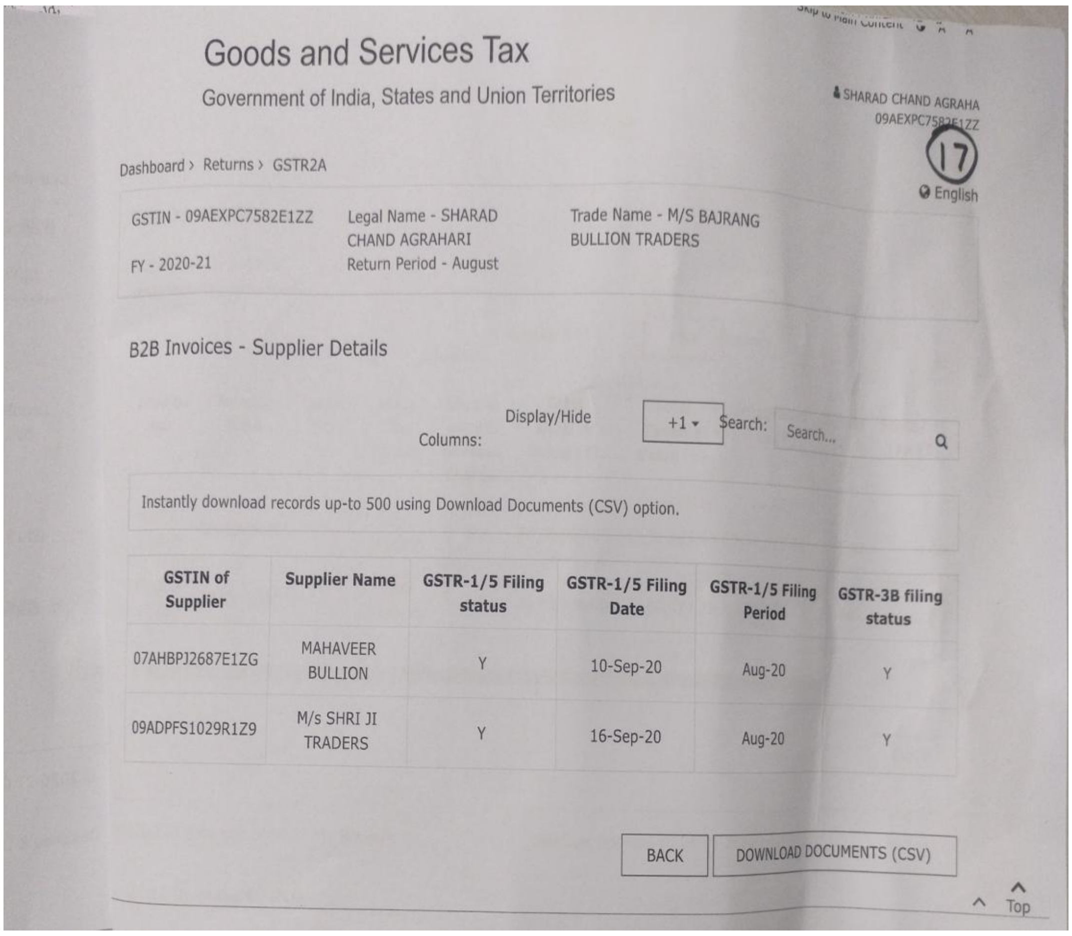
20. These investigations are not conclusive enough to establish that the impugned gold was smuggled. Interestingly, both M/s Shriji Traders, Lucknow and M/s Mahaveer Bullion Traders New Delhi did not deny transactions with M/s Bajarang Bullion or shri Sharad Agrahari. To the reasons best known to them, they have stated that the signature on invoices produced by the Bajrang Bullion, to claim licit purchase of impugned gold was not theirs. Surprisingly, the investigation concluded at that point only. Neither the signatures were got verified nor further enquiries to ascertain or negate the claim of financial transactions etc. were conducted. As we find that the existence of reasonable belief was suspect, the onus to prove otherwise was not on the Appellants but on the Department. In the instant case, the Appellants have discharged the burden by producing documents and accounts. We are of the considered opinion that burden envisaged in Section 123 is not absolute in nature. Once the persons from whom gold was seized have claimed licit purchase of the impugned gold, it was incumbent upon the investigation to disprove the same with evidence, after taking the enquiries to a

logical conclusion. That having not been done, Revenue cannot say that the Appellants failed to discharge the burden of proof. The Appellants may have violated any other law for time being in force, but that would not render goods liable for confiscation under Customs Act, 1962.

