

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76175 of 2024

(Arising out of Order-in-Appeal No.192-195/Pat/Cus/Appeal/2023-24 dated 12.03.2024 passed by Commissioner of CGST & Central Excise & Customs, Patna)

Neeraj Agarwal, : **Appellant**
M/s. Raj Shree Jewellers, Banshi Bazar, Mirzapur, U.P.-
231001.

VERSUS

The Commissioner of Customs (Preventive), : **Respondent**
5th Floor, Central Revenue Building, Virchand Patel Path,
Patna-80001.

With

Customs Appeal No. 76176 of 2024

(Arising out of Order-in-Appeal No.192-195/Pat/Cus/Appeal/2023-24 dated 12.03.2024 passed by Commissioner of CGST & Central Excise & Customs, Patna)

M/s. Ramdhani, :
Village-Lohandi Kalalan, Post-Nakahara, PS-Dehat Kotwali, Dist.-Mirzapur, **Appellant**
Uttar Pradesh-231001 & 3.

VERSUS

The Commissioner of Customs (Preventive), :
5th Floor, Central Revenue Building, Virchand Patel Path, Patna-80001. **Respondent**

With

Customs Appeal No. 76177 of 2024

(Arising out of Order-in-Appeal No. 192-195/Pat/Cus/Appeal/2023-24 dated 12.03.2024 passed by Commissioner of Central Excise,Kolkata)

M/s. Rameshwarbind, : **Appellant**
Village-Lohandi Kalalan, Post-Nakahara, PS-Dehat Kotwali,
Dist.-Mirzapur, Uttar Pradesh-231001 & 3.

VERSUS

The Commissioner of Central Excise, Kolkata, : **Respondent**
118, Shantipally, Rajdanga Main Road, Kendriya Utpad
Shulk Bhawan, Kolkata-700 107.

APPEARANCE:

Shri Vineet Kumar Singh, Advocate for the Appellants

Shri S.Chkroborty, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 75230-75232/ 2025

DATE OF HEARING :23.01.2025

DATE OF DECISION: 28.01.2025

Order : [Per Shri Ashok Jindal]

All the appellants are in appeal against the impugned order for absolute confiscation of the 6 kg gold required from the appellant no. 2 & 3 and absolute confiscation thereof consequently, imposing penalty on the appellants.

2. The facts of the case are as under:

"That the officers of DRI, received an intelligence that a person is travelling in S-7 Coach of Shipra Express at berth No 38 and the said person was apprehended by the officers at Gaya Railway Station on 04/01/2022 around 015 hrs. The said person introduce himself as Rameshwar Bind aged about 31 years resident of Mirzapur (U.P) and admitted that he was carrying 3 piece of gold bars weighing 3.0 Kg along with delivery Challan Sr No 41 dated 03/01/2022 issued by M/s Raj Shree Jewelers Basnahi Bazar, Mirzapur in favour of M/s K.K Gold Coimbatore and authority letter on a letter head of M/s Raj Shree Jewelers. The apprehended person informed to the officers that another person named Shri Ramdhani is also travelling in Train No 12311,

berth no 38 Coach No S8 and this person is also carrying gold. The officers apprehended such person and during interrogation, the said person informed that he was carrying 3 pieces of gold bars weighing 3000 gram through cover of Challan No 38 dated 02/01/2022 issued by M/s Raj shree Jewelers Mirzapur. The Delivery challan is in favour of M/s K.K Gold Coimbatore. Thereafter, the said gold bars were seized under Section 110 of the Customs Act 1962. The Custom officers recorded the statement of both the apprehended persons under Section 108 of the Customs Act 1962. The appellants in their statement informed to the officers that such seized gold bars were handed to him by a persons whose name they did not know on the instructions of Mr Neeraj Agarwal and they works for Mr Neeraj Agarwal who deals in foreign origin gold and he purchase the gold from Kolkata and sold the same at Mirzapur, Varanasi & Delhi. Mr Neeraj Agarwal also owned a jewelry shop & cinema hall. To unearth the entire racket, the officers arrested the apprehended persons on 05/01/2022 under section 104 of the Customs Act 1962 and produced before Ld Chief Judicial Magistrate Court. After authentication of seized gold bars, the gold was sent to Chemical Examiner CRCL to check the purity of seized gold bars and CRCL through its report dated 09/02/2022 confirmed the purity of seized gold as 99.7%. On behalf of the appellants, both delivery challan, authority letter, stock register, purchase invoice were submitted in the court of Chief Judicial Magistrate. The documents which were submitted were issued by M/s Raj Shree Jewellers, Banshi Bazar, Mirzapur duly signed by its owner Mr Neeraj Agarwal.

3. During the Course of inquiry, Summons were issued to Mr Neeraj Agarwal to record his statement and in response to such Summon, Mr Neeraj Agarwal appeared before the officers of DRI & recorded his statement in which he informed that he was sending the gold to K.K Gold Coimbatore for making jewelleryes in normal course of trading. Such gold is duly accounted for in his books of accounts and to substantiate this, submitted documents duly certified by the Chartered Accountant.

4. The ongoing inquiry was culminated by the department by issuance of SCN why the six kg gold bar of foreign origin should not be confiscated under Section 111 of the Customs Act 1962 & penalty should not be imposed upon the Noticees under Section 112 of the Customs Act 1962.”

3. The matter was adjudicated and it was held that gold is liable for confiscation accordingly absolutely confiscated and penalties on all the appellants were imposed.

4. Aggrieved from the said order appellants are before us.

5. The Ld. Counsel for the appellants submits that in the Show Cause Notice main allegation of the Revenue that the appellant has not submitted any document regarding procurement of gold bars of foreign origin at the time of seizure but it was nowhere alleged that seized gold bars were the smuggled one and does not say about the origin of the seized gold bar.

