

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH – COURT NO. – I

Customs Appeal No. 30367 of 2022 [SM]

[Arising out of Order-in-Appeal No. VJD-CUSTOM-000-APP-009-2022-23 dated 22.06.2022 passed by the Commissioner of Central Tax & Customs (Appeals), Guntur]

Gudipati Subba Reddy

...Appellant

S/o Late Subbareddy,
D.No. 1-90, O.C. Street,
Kallamvaripalem, Budawada Post,
Janakavaram, Pangaluru Mandal,
Prakasam – District,
Andhra Pradesh - 523167

VERSUS

**Commissioner of Central Tax,
Guntur GST**

...Respondent

C.R. Building, Sitaram Prasad Tower,
Red Hills, Kannavari Thota,
Guntur, Andhra Pradesh – 522004

WITH

Customs Appeal No. 30389 of 2022 [SM]

[Arising out of Order-in-Appeal No. VJD-CUSTOM-000-APP-008-2022-23 dated 22.06.2022 passed by the Commissioner of Central Tax & Customs (Appeals), Guntur]

Pathan Jaffar Sadik

...Appellant

S/o Pathanmabu Subhani
D.No. 1-12-57, Barampet,
Narasaraopet, Guntur District,
Andhra Pradesh - 522601

VERSUS

**Commissioner of Central Tax,
Guntur GST**

...Respondent

C.R. Building, Sitaram Prasad Tower,
Red Hills, Kannavari Thota,
Guntur, Andhra Pradesh – 522004

WITH

Customs Appeal No. 30401 of 2022 [SM]

[Arising out of Order-in-Appeal No. VJD-CUSTOM-000-APP-012-2022-23 dated 22.06.2022 passed by the Commissioner of Central Tax & Customs (Appeals), Guntur]

Atluri Ramanjaneya Reddy

S/o Venkata Reddy,
D.No. 2-11, Jagarlamudi Village,
Yuddanapudi Mandal, Prakasam,
Andhra Pradesh-523169

...Appellant*VERSUS***Commissioner of Central Tax,
Guntur GST**

C.R. Building, Sitaram Prasad Tower,
Red Hills, Kannavari Thota,
Guntur, Andhra Pradesh - 522004

...Respondent**WITH****Customs Appeal No. 30404 of 2022 [SM]**

[Arising out of Order-in-Appeal No. VJD-CUSTOM-000-APP-011-2022-23 dated 22.06.2022 passed by the Commissioner of Central Tax & Customs (Appeals), Guntur]

Pinninti Ganesh

S/o Late Sri Ramulu,
D.No. 21-9/1-41F23/3B,
Peddhapudivari Street, Madhuranagar,
Satyanarayanapuram Vijayawada,
Andhra Pradesh-520011

...Appellant*VERSUS***Commissioner of Central Tax,
Guntur GST**

C.R. Building, Sitaram Prasad Tower,
Red Hills, Kannavari Thota,
Guntur, Andhra Pradesh - 522004

...Respondent**WITH****Customs Appeal No. 30405 of 2022 [SM]**

[Arising out of Order-in-Appeal No. VJD-CUSTOM-000-APP-013-2022-23 dated 22.06.2022 passed by the Commissioner of Central Tax & Customs (Appeals), Guntur]

Shaik Imtiyaz

S/o Shaik Mahaboob Basha,
Prop. M/s. M.S. Gold Jewellery,
D.No. 8-33-125, Yusufkhan Street,
Near Foreman Bunglow, Vinchipet,
Vijayawada, Andhra Pradesh-520001

...Appellant*VERSUS***Commissioner of Central Tax,
Guntur GST**

C.R. Building, Sitaram Prasad Tower,
Red Hills, Kannavari Thota,
Guntur, Andhra Pradesh - 522004

