

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
REGIONAL BENCH – COURT NO.2**

Customs Appeal No. 76086 of 2016

(Arising out of Order-in-Original No. CCP/NER/10/2016 dated 18th April, 2016 passed by Commissioner of Customs (Prev.), North Eastern Region, 110, M.G. Road, Shillong.)

R. K. Angangbi Singh, Imphal

(P.O. Imphal, Dist. Imphal West, Manipur-795 001)

...Appellant (s)

VERSUS

Commr. of Customs (Preventive), Shillong,

(Customs House, 110, M.G. Road, Shillong, Meghalaya-793 001)

...Respondent (s)

With

(i) Customs Appeal No. 77030 of 2016 (Shri Sashikant Shinde, Director vs. Commr. of Customs (Prev.) Shillong)

(ii) Customs Appeal No. 77031 of 2016 (Ajit Shinde, Director vs. Commr. of Customs (Prev.) Shillong)

(iii) Customs Appeal No. 77032 of 2016 (Anand Kumar Agarwal vs. Commr. of Customs (Prev.) Shillong)

Appearance:

Mr. P. Sikdar, Consultant, Mr. H. K. Pandey & Mr. Nihar Das Gupta, both Advocates, for the Appellant

Mr. Sourav Chakraborty, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

Final Order No. 76536-76539/2023

Date of Hearing: 27.07.2023

Date of Pronouncement: 01.09.2023

PER RAJEEV TANDON:

The present appeal is in the second round of litigation before this Tribunal, against the order in original number CCP/NER/10/2016 dated 18.4.16 passed by the learned Commissioner of Customs (Prev.) North-Eastern Region, Shillong. The appellants have extensively pursued legal recourse in the matter. Thus at the very outset, the appellants filed a writ petition being number 344/2015, before the Hon'ble High Court of Meghalaya, Shillong, seeking inter alia, the quashing of the seizure, dated 27.08.2014,

and directing the department to release the 26 pieces of gold biscuits seized by it under Section 110 of the Customs Act 1962¹. The Hon'ble High Court vide a detailed order dated 27.08. 2015 dismissed the writ petition filed by the appellants, directing them to file statutory appeal in the matter and seek remedies as provided for under Chapter XV of the Customs Act, 1962. Against the impugned order of the Hon'ble High Court the appellants filed a SLP before the Apex Court which too got dismissed vide Order dated 23.11.2015. Alongside, the Show Cause Notice dated 27.08.2015, got to be adjudicated by the Commissioner of Customs vide Order-in-Original dated 18 April, 2016, confiscating absolutely the seized gold, besides imposing personal penalties on the appellants amongst others. Appeal filed against the impugned order before the Tribunal was decided vide Order dated 29.11.2017². An ROM, filed by the appellants against the said order of the Tribunal was dismissed vide orders dated 19.3.2018. The appellant had also approached the Hon'ble High Court of Meghalaya in appeal against the order of the Tribunal dated 29.11.2017 pleading therein, that certain factual points and legal issues raised before the Tribunal were not dealt by it, in its order. This however, was dismissed as withdrawn vide orders of the Hon'ble High Court dated 05.07.2019, in view of the orders passed by the Tribunal in the ROM filed. The appellants, subsequently, filed a review petition under Section 114 read with Order XLVII, Schedule 1 of the Code of Civil Procedure, 1908, seeking review of the direction of the Hon'ble High Court dated 5.7.2019. This too was dismissed as withdrawn with liberty to the appellants to seek appropriate remedy in accordance with law, in terms of its orders dated 05.07.2019. Accordingly vide orders dated 23.10.2019 passed by this Tribunal in ROA, the final order of the Tribunal dated 29.11.2017 was recalled and the appeals restored to their

1. The Act**2. 2018(361) ELT Tri-Kolkata.**

original numbers. It is in this background that the present appeals have been listed for final disposal of the matter and were heard afresh by us.

2. Briefly stated on 26.08.2014. based on prior specific information, the Officers of the Railway Protection Force (RPF), intercepted four persons upon arrival at Dimapur, by train number 15960 DN Kamrup Express from bogey number S-8. Four persons intercepted, were (i) RK Templer Singh, (ii) RK Samsung Singh, (iii) Smt. T, Shantibala Devi, (iv) RK Rojita Devi. All the four accused were said to be resident of Imphal. Upon checking of their belongings and personal search, nothing incriminating was recovered from RK Templer Singh and RK Samson Singh. The personal search of Smt. T. Santibala Devi yielded 13 pieces of yellow metal biscuits believed to be gold of foreign origin. Likewise, personal search of RK Rojita Devi also yielded another 13 pieces of yellow metal biscuits believed to be gold of foreign origin. Thus collectively recovering 26 pieces of yellow metal biscuits believed to be gold. Upon a query from the RPF officials-Santibala Devi and RK Rojita Devi confirmed the said yellow metal biscuits to be gold, further informing that they were given to them by RK Angangbi Singh at Imphal meant to be delivered to him at Howrah, Kolkata. They confirmed that they were carrying the said goods without any valid documents, legal authority (refer para 1.4 of show cause notice), however the (RPF) personnel did recover photo copies of 3 tax invoices, from the arrested persons (which they claimed were in support of these gold biscuits) (refer para 2.1 of show cause notice). RK Samsung Singh and RK Templer Singh also reiterated and reconfirmed the assertions made by T. Santibala Devi and RK Rojita Devi. All the four accused were arrested by the RPF on 26.8.2014 At Dimapur and were later produced before the Hon'ble Special Railway Magistrate, Tinsukia on 27.8.2014. As per the directions of the Hon'ble Magistrate, the case was handed over to the Customs Department for further investigations. The four accused arrested by the RPF alongwith 26 gold

biscuits said to be of foreign origin, were therefore handed over to the Customs Authorities at Tinsukia on 27.8.2014.