6. The whole of the case of the department is on the basis of statement of appellant no. 2 and 3 and which were retracted by the appellants on very first opportunity. It is his contention that the appellants have purchased the gold bar in question from Neeraj Agarwal, Mirzapore through cash memo whose details have been provided to the Respondents and payments of the same has also made through cash.

7. The appellant no. 2 & 3 were going to Coimbatore to handover the gold to M/s. K.K.Gold for manufacturing of designer jewellery and delivery challans were produced by the appellants no. 2 & 3, when DRI officers apprehended them.

8. It is his further submission that there is no inscription mentioned on the seized gold bar and purity of gold is also not equal to 99.9%. As per CRCL test report the purity of gold is only 99.6%. Therefore, it cannot be held that gold is of foreign origin as the purity of foreign origin gold is 99.9%.

9. It is his submission that it is established beyond doubt that the seized gold bars were not of foreign origin because purity was 99.6% as per CRCL, therefore, it cannot be confiscated.

10. He further submitted that at the time of bail application, purchase register of M/s Rajshree Jewelers Mirzapur was produced to establish the licit possession of the gold at the first available opportunity before the Sessions Court. The Ld. Adjudicating Authority conveniently ignored these documents. To support this contention he relied on

i) Krishnakumar Dhandania [2007(219) E.L.T. 736 (Tri-Kol)]

ii) CC v. Golak Chandra Kamila [2006 (205) E.L.T. 65]

iii) S.K.Chains v. CC, Mumbai [2001(127) E.L.T. 415]

11. He further submitted that the only evidence which the department has against the appellant is that the statements of two co-accused tendered at the time of arrest when the co-accused admitted that the goods under seizure was foreign origin otherwise there is no evidence available with the department to allege that the seized gold was of foreign origin smuggled gold. The appellant immediately produced the evidence by way of delivery Challan Invoice, Stock Register etc at the time of filing his bail application and it was not negated by the department that the invoices submitted by the appellant were forged documents. Therefore, the department had not made any discreet enquiry from the G.S.T department to check genuiness of such invoices.

12. He further submitted that it is a well settled proposition of law that confessional statements need independent corroboration and in the instant case, the voluntary character of the statements themselves being in doubt, the same cannot be the basis of holding the guilt against the appellants because purity of the gold is below 99.9%.

13. Therefore, circumstantial evidence is not compatible with the guilt of the accused. To support this contention he relied on the decision of Commissioner of Customs (Preventive) Vs Puni Dhapa Lokeswara Rao 2009 (248) E.L.T 141 (Cal) which says that circumstantial evidence proves that

the statement recorded under Section 108 of the Customs Act 1962 was not voluntary.

14. To substantiate the seized gold was part of stock in trade, the appellant has submitted a copy of the Delivery Challan stock statement etc. Thus the appellant has discharged the burden of proof under Section 123 of the Customs Act. Now the onus shifts on the department to establish that the gold seized from the appellant was smuggled into India.

15. He further submitted that department has made a detailed inquiry from the owner of the gold bullion but nothing incriminating came from the inquiry. None of the documents which were produced by the Appellant No. 1 have been discredited by the department. Therefore, the proceedings are not sustainable against the appellants. To support his contention he relied on the following decisions:

- a. Sitaram Sao v. State of Jharkhand -2007(12) SCC 630.
- b. Mridul Agarwal v. Commissioner of Customs, Lucknow, 2018 (362) E.L.T 847 (Tri-All.)
- c. Shantilal Mehta v. UOI and Other, 1983 (14) E.L.T. 1715 (Del.)
- d. CCC (P) v. Prabhash Kumar Jalan, CESTAT, Kolkata Bench, Final Order No. 75500/2021, dated 27.8.2021.
- e. Shri Sarvendra Kumar Mishra v. Commissioner of Customs Vide Final Order Nos. 70198-70199/2021, dated 6.9.2021.
- f. Nand Kishore Modi v. Commissioner of Customs (Preventive), West Bengal, 2015 (325) E.L.T. 781.

g. Rajesh Pawar v. UOI, 2014 (309) E.L.T. 600 (Cal)

h. Commissioner of Customs (Prev.) Kolkata v. Ashok Kumar Agarwal, 2017 (348) E.L.T. 555 (Tri-Kolkata).

16. He further submitted that Department has failed to discharge the obligation cast upon it. It is the case of the department that the gold is smuggled. To prove the same be smuggled, the Department has not extended the investigation to reach the root of the matter. The Department has completely failed to go into the root of the matter as to how the goods were smuggled in nature nor it has based any evidence to this effect whereas the appellant from the very first day contending that the gold was part of stock in trade of M/s. Rajshree jewelers and the appellants were going to Coimbatore to manufacture jewellery from such gold. In such circumstances, by no stretch of the imagination, the seized gold can be termed as smuggled one.

17. He further submitted that the confessional statement does not have value unless and until there is cogent evidence. He also submitted,

"that the entire case has been made by the department based on the confessional statements of appellant which was recorded under duress by the Custom officers. Such a statements were retracted by the appellants on the very first opportunity. Therefore, such a confessional statement does not have any evidentiary values in the eyes of law when the documentary evidence is contradictory to the such statement which proves that the statement was recorded under duress. It is established law that the

confessional statement does not have any evidentiary value unless there is cogent evidence. In this regard the appellant is placing reliance on the following Hon'ble High court Orders in the matter of

a. Saakeen Alloys Pvt Ltd 2014(308) ELT655.

b. UNION OF INDIA VS Kisan Ratan Singh 2023(ELT) 714.

It is a settled law that burden to show that confession was voluntary and not obtained as an outcome of threat is on the opp. party which has not been discharged in the present case. In this regard, the appellant is placing reliance on Apex Court judgment in the case of Vinod Solanki vs. Union of India 2009 (233) ELT 157.

