

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA
REGIONAL BENCH – COURT NO. 1**

Customs Appeal No. 75055 of 2020

(Arising out of Order-in-Original No. CCP/NER/26/2019 dated 11.11.2019 passed by the Commissioner of Customs (Preventive), 110, Mahatma Gandhi Road, NER, Shillong – 793 001, Meghalaya)

Shri R. Rajesh Naykar

: Appellant

S/o. (L) J. Raju Naykar,
Proprietor of M/s. R.N. Trading,
Morning Bazar Road, Ward No. 3, Moreh,
Manipur

VERSUS

Commissioner of Customs (Preventive)

: Respondent

110, Mahatma Gandhi Road, NER,
Shillong – 793 001, Meghalaya

AND

Customs Appeal No. 75056 of 2020

(Arising out of Order-in-Original No. CCP/NER/26/2019 dated 11.11.2019 passed by the Commissioner of Customs (Preventive), 110, Mahatma Gandhi Road, NER, Shillong – 793 001, Meghalaya)

Shri Soibam Subhash Singh

: Appellant

S/o. Shri Soibam Golapi Singh,
Resident of Naranseina Mamang Leikai,
P.O. & P.S. – Moirang, District: Bishnupur,
Manipur – 795 133

VERSUS

Commissioner of Customs (Preventive)

: Respondent

110, Mahatma Gandhi Road, NER,
Shillong – 793 001, Meghalaya

APPEARANCE:

Shri P. Sikdar, Consultant,
Shri D. Bhattacharya, Advocate,
For the Appellant(s)

Shri Faiz Ahmed, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NOS. 77299-77300 / 2025

DATE OF HEARING: 05.08.2025

DATE OF DECISION: 20.08.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Customs Appeal No. 75055 of 2020 has been filed by Shri R. Rajesh Naykar (hereinafter referred to as the "appellant no. 1") against the Order-in-Original No. CCP/NER/26/2019 dated 11.11.2019 passed by the Ld. Commissioner of Customs (Preventive), 110, Mahatma Gandhi Road, NER, Shillong – 793 001, Meghalaya.

1.1. Customs Appeal No. 75056 of 2020 has been filed by Shri Soibam Subhash Singh (hereinafter referred to as the "appellant no. 2") against the Order-in-Original No. CCP/NER/26/2019 dated 11.11.2019 passed by the Ld. Commissioner of Customs (Preventive), 110, Mahatma Gandhi Road, NER, Shillong – 793 001, Meghalaya.

1.2. As both these appeals emanate from a common order, they are taken up together for disposal by way of a common order.

2. The facts of the case are that on 24.07.2015, personnel of 24th Assam Rifles, Khudengthabi, Manipur, intercepted one Maruti Van bearing Registration No. MN-06L-6803. On examination of the said vehicle, the personnel of 24th Assam Rifles recovered 20 (twenty) pieces of yellow metal (gold biscuits), wrapped in carbon paper and plastics, from a secret compartment of the rear seat of the said vehicle, amongst other items. Upon being asked, the driver of the said vehicle identified himself as Shri Soibam Subhash Singh, the appellant no. 2 herein, who stated that the said goods were being carried from Moreh to Imphal. The personnel of 24th Assam Rifles were of the belief that the said gold biscuits recovered were of foreign origin and accordingly handed over the said gold biscuits, along with the

vehicle in question, to the officers of Customs Preventive, Moreh for further necessary action under the Customs Act, 1962.

3. On receipt of the gold pieces from the 24th Assam Rifles personnel, the officers of Customs Preventive, with the help of a local goldsmith, ascertained the weight of the said gold biscuits as 3320 grams, valued at Rs.83,00,000/-. On testing of the good pieces, the purity of the gold was found to be in the range of 994.5 to 996.3. Thus, the Customs Officers were of the view that the said goods were of foreign origin and had been smuggled into the country through a route not specified under Section 7(1)(c) of the Customs Act, 1962, in violation of Section 11 of the said Act, the same were liable for confiscation under Section 111(b) and (d) of the Customs Act, 1962. Accordingly, the officers seized the said 20 pieces of gold under Section 110 of the Customs Act, 1962. The Maruti Van bearing Registration No. MN-06L-6803 valued at Rs.1,50,000/- was also seized under the impression that the same was also liable for confiscation under Section 115 of the Act.

