IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75154 of 2015

(Arising out of Order-in-Original No. 02-Cus/CC/FBG/2014 dated 25.08.2014 passed by the Commissioner of Central Excise and Service Tax, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna – 800 001)

Shri Sonu Kumar Deshmukh **: Appellant**
S/o. Late Shankar Panduray Deshmukh
A.T.: Baritola, Near Bata Showroom,
P.O. & P.S.: Buxar, Bihar – 802 101

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
4th Floor, C.R. Building, Birchand Patel Path,
Patna – 800 001

APPEARANCE:

Shri Nilotpal Chowdhury, Advocate
Smt. Atika Sumran Ahmed, Advocate
For the Appellant

Shri Sourabh Chakravorty, Authorized Representative
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75099 / 2025

DATE OF HEARING: 17.12.2024

DATE OF DECISION: 22.01.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the impugned Order-in-Original No. 02-Cus/CC/FBG/2014 dated 25.08.2014 passed by the Commissioner of Central Excise and Service Tax, Patna, wherein the Ld. Commissioner has absolutely confiscated the gold weighing 2513.40 grams, valued Rs. 76,65,870/-. A penalty of Rs. 10,00,000/- was also imposed on the appellant under section 112(b) of the Customs Act, 1962. Aggrieved against the confiscation of gold and imposition of penalty, Shri. Sonu Kumar Deshmukh (the appellant), has filed this appeal.

2. The facts of the case are that gold bars weighing 2513.40 Grams valued at Rs. 76,65,870/- was seized from the personal possession of Mr. Sonu Kumar Deshmukh while he was about to board the Brahmaputra mail on 24.10.2013. Apart from gold, 3/6 pcs of handsets as well as Indian currency amounting to Rs. 29,470 were also seized. The seizure was effected by a team of officers comprising of the Superintendent (Prev.) Circle Kishanganj and Preventive Officers assisted by SSB officials and G.R.P./R.P.F. personnel on the 'reasonable belief' that the said gold was contraband in nature and was smuggled from Bangladesh. Consequent to seizure, statements of all the three apprehended persons were recorded in terms of section 107 of the Customs Act, 1962, wherein the appellant stated the name of Srikant Jadhav as the person from whom the said gold was purchased. However, the said statement was later on retracted by the appellant.

2.1. A search was conducted at the premises of Srikant Jadhav of Sonarpatti Kishanganj whose employee Tanaji Dilip Kumar Shindhe was found accompanying the appellant and his friend to Kishanganj Railway Station on 24.10.2013. In his statement, he admitted to have directed his staff to see off the appellant at the railway station.

2.2. A search was also conducted at the premises of the appellant and the statement of his mother Smt. Suman Devi was recorded wherein she had admitted that the appellant and his brother were engaged in smelting of gold and silver. During the course of his judicial custody, the appellant had retracted his earlier statement dt. 25.10.2013 and instead submitted that the gold seized from his possession was licitly purchased from M/s Akshay Kripa jewelers (Pvt.), Chandni Chowk vide invoice no. 46 dt. 18.04.2013 and that the payment for the same was done through cheque no. 2037 of the Axis Bank, Buxar.