That it is settled position of law that unless there was any corroborative evidence the statement under section 108 of the Customs Act cannot be read against the maker of the statement. The possession of the gold even if it was foreign origin, would not be under purview of the Customs Act unless it was established by reliable evidence that gold was smuggled and brought by the applicant or by his agent. In the case of Sevvantilal Karsondas Modi Vs State of Maharashtra & Another 1979 SCC (2) 58 the Apex Court held that "confession made before Customs officer as a result of coercion cannot be basis of conviction under section 135(1) (a) (b) of the Customs Act. That at any rate, it was incumbent upon the opp. party to corroborate the confession from independent sources, which has admittedly not been done in the present case". Reliance in this regard is placed on Apex Court judgment in the case

of Mohtesham Mohd. Ismail vs. Spl. Director 2007 (220) ELT 3 SC.”

18. He further submitted that the statement made by the person before any gazette officer of customs during the course of any inquiry or the proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which contains when the person who made the statement is to be examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice. To support this contention he relied on the decision of the Hon'ble Punjab and Haryana Court in Jindal Drugs Pvt. Ltd. v. UOI [2016(340)E.L.T. 67 (P & H). He also relied on the decision of Andaman Timber Industries [2015 (324) E.L.T 641 (S.C) =2017 (50) S.T.R. 93 (S.C.)]

19. He further submitted that there is no material available on record to show that the invoices placed by the appellant were false or fabricated. In the entire investigation as well as adjudication, department has not alleged that such invoices were fabricated. The department has either to accept the documents or negate it. But the department has not done either of the two which is not permissible. Apparently, the invoice contain GST and PAN of the appellant No. 1., the department has never doubted the genuiness of documents produced by the appellant, hence documentary evidence prevails over the oral evidence. To support this contention he relied on the decision of Commissioner of Central

Excise, Customs & ST, Patna Vs. Gopal Prasad 2020
(371) E.L.T 243 (Pat.)

20. On the other hand the Ld. Authorized Representative oppose the contention of the Ld. Counsel and submits that at the time of seizure of the gold the appellant no. 2 and 3 were not having any valid document to say that gold is not of foreign origin and in their statements, they have admitted that gold is of foreign origin. Moreover, as the appellant no. 2 and 3 were apprehended by the officers of DRI at Gaya Railway Station on 4.1.2001 while travelling through train no. 22912 Shipra Express and train no. 12311 Netaji Express and department was having information regarding the smuggling of foreign gold from Bangladesh into India and it is further transportation from Kolkata-Howrah to Mirzapur via Railway Station. One person travelling from Howrah to Mirzapur who was apprehended and gold was recovered. Therefore, the gold in question is liable for confiscation and the Adjudicating Authority has done so.

21. In support of this contention he relied on the following cases:

- "Hon'ble Bombay High Court in the case of State of Maharashtra v. Prithviraj Pokhraj Jain reported in 2000 (126) ELT 180 (Bom.)
- CESTAT, Kolkata in the case of Nitya Gopal Biswas v. Commr. Of Customs (Prev.), Kolkata reported in MANU/CK/0096/2015: 2016 (344) ELT 209 (Tri.-Kolkata)
- CESTAT, Kolkata in the case of Nand Kishore Sumani v. Comm. Of Cus., C.EX.

& ST, Siliguri, reported in MANU/CK/0045/2015 2016 (333) ELT 448 (Tri- Kolkata)

- Hon'ble Calcutta High Court in the case of Comm. Of Cus., Ex. & ST., Siliguri, reported in MANU/WB/0547/2016: 2016 (337) ELT 10 (Cal.)

- CESTAT, Kolkata in the case of Madhukar Sonaba Bhagat v. Commr. Of Customs (Prev.), West Bengal, reported in MANU/CK/0056/2019: 2019 (368) ELT 990 (Tri.-Kolkata).

- CESTAT, Kolkata in the case of Ram Naresh Chaurasiya v. Comm. Of Customs (Prev.), Patna, reported in MANU/CK/0089/2018 2019 (365) ELT 940 (Tri.- Kolkata)

- CESTAT, Kolkata in the case of Commr. Of Customs (Preventive), Kolkata v. Ashok Kumar Agarwal, reported in MANU/CK/0180/2016: 2017 (348) ELT 555 (Tri.-Kolkata)

- CESTAT, Kolkata in the case of Goutam Karmokar Vs. Commr. Of Cus. (Prev.), West Bengal, reported in 2010 (261) ELT 812 (Tri.- Kolkata)

- Hon'ble Calcutta High Court in the case of Rajesh Pawar v. Union of India, reported in MANU/WB/0895/2014: 2014 (309) ELT 600 (Cal.)

22. Heard the parties. Considered the submissions and considered the evidence placed before us. We

also have considered all the case laws relied upon by both the sides and then come to the conclusion as under:

In this case it is a fact that the appellant no. 2 & 3. were apprehended at Gaya Railway Station and having on on 04.01.2022 around 0.15 hours and having 3 kg of gold each and produce the challan issued by M/s. Raj Shree Jewellers Basnahi Bazar, Mirzapur.

23. To say that gold in question is not smuggled one, during the course of investigation, the appellant no. 1 has also submitted that the gold in question has also suffered GST which has already been paid and in support of payment of GST the appellant produced the invoice to say that the gold has been procured from M/s. Raj Shree Jewellers. For better appreciation of the fact copy of the invoice is excerpt here below:

Appeal No.: C/76175, 76176, 76177/2024-DB

INVOICE

M/S RAJ SHREE JEWELLERS
H.O. BASNAHI BAZAR, MIRZAPUR
GSTIN/UIN: 09ABNPA7884N1ZT
State Name : Uttar Pradesh, Code : 09

Invoice No. **RSJ/279/2021-22**
Supplier Invoice No. & Date.