...Respondent

AND**Customs Appeal No. 30406 of 2022 [SM]**

[Arising out of Order-in-Appeal No. VJD-CUSTOM-000-APP-010-2022-23 dated 22.06.2022 passed by the Commissioner of Central Tax & Customs (Appeals), Guntur]

Pinninti Nagaraju**...Appellant**

S/o Late Sri Ramulu,
D.No. 21-9/1-41F23/3B,
Peddhapudivari Street, Madhuranagar,
Satyanarayanapuram Vijayawada,
Andhra Pradesh-520011

*VERSUS***Commissioner of Central Tax,
Guntur GST****...Respondent**

C.R. Building, Sitaram Prasad Tower,
Red Hills, Kannavari Thota,
Guntur, Andhra Pradesh - 522004

APPEARANCE:

Shri B. Seetha Ramaiah, Consultant for the Appellant
Shri A. Rangadham and Shri A.V.L.N. Chary, Authorised Representatives
for the Respondent

CORAM: HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING: 12.01.2023
DATE OF DECISION: **02.05.2023**

FINAL ORDER No. A/30086-30091/2023**DR. RACHNA GUPTA**

Present order disposes of six appeals being arising out of same investigation, same show cause notice, common Order-in-Original No. 15/2021/22 dated 30.12.2021 and common Order-in-Appeal dated 22.06.2022, except with different serial number. The facts in brief relevant for the impugned investigation are as follow:

1.1 The Officers of Directorate of Revenue Intelligence (DRI) got a specific intelligence about some persons carrying smuggled gold of foreign origin to have been travelling by a car of make and model Hyundai Xcent bearing registration number TS08 UD 0204 on 07.10.2020. The officers intercepted said car at Venkatachalam Toll Plaza, Nellore while coming from Chennai (at about 21.15 Hrs), in presence of the two Panchas. Two persons were found travelling in the said car. The driver thereof introduced him as Shri Pathan Jaffar Sadik and the co-traveller was identified as Shri Gudipati Subba Reddy. On being specifically asked about possessing/carrying smuggled gold of foreign origin, both of them admitted that they were carrying the gold on their person. They also admitted to not to have any bill/invoice for the said gold. Both of them were searched in the presence of both the Panchas. Shri Gudipati Subba Reddy removed a cloth belt tied to his waist, on opening whereof, two newspaper wrapped packets tied with rubber bands, were found in the said belt. On unwrapping, three un-evenly shaped yellow metal bars having 999 mark on one side of bars and six small uneven sized pieces of yellow metal were recovered. Shri Pathan Jaffar Sadik also took out a newspaper wrapped packet tied with rubber bands from the pocket of his trouser. On getting it unwrapped, one un-evenly shaped yellow metal bar having 999 mark on one side of the bar and two tiny pieces of yellow metal were found in the said packet.

1.2 The recovered pieces were got photographed, Panchanama dated 07.10.2020 was prepared for the said recovery. The recovered pieces of yellow metal got examined by the Gold

Appraiser, Shri K. Mallikarjun who after conducting necessary tests issued a certificate dated 08.10.2020 certifying that the metal recovered is gold of 99.9% purity. The recovery from Shri Gudipati Subba Reddy was certified to be of 2000 grams valuing at Rs.1,04,00,000/- @ Rs.5,200/- per gram. The recovery from Shri Pathan Jaffar Sadik was certified to be of 500 grams with a value of Rs.26,00,000/-. Both of them admitted the gold to be of foreign origin which they got remelted. Even, while being examined under Section 108 of the Customs Act, 1962 on 07.10.2020 itself, they stated that they have purchased the said gold from M/s. Uday Kranti Sri Bullion (known as UKS Spot, Chennai), however, without any bills by making the cash payment of Rs.1,02,00,000/- and Rs.25,50,000/- by Shri Gudipati Subba Reddy and Shri Pathan Jaffar Sadik respectively. Both of them admitted to not to have any document or bill pertaining to the purchase of said foreign origin remelted gold for the reason that the said gold was imported illegally into India.