3. It was observed by the Customs Officers that the seized gold biscuits were of rectangular shape having no markings. Photo copies of the three tax invoices recovered from the said persons by the RPF in support of the seized gold biscuits pertaining to the year 2013–2014, issued by M/s Magna Projects Private Ltd. Kolkata, in favour of Rajkumar Angangbi Singh, of Imphal, against sale of one Kg gold, were also made over to the authorities. The arrested persons confirmed that in addition to the three tax invoices, they did not have any other document in support of the recovered 26 pieces of gold biscuits. As the recovered gold biscuits and the description of the goods mentioned on the said three tax invoices did not match, the Customs Officers seized the goods, under the reasonable belief, that the said gold biscuits were of foreign origin and were smuggled into India in violation of Section 7(1)(c) and Section 11(c) and (f) of the Act, and hence liable to confiscation under Section 111(b) and 111(d) of the act, *ibid*. The value of the seized gold was assessed at Rs.1,22,15,438/- only (Rs. One crore, twenty two lakhs fifteen thousand and four hundred thirty eight only).

4. In their statements recorded by the customs authorities, Rojita Devi and Santibala Devi, on 27.08.2014, confirmed that the RPF personnel had recovered 26 pieces of gold biscuits from their possession, which they had kept hidden in their jeans pant/petticoat, and that the owner of the said gold biscuit is one RK Angangbi Singh (RKAS) of Imphal, that they had received the said gold biscuits from the appellant RK Angangbi Singh on 25.08.2014 and were instructed to carry the said gold biscuits to Kolkata for delivery to him in Kolkata. Both RK Templer Singh and RK Samson Singh also reiterated and confirmed the versions of the two ladies. All the four accused were arrested by the Customs authorities, under Section 104 of the Act. On 28.08.2014, all the

four accused were remanded to judicial custody, and were released on bail subsequently.

5. The follow-up investigations were undertaken by the department, and the original copies of the three tax invoices referred to supra issued by M/s Magna Projects Private Limited, alongwith particulars of payment of sale/purchase were obtained. The Director of M/s. Magna Projects Private Limited, Shashikant Shinde upon enquiry informed the departmental authorities that at the time of selling, the one Kg bar and 100 gm. biscuits of primary gold, carry the serial number as well as make and inscriptions of the country of origin besides carrying the name and purity of the gold. He further stated that they do not delete/erase/tamper with the inscription of the serial numbers, name of the maker, asayer's, name and particulars of purity, found on the body of the bar or the biscuit and actually sell the bullion to the customers "as such". With reference to the photo copies of the three Tax Invoices bearing number 37260-13-14 dated 01.06.2013, 38757/13-14, dated 11.06.2013. and 47709/13-14 dated 19.07.2013, he confirmed that the said three photo copy of the invoices bore the stamp of their company and signature of their employee Anand Agarwal, that the three tax invoices were issued at the request of RK Angangbi Singh, who had told them that he had lost the original copy of the invoice issued at the time of delivery of the goods. He confirmed that the said three tax invoices were duplicate copies, the original of which had been recovered by the DRI Officers and that the gold mentioned in the impugned three tax invoices was delivered on the date of issue of the invoice either to RK Angangbi Singh in person or his wife at their office in Kolkata. *He stated that vide Invoice No. 37260/13-14 dated 01.06.2013, they had sold two cut pieces of two 1 kg gold bar of MMTC Pamp bearing Serial No. 048606 and 048607, that, vide tax invoice No. 38757/13-14 dated 11.06.2013 they had sold three 1 kg bars bearing Serial No. SO B37928, SO B37929, SO B37930 and two 100 gm. cut pieces of Serial number*

SO B37927 of Rand Refinery, that, vide tax invoice No. 47709/13-14 dated 19.07.2013 they had sold 172.350 gm cut piece from bar number 055605 of MMTC Pamp, one kg. bar bearing Sl. No. 055606 of MMTC Pamp, one kg. bar bearing Serial No. L06976 of Argor Heraeus and 801.630 gm cut piece from bar Serial No. SO B45576 Rand Refinery. He added that they had received the payment towards these sales by cheque only, and that though he had been dealing with Rajkumar Angangbi Singh for 2-3 years, they had not dealt with R.K Angangbi Singh during the year 2014-15. **Specifically to the delivery of twenty six pieces of gold biscuits to R K Angangbi Singh in the month of August 2014, it was confirmed by the Director of the firm, Magna Projects Pvt. Ltd., that they did not have any transaction with R K Angangbi Singh during 2014-15.**

6. Scrutiny of the original copies of three tax invoices (duplicate seller's copy) obtained from the office of M/s Magna Projects Pvt. Ltd. by the authorities, revealed the name(s) of the foreign makers of the imported gold bars as MMTC Pamp, Rand Refinery and Argor Heraeus whereas the name(s) of the foreign makers of the imported gold bars were absent in the duplicate copies (duplicate bills) and also that the signatures given in the original copies as well as in the duplicate copies did not match with one another.