4. Shri Soibam Subhash Singh (the appellant no. 2), the driver of the Maruti Van in question, in his statement inter alia stated that he had met a person in Moreh who had requested him to carry some goods to Imphal; that he had given his mobile number to the said person and told him to hand over the goods on 24.07.2015; that on 24.07.2015, the said person gave him a packet containing twenty pieces of gold biscuits and promised to pay him a sum of Rs.10,000/- upon delivery of the said gold biscuits to one Jaiseela Madrasij, who would give him a call at around 11 a.m., for meeting at Gandhi Avenue,

Imphal. In his statement, the appellant no. 2 has further stated that the said person did not disclose his name.

4.1. Thereafter, a Show Cause Notice under C. No. VIII(10)56/CUS/SH/2015/1414(B) dated 12.10.2015 was issued to Shri Soibam Subhash Singh / appellant no. 2 asking to show cause as to why the seized gold biscuits in question, along with the seized vehicle and other documents as listed in the inventory, should not be confiscated under Sections 111(b), (d) and 115 of the Customs Act, 1962 and penalty should not be imposed on him under Section 112(b)(ii) of the said Act.

5. Subsequently, one Shri R. Rajesh Naykar, the appellant no. 1 herein, Proprietor of M/s. R.N. Trading, Morning Bazar Road, Ward No. 3, Moreh, Manipur submitted a petition dated 09.10.2015 (received on 27.10.2015) at the CPF, Moreh, claiming legitimate ownership of the said twenty (20) pieces of gold biscuits weighing 3320 grams. In his petition, the appellant no. 1 also stated that he had purchased the gold in question from M/s. Sangham Diamonds Pvt. Ltd., Office No. 12, 2nd Floor, Renuka Building, 1st Bhatwadi, Opera House, Mumbai 400 004 under Tax Invoices No. SD/JEW/JUN/003/2015-16 dated 05.06.2015, SD/JEW/JUN/004/2015-16 dated 08.06.2015 and SD/JEW/JUN/005/2015-16 dated 11.06.2015. It was further submitted by Shri R. Rajesh Naykar / appellant no. 1 that he had found it risky keep the said gold in Moreh and had decided to bring the said gold from Moreh to Imphal for further dispatch to Mumbai for resale since the price of gold was showing declining trend; that he telephonically directed his brother to hand over the said gold to Shri

Soibam Subhash Singh, Driver-cum- owner of Maruti van bearing Registration no. MN-06L-6803 along with the copies of the said tax Invoices on 27.03,2015, as it was impossible for him to personally go from Imphal to Moreh due to vehicle strike on Imphal Moreh Road. It has also been stated that although Shri Soibam Subhash Singh was having the documents evidencing legal procurement of the said gold, due to nervousness and being frightened at the sight of Assam Rifles personnel, Shri Soibam Subhash Singh could not show the Invoices as well as could not disclose the name of the real owner of the seized gold. In the said petition, it has been stated by the appellant no. 1 that he had claimed ownership of the seized gold before the Chief Judicial Magistrate of Chandel Manipur on 26.07.2015 and produced the said three Tax Invoices.

5.1. Thereafter, statement of Shri R. Rajesh Naykar (appellant no. 1), was recorded on 24.02.2015, wherein he inter alia stated that he had been dealing in jewellery and precious and semi-precious stones from the premises of M/s. R.N. Trading, Morning Bazar Road, Ward No. 3, Moreh, Manipur for the last one year. He had also stated that he had purchased the said gold bars (without markings) from M/s. Sangam Diamonds Pvt. Ltd., Mumbai under Tax Invoices No. SD/JEW/JUN/003/2015-16 dated 05.06.2015 SD/JEW/JUN/004/2015-16 dated 08.06.2015 and SD/JEW/JUN/005/2015-16 dated 11.06.2015.

5.2. The veracity of the claim of Shri R. Rajesh Naykar was investigated and M/s. Sangam Diamonds Pvt. Ltd., Mumbai was asked to confirm the sale. They communicated vide their letter dated 15.01.2015 that they had sold 3325.49 gms gold bars under the

aforementioned Tax Invoices and that the gold bars were made by way of melting gold jewellery; that there were no markings on the gold bars sold by them.

5.3. However, the inventory of the seized goods in the instant case showed there were markings on five of the gold bars in the name and style of "THOON". It was therefore alleged by the Customs Authorities that the Tax invoices of M/s. Sangam Diamonds Pvt. Ltd. submitted by appellant no. 1 are not supporting the legal purchase of the gold by the said appellant.