2.3. On a follow-up, the officers made enquiry with M/s Akshay Kripa Jewellers whereby the firm admitted that the appellant had been their regular customer for the period 17.04.2013 to 20.05.2013 and made his purchases via RTGS/Account Transfer Mode. This in turn led the officers to investigate M/s Lawat Jewellers (Pvt.) Ltd. and M/s Atma Ram Amar Nath Jewellers of Chandi Chowk, New Delhi who were concerned with sale of gold to M/s Akshay Kripa Jewellers (Pvt. Ltd.). Based on the statement of M/s Lawat Jewellers (Pvt.) Ltd. and M/s Atma Ram Amar Nath Jewellers, the officers visited "HDFC bank" Kailash Building, K.G. Marg, New Delhi-110 001 to ascertain the origin of import of the gold that was supplied to the said two firms. HDFC bank, vide Letter dt. 03.12.2013, supplied Bill of Entry & Packing List containing the details of gold imported by their bank to the said two firms during the period 15.04.2013 to 18.04.2013. Further investigation was done with the HDFC Bank, Harsha Bhawan, Connaught Place, New Delhi and with the Chief General Manager (Import & Export S.T.C. Ltd. Jawahar, Vyapar Bhawan, New Delhi regarding details of gold bars imported and delivered for the period 20.02.2013 to 20.05.2013 which were imported from Rand Refinery, South Africa and sold to customers. Subsequently HDFC bank, Harsha Bhawan vide Letter dt. 08.01.2024 gave details of customers to whom the gold was imported from M/s. Rand Refinery, South Africa. It was found that M/s. Lawat Jewellers (P) Ltd. & M/s. Atma Ram Amar Nath were the recipients of such imported gold from M/s. Rand refinery, South Africa. From the letter dated 03.12.2013 of HDFC Bank, it was found that they also imported gold from Switzerland.

2.4. The appellant submitted documents as issued to him by M/s Supreme Gold and thereby contended that the gold seized from his possession could have been possibly procured from both M/s Akshay Kripa Jewellers & Supreme Gold Jewellers, Delhi in the usual course of trade which could not be recollected by him then. Thus, the appellant claimed that he has submitted all the relevant documents to prove his licit acquisition of gold from domestic sources.

2.5. The Superintendent of Customs (Prev.) caused further investigation at Delhi and visited M/s Akshay Kripa Jewellers & Supreme Gold Jewellers, Delhi to cross verify the documents and transactions made with the appellant and the said jewellers from 25.02.2013 to 04.05.2013, to which they produced a list of Nine importers who sold gold to them during the relevant period. Thereafter, another statement was recorded from the appellant on 20.03.2014.

2.6. On completion of the investigation, a Show Cause Notice under C. No. VIII(10)310-Import/2013-14/1680 dated 11.04.2014 was issued to the appellant proposing to confiscate the seized gold and also to impose penalty upon the appellant in terms of

Section 112 of the Customs Act, 1962. After due process, the notice was adjudicated and the impugned order was passed by the Ld. Commissioner.

3. The appellant submits that the Department failed to produce any evidence to corroborate that the gold seized was smuggled in nature; no evidence has been adduced to the effect to prove *mens rea* of the appellant in the alleged act of smuggling/illegal importation. It is contended that the impugned order has been passed by the Ld. Commissioner only on the basis of presumptions and assumptions without any documentary evidence. Thus, the appellant submits that the impugned order wherein the confiscation of gold as well as imposition of penalty has been ordered, is bad in law and hence the same is liable to be quashed.

3.1. It is also submitted by the appellant that Section 123 of the Customs Act clearly stipulates that a 'reasonable belief' that the gold is of smuggled in nature is mandatory for invocation of the said provision; However, in the present case no reasonable belief has been formed by the officers that the gold is of smuggled in nature and hence the provisions of Section 123 are not applicable in this case and the burden lies on the Department to prove that seized gold is of smuggled in nature. The appellant contends that no evidence has been brought on record by the Revenue to substantiate the allegation that the gold is of foreign origin and smuggled in nature.

3.2. The appellant submits that evidence produced by them on 08.01.2014 proves beyond doubt that they had purchased the gold in a licit mode and trading by acquiring gold against payments made by cheque/RTGS to the suppliers M/s. Supreme Gold and M/s. Akshay Kripa Jewellers (Pvt.) Ltd., Delhi. It is also stated that during the course of investigation the appellant had produced all the invoices/bills of M/s. Akshay Kripa Jewellers (Pvt.) Ltd. and M/s Supreme Gold of Chandni Chowk, Delhi from whom the gold was purchased by using his current account in Axis Bank; he has submitted bank statement to prove that he had been purchasing primary gold from the said parties between the period 25.02.2013 to 20.05.2013 which were imported by Nominated Agencies such as MMTC, HHEC, STC, SBI and other agencies authorized by the RBI in terms of AD(G.P Series) Circular No. 07 dated 06.03.1998. The appellant submits that there was no restriction on the sale of the gold imported by nominated agencies to individuals like appellant, whose family business was smelting of gold and silver and purification of the said metals at Buxar for further sale to goldsmiths/silversmiths of jewellery/ornaments. Accordingly, the appellant submits that they have discharged the burden that the gold was procured by them in a licit manner and hence the confiscation of the legally procured gold is not sustainable.