7. R.K. Angangbi Singh in his statement submitted that he had given twenty six pieces gold biscuits to Rojita Devi and Santibala Devi and sent them to Kolkata for making small gold coins while he had travelled from Imphal to Kolkata on flight on 26.08.2014, to collect the said gold from them at Howrah Railway Station on 27.08.2014. He confirmed to have borne the expenses for the tickets of the said four persons from Imphal to Kolkata. He also stated that he had submitted the supportive documents for the said 26 pieces gold biscuits i.e. invoice Nos. (i) 17320/13-14, (ii) 22281/13-14, (iii) 18594/10-11, (iv) 46827/13-14 and (v) 40791/13-14 vide which he had bought the said

goods earlier from M/s Magna Projects Pvt. Ltd., Kolkata to justify ownership of the same. (These documents are at variance to the invoices referred to in para 5 above). He also stated that, he had one shop of gold jewellery, M/s Radhika Jewellery bearing Registration No. 6192, IMC, Gold (Bullion) Jewellery Act (A) of Sagolband Bijoy Govinda as Head Office and Branch Office at Paona Bazar, Governor Road, Imphal and that the proprietor of the shop was his wife R.K (O) Sonia. Regarding sale and purchase of the goods, he stated that he did not maintain proper records due to lack of staff, that, the seized 26 pieces gold biscuits belonged to him which he had bought from M/s Magna Projects Pvt. Ltd. as legally approved gold. He also added that there was no markings on the gold biscuits since he had done the conversion for these 26 pieces of gold biscuits into different sizes and weight as per his requirements.

7.1 R.K Angangbi Singh, in his subsequent statement dated 11.09.2014 while reconfirming and reiterating the information tendered earlier added that he had purchased the said gold biscuits from M/s Magna Projects Pvt. Ltd., a bullion merchant of Kolkata and that he made the payment by cheque and RTGS only, that, he had given them three purchase invoice bills No. 37260/13-14, 38757/13-14 and 47709/13-14 pertaining to M/s Magna Projects, Kolkata to justify that the seized gold was not smuggled and that these documents were genuine supporting documents. About the gold purchased under cover of the five invoices referred to in earlier para, he said that, most of the gold purchased was in biscuit form with some markings i.e. (i) Invoice No. 17320/13-14 is in 50 gm biscuits from, (ii) Invoice No. 22281/13-14 is in one kg gold bars form, bearing No. AH 03230, AH 03231, AH 03233, AH 03232, AH 03234 and also having inscriptions Valcambi Suisse, (iii) Invoice No. 18594/10-11 is 1 kg gold bar bearing No. A 502067 and 353.29 in cut piece with No. A 502029, (iv) Invoice No. 46827/13-14 is in cut piece of gold bar inscribed SO B35732 (659.830 gm) and on the other 41.49 gm. is not written anything and only a cut piece, (v) Invoice No 40791/13-14

is in cut piece of two parts. He contended that these gold biscuits and cut pieces were made into different form as per his requirements because he could not give 1 kg bar or 50 gm bar to the goldsmiths and that he had made (Dhalai) in different sizes of biscuits and there was no number written on the said biscuits and he had sent twenty six pieces gold biscuits through the said persons approximately weighing 4334 gm. He further contended that, he used to purchase small quantity of gold in jewellery form (10 gm or 15 gm or others, of used jewellery, from local people having proper bills and documents and did not purchase local gold without documents. He emphatically stated, that, the Dhalai of the biscuits was generally done by him, his wife, younger sister and his goldsmith, at his shop and sometimes at his residence and in the instant case he, his wife and younger sister had made the Dhalai, and further his wife had done the concealment, as per his advice to keep the same secretly. On being quizzed whether any Customs case had been registered in the past against R.K Templer, he stated that, in an earlier case, his name and his wife's name came out where gold biscuits from the possession of one Saraogi of Kolkata were seized, and that, he was actually not related to the said case and they replied accordingly to the Customs Department. As for record maintenance of gold he stated that he did not maintain sale, purchase, stock register properly, attributing it to lack of staff. For the seized gold he admitted that, he had done the Dhalai as per requirements and the weight of the gold after Dhalai ranged between 100 gm to 166 gm/167 gm approximately. He admitted that he had heard that gold was smuggled from Myanmar, but he had neither seen smuggled gold nor did he knew about the weight and shape of the smuggled gold. That, in the instant case, shape and weight of seized gold bars could be similar to the smuggled gold but he did not know what could be the weight of smuggled gold bars. On being asked why he sent the carriers through road while he himself was going by flight to collect the same he stated that they were unemployed so he sent them by road so

that he could provide monetary help to them and if he had sent them by flight the expenditure would have been much higher and he could not provide monetary benefit to them. Finally, he mentioned that he had not insured the said twenty six pieces of gold biscuits.

8. R.K. Radhika Devi, in her statement tendered on 30.09.2014, interalia stated that her actual name is R.K Sonia Devi and her shop is called Radhika Jewellery. That, as per directions of the appellant R.K. Angangbi Singh, R.K Ranjana Devi had given the said gold biscuits to Rojita and Shantibala. That she had concealed the said gold and also modified the garments. That, R.K Ranjana Devi had delivered the modified garment to Rojita and Shantibala as per directions of R.K. Angangbi Singh for safe journey. That, the 1 kg bar and cut pieces of gold were purchased from Kolkata. That, in the 1 kg bar there was some marks like Valcambi and Emmrate. That, she and R.K. Angangbi Singh had purchased the gold and the payment made by cheque and RTGS only. That, she used to sell gold in jewellery form and sometimes as gold biscuits weighing 5 gm and 10 gm. That, R.K. Angangbi and herself converted the gold in biscuits form and that R.K. Ranjana and her goldsmith M. Sanjoy had also joined in the work. That, the weights of gold biscuits in Dhalai form varies from 100 gm to 170 gm but they had not done Dhalai at the shop. That, after Dhalai the gold biscuits became totally plain i.e., without mark. That, in the instant case, she and R.K Angangbi had converted the gold in biscuits form weighing 166.5 gram to 167.5 gram. That, the gold biscuits without any markings and of weight 166.5 to 167.5 gm had been sent to Kolkata for making gold jewellery like necklace sets, bangles, finger rings and earrings and coins of 5 gram to 10 gram. That, the gold biscuits recovered from Santibala and Rojita were not for sale in Kolkata. That, she had been investigated earlier also in connection with a gold smuggling case of one Mr. Saraogi.