5.4. In view of the above, a Supplementary Show Cause Notice under under C. No. VIII(10)56/CUS/SH/2015/11159(B) dated 17.03.2016 asking Shri R. Rajesh Naykar to show cause to as to why the said seized gold biscuits/vehicle/documents etc as listed in the inventory collectively valued at Rs.84,50,000/-, should not be confiscated under Section 111 (b), (d) and 115 of the Custom Act 1962, and penalty should not be imposed upon him under Section 112(b)(ii) of the Customs Act 1962.

6. Both the Show Cause Notices were adjudicated vide the Order-in-Original No. CCP/NER/26/2019 dated 11.11.2019 wherein the Id. adjudicating authority has ordered absolute confiscation of the 20 (twenty) gold biscuits collectively weighing 3320 grams valued at Rs.83,00,000/- under Section 111(b) and (d) of the Customs Act, 1962, besides ordering absolute confiscation of the Maruti Vehicle bearing Registration No. MN-06L-6803 valued at Rs.1,50,000/- under Section 115(2) *ibid*. Penalties of Rs.8,00,000/- each have also been imposed by the Id. adjudicating authority on the appellants herein under Section 112(b) of the Act.

7. Aggrieved by the confiscation of the gold biscuits, Maruti vehicle and imposition of penalties on them, the appellants have filed the present appeals.

8. The Ld. Counsel appearing on behalf of the appellant has made various submissions, which inter alia are as follows: -

- (i) The appellant no. 1 viz. Shri R. Rajesh Naykar, is a registered jeweller in Moreh, Manipur. under the Manipur Value Added Tax (VAT) with TIN: 14922640149 and holds Certificate of Registration No. 14922512231 under the Central Sales Tax (Registration & Turnover) Rules, 1957.
- (ii) The appellant no. 2 viz. Shri Soibam Subhash Singh in his bail application dated 24.07.2015, before the Ld. Chief Judicial Magistrate, Chandel, Manipur, claimed that Shri R. Rajesh Naykar (appellant no. 1) is the owner of the gold and he had annexed three tax invoices in support of the gold. He was enlarged on bail on the same date.
- (iii) The appellant no. 1, Shri R. Rajesh Naykar, apprehending arrest by the Customs officers had filed an anticipatory bail application before the Learned Chief Judicial Magistrate, Chandel, Manipur. Bail order dated 12.08.2015 would show that the appellant no. 1 had claimed ownership of 20 pcs of gold biscuits, which was purchased from M/s Sangam Diamond Private Limited, Mumbai. He was granted anticipatory bail.

(iv) The Order-in-Original at paragraph 45 records that the Appellant had produced valid purchase tax invoices issued by M/s Sangham Diamonds Pvt. Ltd., Mumbai, in support of the seized gold, which precisely corresponds to the total quantity of 3,325.49 grams. The details of the invoices are as follows:

(i) Invoice No. SD/JEW/JUN/003/2015-16 dated 05.06.2015 – 1330.000 grams

(ii) Invoice No. SD/JEW/JUN/004/2015-16 dated 08.06.2015 – 1164.240 grams

(iii) Invoice No. SD/JEW/JUN/005/2015-16 dated 11.06.2015 – 831.250 grams

Total: 3325.49 grams

(v) Further, it is on record that the aforesaid seller, M/s Sangham Diamonds Pvt. Ltd., had duly discharged VAT liability amounting to Rs.3,17,582/- for the month of June 2015 through Challan in MTR Form No. 6, in compliance with the Maharashtra VAT Rules, 2005. This further reinforces the genuineness of the purchase transactions and the lawful acquisition of the gold.

(vi) It is submitted that the authenticity of the purchase documents submitted by the appellant no. 1 stands duly verified by the Department itself. Paragraph 10 of the Supplementary Show Cause Notice dated 17.03.2016 records the outcome of the follow-up investigation conducted with the supplier, M/s Sangham Diamonds Pvt. Ltd., Mumbai. The relevant portion is reproduced below:

"10. As a part of the follow-up investigation, the matter was referred to Sangham Diamonds Pvt. Ltd., Mumbai. It was communicated by the said supplier that they had sold 3325.49 grams of gold bars at Mumbai under tax invoices No. SD/JEW/JUN/003/2015-16 dated 05.06.2015, SD/JEW/JUN/004/2015-16 dated 08.06.2015, and SD/JEW/JUN/005/2015-16 dated 11.06.2015. It was further stated that the said gold bars were made by melting gold jewellery and that there were no markings on the gold bars so sold."