3.3. The appellant submits that evidences available on record prove that they were having gold with the marking Rand Refinery and Credit Swisse in their possession which were having no bar numbers. It was possible since the Tax Invoices of the sellers M/s. Supreme Gold Jewellers and M/s. Akshay Kripa Jewellers (Pvt.) Ltd. did not indicate the same and therefore the benefit of doubt should have been extended to the appellant. It is his contention that the ld. adjudicating authority has failed to verify from M/s.

Supreme Gold Jewellers & M/s Akshay Kripa Jewellers, Chandni Chowk, New Delhi, as to why they did not state that the bar numbers appearing on the gold were not indicated on their tax invoices and also the reason for not indicating the markings and the country of origin. Thus, the appellant submits that he cannot be held responsible for not having the details of marks and numbers of the gold bar in the invoices issued by the sellers.

3.4. The appellant submits that the gold which was recovered from his possession was that which had remained unsold from his stock that he acquired from M/s. Supreme Gold Jewellers and M/s. Akshay Kripa Jewellers (Pvt.) Ltd., Delhi, which he carried along-with him to Krishangunj accompanied by his neighbour named Rohit Kumar, a minor aged 15 years who was unaware that the appellant was carrying gold on his person as is evident from the statement of Rohit Kumar which is on record.

3.5. The appellant submits that failure to produce documents in respect of the goods carried by a person does not *ipso facto* prove that the goods were contraband in nature. In this regard, the appellant submits that the allegation of smuggling needs to be proved with cogent reasoning and corroborative evidence thereof. In this regard, the appellant relies on the decision in the case of *COMMISSIONER OF CUSTOMS (PREV.), SHILLONG versus SRI SANGPUIA, reported in 2005(189) E.L.T.321 (Tri.- KOLKATA),*

3.6. The appellant submits that the statement recorded in the initial stage of the investigation from M/s. Akshay Kripa Jewellers (Pvt.) Ltd., Delhi dated 29.11.2013 clearly reveals that the appellant was their regular customer and the subsequent evidence produced by M/s. Supreme Gold, Delhi also confirms that the appellant was purchasing gold from them regularly; the payment details available in the "AXIS BANK" statement of the appellant confirms his dealings with M/s. Akshay Kripa Jewellers from whom he has purchased the gold.

3.7. The appellant further submits that he is simply a purchaser who had licitly purchased the seized gold from the respective sellers and his onus has been discharged by production of the documents related to the subject gold which has not been negated. It is the appellant’s contention that the fact that the invoices were cross verified by the investigating authority with the respective sellers who had raised them, strongly establishes the fact that the gold had been licitly purchased from indigenous sources; it is beyond their capacity to find the source of importation of the same and therefore, they have discharged the burden of licit procurement of the gold. Further, the appellant submits that the evidence provided by M/s. Akshay Kripa Jewellers (Pvt.) Ltd. and M/s. Supreme Gold, Delhi, in the course of follow up action, goes to indicate that both jewellers purchased and sold the gold with the markings Rand Refinery and Credit Swisse which they had acquired from M/s. Atma Ram Amar Nath and Ms. Lawat Jewellers, Delhi, who had acquired the same from the HDFC Bank, Delhi, the actual importers; the letter's dated 3.12.2013 and 18.01-2014 issued by HDFC bank authorities with annexures has proved beyond doubt that they imported gold which was indeed sold with the marking Rand Refinery and Credit Swisse during the said period when the appellant dealt with the jewellers

M/s. Akshay Kripa Jewellers (Pvt.) Ltd. and M/s. Supreme Gold of Delhi. The appellant also contends that the investigating officers could not produce any evidence contrary to their submissions. Accordingly, the appellant submits that the confiscation of the licitly procured gold is sustainable and prayed for setting aside the impugned order.