1.3 Based on such deposition of both the possessors that the officers of DRI had the reasonable belief for holding the goods as liable for confiscation under the provisions of the Customs Act, 1962. Due to the same reason the car used as a means of transportation for carrying remelted smuggled gold of foreign origin was also seized by the DRI Officers. The Officers then examined Shri Pinninti Ganesh/appellant, Proprietor of M/s. UKS Spot who in his statement dated 16.10.2020 admitted that on his behalf and as per his instructions, his brother, Shri Pinninti Nagaraju/appellant used to receive the foreign origin smuggled gold from Shri Gudipati

Subba Reddy and Shri Pathan Jaffar Sadik. The said deposition was admitted by Shri Pinninti Nagaraju/appellant also vide his statement dated 19.10.2020. These statements were sufficient for the DRI Officers to hold that Shri Pinninti Ganesh and Shri Pinninti Nagaraju along with Shri Gudipati Subba Reddy and Shri Pathan jaffar Sadik were knowing fully well that they are possessing and dealing with the smuggled gold of foreign origin which otherwise is an offence. They dealt with the purchasing and selling of such smuggled gold with clear knowledge that same was liable to confiscation. Shri Gudipati Subba Reddy in his statement dated 08.10.2020 also stated that he agreed to sell his 2000 grams of smuggled gold to Shri Suresh Kumar of Guntur who had a Jewellery Shop in Patnam Bazar area, Guntur. Shri Suresh Kumar was therefore examined who vide his statement dated 02.11.2020 though acknowledged his firm to be engaged in sale and purchase of gold and silver bullion and jewellery but he outrightly denied to know Shri Gudipati Subba Reddy.

1.4 Shri Pathan Jaffar Sadik retracted his statement vide his letter dated 21.10.2020 mentioning that on 05.10.2020, he was having a balance stock of gold ornaments in his shop, weighing 597 grams, he got those ornaments melted by Shri Jadhav Duryodhan, gold refiner at Narasaraopeta and obtained 500 grams of melted gold with 99.9% purity. A letter of said Shri Jadhav Duryodhan was also annexed therewith and it was said melted gold that he was carrying to Chennai to purchase some ornaments. However, because no deal could struck that he was returning back with the said 500 grams of melted gold. On being enquired, Shri Jadhav

Duryodhan acknowledged himself to be engaged in gold and silver melting. He also acknowledged for putting a stamp of 999 mark on the remelted gold, however, as per the customer's wish.

1.5 Later Shri Gudipati Subba Reddy also retracted his statement vide letter dated 18.11.2020 about receiving 2000 grams of gold from Shri Shaik Imtiaz/appellant who while handing over him the melted gold asked him to go to Chennai to exchange the said gold for purchase of readymade gold articles. Since he could not purchase any of such articles that he was returning back with said 2000 grams of melted gold in the car owned by his nephew Shri Atluri Ramanjaneya Reddy. On being examined by the DRI Officers, Shri Shaik Imtiyaz had admitted the contents of said retraction with the mention that he purchased 1011.170 grams of 22 carat gold jewellery from Penava Gold, Mumbai, on 06.10.2020 against the invoice of the same date and purchased gold of 1162.750 grams of gold jewellery from Badradri Bullion and Jewelers vide invoice no. 16 dated 05.10.2020. It was this 2173.92 grams of jewellery which after being melted resulted in 2000 grams of FT Gold as was given to Shri Gudipati Subba Reddy. FT gold was mentioned to be the gold obtained after jewellery is melted down and the copper or silver mixed in the jewellery is completely removed.

1.6 After recording various other statements that the impugned show cause notice was served upon the appellant proposing the confiscation of the seized gold of foreign origin and penalty under Section 112(a) and 112(b) of Customs Act, 1962 was also proposed

to be imposed upon all the appellants. The said proposal has been confirmed by the original adjudicating authority vide the order as mentioned above. The appeal thereof has been rejected vide the order under challenge i.e. Order-in-Appeal dated 22.06.2022. Being aggrieved all the appellants are before this Tribunal.