Dated **25-Dec-21**
Other References

Consignee (Ship to)
M/S RAJ SHREE JEWELLERS
H.O. BASNAHI BAZAR, MIRZAPUR
GSTIN/UIN : 09ABNPA7884N1ZT
State Name : Uttar Pradesh, Code : 09

Supplier (Bill from)
NEERAJ AGRAWAL JI
MIRZAPUR
State Name : Uttar Pradesh, Code : 09

Sl No.	Description of Goods	Quantity	Rate	per	Amount
1	Gold Bar	6,000.000 G.	4,500.00	G.	2,70,00,000.00
Total		6,000.000 G.			2,70,00,000.00 ₹

Amount Chargeable (in words)
Two Crore Seventy Lakh INR Only

Company's GSTIN/UIN : ABNPA7884N
Buyer's PAN

for NEERAJ AGRAWAL JI
Authorized Signatory

Certified to be true from records

M. N. Aggarwal & Associates Chartered Accountants

M. N. Aggarwal

24. Further the appellant has produced GST return filed by M/s Raj Shree Jewellers showing the payment of GST under reverse charge mechanism. For better appreciation of the fact the form GST in enclosed herewith:

Form GSTR-3B
[See rule 61(5)]

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Year	2021-22
Period	December

GSTIN of the supplier	09ABNPA7884N1ZT
2(a). Legal name of the registered person	NEERAJ AGRAWAL
2(b). Trade name, if any	M/S RAJ SHREE JEWELLERS
2(c). ARN	AB091221234190Q
2(d). Date of ARN	15/01/2022

3.1 Details of Outward supplies and inward supplies liable to reverse charge (Amount in ₹ for all tables)

Nature of Supplies	Total taxable value	Integrated tax	Central tax	State/UT tax	Cess
(a) Outward taxable supplies (other than zero rated, nil rated and exempted)	19802200.77	218761.63	196334.38	196334.38	0.00
(b) Outward taxable supplies (zero rated)	0.00	0.00	-	-	0.00
(c) Other outward supplies (nil rated, exempted)	0.00	-	-	-	-
(d) Inward supplies (liable to reverse charge)	27000000.00	0.00	405000.00	405000.00	0.00
(e) Non-GST outward supplies	0.00	-	-	-	-

3.2 Out of supplies made in 3.1 (a) above, details of inter-state supplies made

Nature of Supplies	Total taxable value	Integrated tax
Supplies made to Unregistered Persons	0.00	0.00
Supplies made to Composition Taxable Persons	0.00	0.00
Supplies made to UIN holders	0.00	0.00

4. Eligible ITC

Details	Integrated tax	Central tax	State/UT tax	Cess
A. ITC Available (whether in full or part)	0.00	0.00	0.00	0.00
(1) Import of goods	0.00	0.00	0.00	0.00
(2) Import of services	0.00	405000.00	405000.00	0.00
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)	0.00	0.00	0.00	0.00
(4) Inward supplies from ISD	323121.16	0.00	0.00	0.00
(5) All other ITC	0.00	0.00	0.00	0.00
B. ITC Reversed	0.00	0.00	0.00	0.00
(1) As per rules 42 & 43 of CGST Rules	0.00	0.00	405000.00	0.00
(2) Others	323121.16	405000.00	0.00	0.00
C. Net ITC available (A-B)	0.00	0.00	0.00	0.00
D. Ineligible ITC	0.00	0.00	0.00	0.00
(1) As per section 17(5)	0.00	0.00	0.00	0.00
(2) Others	0.00	0.00	0.00	0.00

5 Values of exempt, nil-rated and non-GST inward supplies

Nature of Supplies		
From a supplier under composition scheme, Exempt, Nil rated supply	Inter- State supplies	Intra- State supplies
Non GST supply	0.00	0.00
	0.00	0.00

5.1 Interest and Late fee for previous tax period

Details	Integrated tax	Central tax	State/UT tax	Cess
System computed Interest	-	-	-	-
Interest Paid	0.00	0.00	0.00	0.00
Late fee	-	0.00	0.00	-

6.1 Payment of tax

Description	Total tax payable	Tax paid through ITC				Tax paid in cash	Interest paid in cash	Late fee paid in cash
		Integrated tax	Central tax	State/UT tax	Cess			
(A) Other than reverse charge								
Integrated tax	218762.00	218762.00	0.00	0.00	-	0.00	0.00	-
Central tax	196334.00	104359.00	91975.00	-	-	0.00	0.00	0.00
State/UT tax	196334.00	0.00	-	196334.00	-	0.00	0.00	0.00
Cess	0.00	-	-	-	0.00	0.00	0.00	-
(B) Reverse charge								
Integrated tax	0.00	-	-	-	-	0.00	-	-
Central tax	405000.00	-	-	-	-	405000.00	-	-
State/UT tax	405000.00	-	-	-	-	405000.00	-	-
Cess	0.00	-	-	-	-	0.00	-	-

Breakup of tax liability declared (for interest computation)

Period	Integrated tax	Central tax	State/UT tax	Cess
December 2021	218762.00	601334.00	601334.00	0.00

Verification:

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed there from.

Date: 15/01/2022

Name of Authorized Signatory
NEERAJ AGRAWAL
Designation /Status
PROPRIETOR

25. The said documents have not been discarded by the Revenue as it is recorded in the investigation itself that the appellant has submitted that the gold in question has suffered GST and neither sought investigate the same. Further if the said documents have been produced such as invoice and GST payments, stock register and the challans were produced by the appellant during the course of investigation itself then the appellants have discharged their onus under Section 123 of the Customs Act, 1962 and onus shifts on the Revenue

to prove that gold in question is of foreign origin and smuggled in nature. Therefore, we hold that the appellants have discharged the burden under Section 123 of the Customs Act, 1962.