21. We find on perusal of the statements, Shri Manoj Kumar Nishad & Shri Rajan Kumar Sahni, Shri Sharad Agrahari and others, that the so-called confession about the gold being smuggled is very general in nature. We find that nowhere they have been questioned as to how the gold in question was smuggled from Bangladesh to India. No critical details about the persons who carried the gold from across the border, what was place of crossing the international borders, what was the mode of transport and how the finances were arranged etc. were neither asked by officers nor stated by the accused. The facts claimed to have been confessed regarding the alleged smuggling of the impugned Gold are very general in nature. It would be very naïve to expect that the accused would confess the most minute details, even if they actually smuggled the impugned goods. What is intriguing is that the officers did not even put the relevant and pertinent questions to unearth or establish the act of smuggling. As such, it is not open for the Department to draw conclusions from a general statement to particularize the details 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. This 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, they cannot be conclusively relied upon.

22. The Appellants have submitted the evidence regarding local purchase of the gold. They have submitted evidence regarding purchase of gold and contended that the supplier has filed GST Part-2A and the details of the GST payments are available in the portal for ready reference evidence regarding payment of IGST

available in the GST Portal and the invoices issued by the supplier available in GST Portal also extracted below:-



Goods and Services Tax

Government of India, States and Union Territories

SHARAD CHAND AGRAHA
09AEXPC7582E1ZZ

17

English

Dashboard > Returns > GSTR2A

GSTIN - 09AEXPC7582E1ZZ
FY - 2020-21

Legal Name - SHARAD CHAND AGRAHARI
Return Period - August

Trade Name - M/S BAJRANG BULLION TRADERS

B2B Invoices - Supplier Details

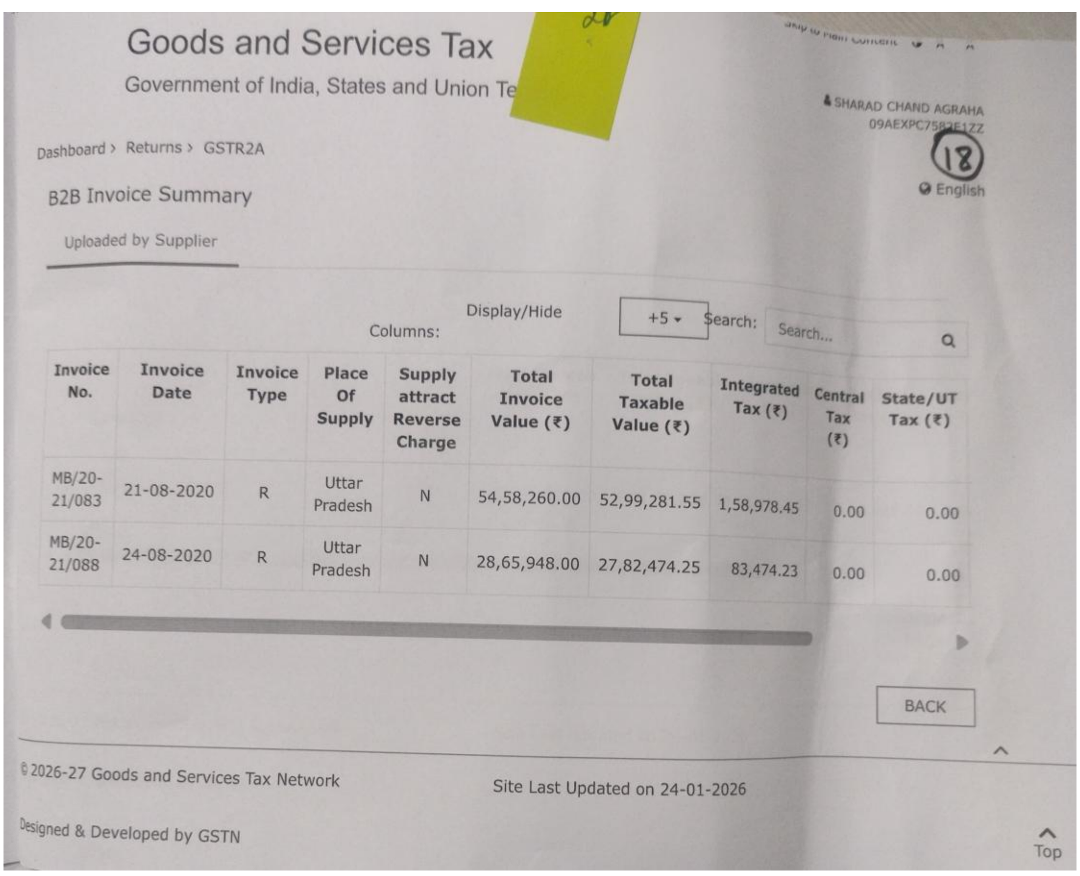
Display/Hide Columns: +1 Search: Search...