9. R.K Ranjana Devi, in her statement dated 30.09.2014 stated that she had delivered the gold biscuits to R.K Rojita and T. Santibala as directed by R.K Angangbi Singh. That, the gold bars were concealed in the pants and undergarments. That, she did not know who modified the clothes except that it was handed over to her by Sonia Devi. That, she delivered the modified clothes but she did not give any instructions to them as she was not asked to say anything by Sonia Devi. That, she did not know who gave the documents recovered from them. That, R.K Angangbi Singh made the gold biscuits from the gold bar. That, she handed over the gold to the said two ladies in their respective houses.

10. In the course of follow-up investigations, with the Assistant Commissioner of Taxes, Government of Manipur, Imphal it came to light that no registration in the name and style of (i) M/s. R. K Angangbi Singh, S/o R.K Sanayaima Singh, R/o of Sagolband, Bijoy Govinda Leikei, Imphal, or (ii) M/s R.K Sonia Devi, W/o R.k Angangbi Singh, R/o Sagolband, Bijoy Govinda Leikei, Imphal, or (iii) M/s Radhika Jewellers, Sagalband, Imphal and also (iv) M/s Radhika Jewellers Paona Bazar, Governor Road, Imphal, was even made, under Manipur Value Added Tax (MVAT) Act, 2004. It was however ascertained that M/s Radhika Jewellery, Sagolband Bijoy Govinda, Imphal was registered as a Proprietorship of Rajkumari Ongbi Sonia Devi, W/o R.K. Angangbi Singh, Sagolband, Bijoy Govinda Imphal West, and the effective date of registration was 10.12.2014. Similarly the Executive officer, Imphal Municipal Council had reported that M/s. Radhika Jewellery, Sagolband, Imphal had been issued the shop licence and registration licence bearing No. 6192 only on 27.08.2014.

11. In the course of further follow-up investigations, Shri Anand Aggarwal, Accountant of M/s Magna Projects Pvt. Ltd., 163 Rabindra Sarania, Kolkata-7 in his statement dated on 15.05.2015, stated inter alia that he had been looking after the entire financial and account aspects of M/s Magna

Projects Pvt. Ltd., Kolkata -7. That, he had given copies of the old invoices freshly printed out from their system on their company's stationery and had signed and put the company's seal for their authenticity, affixed with the company's round seal. That, apart from invoice they did not issue any challan, delivery note etc. That, for issuance of duplicate invoices, they did not maintain any separate records. All duplicate invoices are provided based on their records. He further confirmed that as per records there was no sale to M/s Radhika Jewellery during the period 2012-13 and 2013-14, and during the year 2014-15 they had sold 15 kg of silver grains valued Rs.5,44,500/- under cover their invoice No. 04242/14-15 dated 8.11.2014. That, they had not sold any gold to M/s Radhika Jewellery, Imphal during the period 2012-13, 2013-14 and 2014-15. That, upon verification of the records, it was ascertained that **invoice No. 02082/14-15** dated 28th July 2014 was issued to R.K Angangbi Singh, of Sagolband Road, Bijoy Govinda Leikei, Imphal having PAN No. BGKPS9342A. On being asked that R.K Angangbi Singh of Sagolband, Bijoy Govinda, Near Amudon Lai, Imphal 795001, Manipur, purchaser of gold valued at Rs. 23,84,000/- had given his PAN No. BGKPS8342A in the **invoice No. 72282/12-13** dated 11.03.2013 he stated that the said PAN No. was found to be non-existent as per online verification report. That, in respect of Ranjana Devi, Imphal to whom gold bar valued Rs. 8,00,000/- was sold under **invoice No. 71248/12-13** dated 06.03.2013, no PAN number was provided by the customer. That, in respect of R.K Ronjana Devi, Sagolband Road, Bijoy Govinda Leikai, Imphal (West) to whom gold bar valued Rs. 50,00,000/- was sold under **invoice No. 02083/14-15** dated 28.07.2014 the PAN No. furnished was given BBGPD7132J, however, as per online verification, it was seen that the PAN belonged to Raj Kumari Ranjana Devi. **That, he was not able to state whether Ranjana Devi, R.K Ranjana Devi and Raj Kumari Ranjana Devi as appearing in different invoices were same.** That, in respect of R.K (O) Sonia Devi, Sagolband Amudon Leirak, Imphal to whom

gold bar valued at Rs. 92,50,000/- had been sold under **invoice No. 44824/13-14** dated 03.07.2013 the party had not provided any PAN No. That, in respect of R.K Sonia Devi, Sagolband Road, Bijoy Govinda Leikai, Imphal (west) to whom gold bar valued at Rs. 70,00,000/- was sold under **invoice No.02084/14-15** dated 28.07.2014, the PAN No. provided by the party was DHUPS7776H, which upon online verification, was found issued in favour of Raj Kumari Ongbi Sonia. That, he was not able to state whether **R.K (O) Sonia Devi, R.K Sonia and Raj Kumari Ongbi Sonia** are one and the same. That, he prepared the invoice mainly based on the names reflected on cheques or RTGS of the customers. That, they ignore slight variation in the indicated name in the PAN records during online verification. That, for requests for raising invoice in the name of third party, they entertain such request only after getting a proper authorization on letter head from the customer to whom the bill is required to be raised. That, in the above cases they received letters from the party (who made the payment) advising them to raise invoice in the name of a third party. That, the request was received from the first party on the letter head of the third party and accordingly gold was also delivered to the third party. That, these changes had not been shown in their invoices since there was no such scope in the invoices generated through "Taly ERP 9" software. That, as per records, under cover of **invoice No. 17320/13-14** dated 29.04/2013, gold valued Rs. 3,00,000/- was sold to M/s Milan Kanak Saaj (Jewellers), Baruipur, Station Road, Kalitala Railgate, 24 PGS (S), Kolkata-700144. That, in the other copy of **invoice No. 17320/13-14** dated 29.04.2013 showing sale of gold 8,000 grams of gold, valued at Rs. 2.26 crore, as was produced before him by the Investigation officers, was signed by Raj Kumar Angangbi Singh in the space meant for Receiver's Signature. That, this shows that the gold under the second invoice was received physically by Raj Kumar Angangbi Singh. He reiterated that invoice no. 17320/13-14 issued to M/s Milan Kanak Saaj (Jewellers) was genuine as per their records and