2. I have heard Shri B. Seetha Ramaiah, learned Consultant for the appellants and Shri A. Rangadham and Shri A.V.L.N. Chary, learned Authorized Representatives for the department.

3. Learned Counsel for the appellants has mentioned that as per department's own case, appellants were intercepted while coming from Chennai. The question for gold which was recovered from two of the appellants to be an imported article does not at all arise. This particular fact is impressed to be sufficient to hold that there is no cogent reason of any reasonable belief with the DRI Officers to hold the recovered gold to be a foreign origin. Thus the authorities below have wrongly invoked Section 123 of the Customs Act, 1962. It is further submitted that all the appellants have fully cooperated during the investigations and all relevant facts have duly been brought to the notice of DRI Officers. The requisite documents in the form of invoices of purchasing gold through Shri Shaik Imtiyaz were brought on record to prove that the gold in the hands of Shri Gudipati Subba Reddy and Shri Pathan jaffar Sadik was melted FT gold, hence, no question arises for it to be of foreign origin. It is mentioned that not only the confiscation has wrongly been ordered, the penalties on all the appellants have also been wrongly imposed. Accordingly, the order of Commissioner (Appeals) is prayed to be

set aside and the appeals are prayed to be allowed. To support his submissions learned Counsel has relied upon the following decisions:

(i) *Amba Lal Vs. The Union of India and Others reported as 1961 AIR 264, 1961 SCR (1) 933 (S.C.)*

(ii) *J. Suresh, S/o J. Laxminarayana Vs. Commissioner of Customs (Prev.) vide Final Order No. A/30123/2022 dated 16.11.2022.*

(iii) *Balanagu Naga Venkata Raghavendra & Balanagu Venkata Siva Kanaka Ratnam Vs. Commissioner of Customs, Vijaywada vide Final Order No. A/30018-30019/2021 dated 15.02.2021*

(iv) *Deepak Handa Vs. Principal Commissioner of Customs (Preventive) vide Final Order No. 51520-51521/2021 dated 25.05.2021*

4. While rebutting these submissions learned DR has submitted that at the time of search of Shri Gudipati Subba Reddy and Shri Pathan Jaffar Sadik, in the presence of independent witnesses on 07.10.2020, both of them admitted for the metal on their person to be remelted gold of foreign origin as being purchased without any bill. It was specifically mentioned that since the gold was illegally brought into the country, hence was available at comparatively cheaper prices and that they both were aware of this fact. It is further submitted that at the time of recording their initial statements and drawing the Panchanama, none of the appellants informed about the source of their purchase. It was subsequently vide their respective retraction, the bills of purchase were submitted. However, the seller denied the gold seized by DRI to be the same gold as was sold by him vide the bill produced. It is

submitted that there is sufficient circumstantial evidence on record which points to the fact that the gold recovered was the smuggled gold. The circumstances were enough to give reasonable belief to the investigating DRI Officers for the gold to be the smuggled one. Section 123 of the Customs Act, 1962 has rightly been invoked by the authorities below. Impressing upon no infirmity in the order of confiscating the said gold and for imposing penalty upon all the appellants herein, learned DR has requested for the appeals in hand to be dismissed. Reliance is placed upon the following decisions of Hon'ble Supreme Court:

(i) Om Prakash Khatri Vs. Commissioner reported as 2019 (11) TMI 796 (S.C.)

(ii) Balram Kumawat Vs. Union of India and Ors. reported as 2003 (8) TMI 221 (S.C.)

(iii) Kanungo & Co. Vs. Collector of Customs, Calcutta & Ors. reported as 1972 (2) TMI 35 (S.C.)