Instantly download records up-to 500 using Download Documents (CSV) option.

GSTIN of Supplier	Supplier Name	GSTR-1/5 Filing status	GSTR-1/5 Filing Date	GSTR-1/5 Filing Period	GSTR-3B filing status
07AHBPJ2687E1ZG	MAHAVEER BULLION	Y	10-Sep-20	Aug-20	Y
09ADPFS1029R1Z9	M/s SHRI JI TRADERS	Y	16-Sep-20	Aug-20	Y

BACK DOWNLOAD DOCUMENTS (CSV)

Top



Goods and Services Tax

Government of India, States and Union Te

SHARAD CHAND AGRAHA
09AEXPC7582E1ZZ

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English

Dashboard > Returns > GSTR2A

B2B Invoice Summary

Uploaded by Supplier

Display/Hide Columns: +5 Search: Search...

Invoice No.	Invoice Date	Invoice Type	Place Of Supply	Supply attract Reverse Charge	Total Invoice Value (₹)	Total Taxable Value (₹)	Integrated Tax (₹)	Central Tax (₹)	State/UT Tax (₹)
MB/20-21/083	21-08-2020	R	Uttar Pradesh	N	54,58,260.00	52,99,281.55	1,58,978.45	0.00	0.00
MB/20-21/088	24-08-2020	R	Uttar Pradesh	N	28,65,948.00	27,82,474.25	83,474.23	0.00	0.00

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SHARAD CHAND AGRAHA
09AEXPC7582E1ZZ

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English

Dashboard › Returns › GSTR2A

B2B Invoice Summary

Uploaded by Supplier

Display/Hide Columns: +5 Search: Search...

Invoice No.	Invoice Date	Invoice Type	Place Of Supply	Supply attract Reverse Charge	Total Invoice Value (₹)	Total Taxable Value (₹)	Integrated Tax (₹)	Central Tax (₹)	Sta Ta
G138	04-08-2020	R	Uttar Pradesh	N	1,66,39,650.00	1,61,55,000.00	0.00	2,42,325.00	2,42