- (vii) This confirmation by the supplier corroborates the claim of the appellant no. 1 regarding the lawful purchase of gold through verifiable and documented transactions. It is also noteworthy that the gold seized corresponds exactly in weight to the quantity mentioned in the aforesaid invoices, and that the supplier has acknowledged the absence of any foreign markings on the gold bars, nullifying any presumption of foreign origin.
- (viii) Accordingly, the verification undertaken by the Department establishes the genuineness of the purchase documents beyond reasonable doubt and supports the appellant's claim of lawful acquisition.
- (ix) Two Show cause notices dated 12.10.2015, and dated 17.03.2016 were issued, within a period of five months, stating different grounds for confiscation U/s 124 of the Customs Act, 1962:

First SCN , dated 12.10.2015, has been issued to Shri S Subash Singh, Driver/carrier, proposing confiscation of seized Gold on the grounds that there were no owner or documents in support of the seized Gold, hence seized Gold were unclaimed, foreign origin and illegally imported. Shri R. Rajesh Nayekar (Appellant) was not made a party to the Show Cause Notice, dated 12.10.2015. The appellant no. 1, being aggrieved, had preferred the Writ Petition (Civil) No 303 of 2015, before the Hon'ble Court of Meghalaya for depriving him an opportunity to present his case as owner of the Gold. During the pendency of the said Writ Petition, Supplementary Show Cause Notice dated 17.03.2016 was issued to Shri Rajesh Naykar (appellant no. 1), as owner of the seized Gold, but added a new ground that the gold biscuits under seizure bore foreign markings "THOON", which allegedly did not match with the documents produced by the Appellant.

- (x) THOON" markings on 5 out of the 20 seized gold bars do not indicate foreign origin. Appellant's gold bore no markings to his best of knowledge. However, on verification after issuance of the Show Cause Notice, it was found "THOON" markings on 5 out of the 20 seized gold bars. These markings are crude, faint, and appear to have been manually inscribed, likely by a local goldsmith. They lack the characteristics of any certified hallmark, recognized refinery stamp, or branding associated with an established or notified foreign manufacturer. "THOON" is neither an internationally recognized brand nor supported by any certification, industry

validation, or official documentation linking it to a specific foreign source. In the absence of any expert opinion, assay report, or notification under the Customs Act, 1962, these markings cannot be relied upon to establish foreign origin of the gold in question.

- (xi) The gold bars/pieces dealt with by the appellants are proved to be not of foreign origin and therefore, no penalty was imposable on them under the Section 112(b) of the Customs Act, 1962.
- (xii) In the absence of any evidence on record to establish the foreign origin of the seized gold, the appellant no. 1's claim of lawful domestic purchase remains uncontroverted. Consequently, the confiscation of the gold is untenable in law and liable to be set aside.
- (xiii) In support of their contentions, the appellants have placed reliance on the following case law:-
- *Daleep Kumar Verma v. Commissioner of Cus. (Prev.), Shillong [Final Order Nos. 75300-75302 of 2023 dated 04.05.2023 in Customs Appeal No. 75315 of 2022 & ors. – CESTAT, Kolkata]*
 - *Balanagu Naga Venkata Raghavendra v. Commissioner of Customs, Vijayawada [2021 (378) E.L.T. 493 (Tri. – Hyd.)]*
 - *Balwant Raj Soni & ors. v. Commissioner of Cus. (Prev.), Patna [Final Order Nos. 75455-75457 of 2023 dated 18.05.2023 in Customs Appeal No. 75414 of 2022 – CESTAT, Kolkata]*

- *Sarvendra Kumar Mishra & Anr. v. Commissioner of Customs [2021 (9) TMI 405 – CESTAT, Allahabad]*
- *Commissioner of Cus (Prev.), Patna v. Lalit Krishna Agarwal [Final Order No. 77506 of 2023 dated 08.11.2023 in Customs Appeal No. 75499 of 2022 – CESTAT, Kolkata]*
- *Commissioner of Cus., Chennai-III v. Mohammed Ali Jinnah [Final Order No. 40289 of 2023 dated 20.04.2023 in Customs Appeal No. 40099 of 2020 – CESTAT, Chennai]*
- *Ajit Bhosle v. Commissioner of Cus. (Prev.), Kolkata [Final Order Nos. 77019-77022 of 2019 dated 09.08.2019 in Customs Appeal Nos. 75667 to 75670 of 2017 – CESTAT, Kolkata]*
- *Oryx Fisheries Pvt. Ltd. [2011 (266) E.L.T. 422 (S.C.)]*
- *Siemens Ltd. [2007 (207) E.L.T. 168 (S.C.)]*