4. The Ld. Authorized Representative of the Revenue submits that the appellant was not having any document at the time of seizure of the gold.

5. Heard both sides and perused the appeal documents.

6. We observe that gold bars weighing 2513.40 Grams valued at Rs. 76,65,870/- was seized from the personal possession of Mr. Sonu Kumar Deshmukh (appellant) while he was about to board the Brahmaputra mail on 24.10.2024. The officers seized the gold bars on the reasonable belief that the gold bars were smuggled in nature and the appellant was not having any document with them for the licit procurement of the gold.

6.1. We observe that the seizure was effected by a team of officers comprising of the Superintendent (Prev.) Circle Kishanganj and Preventive Officers assisted by SSB officials and G.R.P./R.P.F. personnel on the 'reasonable belief' that the said gold was contraband in nature and was smuggled from Bangladesh. However, in the present case, we observe that no reasonable belief has been formed by the officers that the gold is of smuggled in nature. We also find that no evidence has been brought on record by the Revenue to substantiate the allegation that the gold is of foreign origin and smuggled in nature. We observe that the seizure of the gold without following the 'reasonable belief' that the gold is of smuggled in nature, is not sustainable.

7. The next ground raised by the Appellant is regarding Burden of Proof as envisaged under Section 123 of Customs Act,1962 is not applicable in this case. As per this section, the burden of proving that the goods are not smuggled, lies on the person from whose possession the goods were seized. For the sake of easy reference, the said section 123 is reproduced below:

> *"SECTION 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 form 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 be notification in the Official Gazette specify."*

7.1. We find that Section 123 applies inter-alia to gold bars bullion seized on the reasonable belief that they are smuggled goods. The burden of proving that they are not smuggled goods shall be on the person, who claims to be the owner of the goods from whose possession the goods are seized. The contention of the Department is that in the instant case gold bars were not of smuggled in nature, lies on the appellant Shri Sonu Kumar Deshmukh from whose possession the impugned goods were seized. The Department contended that the appellant did not produce any document for the licit procurement of the gold bars.

7.2. We observe that Section 123 of the Customs Act clearly stipulates that a 'reasonable belief' that the gold is of smuggled in nature is mandatory for invocation of the said provision. However, in the present case no reasonable belief has been formed by the officers that the gold is of smuggled in nature and hence the provisions of Section 123 are not applicable in this case and the burden lies on the department to prove that seized gold is of smuggled in nature. However, we find that no evidence has been brought on record by the Revenue to substantiate the allegation that the gold is of foreign origin and smuggled in nature.

7.3. The appellant submits that evidence produced by them on 08.01.2014 proves beyond doubt that they had purchased the gold in a licit mode and trading by acquiring gold against payments made by cheque/RTGS to the suppliers M/s. Supreme Gold and M/s. Akshay Kripa Jewellers (Pvt.) Ltd., Delhi. During the course of investigation, the appellant had produced all the invoices/bills of M/s Akshay Kripa Jewellers (Pvt.) Ltd. and M/s Supreme Gold of

Chandni Chowk, Delhi with his current account AXIS Bank statement to prove that he had been purchasing primary gold from the said parties between the period 25.02.2013 to 20.05.2013 which were imported by Nominated Agencies such as MMTC, HHEC, STC, SBI and other agencies authorized by the RBI in terms of AD(G.P Series) Circular No. 07 dated 06.03.1998 and there was no restriction on the sale of the same to individuals like appellant, whose family business was smelting of gold and silver and purification of the said metals at Buxar for further sale to goldsmiths/silversmiths of jewellery/ornaments. We observe that the investigation conducted by the Department has not negated the claims of licit purchase made by the appellant. Thus, we find that the appellant has discharged the burden that the gold was procured by them in a licit manner from indigenous sources and hence we hold that the confiscation of the legally procured gold is not sustainable.