accounts and that, the second invoice No. 17320/13-14 dated 29.04.2013 where party name was shown as Raj Kumar Angangbi Singh showing sale of 8 kg gold valued Rs. 2.26 crore was not genuine and fake. That the rubber stamp and the paper stationery which were used for generating the fake invoice were of their company. He stated that on the date of issue of the invoice, he was not present in the office. That, the signature on the invoice signed by authorized signatory for the company was not his. That, he was not in a position to identify the person who signed the said invoice for the company. That, their Company had not purchased any gold from R.K Angangbi, Raj Kumar Angangbi Singh, R.K Sonia Devi, R. K (O) Sonai Devi, R.K Ranjana, Ranjana Devi, R.K Granites, Radhika Jewellery of Imphal, Manipur nor had they done any making of jewellery, coins etc. for the above persons, nor did they have any licence/permission for hallmarking of gold. That, R.K Angangbi Singh, R.K Ranjana Devi, R.K Sonia and Radhika Jewellery etc. of Manipur who purchased gold from their company were treated as individuals as evident from their names except Radhika Jewellery. That, the PAN No. provided by these purchasers were of individuals. That, Radhika Jewellery provided the PAN No. of R.K Sonia and was accordingly reflected in the only invoice issued to that party. That, in case of sales to customers outside West Bengal they provide information separately in their periodical/quarterly statutory returns to the Sales Tax Authority as unregistered dealers. That, Rajkumar Angangbi Singh, R.K Angangbi, R.K Sonia, R.K (O) Sonia Devi, R.K Ranjana, Ranjana Devi, R.K Granites were categorized under unregistered dealers while filing return with the Sales Tax Authority.

11.1 However, the appellant Anand Kumar Agarwal, subsequently vide letter dated 16.05.2015 retracted his statement given on 15.05.2015. Anand Kumar Agarwal was therefore again summoned to depose and tender his statement but he did not appear before the investigators thereafter.

12. We have heard the two sides at considerable length in view the significant factual contents of the narrations. The Learned advocate for the appellants essentially pleaded that they were large scale purchasers/traders of gold that they had done no wrong and the gold seized from the possession of the accused was licitly procured and needs to be released in their favour.

13. From the material evidence discussed in foregoing paras and the narrations the following emerges and can be summarised; that :

- i. On 25th August 2014, the Railway Protection Force personnel, at Dimapur Railway Station recovered 26 pieces of gold biscuits from the possession of T. Santibala Devi and R.K. Rojita Devi kept concealed in their waistline of Jeans pant/petticoat, collectively weighing 4334 gms appropriately
- ii. The gold biscuits seized were in the form of rough biscuits without any markings/inscriptions or any number and were not supported by proper documents. Each gold biscuit weighing 166.52 gm to 167.05 gm were alleged by the investigators to be similar to the gold biscuits smuggled from Myanmar and were not in conformity to the locally available gold biscuits, weighing generally in between 116 gm and 117 gm.
- iii. Admittedly, the foreign markings available on the said goods were removed by application of heat before transportation of the same.
- iv. Thirteen pieces of the biscuits were kept concealed in the waist line of the Jeans Pant of T. Santibala Devi and another thirteen concealed inside the waistline of the Petticoat of R.K. Rojita Devi.
- v. The said goods were being transported/carried from Imphal to Kolkata without any Sale Tax Challan, Seller/Invoice, Bill, etc.,
- vi. The photocopies of three invoices said to be issued by M/s Magna Projects Pvt. Ltd., Kolkata, to Rajkumar Angangbi Singh, Imphal recovered from the 4 carriers of gold was found to be fake and forged as the goods sold under the said invoices, were found to be in the form of 1 kg bars as well as in

the form of smaller biscuits. Therefore, the photocopies of the said invoices recovered/produced were not relatable and do not correspond to the said recovered twenty six pieces gold. *(Gold bars, biscuits or coins are normally sold in polished/finished condition having logo/inscription/number/assayers name or purity markings etc. for identification, however nothing as such were there on the recovered goods nor reasons for the same could be explained by the carriers.)*

vii. The said invoices were for sale/transportation of gold from Kolkata to Imphal whereas, in the instant case, seized/confiscated gold was being transported from Imphal to Howrah, Kolkata. Also no consignment note/challan, nor any authority letter in support of transportation of the said gold biscuits was produced by any of the four persons viz. RK Templer Singh, RK Samsung Singh, T Santibala Devi and RK Rojita Devi, travelling together at the time of interception.

viii. The assay report of the seized gold biscuits furnished by the Indian Government Mint, Kolkata has shown higher purity, than what was mentioned in the recovered invoices. Thereby, evidencing that the copies of the said invoices did not correspond to the recovered gold biscuits.