5. Having heard the rival contentions of the parties, perusing the records of all these appeal and after going through the case laws relied upon by the parties. The points of adjudication to my opinion are as follows:

- (i) Whether Section 123 of the Customs Act, 1962 is invocable in the given set of circumstances.
- (ii) Whether the gold recovered in question was actually the gold of foreign origin illegally imported into Indian Territory and thus is liable for confiscation.
- (iii) Whether appellants are liable for penalty.

6. First point of adjudication

Section 123 of the Customs Act postulates the theory of 'reverse burden of proof.' The Section reads as follows:

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 the owner of the goods so seized.

(2) This section shall apply to gold [and manufactures thereof], watches and any other class of goods which the Central Government may by notification in the Official Gazette specify.

From the above, it is clear, that the burden of proof shifts under Section 123, when (a) there must be goods to which the section applies; (b) the goods must have been seized; and (c) the seizure must be under a reasonable belief that they are smuggled goods.

6.1 Reverting to the facts of the present case, I observe that at the time of interception and preparing of Panchanama about recovery of gold from Shri Gudipati Subba Reddy and Shri Pathan Jaffar Sadik, they both in their statement as was recorded under

Section 108 of Customs Act, 1962, admitted that the gold in their possession was actually a gold of foreign origin, however, it got remelted for erasing the foreign markings but 99.9% purity mark was still got embossed thereupon. They also admitted to have no documents for proving that they were legally possessing that quantity of gold in several number of uneven pieces. These particular admissions, to my opinion, are sufficient to invoke the theory of reverse burden of proof i.e. the burden of proof that the gold recovered is not the smuggled on lies upon Gudipati Subba Reddy and Pathan Jaffar Sadik in terms of Section 123 of Customs Act, 1962. I draw my support from the decision of Hon'ble Apex Court in the case of **Labhchand Dhanpat Singh Jain Vs. State of Maharashtra, AIR 1975 SC 182**, wherein the Hon'ble Apex Court has held as follows:

The appellant admitted, in his statement under Section 108 of the Act that transporting of these pieces of gold was an offence. If the gold had been legally imported before 1948 it could not be an offence to carry it. The appellant had not proved who Pannalal, the person who was alleged by him to have given him the gold to carry, was. Atleast, the burden of proving an innocent receipt of gold lay upon the appellant under Section 106 Evidence Act. The totality of facts proved was enough, in our opinion, to raise a presumption under Section 114 Evidence Act that the gold had been illegally imported into the country so as to be covered by Section 111(d) of the Act. The appellant had not offered any other reasonable explanation of the manner in which it was being carried."

6.2. Otherwise also the statement as recorded under Section 108 of the Customs Act are admissible in the evidence. Hon'ble Supreme Court in the case of **Naresh J. Sukhawani Vs. Union of India reported as 1996 (83) E.L.T. 258** held that the statement recorded under Section 108 of the Customs Act, 1962 made before

the customs officers is not a statement recorded under Section 161 of Cr.PC., for customs officers not being the police officers. Therefore, the statement got recorded by customs officer is the material piece of evidence which can be used as substantive evidence connecting the deponent with the contravention of the customs act. Thus, I do not find any reason to reject the statement of both the appellants from whose possession the gold in question was recovered about admitting the gold to be a foreign origin. Hence, I do not want to differ from the findings arrived at by the adjudicating authorities below that Section 123 Customs Act, 1962 has rightly been invoked.

6.3 In view of the above discussion it is held that Section 123 of the Customs Act, 1962 has rightly been invoked by the department.

7. Second point of adjudication

The appellants have taken a plea that the seizure in question is admittedly a town seizure and since there were no foreign markings on the gold, hence, it has wrongly been confiscated under Section 111 of the Customs Act and penalties have wrongly been imposed under Section 112(a) and (b) of the Act. But in the light of the above discussion that the admissions by Shri Gudipati Subba Reddy and Shri Pathan Jaffar Sadik is a substantive piece of evidence to *prima facie* belief that the gold recovered from them was of foreign origin, the burden was now upon both of them to prove it otherwise. I observe that both of them though had made retraction of their earlier statements but it was a delayed retraction. Shri Gudipati Subba Reddy retracted his statement almost after 45

days and Shri Pathan Jaffar Sadik retracted after nearly 15 days. It is observed that they could not have proved the plea of their earlier statements being recorded under coercion and threat. The original adjudicating authority has in detail, discussed the said failure of both these appellants. I do not find any reason to differ from those findings.