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Goods and Services Tax

Government of India, States and Union Territories

SHARAD CHAND AGRAHA
09AEXPC7582E1ZZ

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English

Dashboard › Returns › GSTR-1 › B2B

GSTIN - 09AEXPC7582E1ZZ
FY - 2020-21

Legal Name - SHARAD CHAND AGRAHARI
Return Period - September

Trade Name - M/S BAJRANG BULLION TRADERS
Status - Filed

4A, 4B, 6B, 6C - B2B, SEZ, DE Invoices

HELP

Recipient wise count | Document wise details

Processed Records

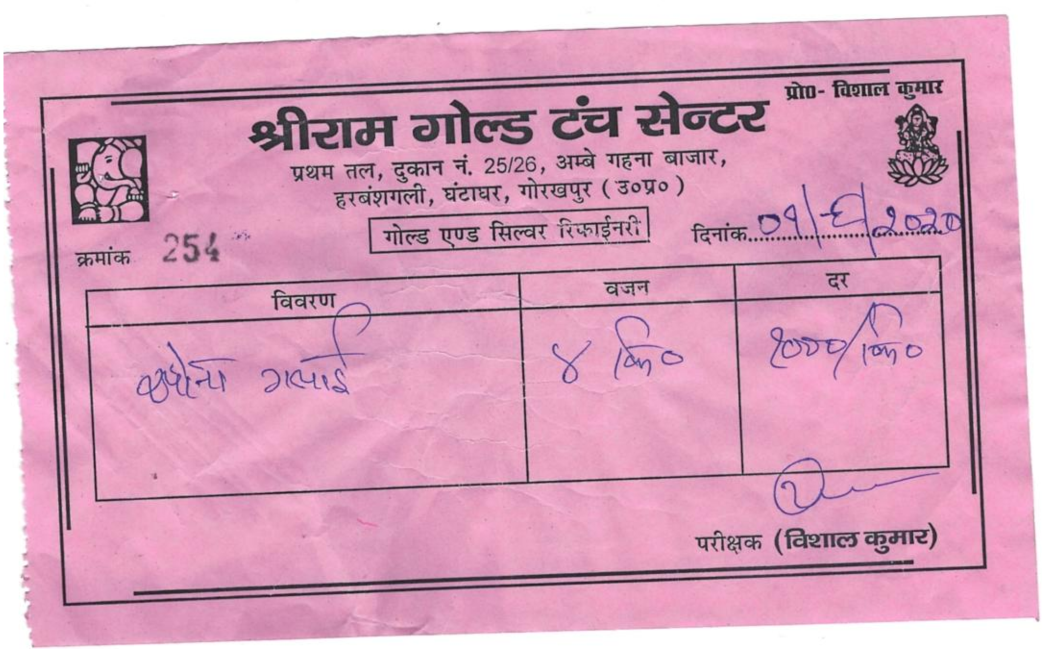
07AHBPJ2687E1ZG MAHAVEER BULLION

Display/Hide Columns: **Records Per Page :** 10 Search...

Invoice no.	Invoice date	Total invoice value (₹)	Total taxable value (₹)	Integrated tax (₹)	Central tax (₹)	State/UT tax (₹)	Cess (₹)	Source	Actions
645	03/09/2020	1,04,64,800.00	1,01,60,000.00	3,04,800.00	0.00	0.00	0.00		
644	03/09/2020	1,04,64,800.00	1,01,60,000.00	3,04,800.00	0.00	0.00	0.00		

23. We also find that /s. Bajrang Bullion Traders have sold 3999.830 grams of gold to M/s Mahaveer Bullion, New Delhi vide Voucher No.644 & 645 both are dated 03.09.2020. It is an admitted fact that Shri Manoj Kumar Nisad and Shri Rajan Kumar Sahani were carrying the voucher No.644 & 645 dated 03.09.2020 at the time of seizure of the gold. Shri Sarad Chand Agrahari who claimed the ownership of the gold has stated that during the financial year 2020-21 he had purchased 1525.010 grams from M/s Mahaveer Bullion, Delhi and 8000 grams from M/s Shree Ji Traders, Lucknow (totaling 9525.010 grams of gold) during the period from 01.04.2020 to 04.09.2020; that after receiving gold bars bearing bar number, he used to get the said gold bars melted from Shri Ram Bullion Refinery and maintained the stock of such melted gold bars, which he used to sell to his customers and for this, he got manufactured the said gold bars in 1 kg form.

24. However, the learned Adjudicating Authority has not accepted his contention. We find that the learned Adjudicating Authority has given findings that the Appellants have not given any evidence regarding melting of the gold from the Shri Ram Bullion Refinery, in this regard we find that the Appellant has submitted the challan evidencing the melting of the gold at M/s Ram Bullion Refinery which is reproduced below:-


प्रो०- विशाल कुमार

श्रीराम गोल्ड टंच सेन्टर

प्रथम तल, दुकान नं. 25/26, अम्बे गहना बाजार,
हरबंशगली, घंटाघर, गोरखपुर (उ०प्र०)

गोल्ड एण्ड सिल्वर रिफाईनरी

क्रमांक 254

दिनांक 04-9-2020

विवरण	वजन	दर
सोना गलाई	8 कि०	2000/कि०

परीक्षक (विशाल कुमार)

25. Learned Adjudicating Authority has given finding that 3999.830 grams gold sold by Shri Sarad Chand Agrahari was not from the out of stock of gold procured by M/s Bajrang Bullion, Gorakhpur. We find that the statement of the learned Adjudicating Authority is not supported by any evidence. The documentary evidence submitted by the Appellants regarding purchase of 1525.010 grams gold from M/s Mahaveer Bullion, Delhi and 8000 grams from Shree Ji Traders, Lucknow during the period from 01.04.2020 to 04.09.2020 has not been admitted.