ix. On 09.09.2014, R.K. Angangbi Singh produced another five sets of invoices No. **17320/13-14** dated 29.04.2013, **22281/13-14** dated 6.6.2013, **40791/13-14** dated 21.06.2013, **46827/13-14** dated 10.07.2013 and 18594/10-11 dated 07.01.2011, all issued by M/s Magna Projects Pvt. Ltd, Kolkata, in the name of Rajkumar Angangbi Singh to justify transportation of the said twenty six pieces gold biscuits. (He had earlier stated that purchase invoices No. **37260/13-14** dated 1.6.2013, **38757/13-14** dated 11.06.2013 and **47709/13-14** dated 19.07.2013, were handed over to the carriers without any ulterior intentions as they commenced the journey hurriedly and that the actual documents were these documents which he had submitted afterwards i.e. the aforesaid five purchase invoices.) It is thus

evident that the documents produced by the persons from whose possession the said goods were recovered also admittedly by the appellant do not relate to the seized gold biscuits and the documents produced later were submitted as an act of afterthought.

x. The five purchase invoices produced by R.K. Angangbi Singh on 9.9.2014, to justify transportation of the twenty six pieces gold biscuits were all purportedly issued by M/s Magna Projects Pvt. Ltd., Kolkata, in the name of R.K Angangbi Singh. Investigations revealed that there was no reference of purchase invoice No.17320/13-14 dated 29.4.2013 in the ledger of M/s Magna Projects Pvt. Ltd., Kolkata. Shri Anand kumar Agarwal, Accountant, M/s Magna Projects Pvt. Ltd., Kolkata, stated that invoice No. 17320/13-14 dated 29.4.2013 showing party's name as Raj Kumar Angangbi Singh in the matter of sale of 8 kg gold valued at Rs.2.26 crore was not genuine and was a fake invoice, as the actual said invoice was for Rs.3lakh and issued in favour of Milan Kanak Saaj (Jewellers) of Kolkata. It therefore can reasonably be believed that the tax invoice No.17320/13-14 dated 29.04.2013 issued by M/s Magna Projects Pvt. Ltd., Kolkata, in the name of Raj Kumar Angangbi Singh for sale of 8 kg gold and which was produced by R.K. Angangbi Singh on 9.9.2014, while claiming the seized gold is a manipulated and a void document. Therefore, it is apparent that Rajkumar Angangbi Singh had produced falsified documents in order to justify transportation of the smuggled gold.

xi. R.K. Angangbi Singh in the Writ Petition filed before the Hon'ble High Court of Meghalaya had claimed that the gold biscuits under seizure pertained to the stock of gold purchased vide Invoice No. 02082/14-15 dated 28.7.2014 issued in favour of R.K. Angangbi Singh, 02083/14-15 dated 28.7.2014 issued in favour of R.K. Angangbi Singh and 02084/14-15 dated 28.07.2014 issued in favour of R.K. Ranjana Devi. He has thus contradicted his own statement subscribed before the Customs Officers on 9.9.2014, wherein he claimed that

the seized gold were consigned from the stock pertaining to Invoice No.17320/13-14 dated 29.4.2013, 22281/13-14 dated 6.6.2013, 40791/13-14 dated 21.6.2013, 46827/13-14 dated 10.7.2013 and 18594/10-11 dated 7.1.2011.

- xii. Sashi Kant Shinde, Director of M/s Magna Projects Pvt. Ltd., Kolkata specifically stated that M/s Magna Projects Pvt. Ltd., Kolkata, had no business dealings with R.K. Angangbi Singh during the financial year 2014-2015. In support of his claim he had submitted ledger account of Rajkumar Angangbi Singh and R.K. (O) Sonia which made it evident that invoices No.02082/14-15 dated 28.7.2014, 02083/14-15 dated 28.7.2014 and 02084/14-15 dated 28.7.2014 produced by R.K. Angangbi Singh while claiming the seized gold biscuits too were fabricated and void. The factual contents of his statement is also supported by the statement of Anand Agarwal.
- xiii. Thus even though, R.K. Angangbi Singh has produced three different sets of purchase invoices to claim the ownership of the seized 26 pieces of gold biscuits on three different occasions as indicated in the following table :

Invoice recovered at the time of seizure	Invoices submitted on 09.09.2014 Customs Authorities	Invoices in transit challan produced in Writ petition
<u>37260/13-14</u> dated 01.06.2013, issued in favour of Raj Kumar Angangbi Singh	<u>17320/13-14</u> dated 29.04.2013, issued in favour of Raj Kumar Angangbi Singh	<u>02082/14-15</u> dated 28.07.2014 issued in favour of R.K Angangbi Singh
<u>38757/13-14</u> dated 11.06.2013, issued in favour of Raj Kumar Angangbi Singh	<u>22281/13-14</u> dated 06.05.2013, issued in favour of Raj Kumar Angangbi Singh	<u>02083/14-15</u> dated 28.07.2014 issued in favour of R.K Rajana Devi
<u>47709/13-14</u> dated 19.07.2013, issued in favour of Raj Kumar Angangbi Singh	<u>40791/13-14</u> dated 21.06.2013, issued in favour of Raj Kumar Angangbi Singh	<u>02084/14-15</u> dated 28.07.2014 issued in favour of R.K Sonia
	<u>46827/13-14</u> dated 10.07.2013, issued in favour of Raj Kumar Angangbi Singh	
	<u>18595/10-11</u> dated 07.01.2011, issued in favour of Raj Kumar Angangbi Singh	

There is nothing to establish on record that even at least one of the sets of invoices tendered were genuine and could cover the impugned sale and possession of the seized/confiscated gold. The onus cast upon the appellants to establish licit acquisition/possession of gold under Section 123 of the Act, is thus not discharged by the appellants.

xiv. While the appellants, by virtue of their books of accounts have stated that they are large scale gold dealers having procured nearly 43 kgs. of gold valued at around Rs.13 crore, from Kolkata during 2013-14, on the other hand they ascribe their failure to manage invoices and other records to satisfactorily link the seized gold with the various sets of invoices tendered (or any licitly produced evidence), by them as to be on account of lack of man power. Thus, it belies logic, if gold over ten times the quantity of seized gold can be duly recorded in their books of accounts, what prevents in satisfactorily demonstrating proper and legitimate accountal and documentation of seized gold, if at all it ever existed. The said argument of shortage of staff is thus a mere ruse to coverup their colossal failure.