8. We observe that the provisions of Section 123 are not applicable to indigenously procured gold. Hence, we find merit in the argument of the appellant that the onus is on the department to prove that the gold is of smuggled in nature. However, we find that the department could not bring in any evidence to prove that the gold is of smuggled in nature. The appellants relied upon many decisions to support their contention. In the case of *Sanjeeb Kumar @ Pappu Kumar vs Joint Commr. of Cus., Lucknow [2019 (369) E.L.T. 1177 (Tri-All.)],* it has been held as under:

> *"6. Considering the submissions made by both the sides, we find that the appellants have failed to prove the source of procurement of gold, therefore, we hold that gold is smuggled one but on the same*

time, Revenue is also failed to prove that gold is of third country origin and smuggled through Nepal. In fact, the Revenue has not adduced any evidence to that effect, whereas on the other side, Shri Sanjeeb Kumar, himself has categorically stated that he is not dealing with the purchase and sale of the gold. Therefore, the Revenue has failed to prove that the gold in question is of third country origin and have been imported/smuggled through Nepal. In that circumstances, the gold in question cannot be held as restricted goods and they can be released on payment of redemption fine and penalty as the goods are smuggled in nature. We also gone through the case law relied upon by the Learned Counsel for the appellants in the case of Prithviraj Pokhraj Jain (supra) wherein in Para 19 which is extracted below wherein the Hon'ble High Court observed as under -

> *"19. The burden was, therefore, on the prosecution to prove that the goods were smuggled. For this the prosecution relied upon the evidence of Hebbar who stated that he believed the goods to be smuggled, because watches and watch straps were of foreign origin, the import of which was heavily restricted and prohibited and they were found in huge quantity. The foreign origin of the watches is tried to be shown from the foreign markings on the watches. The question whether the foreign markings of goods can be treated as admissible in evidence was considered by Naik J. in Criminal Appeal No. 3 of 1966, decided on 22nd December, 1966. Among the property involved in that case were some gold slabs. The slabs bore the marking "Johnson Mathey 9990 London". Naik J. observed in his judgment that the markings do not speak for themselves and that evidence would be hearsay evidence. There was nothing to indicate that the markings were really done by Johnson Mathey in London. No presumption can arise in regard to the markings, unless there is evidence to show that those markings were made by a particular company in the ordinary course of business. A Division Bench of the Gujarat High Court has also taken a similar view in Asstt. Collector of Customs, Baroda v. M. Ibrahim Pirjada, 1970 Criminal Law Journal, 1305.*

> *There, the Gujarat High Court has held that mere markings cannot be taken as proof of the fact of foreign origin of the goods as such markings and labels would be hearsay evidence. With respect, I agree with the above view."*

> *Relying on the said decision, without evidence, the benefit of presumption under Section 123 of the Customs Act, 1962 is not available to the Revenue. Therefore, we hold that the gold in question is not restricted item but being smuggled one liable for confiscation and the same can be redeemed on payment of redemption fine. We also take note of the fact that the value of gold is Rs. 1,26,22,800/- and margin of profit in the trade of gold is very less, therefore, considering the value of gold and margin of profit, we hold that the redemption fine of Rs. 5 lakhs is appropriate in the facts and circumstances of the case. Therefore, we impose redemption fine of Rs. 5 lakhs on the gold in question which can be redeemed on payment of the said redemption fine. Considering the fact, that appellants are involved in the activity of smuggling of gold, therefore, penalty of Rs. 1 lakh each is imposed on all the appellants."*

8.1. The Appellants also relied upon the decision in the case of *Balanagu NagaVenkata Raghavendra vs Commr. of Cus., Vijayawada [2021 (378) E.L.T. 493 (Tri-Hyd.)],* wherein it has been held that the burden under section 123 will not shift on the Appellants when the seizure of gold without foreign markings are seized from city. The relevant portion of the order is reproduced below.