26. Moreover, it is a fact on record that gold seized in question is neither having any foreign mark thereon nor having the purity of 99.9% and it is not a case of seizure of gold at any port, airport of International Border. In that circumstances, when the appellant has produced evidence in support of the procurement of the gold, it is the duty of the investigating officer to find out the documents produced by the appellants are genuine or not and the documents produced by the appellants were not discarded.

27. The Revenue has relied on the statements recorded during the course of investigation.

28. We find that the statements recorded during the course of investigation cannot be relied upon as an evidence to allege that the appellants have admitted that the gold is of foreign origin. Infact, the statement recorded under Section 108 of Customs Act has to be tested as provided under Section 138(B) of the Customs Act, 1962 by way of examination in Chief and after the examination in Chief The Adjudicating Authority has to make up his mind that the statements made by the accused are admissible in evidence. The said examination has not been done by the Adjudicating Authority. Moreover the statements recorded during the course of investigation have been retracted before the Session Judge. In that circumstances, the statements recorded during the course of investigation are not a

piece of evidence to allege that gold in question is of smuggled in nature.

29. Moreover, the issue whether before seizure, under Section 110 of the Customs Act, 1962 a reasonable belief has to be made by the investigating Agency which they have failed to do so as held by the Hon'ble Delhi High Court in the case of Shanti Lal Mehta Vs Union of India and Others 1983 (14) E.L.T. 1715 (Del.) :

"5. The real question for decision in this case is whether the confiscation of the goods is lawful when the detention of the goods was unlawful. It will be remembered that the goods were seized on 15-2-1967. Six months expired on 14-8-1967. During this period of six months no show cause notice was issued. The Additional Collector made an order on 4-8-1967 extending the time by three months. The extended period of 3 months expired on 14-11-1967. But what is significant is that the order of extension was made ex parte behind the back of the petitioner and without any notice to him. After the expiry of six months the customs authorities were bound to return the goods to the petitioner. In fact the petitioner specifically asked for the return of the goods on 27-12-1967 when he made a reply to the show cause notice. The customs authorities paid no heed to his request. They refused to return the goods to him and, on the contrary, made an order of confiscation of the goods on 14-8-1968.

6. One thing is clear from this narrative. On 14-8-1967 the customs authorities were bound in law to return the goods which inspite of the petitioner's demand they did not return to him. What is the

*effect of the wrongful refusal to return the goods?
This is the question for decision in this case.*

Section 110 of the Act says :

"110. (1) *If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods :*

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

(2) *Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:*

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months.

(3) *The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.*

(4) *The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs."*

Section 110 provides that if the officer has reason to believe that any goods are liable to confiscation, he may seize the goods. The proviso enables the officer

in cases where it is not practicable to seize the goods, to serve on the owner of the goods an order that he shall not remove, part with or otherwise deal with the goods except with the previous permission of such officer. Sub-section (2) enables the officer to keep the seized goods for a period of six months. But when goods are seized under sub-section (1) of Section 110, if a notice as provided for under clause (a) of Section 124 is not given within 6 months of the seizure of the goods, the officer is bound to return the goods to the person from whose possession they were seized. The proviso enables the officer to get an extension of the period of notice from six months to one year by applying to the Collector of customs.

7. *The true effect of the provision of Section 110 is that if notice for further proceedings under Section 124 is not served within the time of six months and in any event one year from the date of the seizure, the seized goods must be returned to the person from whose possession they were taken. This is an absolute obligation and a liability imposed on the customs under sub-section (2) of Section 110 of the Act. The power to retain the goods is no longer available after the period has expired. Section 110 puts a limit to the power of seizure and retention of goods by the officer. When once action is taken under Section 124, before the expiry of the period as contemplated in Section 110 he may continue to retain the goods.*

After the expiry of six months, the retention of the seized goods by the customs in this case was illegal and without jurisdiction as the same was directly contravention of sub-section (2) of Section 110 of

the Act. The right of restoration of the seized goods is a vested civil right which accrued to the owner of the goods on the expiry of six months.

Case of Charan Dass Malhotra :

8. *Section 110(2) was incorporated in the Customs Act of 1962 for the first time. There was no such provision in the old Sea Customs Act of 1878. Upon the reasonable belief that certain goods are liable to confiscation, an officer of the customs has now been empowered to seize such goods from any person. This power of seizure is an extraordinary power. Six months time is given to investigate the case, to collect evidence and to complete the enquiry. If within that period prima facie evidence of confiscation is not collected and the proper officer thinks that further investigation into the matter is necessary, the Collector of customs under the proviso to Section 110(2) is given the power to extend the period for a further period of 6 months. In dealing with this power to extend the time under the proviso the Supreme Court held in Assistant Collector of Customs v. Charan Dass Malhotra, AIR 1972 S.C. 689 = 1983 E.L.T. 1477 that such power is quasi-judicial and at any rate one which requires a judicial approach. While the power of seizure under sub-section (1) of Section 110 can be exercised on the basis of reasonable belief on the part of the customs officer, the power to extend the time to give notice under Section 124(2) is to be exercised only "on sufficient grounds to be shown". This expression envisages at least some sort of inquiry into the facts to be placed before the authority and the determination by him on those facts. The extension*

order, the Supreme Court has said, is not to be passed mechanically.