Customer Copy
PH. NO. 2532032

M/S BAJRANG BULLION TRADERS

HINDI BAZAR : GORAKHPUR

Customer Name & Address :
MAHAVEER BULLION
10/3581, 2nd FLOOR, RAGAR PURA KAROL BAGH : NEW DELHI

State : Delhi Code : 07
GSTIN :07AHBPJ2687E1ZG PAN : AHBPJ2687E

Vou.No.: 644 Date : 03/09/2020

Consignee Detail :
MAHAVEER BULLION
10/3581, 2nd FLOOR, RAGAR PURA KAROL...

Type	Description	Hsn Code	Gross Wt.	Net Wt.	Pcs.	Rate	Value	Dia	Stn.	Dia/Stn Value	Others	Amount (Rupees)
S	GOLD BAR	7108	2000.000	2000.000		50800.00	*******					10160000.00
Total			2000.000	2000.000								10160000.00

	IGST 3.00%	304800.00
Rs One Crore,Four lakh,Sixty Four thousand,Eight hundred,Only	Total Amnt. With Tax	10464800.00
	Bal. [PRD/6-24/08/20]	-900708.00
Rs Ninety Five lakh,Sixty Four thousand,Ninety Two,Only	Balance Amount [Dr.]	9564092.00

FOR M/S BAJRANG BULLION TRADERS

Terms & Conditions :
E & O E

SUBJECT TO GORAKHPUR JURIDICTION ONLY

Bank Details

Bank Name	PUNJAB NATIONAL BANK
Bank Branch	URDU BAZAR-GKP.
Bank A/c No	0184002100045380
Bank Ifsc code	PUNB 0018400

BAJRANG BULLION TRADERS HINDI BAZAR GKP

SIGNATURE

GSTIN [illegible]
PAN [illegible]

Customer Copy
PH. NO. 2532032

M/S BAJRANG BULLION TRADERS

HINDI BAZAR : GORAKHPUR

Customer Name & Address :
MAHAVEER BULLION
10/3581, 2nd FLOOR, RAGAR PURA KAROL BAGH : NEW DELHI

State : Delhi Code : 07
GSTIN : 07AHBPJ2687E1ZG PAN : AHBPJ2687E

Vou.No.: 645 Date : 03/09/2020

Consignee Detail :
MAHAVEER BULLION
10/3581, 2nd FLOOR, RAGAR PURA KAROL...

Type	Description	Hsn Code	Gross Wt.	Net Wt.	Pcs.	Rate	Value	Dia	Stn.	Dia/Stn Value	Others	Amount (Rupees)
S	GOLD BAR	7108	2000.000	2000.000		50800.00	*******					10160000.00
Total			2000.000	2000.000								10160000.00
											IGST 3.00%	304800.00
Rs One Crore,Four lakh,Sixty Four thousand,Eight hundred,Only											Total Amnt. With Tax	10464800.00
											Bal. [PRD/6-24/08/20]	9564092.00
Rs Two Crore,Twenty Eight thousand,Eight hundred,Ninety Two,Only											Balance Amount [Dr.]	20028892.00

FOR M/S BAJRANG BULLION TRADERS

Terms & Conditions :

SUBJECT TO GORAKHPUR JURIDICTION ONLY

BAJRANG BULLION TRADERS
HINDI BAZAR GKP

SIGNATURE

Bank Details :

Bank Name	PUNJAB NATIONAL BANK
Bank Branch	URDU BAZAR-GKP.
Bank A/c No-	0184002100045380
Bank ifsc code	PUNB 0018400

GSTIN NO-09ADPFS1029R1Z9
PAN NO-ADPFS1029R

GST INVOICE

Customer Copy

Ph. No.: 0522-2255368
Ph. No.: 09415007738
Mob.No.: 09415008360

Shriji

SHRI JI TRADERS

321/01 Ground Floor,Bahoran Tola, Chowk
Lucknow (U.P)-226 003
email:- sjtlko@gmail.com