8.1. Further, the appellant no. 1, Shri R. Rajesh Naykar, has made additional submissions vide letter dated 06.08.2025 wherein he has inter alia submitted that during pendency of the present appeal, the Department has proceeded to dispose of the seized gold in violation of the settled legal principles. The appellant has cited the CBIC's Instruction No. 11/2022-Customs dated 08.09.2022, read with Instruction No. 27/2021-Customs dated 03.12.2021, explicitly lays down that in case the seized gold is disposed of and the appellate authority orders its return, the Appellant is to be refunded the value of the gold, calculated either as per tariff value or

average market price, based on the date of disposal, as approved by the Joint Pricing Committee. In the written submission, appellant no. 1 further submitted that he had sought the information regarding disposal of the gold in question by way of application under the RTI Act and received a reply thereto wherein it has been informed that the seized gold was handed over to the Security Printing and Minting Corporation of India Ltd. (SPMCIL) under HOGS Note bearing Serial No. 02/IMP/2023 dated 23.01.2023 and included in Preliminary Weight Note No. 48/2023 dated 03.03.2023. Since the gold in question has been handed over to SPMCIL government mint, it is his contention that as per the instructions cited supra issued by the Department, the value of the gold is required to be refunded to him at the average market price prevailing on the date of its disposal, as approved by the Joint Pricing Committee, along with interest at the rate of 12% from the date of seizure till the date of payment. In support of his claim, the appellant no. 1 has cited the following decisions in his favour: -

- *Northern Plastics Ltd. Vs Collector of Customs [1999 (113) E.L.T .3 (S.C)]*
- *Ratan Lal Jain Versus Union of India [2017 (349) E.L.T. 468 (Cal.)]*
- *Dejero Logix Pvt. Ltd. v. CC (Imports), AIR CARGO, NCH, New Delhi [2017 (351) E.L.T. 213 (Del.)]*
- *Shilps Impex v. Union of India [2002 (140) E.L.T. 3 (S.C.)]*

9. On the other hand, the Ld. Authorized Representative of the Revenue has reiterated the findings in the impugned order. He submits that the purchase invoices produced by the appellant no. 1 from M/s. Sangam Diamonds Pvt. Ltd., Mumbai do not correspond to the gold in question. The Ld. Authorized Representative cited the letter dated 15.01.2015 received from M/s. Sangam Diamonds Pvt. Ltd., Mumbai, wherein they have categorically stated that there were no markings on the gold sold by them. As five of the gold pieces seized in this case bear the markings of 'THOON' on them, the Ld. Authorized Representative of the Revenue contends that the gold sold by M/s. Sangam Diamonds Pvt. Ltd., Mumbai to the appellant are different from the gold seized in the present case. Thus, he submits that the purchase invoices submitted by appellant no. 1 cannot be considered as evidence of legal purchase of the gold in question. Accordingly, the Ld. Authorized Representative of the Revenue has supported the demands confirmed in the impugned order.

10. Heard both sides and perused the records.

11. Having gone through the documentary evidence available on record, we find that the following issues emerge for our consideration: -

- (i) Whether the seizure of the gold was based on a 'reasonable belief' as required under Section 110(1) of the Customs Act, 1962 or not.
- (ii) Whether the seized gold actually bore the "THOON" marking, and if so, whether the marking is sufficient to establish the gold's foreign origin or not.

- (iii) Whether the burden of proof under Section 123 of the Customs Act, 1962, can be shifted to the appellants in the absence of any conclusive evidence proving the foreign origin of the gold, or not.
- (iv) Whether the documents produced by the appellant no. 1 evidence licit purchase of the gold in question from domestic sources or not.
- (v) Whether the confiscation of the seized gold and vehicle under Sections 111(b), 111(d) and 115(2) of the Customs Act, 1962, is legally justified or not.
- (vi) Whether the imposition of penalties under Section 112(b) of the Customs Act, 1962, is legally warranted, or not.

Issue No. (i) Whether the seizure of the gold was based on a 'reasonable belief' as required under Section 110(1) of the Customs Act, 1962 or not.

12. We find that in the instant case, gold weighing 3325.49 grams was seized by the 24th Assam Rifles on 24.07.2015 at Imphal-Moreh Road from the possession of the driver Shri S. Subash Singh, appellant no. 2 and subsequently, the same had been handed over to the Customs Officers, Moreh, Manipur.