9. *The object of enacting Section 110(2) of the Act is that a citizen should not be deprived of his right to property indefinitely upon a mere reasonable belief of an officer of customs that the goods are smuggled goods and liable to confiscation. A merciful legislature fixed six months time within which the concerned officer must collect evidence and material in support of his belief that the seized goods are liable to confiscation and to issue notice to the owner of the goods to show cause why the goods be not confiscated. Six months is the outer limit for the detention of the goods by the customs, unless it is extended further. The further extension cannot be for a period exceeding six months. The extension beyond the original period of 6 months can only be made by the collector of customs "on sufficient cause being shown" to him. If within this period, original or extended, the concerned officer fails to make out a prima facie case in support of his reasonable belief that the goods are liable to confiscation, in that case the goods shall be returned to the person from whose possession they were seized."*

27. Further, in the case of Shri Balwant Raj Soni (Supra) again the issue has been examined and this Tribunal held as under:

"The Appellant stated that the gold pieces/bars were seized on the reasonable belief that they were smuggled into India from Bangladesh. The Adjudicating authority has relied upon the decision of the Hon'ble Supreme Court in the case of Gopal Das Uddhav Das Ahuja v. UOI reported in

MANU/SC/0530/2004 2004 (176) ELT 3 (SC) for effecting the seizure on the ground of 'reasonable belief. However, the said case is distinguishable on the ground, firstly, that the subjected case was during the breathing period of Gold Control Act, wherein possession of primary gold even unmarked had a Phrust of burden upon the Assessee. When the Gold Control Act was repealed without a the said decision under the Gold Control Act has no relevancy under the saving clause, the Customs Act Currently under the Customs Law, the burden has been thrust upon the Department and the presumption under Section 123 of the Customs Act has the application in the present case, as the gold seized is of Indian origin.

16. The Appellants have relied upon the decision of the Hon'ble Supreme Court in the case of Tata Chemicals Ltd. v. Commissioner of Customs (Preventive), Jaming the reported in MANU/SC/0617/2015 (2015) 11 SCC 628, which has explained the meaning of the word 'reason to believe as under-

"reason to believe" by opining it to be not the subjective satisfaction of the officer concerned, for "such power given to the officer concerned is not an arbitrary power and has to be exercised in accordance with their strains imposed by law and that such belief must be that of an honest and reasonable person based upon reasonable grounds. Further, if the authority would be acting without jurisdiction or there is no existence of any material or conditions leading to the belief, it would be open for the Court to examine the same, though

sufficiency of the reasons for the belief cannot be investigated.

In view of the above, the Appellants stated that to form a reasonable belief that, the goods are smuggled from Bangladesh, there must be irrefutable evidence to prove that allegation. In the present case there is no such evidence available to prove that the goods were of foreign origin and smuggled into India from Bangladesh.

17. The Appellants also relied upon the following decisions in support of their argument that the 'reasonable belief must be supported with other independent corroborative evidences.

(1) In Assistant Collector of Customs v. Charan Das Malhotra, MANU/SC/0605/1971 1971 (1) SCC 697, Shelat J., has held reasonable believe to be relevant and not extraneous.

(ii) In Kewal Krishan V. State of Punjab, MANU/SC/0095/1962: AIR 1967 SC 737, Kapur J., while dealing with identical provisions had clarified that confiscatory power based on 'reason to believe' has to be exercised only on the satisfaction based on certain objective material.

18. The Appellants relied upon judgment of the Hon'ble Supreme Court in the case of Sita Ram Sao vs. State of Jharkhand reported in MANU/SC/4270/2007: (2007) 12 SCC 630, wherein the Hon'ble Apex Court defined the word 'Corroboration' as under:

"34. The word 'corroboration' means not mere evidence tending to confirm other evidence. In DPP vs. Hester (1972) 3 AIR ER 10.16 Lord Morris said: "The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible: and corroborative evidence will only fill its role if it is completely credible....."

19. The Appellants also relied upon the decision of the Hon'ble Delhi High Court in the case of Shanti Lal Mehta vs. UOI and Others reported in MANU/DE/0249/1982: 1983(14)ELT1715 (DEL), which elaborately dealt with Town seizures. The relevant portion of the Order are reproduced below:

19.1 The Appellants stated that Reasonable belief must be at the time when the goods are seized and not subsequent to seizure.

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

Sampathu Chetty, MANU/SC/0089/1961: AIR 1962 S.C. 316). The preliminary requirement of Section 110 is that the officer seizing should entertain a reasonable belief that the goods seized were smuggled.

55. Reasonable belief as required by Section 110 refers to the point of time when the goods in question are seized and not to a stage subsequent to the act of seizure. (M.G. Abrol v. Amichand, MANU/MH/0055/1961: AIR 1961 Bom. 227). The condition precedent that there was such a reasonable belief anterior to the seizure must exist before the presumption under Section 123 can be invoked."

19.2 Smuggled goods Reasonable belief cannot be based on presumption.

"58. The second reason for entertaining a reasonable belief is that the seized goods were not accounted for by the petitioner on 15-2-1967 when the officer seized the goods from his possession. The seized goods consisted of 20 items of ornaments and diamonds. Out of these six items were released before the show cause notice was issued. One item was released at the adjudication stage. Six items were released by the Board on appeal. Only 7 items have been confiscated. These consist of 2 packets of diamonds and 5 ornaments. The petitioner claimed that they belonged to the queen mother of Nepal. A letter was written to queen mother. On her behalf a reply was received that she had given certain ornaments to the petitioner for polishing, remaking etc., though not for sale. But this was done later on.