Customer Name & Address : Bajrang Bullion Traders Prop-Sharad Chand Agrahari Hindi Bazar Ganta ghar Chowdhary Building .Gorakhpur(U.P) Ph # 0551-2533032 State : Uttar Pradesh Code : 09 GSTIN :09AEXPC7582E1ZZ PAN : AEXPC7582E	Invoice No : G138 Date : 04/08/2020 Our Bank Detail : State Bank Of India A/c No:37955366603 IFSC Code: SBIN0000125 Main Branch Hazrat Ganj Lucknow(U.P)

Sno.	Description	HSN Code		Weight	Rate	Amount (Rupees)
1	Gold Bullion (99.50) BAR-205899 TO 205900	7108		2000.000 Gm	53850.00	1,07,70,000.0
2	Gold Bullion (99.50) BAR-205901	7108		1000.000 Gm	53850.00	53,85,000.0
				3000.000	Total Amnt.	1,61,55,000.
					SGST 1.50%	2,42,325.0
					CGST 1.50%	2,42,325.0
Rs.One Crore,Sixty Six lakh,Thirty Nine thousand,Six hundred,FiftyOnly					Net Amount	1,66,39,650.

Customer Signature Bajrang Bullion Traders Goods Received In Good Condition Authorised Signature	Signature of person issuing invoice Name : Lokesh Kumar Agrawal Name : Bhuvanesh Chand Agrawal Status : Partner

(1) We declare that this invoice shows the actual price of the goods described that all particulars are true & correct.
(2) Subject to Lucknow jurisdiction only.
(3) Delivery at our LUCKNOW shop only.

GSTIN NO-09ADPFS1029R1Z9
PAN NO-ADPFS1029R

GST INVOICE

Customer Copy

Ph. No.: 0522-2255368
Ph. No.: 09415007738
Mob.No.: 09415008360

Shriji

SHRI JI TRADERS

321/01 Ground Floor,Bahoran Tola, Chowk
Lucknow (U.P)-226 003
email:- sjtlko@gmail.com

Customer Name & Address : Bajrang Bullion Traders Prop-Sharad Chand Agrahari Hindi Bazar Ganta ghar Chowdhary Building Gorakhpur(U.P) Ph # 0551-2533032 State : Uttar Pradesh Code : 09 GSTIN :09AEXPC7582E1ZZ PAN :AEXPC7582E	Invoice No : G113 Date : 14/07/2020 Our Bank Detail : State Bank Of India A/c No:37955366603 IFSC Code: SBIN0000125 Main Branch Hazrat Ganj Lucknow(U.P)

Sno.	Description	HSN Code		Weight	Rate	Amount (Rupees)
1	Gold Bullion (99.50) BAR-204123-24	7108		2000.000 Gm	47500.00	95,00,000.00
				2000.000	Total Amnt.	95,00,000.0
					SGST 1.50%	1,42,500.00
					CGST 1.50%	1,42,500.00
Rs.Ninety Seven lakh,Eighty Five thousandOnly					Net Amount	97,85,000.0

Customer Signature Bajrang Bullion Traders Goods Received In Good Condition Authorised Signature	Signature of person issuing invoice Name : Lokesh Kumar Agrawal Name : Bhuvanesh Chand Agrawal Status : Partner

(1) We declare that this invoice shows the actual price of the goods described that all particulars are true & correct.

(2) Subject to Lucknow jurisdiction only.
(3) Delivery at our LUCKNOW shop only.

GST INVOICE

Customer Copy

GSTIN NO-09ADPFS1029R1Z9
PAN NO-ADPFS1029R

Ph. No.: 0522-2255368
Ph. No.: 09415007738
Mob.No.: 09415008360

Shriji

SHRI JI TRADERS

321/01 Ground Floor,Bahoran Tola, Chowk
Lucknow (U.P)-226 003
email:- sjtlko@gmail.com

Customer Name & Address : Bajrang Bullion Traders Prop-Sharad Chand Agrahari Hindi Bazar Ganta ghar Chowdhary Building Gorakhpur(U.P) Ph # 0551-2533032 State : Uttar Pradesh Code :09 GSTIN :09AEXPC7582E1ZZ PAN :AEXPC7582E	Invoice No : G39 Date : 24/06/2020 Our Bank Detail : State Bank Of India A/c No:37955366603 IFSC Code: SBIN0000125 Main Branch Hazrat Ganj Lucknow(U.P)