7.1 In addition, they both admittedly are in the business of selling and purchasing gold and silver in bullion as well as in jewellery form. Though as per their retracted version they had some old jewellery in their stock due to previous purchasers which they got melted to FT gold and the said remelted gold they were carrying to Chennai to purchase new designs. However, could not purchase, resultantly were returning with the said remelted gold. Shri Gudipati Subba Reddy got it melted from Shri Shaik Imtiyaz and Shri Pathan Jaffar Sadik mentioned to have got the ornaments melted through Shri Jadhav Duryodhan. But I observe that both the melters were also examined by the DRI Officers. Both of them though admitted that they used to melt gold ornaments for Shri Gudipati Subba Reddy and Shri Pathan Jaffar Sadik. However, they stated that they used to return the melted gold in the pieces of uniform shape. Shri Shaik Imtiyaz vide his statement dated 14.12.2020 stated that the gold he gave to Shri Gudipati Subba Reddy was FT gold having purity of 95 to 99.5%. He specifically mentioned that FT gold can never have the purity of 99.9%. But as seen from the Panchanama and also from the fact that recovered gold was admittedly of 99.9% purity and that the said admission has not been retracted.

7.2 In view of these facts, I hold that there appears no evidence to prove the gold recovered from Shri Gudipati Subba Reddy is the gold which got melted by Shri Shaik Imtiyaz. This observation receives corroboration from the statement of Shri Shaik Imtiyaz that shape of remelted gold given to Shri Gudipati Subba Reddy was always used to be uniform in one shape and the pieces were never used to be uneven broken or cut. He even stated that he cannot remember that he had melted a large quantity as that of 2000 grams of gold on 06.10.2020. Similarly Shri Jadhav Duryodhan also acknowledged melting gold for Shri Pathan Jaffar Sadik but he also has emphasized that he always used to return the melted gold into one piece of uniform shape instead of those being into several pieces of cut and uneven shape. Apparently and admittedly the gold recovered from the possession of Shri Gudipati Subba Reddy was in the form of two gold bars and six small uneven and cut pieces and the one recovered from Shri Pathan Jaffar Sadik was in the shape of one bar and three small uneven cut pieces of gold. These observations are sufficient for me to hold that even the retracted version receives no cogent proof rather it is highly insufficient to prove that the recovered gold was actually of Indian origin or was being traded by legal means.

7.3 I further observe that appellant Shri Pinninti Ganesh and Shri Pinninti Nagaraju had admitted dealings of sale and purchase of gold from Shri Gudipati Subba Reddy and Shri Pathan Jaffar Sadik with the clear admission that both of them used to deal into smuggled gold which is why that gold used to be sold on cheaper

prices and Shri Pinninti Ganesh and Shri Pinninti Nagaraju were in regular dealings of sale and purchase of gold with them. None of them have retracted their statement nor any other evidence has been produced on record to falsify their admission. The only document which has come up on record is in the form of two invoices, one issued by M/s. Penava Gold and another from M/s. Badradri Bullion & Jewelers. But the description of gold in those invoices does not match to the description of the gold recovered. Above all, the pieces of gold recovered were got photographed by the DRI Officers. The scanned images are very much in the show cause notice. Perusal thereof shows that each piece has some embossed inscription as contrary to the statement of the appellants that the impugned gold was FT gold out of old ornaments. None of the statement recorded during investigation has any explanation about those embossed inscriptions on the recovered gold pieces. Nor there is any evidence to justify the 999 purity marka thereupon.