The letter was written on 3-7- 1967. The reply was received on 24-7-1967. But at the time of seizure all that the officer had before him were 2 packets of diamonds and 5 ornaments. Neither the diamonds nor the ornaments had any foreign markings or label to suggest to the customs that these were smuggled goods. In the search list these two packets of diamonds are described as "appearing to be diamonds". This shows that the customs officer did not believe them to be diamonds on any reasonable ground. The ornaments had no foreign label or making. They were ordinary ornaments as are worn in this country. There was nothing peculiar about them. Nothing extraordinary. On this material could any reasonable man entertain a belief that these were smuggled goods

59. The belief must be such as any reasonable man in the circumstances of the case would entertain about the existence or non-existence of a thing. Simply because the goods were not accounted for at that time does not necessarily mean that the goods were smuggled goods. Unaccounted goods may be stolen goods. Reasonable belief could be entertained either on the basis of some external indicia or on the basis of some internal information that the goods had been illegally imported into India from Nepal or some other foreign country either without payment of duty or in contravention of any restriction or prohibition imposed by statute. There was nothing to suggest the foreign origin of the goods. There was nothing to suggest the illegal importation of the goods into the country.

60. *The goods must be smuggled goods. The word 'smuggled' means that the goods were of foreign origin and they had been imported from abroad. Only then does the presumption under Section 123 arise. The goods themselves did not suggest that the petitioner was an old smuggler or a dealer in smuggled goods. If there was such information with the customs, they ought to have disclosed it. The goods themselves did not suggest any illicit importation. Nor was there any inscription on the goods which could be the basis of the reasonable belief that the goods were of foreign origin. There was nothing in the appearance of the goods to suggest that they had been newly manufactured and brought into this country very recently from another country. In a word there was nothing absolutely from which inferences about their origin or recent import could arise. It was not a case where large quantity of gold with foreign markings was found hidden in the trousers of the accused as happened in Hukma v. State of Rajasthan, MANU/SC/0087/1963: AIR 1965 S.C. 476.*

61. *In fact there is a finding by the Board in favour of the petitioner supporting his contention that there could be no reasonable belief in the mind of the officer when he seized the goods. On the penalty of Rs. 25,000/- imposed on the petitioner the Board observed: "there is no definite evidence to show that the appellant knew or had reason to believe that those items were smuggled. In the absence of this evidence the penalty imposed is not justified. The Board accordingly remits the personal penalty in full". If the petitioner did not know that the goods were smuggled, how could the customs officer*

reasonably believe that the goods were smuggled. The petitioner knew better.

62. The customs officer merely thought that as the goods had not been accounted for these are smuggled goods. At the time of seizure what happened was this. The petitioner was present at the shop. He told the customs officer that they were duly entered in his account books but his accountant had gone to the income tax officer. The officer did not wait for the man to arrive to explain the entries to him. He seized the goods and took them away. This was not a case of reasonable belief. It was a case of suspicion. A case of speculation. A case of guess work.

63. As a result Section 123 did not apply to the case. There was no reasonable belief. No presumption could be raised under Section 123. There was no obligation on the petitioner to prove that the goods were not smuggled. The burden of proof was wrongly cast on him. The entire inquiry was vitiated."

20. From the above discussion, we observe that the 'reasonable belief on which the DRI officers presumed that the gold bars/pieces were of smuggled nature is not supported by any corroborative evidence. There is no document available on record to establish that gold bars/pieces were smuggled into India from Bangladesh. The impugned order has concluded that the said gold bars/pieces were smuggled into India only on the basis of assumptions and presumptions without any concrete evidence to substantiate this claim. Hence, we hold that material evidence available on record does not establish that the gold bars/pieces were

smuggled into India without any valid documents. Accordingly, answer to question (i) above in para 13 above is negative.

21. The next question to be answered is whether the burden of proving that the goods are not smuggled rest with the Appellants. The Appellants No 1 and 2, Partners of Gandhi & Sons have claimed that they have purchased the gold from M/s. Chandan Enterprises Delhi under the cover of Invoices 3 and 5 dated 01/01/20 and 03/01/20 respectively. They contended that they have made part payment for the gold purchased from M/s. Chandan Enterprises and the balance could not be paid as the gold pieces were seized by DRI. Since gold is not of foreign origin, section 123 is not applicable in this case as the gold bars/pieces were purchased domestically.

22. Section 123 of Customs Act 1962 puts the burden of proving that the gold is not smuggled one, on the person who claims ownership of the gold. For the sake of easy reference, the said section 123 is reproduced below:

22.1 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 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 be notification in the Official Gazette specify

22.2 We find that Section 123 applies inter-alia to gold/silver 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 so seized or from whose possession the goods are seized. The contention of the Department is that in the instant case, the onus of proving that the gold bars/pieces were not of smuggled in nature, lies on the Noticees from whose possession the impugned goods were seized. The Revenue contended that both Rajesh Kumar Yadav and Umanath did not produce any document for their lawful possession of the recovered gold bars/pieces at the time of seizure in Gaya Railway Station on 10/01/20.

22.3 The contention of the Appellants is that the gold bar/pieces were not of foreign origin. Section 123 of Customs Act is applicable only to foreign marked gold. Also the gold bars/pieces sized is not of 99.99

purity. Since, there is no foreign mark available on the gold bars/pieces seized from the Appellants, the provisions of section 123 is not applicable in this case.

22.4 The Appellants relied upon many decisions to support their case. In the case of Sanjeeb Kumar Pappu Kumar vs. It CC, Lucknow, MANU/CN/0316/2018 2019 (369) ELT 1177 (Tri-All), it has been held as under:

"3. The Learned Counsel for the appellants submits that in terms of Section 123 of Customs Act, 1962 the onus is on the appellant to prove that the gold in question is not smuggled one, although appellants have failed to prove that gold is not smuggled one but the allegation of the Revenue that the gold is restricted item being third country origin has not been proved by the Revenue and no evidence has been brought on record by the Revenue that how the gold is in question has come to India through Nepal. In that circumstances, gold cannot be absolutely confiscated in the facts and circumstances of the case, therefore, gold is required to be released to the appellants on payment of redemption fine and penalty. He also relied on the decision of the Hon'ble Bombay High Court in the case of State of Maharashtra v. Prithviraj Pokhraj Jain reported as 2000 (126) E.L.T. 180 (Bom.).