> *"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 foreignconduct 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………."*

9. We observe that the evidence produced by the appellant on 08.01.2014 proves that the appellant had been purchasing gold in a licit mode and trading by acquiring gold against payment being made by cheque/RTGS to the suppliers M/s. Supreme Gold and M/s. Akshay Kripa Jewellers (Pvt.) Ltd., Delhi. The evidences submitted by the appellant shows that they have been legally procuring primary gold which as per the Exim Policy and RBI regulations was permitted for import by all Nominated Banks/Agencies/Premier or Star trading houses for use in the domestic sector. The appellant's submission is that the gold which was recovered from his possession was that which had remained unsold from his stock that he acquired from H/s. Supreme Gold and M/s.Akshay Kripa Jewellers (Pvt.) Ltd., Delhi. The only ground in which the gold was seized by the officers was that the appellant was not having any document for licit purchase of the same at the time when they were intercepted. We observe that failure to produce documents in respect of the goods carried by a person does not ipso facto prove that the goods are contraband in nature. The allegation of smuggling needs to be proved with cogent reasoning and corroborative evidence thereof. Subsequently, if the appellant could produce documents for its legal purchase, the same cannot be ignored to conclude that the gold is of smuggled in nature. In this regard, the appellant has relied on the case of *Commissioner of Cus.(Prev.), Shillong v. Sri Sangpuia reported in 2005(189) E.L.T.321 (Tri. - Kolkata),* whereof the following has been held:

> *"3.(d) When interdiction of personal private property of a citizen by an officer is effected the law as in that case, it has to be strictly applied. If the Commissioner (Preventive) is of the opinion that large scale smuggling will be resorted to or is resorted in a particular commodity, he is free to move the concerned authorities to get such goods notified or specified under Chapter IVA or IVB of the Customs Act, 1962 and thereafter liabilities of vouchers, bills, acquisition records could be invoked and failure would be relevant and onus will be cast on people who want to or possess such goods. In the present case there is no such notification shown to us under these provisions of the Customs Act, 1962. The absence of documents, therefore, does not induce us to share the views of the Commissioner (Preventive) that the goods are of foreign origin and are of smuggled nature. The present appeal made on grounds as in para 2 above cannot be upheld. This Tribunal has to enforce liability as it is written and cannot go into the pleas as made in certain grounds taken by Commissioner (Preventive) in this appeal."*

10. We observe that M/s. Akshay Kripa Jewellers (Pvt.) Ltd., Delhi in their statement dated 29.11.2013 has confirmed that the appellant was their regular customer and the subsequent evidence produced by M/s. Supreme Gold, Delhi also confirms that the appellant was purchasing gold from them on regular basis by making payment through banking channels. We observe that the evidence provided by M/s. Akshay Kripa Jewellers (Pvt.) Ltd. and M/s. Supreme Gold, Delhi, in the course of follow up action indicate that both jewellers purchased and sold gold with the markings Rand Refinery and Credit Swisse which they had acquired from M/s. Atma Ram Amar Nath and M/s. Lawat Jewellers, Delhi, who had acquired the same from the HDFC Bank, Delhi. This fact has been confirmed by HDFC bank vide their letter's dated 3.12.2013 and 18.01.2014 with annexures, which

indicate that the imported gold which was indeed sold with the marking Rand Refinery and Credit Swisse during the said period when the appellant dealt with the jewellers viz. M/s. Akshay Kripa Jewellers (Pvt.) Ltd. and Ms. Supreme Gold of Delhi.

11. In view of the above discussions and the decisions cited above, we hold that the burden under Section 123 of Customs Act, to prove that the gold is not smuggled one, does not lie on the appellant, in this case. The onus is on the departmental officers that the gold is of smuggled in nature. However, we observe that the officers of the Department could not establish that the gold is of smuggled in nature. Accordingly, we hold that the confiscation of the gold is not sustainable.

11.1 Since the confiscation of the gold is not sustainable, the penalties imposed on the appellant are also not sustainable and accordingly, we set aside the same.

12. In view of the above discussions, we set aside the impugned order and allow the appeal filed by the appellant, with consequential relief, if any, as per law.

(Order pronounced in the open court on **22.01.2025**)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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

Sdd