12.1. From the report submitted by the Assam Rifles while handing over of the gold to Customs Officers at Moreh, we observe that the report does not indicate the presence of any foreign markings on the seized gold. For the sake of ready reference, the

“Handing/Taking Over Certificate” evidencing handing over of the said goods to the Customs authorities is reproduced below: -

HANDING/TAKING OVER CERTIFICATE OF APPREHENDED PERSON AND RECOVERED ITEMS

1. This is to certify that the under mentioned person and recovered items have been handed over to Customs Department of Moreh as on 24 Jul 2015 at 12.30 hrs who was carrying 20 Numbers of Golden biscuits pieces (Weight 3.320 Kg) from Moreh to Imphal and were apprehended by A Coy of 24 Assam Rifles (Khudongthabi Check Post).

(a) Mr. Solbam Subhash Singh, age 28 yrs, S/o Solbam Gutapl Singh, resident of Village Narangoina Mamang Lokkal, PO+PS - Molang, Dist - Bishnupur (Manipur).

2. **Details of Recovered Items**

(a)	Golden biscuit piece	= 20 Numbers (weight - 3.320 Kg),	
(b)	Veh Silver colored Maruti van, regd No. MN06L 6803	-	01 Number
(c)	PAN card	- 02 Numbers	
(d)	Aadhar Card	- 01 Number	
(e)	Voter I/Card	- 01 Number	
(f)	veh regd Card	- 01 Number	
(g)	Driving licence	- 01 Number	
(h)	Amway Business Owner card	- 01 Number	

Handed over by

(Signature) Anil Kumar

No IC-2400314

Rank Nb/Snb

Name Anil Kumar

Unit/Fm : A Coy 24 AR

Taken over by

(Signature) S. Ramesh Kumar

No 24/07/2015

Rank Inspector

Name S. Ramesh Kumar

Unit/Fm Customs Preventive Force Moreh

CHIEF JUDICIAL MAGISTRATE
CHANDHEL MANIPUR

Sum
26.7.2015
Chief Judicial Magistrate
Chandel, Manipur

24/07/15
Inspector
Customs Preventive Force
Moreh

Sum
26.7.15
Chief Judicial Magistrate
Chandel, Manipur

No IC-2400314

Rank Nb/Snb

Name Anil Kumar

24 Assam Rifles

12.2. From the above report, we find that the gold in question has been mentioned in the report as 'Golden biscuit piece-20 numbers'. The report has not indicated the presence of any foreign markings on the gold recovered by them.

12.3. We have also perused the Seizure inventory prepared by the Customs officers under Section 110 of the Customs Act, 1962. For ready reference a scanned copy of the seizure list id reproduced below:

INVENTORY OF THE GOODS SEIZED
(Section 110 of the Customs Act., 1962)

1. Name and address of the owner : Shri Soibam Subhash Singh (26yrs) S/o Soibam Gulapi Singh, R/o Naranseina, Mamang Leikai, PO & PS Moirang, Bishnupur Dist., Manipur

2. By whom seized : Miss.S. Rameshwori Devi, Inspector, C.P.I., Moreh.

3. Place, date & time of seizure : Initially detected by 24th Assam Rifles, at Khudengthabi and formally seized by CPF Moreh, at about 1830 hrs on 24.07.2015

4. Customs House Case File No. 11/CL/IMP/CUS/MOR/15-16 date 24.07.2015

Sl no.	Detailed description of goods (Package wise)	Quantity	Estimated value in Rs.	Remarks
1.	Yellow Metal (Gold Biscuit) of foreign origin	20 (twenty) pcs 3320 grams	Rs.83,00,000/-	@ Rs.2500/- per gram
2.	Old and used Maruti Van bearing Regn No. MN-06L-6803 (Silver colour)	1 (one)	Rs.1,50,000/-	----
3.	PAN Card	1 (one)	NCV	
4.	Adhar Card	1 (one)	NCV	
5.	Voter I/Card	1 (one)	NCV	
6.	Vehicle Registration card	1 (one)	NCV	
7.	Driving Licence	1 (one)	NCV	
8.	Amway Business owner card	1 (one)	NCV	
(Total Rupees eighty four lakhs fifty thousand) only			Rs.84,50,000/=	

S. Subhash Singh
24/07/2015
Signature of the owners:

Witnesses:
1. Y. Manojha Singh
2. Anil Kumar



Signature of the seizing officer: S. Rameshwori Devi
24/07/2015
Inspector
Customs Preventive Force
Moreh.