7.4 Under Section 111 (d), 111(p) and 111(i) of the Customs Act, any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force can be confiscated. Gold is a prohibited good inasmuch as its import was permitted during the relevant period only by designated agencies under the Foreign Trade (Development & Regulation) Act, 1992. There is no evidence on record whatsoever to show that the seized gold was

imported by one of the approved agencies. Thus, the gold is liable for confiscation under section 111(d).

7.5 As far as section 111(i) is concerned, it provides for confiscation of "**any dutiable or prohibited goods found concealed** in any manner in any package either before or after the unloading thereof". The gold in question was, indeed found concealed in the shoes and secret pockets of the backpack. Learned counsel submitted that this should apply to only cases when the goods are being unloaded and not when the goods are being carried domestically in train. We have considered this argument. The section applies either before or after unloading. Thus, if smuggled goods are unloaded after concealing then by this logic it should not matter that they were being carried in a concealed manner. A smuggler carrying a jacket full of gold biscuits can land and once he unloads the jacket, if the argument of the learned counsel is accepted, the concealment should not matter.

7.6 A careful reading of section 111(i) shows that it does not matter whether the concealment was before or after unloading so long as the concealed goods are either dutiable or prohibited goods. Dutiable goods as per section 2(14) means any goods which are chargeable to duty and on which duty has not been paid. Thus, once the duty is paid on the imported goods, they are no longer dutiable goods. Thereafter, one is free to carry them wherever, in any manner whatsoever they please. For instance, if any goods were imported and the duty has been paid on them, whether one

carries them thereafter openly or concealed, section 111(i) does not apply. Until the duty is paid, they cannot be kept concealed. In case of prohibited goods, if the conditions subject to which the goods can be imported are fulfilled, they cease to be prohibited goods and they can be carried openly or concealed as one pleases. In case of gold during the period in question, if gold had been imported by a designated authority, it would not have been a prohibited good (since the condition of import was fulfilled) and if duty has also been paid, it would not have been a dutiable good. Thereafter, if the designated authority, in turn, sold the gold to anyone and such person carried them, concealed in a secret jacket or false bottom of a suitcase or shoes, section 111(i) would not apply. However, In this case, there is no evidence that the goods in question were imported by the designated organizations who alone could have imported the gold. Therefore, the confiscated gold is prohibited good and since it has been found concealed in the newspaper wrapping inside the waist pouch, it is held that Section 111(i) of the Act applies to hold that the gold recovered for appellant is liable for confiscation.

7.7 I further observe that the definition of import in Section 2(23) of the Customs Act, 1962 has no relevance as to who had brought the article into India from a place outside India. The expression is defined to mean an act of bringing into India from a place outside India. Section 2(23) thereof defined prohibited goods. I observe that in terms of Foreign Trade Policy (exim policy) 2015-2020, the importation or exportation of gold or silver is restricted, gold is accordingly a prohibited goods. This exim policy has followed the

earlier Circular No. 34/2013 dated 04.09.2013 issued with respect to guidelines on import of gold/gold bars into India. It has been clearly mentioned therein that the gold shall be permitted to be imported only by 10 agencies mentioned therein as being notified by DGFT. In the light of these provisions it was the mandatory duty of the appellants to prove that to by way of documentary evidence that the gold in question is the part of such quantity of the gold as has been imported in furtherance of the said circular and the said policy. If they claim it to be of Indian origin they had to produce the document of their purchase. As already mentioned above nothing is produced by any of the appellants.

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.

8. Third point of adjudication

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 anyway 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**, 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 Vs. Abani Maity AIR 1979 SC 1029; (1979) 4 SCC 85, 90**, 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 Vs. 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."

9. In view of the entire above discussion, three of the questions of adjudication as framed earlier stands decided in favour of the Revenue and against the appellant. Resultantly, all six appeals stand dismissed.

[Order pronounced in the open court on **02.05.2023**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)