4. On the other hand Learned AR appearing on behalf of the Revenue submits that in this case Shri Umesh Kumar in his statement has admitted that gold is being smuggled from Nepal by Shri Sanjeeb Kumar, therefore, Revenue has established that gold

in question is smuggled one and is of third country origin. The appellants have failed to prove that the gold in question is not smuggled one. In that circumstances, the Revenue has rightly absolute confiscated the Gold in question.

5. Heard the parties.

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, MANU/GJ/0076/1969: 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."

22.5 The Appellants also relied upon the decision in the case of Balanagu Naga Venkata Raghavendra vs. CC Vijayawada MANU/CH/0001/2021 2021 (378) ELT

493 (Tri-Hyd), where in 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 foreign origin. It is true that the conduct of the appellants was suspicious inasmuch as the gold pieces were being carried in newspapers and a letter was found written to one Shri Vijay in Trissur for requesting the gold to be handed over to the bearer of the letter. It is also confirmed by the DCM, Railways that the appellants had travelled from Trissur to Vijayawada by train. However, we note that Trissur is not even a port in itself. The gold was apparently collected from one Shri Vijay in Trissur. There were also several contradictions between different statements as recorded in para 16 of the show cause notice. All these would show that Shri Kanaka Ratnam (Appellant in Appeal No. 30496 of 2017) wrote a letter to Shri Vijay of Trissur to hand over gold to the bearer of the letter and both the

letter and the gold were recovered from his son Shri Naga Venkata Raghavendra (Appellant in Appeal No. 30495 of 2017). Both the appellants had travelled by train from Trissur to Vijayawada. Naga Venkata Raghavendra was acting suspiciously when the Officers approached him. Subsequent statements were contradictory to each other. These factors by themselves cannot, in our considered opinion, constitute the basis for forming a reasonable belief that the seized gold was smuggled. Therefore, the Officers did not have a reasonable belief in the first place to assert that the seized primary gold was smuggled gold which is essential to shift the burden on to the accused under Section 123. The case of Om Prakash Khatri (supra) was different inasmuch as in that case while the foreign markings were missing on the gold in that case the carriers had admitted that they were carrying smuggled gold for Shri Khatri and that it was smuggled through Kerala and they were carrying it to Bombay and marks and numbers have been deleted to avoid being caught. They also admitted that they avoid air travel as there is a high risk of being caught. Coupled with these statements was the fact the gold of very high purity. The ratio of this judgment does not apply to the present case and the facts are quite different.

15. In view of the above, we find that the officers of the Department had no reasonable belief that the gold was smuggled and therefore they have not discharged their responsibility of forming reasonable belief under Section 123 without which the burden of proof will not shift to the person from whom the gold is seized."

22.6 It is observed from the Test report that the gold bars/pieces were of purity 99.5, 99.6 and 99.8 only. Normally foreign origin/foreign marked gold will be of purity 99.99. There is no foreign mark available on the gold seized. They were seized from Shri Rajesh Kumar Yadav and Shri Umanath at the Gaya railway station. The Appellants claimed that the gold bars/pieces were purchased domestically from M/s. Chandan Enterprises, Delhi under Invoices 3 and 5 dated 01/01/20 and 03/01/20. The Appellants stated that the the gold bars/pieces in question were sent to Kolkata to the goldsmiths for making of jewellery. The investigation ignored their claim and charged that the Appellants failed to give name, addresses, contact number, of the persons/goldsmiths to whom the said goods were sent for exchanging the same into gold jewellery. The Investigation also alleged that at the time of interception of Mr.Rajesh Kumar Yadav and Mr. Umanath, they were not carrying any papers/document related to purchase of the gold from M/s. Chandan Enterprises. However, the Investigation failed to make any inquiry from M/s. Chandan Enterprises about the legal purchase of the gold.

22.7 We observe that the Appellants claimed that the gold bars/pieces were purchased from M/s. Chandan Enterprises. Delhi. The investigation has not verified the documents submitted by them in support their claim of domestic purchase of the gold bars/pieces. They brushed aside the evidences submitted by the Appellants by citing some mismatch in the dates. One of the reasons cited for ignoring the invoice was that the invoices were not carried along with them by the persons who carried the gold. Not having the invoices at the time of

seizure cannot be a reason to ignore their claim. The documents produced could have been verified to find out the veracity of their claim. On the contrary, the investigation could not provide any evidence to establish the smuggled nature of the gold. In the absence of any such evidence, the burden of proving that the gold bars/pieces were not smuggled one cannot be thrust upon the Appellants.

22.8 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 Appellants, in this case. Accordingly answer to question no (ii) in para 13 above, is negative.”

30. In view of the discussion, from the facts of the case, as there is no mentioning of foreign origin on gold having purity of 99.6% and not recovered either at port/airport or international border, we hold that the burden under Section 123 of the Act to prove that the gold is not the smuggled one, does not lie on the appellant. Further we hold that as evidence of GST paid in the gold in question has been produced by the appellant in support of the claim also that goods are not smuggled one has been discharged by the appellant in terms of Section 123 of the Act, and Revenue has failed to discharge the onus to prove that gold in question is the smuggled one and relying on the decision of Balwant Raj Soni (Supra), we hold that gold in question cannot be confiscated.

31. Therefore, confiscation of the gold in question is held illegal and the confiscation thereof is set aside.

32. As gold is not liable to confiscation therefore, no penalty can be imposed on the appellant .Consequently penalty imposed on the appellant are set aside.

33. In view of this impugned order is set aside.

34. In result, appeals are allowed with consequential relief, if any.

(Pronounced in the open court on _28.01.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K.ANPAZHAKAN)
MEMBER(TECHNICAL)

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