Sno.	Description	HSN Code		Weight	Rate	Amount (Rupees)
1	Gold Bullion (99.50) BAR-203203 / 203204	7108		2000.000 Gm	47600.00	95,20,000.0
				2000.000	Total Amnt.	95,20,000.0
					SGST 1.50%	1,42,800.0
					CGST 1.50%	1,42,800.0
Rs.Ninety Eight lakh,Five thousand,Six hundredOnly					Net Amount	98,05,600.0

Customer Signature Bajrang Bullion Traders Goods Received In Good Condition Authorised Signature	Signature of person issuing invoice Name : Lokesh Kumar Agrawal Name : Bhuvanesh Chand Agrawal Status : Partner

(1) We declare that this invoice shows the actual price of the goods described that all particulars are true & correct.
(2) Subject to Lucknow jurisdiction only.
(3) Delivery at our LUCKNOW shop only.

GST INVOICE Customer Copy

GSTIN NO-09ADPFS1029R1Z9
PAN NO-ADPFS1029R

Ph. No.: 0522-2255368
Ph. No.: 09415007738
Mob.No.: 09415008360

Shriji

SHRI JI TRADERS

321/01 Ground Floor,Bahoran Tola, Chowk
Lucknow (U.P)-226 003
email:- sjtlko@gmail.com

Customer Name & Address : Bajrang Bullion Traders Prop-Sharad Chand Agrahari Hindi Bazar Ganta ghar Chowdhary Building Gorakhpur(U.P) Ph # 0551-2533032 State : Uttar Pradesh Code :09 GSTIN :09AEXPC7582E1ZZ PAN :AEXPC7582E	Invoice No : G14 Date : 13/06/2020 Our Bank Detail : State Bank Of India A/c No:37955366603 IFSC Code: SBIN0000125 Main Branch Hazrat Ganj Lucknow(U.P)

Sno.	Description	HSN Code		Weight	Rate	Amount (Rupees)
1	Gold Bullion (99.50) BAR NO 202087	7108		1000.000 Gm	46300.00	46,30,000.00
				1000.000	Total Amnt.	46,30,000.00
					SGST 1.50%	69,450.00
					CGST 1.50%	69,450.00
Rs.Fourty Seven lakh,Sixty Eight thousand,Nine hundredOnly					Net Amount	47,68,900.00

Customer Signature Bajrang Bullion Traders Goods Received In Good Condition Authorised Signature	Signature of person issuing invoice Name : Lokesh Kumar Agrawal Name : Bhuvanesh Chand Agrawal Status : Partner
(1) We declare that this invoice shows the actual price of the goods described that all particulars are true & correct.	(2) Subject to Lucknow jurisdiction only. (3) Delivery at our LUCKNOW shop only.

Thus, we do not find any reason to the claim of the Appellants that the said 3999.830 grams of gold seized from Shri Manoj Kumar Nisad and Shri Rajan Kumar Sahani are not from the said stock. As the gold is seized from the domestic sources Section

123 of the Customs Act are not applicable under the facts and circumstances of the present case. It is the responsibility of the Department to establish that the gold in question was smuggled in nature. We find that the Department has failed to bring in any evidence to establish the smuggled nature of the gold. On the other hand the documentary evidence submitted categorically establishing the gold was procured from domestic sources. Accordingly, we hold that the there is no reasonable belief for seizure of the gold at first point as the gold in question are not liable for seizure and the question of confiscation does not arise. In view of the above we, set aside the confiscation of the gold in question.

26. Regarding the penalties imposed on various Appellants, we find that the penalties have been imposed on allegation that the concerned persons directly or indirectly involved in dealing with the smuggled gold. In view of the above discussions and findings, we observe that there is no evidence available to hold that the gold in question were smuggled in nature. As confiscation of the gold is not upheld, we hold that no penalty is imposable on the persons concerned. Accordingly, we set aside all the penalties imposed in the impugned order.

27. In result, we set aside the impugned order and allow all the six appeals filed by the Appellants with consequential relief, if any, as per law.

(Order pronounced in open court on - **15.09.2026**)

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

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

LKS