xv. The statement tendered by Anand Agarwal, though retracted, is an important testimony, as it not only contains wealth of information but is also corroborative with the actual testimonies of others like his own Director, Shashikant Shinde. Also, given the fact that Anand Agarwal thereafter (post retraction), did not make himself available to give his testimonies afresh is evident of the fact that the impugned retraction was a mere after thought and hence holds no legal force.

xvi. Invoice number 17320/13-14 dated 29.04.2013 that was particularly handed over by none else but R.K Angangbi Singh to the

Customs authorities on 09.09.2014 too was ascertained, upon enquiries to be a cancelled invoice (that is to say there was no sale made under cover of the said invoice), due to non-payment by the appellant, and was admitted as having been tendered inadvertently. This is enough proof of the trail of attempts made by R.K Angangbi Singh at trying to hoodwink the authorities.

xvii. While R.K Angangbi Singh is emphatic in claiming that the set of five invoices tendered by him are actually by way of "genuine" sales of seized gold, (refer his statement dated 11.09.2014), the investigations undertaken have amply demonstrated that all these were submitted as clever designs to hoodwink the authorities and actually do not even the least bit can be said to satisfactorily discharge their onus in law.

xviii. The fact of the matter remains that no gold sales were made by Magna Projects Pvt. Ltd. in 2014-15 to R.K Angangbi Singh or any of his associates. Thus despite this seizure of 4.3 kgs (approx.) of gold, five months down the line into the financial year, in the wake of completely non-satisfactory discharge of the burden, by repeated resubmissions of different invoices (and that too not having been found to be genuine one way or the other) is just not legally tenable.

xix. The experts have pointed out that the seized gold was of a high purity and by weight approximates the gold bars commonly available and seized by the authorities at Indo-Mayanmar Border, rather than being akin to locally sourced gold bars in terms of weight and purity.

xx. It has come out during the investigations that at least two of the appellants herein namely RK Templer Singh and the wife of R.K Angangbi Singh – RK Radhika Devi, had earlier been also investigated in

an offence relating to smuggling of gold. The needle of suspicion thus pointing at them as repeat offenders.

- xxi. The falsification of PAN Numbers or the non-submission thereof, against purchase of gold, even in respect of high value sale of gold; invoicing of gold purchase under pseudo or closely or deceptively similar names with or without acronyms coupled with the fact that necessary licences/registrations under allied acts like Manipur VAT or the shop license issued, are all post the date of seizure; is sufficient enough to establish a mindset rich with mal intentions.
- xxii. That even though, were any of the invoices tendered by R.K Angangbi Singh considered to be as covering the valid sales, there has been no attempt by R.K Angangbi Singh to show as to how many of the seized biscuits were cast out by them of say a 1 kg. gold bar or the cut pieces etc. for which R.K Angangbi Singh very enthusiastically submitted the same.
- xxiii. The constant change in stance to establish licit ownership with not even any single given set or even any of the tendered invoices, independently or in association, able to demonstrate the valid ownership is a complete blow to the efforts of R.K Angangbi Singh in establishing his bonafides.
- xxiv. It is thus evident that the marks and numbers, inscriptions on the seized gold bars have been very cleverly obliterated by Raj Kumar Angangbi Singh and/or his associates, to overcome the barrier of proving its legitimate acquisition.
- xxv. The clincher of the evidence at manipulation, forgery and fraud is the fact that duplicate invoices are managed/produced before the authorities, the originals of which upon verification were found to have

been issued to another third person and for a very distinct quantity. The case in point is that of invoice number 17320/13-14 dated 29.04.2013 issued to Milan Kanak Saaj Jewellers of Kolkata as brought out supra and in para 13(x) above.

14. It is thus apparent that the possessors/claimant of seized/confiscated gold have produced/submitted different and varying sets of invoices issued by M/s Magna Projects Pvt. Ltd., Kolkata towards their attempt to showcase licit acquisition of the seized gold. Interestingly, the description of the said goods, mentioned in none of these sets of invoices corresponds to the gold under seizure. Also as discussed in foregoing paras, all the sets of these invoices have been found to be false, forged, fictitious, manipulated and hence ab initio void. Invoices recovered/produced at the time of seizure were initially claimed as cover documents for the acquisition of the seized gold. R.K Angangbi Singh, the claimant of the said gold himself had negated these invoices and he produced a different set of invoices on 09.09.2014 claiming them as the actual set of documents for the said gold under seizure. Again, R.K Angangbi Singh submitted a different set of invoices/transit challans as a legit cover of documents for the seized gold while filing Writ Petition before the Hon'ble High Court of Meghalaya, Shillong. It is thus apparent that R.K Angangbi Singh had produced/submitted different sets of invoices in a deliberate attempt to mislead the investigations and as an act of afterthought as well as to justify transportation of smuggled goods and in an attempt to discharge the onus cast upon the under Section 123 of the Act.

15. The exercise at repeated self-contradiction, thus generates no legal justification in support of the appellant and is sufficient enough to demonstrate that their arguments are no more than fancy fairy tale folklores, unacceptable in law and certainly it is not that all

co-incidences were to happen with the appellants only. The repeated attempt at legitimization of seized gold are completely crass, put up as if one fails the other backs up and if that too fails the back up for the back up, backs up. This malicious design of R.K Angangbi Singh has been clearly brought out by investigators.