Seal
24-7-15
Chief Judicial Magistrate
Chandel, Manipur

12.4. A perusal of the seizure Inventory also reveals that there were no foreign markings available on the gold. We observe that seizure in this case centers around the exercise of authority by the Custom Officials under section 110 (1) of the Customs Act, which reads as under: -

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

12.5. In the present case, we observe that the gold was seized by the personnel of Assam Rifles and later handed over to Customs, meaning that the Customs officer did not act on his independent belief but merely accepted the seizure done by another agency. The Hon'ble Supreme Court in *Union of India v. Mohammed Nawaz Khan, (2021) 10 SCC 100*, held that the authority effecting the seizure must demonstrate a subjective satisfaction based on objective material, failing which the seizure is invalid.

12.6. We observe that even after accepting the gold from personnel of the Assam Rifles, the Customs officers did not derive any subjective satisfaction that the gold was of foreign origin and smuggled. The seizure inventory fails to disclose any material evidence justifying a 'reasonable belief' for seizure of the gold. In this regard, we observe that the mere finding of gold does not render it liable for seizure unless there is cogent and positive evidence proving its foreign origin as the first condition, as precursor to seizure. The Hon'ble Supreme Court, in *Gian Chand v. State of Punjab (1962 AIR 496)*, has categorically held that mere suspicion is not sufficient to justify seizure, and the prosecution must provide substantive evidence of foreign origin.

12.7. Further, we observe that in *Union of India v. Mahesh Raj* (1990 SCC (3) 115), the Hon'ble Supreme Court ruled that the burden under Section 123 arises only if there is prima facie evidence indicating foreign origin, which is entirely absent in this case.

12.8. Also, in *D. Bhoormull* (1974 AIR 859), the Hon'ble Supreme Court emphasized that suspicion alone is not a substitute for evidence. In *Umrao Lal v. Commissioner of Customs* (2016 (331) E.L.T. 216 (Tri.-Del.)), it was held that in the absence of markings or material evidence proving foreign origin, confiscation is not sustainable.

12.9. In the instant case, we observe that Assam Rifles recovered gold from the procession of appellant no. 2 solely on suspicion that it was smuggled and later handed it over to Customs. However, instead of conducting an independent verification or forming their own reasonable belief based on credible evidence, the Customs officers proceeded with the seizure under the Customs Act without exercising due diligence. They failed to assess whether a reasonable belief of smuggling genuinely existed, as required by law, and merely acted on the presumption created by Assam Rifles. This lack of independent application of mind renders the seizure arbitrary and legally unsustainable.

12.10. In this regard, we find that a similar view has been expressed by the Tribunal, Kolkata in *Customs Commissioner of Cus (Prev.), Patna v. Lalit Krishna Agarwal* [Final Order No. 77506 of 2023 dated 08.11.2023 in Customs Appeal No. 75499 of 2022 – CESTAT, Kolkata], wherein it was observed as under:-

"6. In fact, during the course of investigation, it is a fact on record that boondi silver and silver jewellery were recovered from the shop of the respondent. So, the question arises that in the absence of any seizure of Port or Airport or not having any foreign markings on the goods seized from the respondent, how the officers came to the conclusion that the goods are third country origin goods. Therefore, first, onus on the Revenue is to make a reasonable belief that the goods are of third country. Admittedly, no such evidence has been produced by the Revenue to allege that to make a reasonable belief, the goods are of third country origin. In the absence of that, the goods in question cannot be confiscated."

12.11. In view of the above discussions, we hold that there was no 'reasonable belief' in this case for seizure of the gold in question in terms of Section 110(1) of the Customs Act, 1962. Thus, the issue no. (i) framed at paragraph 11 of this Order is answered in the negative.

Issue No. (ii) Whether the seized gold actually bore the "THOON" marking, and if so, whether the marking is sufficient to establish the gold's foreign origin or not.

13. We find that in the instant case, 5 out of the 20 seized gold bars bore the marking "THOON", which has been construed to be of foreign marking by the Ld. Adjudicating authority for confiscation of the gold in question under the Customs Act.

13.1. It is observed that the appellant no. 1 had questioned the said "THOON" markings before the Id. adjudicating Authority, who directed for physical verification of the seized gold, which was conducted on 22.04.2019 at Imphal Customs Office. It was found that out of total 20 (twenty) pieces of gold biscuits under seizure, only five pieces of gold bear markings - THOON' and the remaining fifteen pieces of the seized gold do not have any markings.