16. It is also fascinating to note that while R.K Angangbi Singh claimed that he was sending the gold biscuits to make jewellery and small denomination gold coins at Kolkata, which contention was reiterated before the Hon'ble High Court wherein he stated that he would make hallmark gold coins to sell the same at Imphal during the Nigol Chak Kouba festival in Manipur, R.K Sonia Devi has pointed out that gold was sold in jewellery and biscuits form like 5 gm and 10 gm etc. and limited gold biscuits were sold in a month. It is therefore clear that the biscuits and coins sold in the shop was limited, having weight between 5 to 10 gm. No prudent businessman would ever convert 1 kg gold bars into 166-167 gm biscuits when the market demand was for 5-6 gm gold biscuits. Rather, if at all required, one would have converted the 1 kg bar to 5-10 gm biscuits directly, if so was the need. This again establishes the complete hollowness of their arguments.

17. On the point of transit challan, R.K Angangbi Singh stated that he had issued a transit challan dated 25.08.2014. But, in the instant case the persons from whose possession the gold biscuits were recovered failed to produce any transit challan. In their statements subscribed to the RPF personnel, Tinsukia, none of the arrested persons mentioned about the transit challan, nor was the same highlighted in their statements subscribed before the Customs Officers, at the time of seizure. Further, the RPF'S list of the documents/goods recovered from

the said persons was authenticated by the Special Judicial Magistrate, Tinsukia. The arrested persons were produced before the Chief Judicial Magistrate, Tinsukia, by the RPF personnel and nowhere records lists out or mentions the stated transit challan. This submission again is a simple hogwash like the rest of their contentions as noted in paras above. Also as evident from the table below a comparison of the transit challan with the recovered invoices, indicates no akinness.

Impugned Transit Challan records	Invoices produced at the time of seizure
02082/14-15 dated 28.07.2014 Issued in favour of R.K Angangbi Singh	37260/13-14 dated 01.06.2013 issued in favour of Rajkumar Angangbi Singh
02083/14-15 dated 28.07.2014 issued in favour of R.K Ranjana Devi	38757/13-14 dated 11.06.2013 issued in favour of Rajkumar Angangbi Singh
02084/14-15 dated 28.07.2014 issued in favour of R.K Sonia	47709/13-14 dated 19.07.2013 issued in favour of Rajkumar Angangbi Singh

Note the wide variation in dates and the names of the persons in the two columns.

It is therefore, evident that the description of the purchase invoices in transit challan produced before the Hon’ble High Court, Shillong did not tally with the purchase invoices recovered at the time of seizure. Since, the transit challan records did not match with the recovered purchase invoices it is clear that the transit challan too were fabricated, and presented subsequently, like various other documents and submitted as an afterthought perhaps to even mislead the judiciary; besides being a failed attempt to justify transportation of the smuggled goods.

18. Finally, apart from the plethora of discussions in preceding paras to indicate the complete failure of the appellant's burden required to be discharged in law, to support legal acquisition of seized gold, it may be worthwhile to reproduce the following table from the case records to point out the multiple entities crafted by the appellants, to provide a cover for their "works."

Sl. No.	Name	Address	PAN	VAT/T IN	Active in Financial Year
1.	Raj Kumar Angangbi Singh	Sagolband Bijoy govinda, Near Amudon Lai, Imphal-795001, Manipur	BGKPS8 342A	NIL	2012-13, 2013-14
2.	R.K. Angangbi Singh	Sagolband Road, Bijoygovinda Leikai, Imphal	BGKPS9 342A	NIL	2014-15
3.	R.K (O) Sonia Devi	Sagolband Amudon Leirak, Imphal	NIL	NIL	2012-13, 2013-14
4.	R.K Sonia	Sagolband Road, Bijoygovinda Leikai, Imphal, (West)	DHUPS 7776H	NIL	2014-15
5.	Ranjana Devi	Sagolband Amudon Leirak, Imphal	NIL	NIL	2012-13, 2013-14
6.	R.K Ranjana Devi	Sagolband Road, Bijoygovinda Leikai, Imphal (West)	BBGPD71 32J	NIL	2014-15
7.	R.K Granites	Sagolband Amudon Leirak, Imphal	BGKPS8 342A	1492036 8127	2012-13, 2013-14
8.	Radhika Jewellery	Sagolband Bijoy Govinda Leikai, Imphal	DHUPS 7776H	NIL	2014-15

19. The Hon'ble Patna High Court, in the case of **Commissioner of Customs, Patna v. Amor Kishor Prasad**³ had categorically observed:

"1.8 The fact that there was tampering of the marks and numbers of the seized gold bars coupled with the fact that the owner thereof could not disclose the source of acquisition should necessarily lead to an inference that the seized gold bars were of foreign origin, smuggled into the territory of India."

The Hon'ble Supreme Court in case of **KL Pavanny v. Asstt. Collector (HQ), Commissioner of Excise Collectorate, Cochin**⁴ had held that a mere general corroboration is sufficient and each of the detail was not required to be gone into. It even upheld the validity of the statement, containing wealth of information that was retracted in close proximity of making it and therefore disallowed the said retraction. Substantial force in the matter can also be drawn from the law propounded by the Hon'ble Apex Court, in the case of :

i. **Naresh J Sukhawn v. Union of India**⁵

ii. **Surjeet Singh Chabra v. Union of India**⁶

3. 2013 (298) E.L.T. 711 Pat.

4. 1997 (90) E.L.T.-241 S.C.

5. 1996 (83) E.L.T.-258 S.C.

6. 1997 (89) E.L.T. 646 S.C.

20. In view of the discussions and our findings as herein and relying on the ratio of law as propounded by the Hon'ble High Court, Patna and the Hon'ble Apex Court (Para 19 refers), we are of the view that no case is made out by the appellants, calling for interference in the impugned order passed by the Ld. Commissioner. The same is therefore upheld and the appeals filed are dismissed.

(Pronounced in the open Court on 01.09.2023)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Pinaki