13.2. In this regard, the appellant no. 1 has contended that the gold biscuits were melted and THOON markings were embossed, which are indistinct. In support, the pictures of the 20 pieces of gold biscuits (including 5 pieces of Gold Biscuits containing THOON markings) were enclosed by the appellant no. 1, along with a copy of the verification report thereof. It is the appellant's claim that the said THOON markings in 5 pcs were done by the seller. However, the seller M/s. Sangam Diamonds Pvt. Ltd., Mumbai, have not considered the same as 'foreign marking' and hence in their letter dated 15.01.2015, they have indicated that there was no marking on the gold pieces sold by them.

13.3. We find that the Department has failed to establish that "THOON" is a recognized foreign mark or bears any established nexus with foreign origin. There is no evidence on record of conclusive foreign marking on gold nor any assay reports or any other expert opinion proving that the marking "THOON" signifies foreign origin. It is also pertinent to note that the remaining 15 bars were completely unmarked, and thus cannot be presumed to be of foreign origin. The impugned order merely emphasizes that the documents produced by the Petitioner did not match

the seized goods, but this by itself cannot substitute the mandatory requirement of establishing foreign origin before proving smuggling.

13.4. Further, we also find that it is settled law that even foreign markings on gold bars do not, by themselves, establish the smuggled nature of the gold. We observe that the place of seizure is Khudengthabi on National Highway 102 (NH 102) and gold bore no foreign markings. Thus, we observe that additional evidence is therefore required to prove that the gold was illegally imported, which is not available in this case.

13.5. In this regard, we refer to the decision of this Tribunal in the case of *Rajesh Kumar v. Commissioner of Cus. (Prev.), New Delhi [Final Order No. 51030 of 2022 dated 31.10.2022 in Customs Appeal No. 51709 of 2021 – CESTAT, New Delhi]*. The relevant observation in the said decision is reproduced below:-

"23.

Admittedly, the seized gold was of 99.5% purity, whereas normally the smuggled gold is of 99.9% purity. On this score also there can be no presumption of gold being smuggled only on the basis of foreign marking. In absence of any chain of events supporting movement of smuggled gold from the border area or customs area to town or a person coming from an international border, I hold that simply possession of foreign marking gold without a bill does not lead to the conclusion that it is smuggled."

13.6. The Hon'ble Bombay High Court in the case of *State of Maharashtra v. Prithviraj Pokhraj Jain* [2000 (126) E.L.T. 180 (Bom.)] has held 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."

13.7. We also find that there are no specific findings in the impugned order to prove that "THOON" is a foreign marking. It is seen that "THOON" is neither an internationally recognized brand nor a certified hallmark or refinery marking associated with any established gold manufacturer. In the absence of any official certification, industry recognition, or conclusive evidence linking "THOON" to a specific foreign source, such markings, if they even existed at seizure cannot be relied upon to establish the foreign origin of the gold. There is no factual or legal basis to conclude that such markings, even if present, prove illicit importation. The confiscation of the gold on this ground alone is therefore legally untenable and unsupported by the evidence on record. The confiscation of the gold on this ground is therefore legally untenable and unsupported by the evidence on record. Hence, we answer the issue framed at paragraph 11(ii) supra, in the negative.

Issue No. (iii) Whether the burden of proof under Section 123 of the Customs Act, 1962, can be shifted to the appellants in the absence of any conclusive evidence proving the foreign origin of the gold, or not.

14. Section 123 of Customs Act, 1962, prescribes that the burden of proving that goods which have been seized under the Act are not smuggled in nature is on the person who claims the ownership of the goods. For the sake of ready reference, the said Section is extracted 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 from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

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

14.1. In this regard, we observe that for shifting the onus on the person who claims the ownership of gold, it is required to be proven first that the gold under seizure were of foreign origin and once foreign character is proved, only then the onus is shifted on the person who claims the ownership, to show that the same were not smuggled. In this regard, it is relevant to cite the judgement of the Hon'ble Supreme Court in *Ganesh Das v. Collector of Central Excise [1994 (70) ELT 441 (SC)]* wherein it was held that before the burden shifts to the person from whom the goods were seized, it must first be established that the goods were of foreign origin and mere suspicion or presence of certain disputed markings is not sufficient. Further, the Hon'ble Supreme Court in *Commissioner of Customs v. Abdul Gani [2012 (278) ELT 474 (SC)]* has reiterated that reasonable belief must be backed by sufficient evidence of foreign origin. If there are no foreign markings or documentation, the Customs authorities cannot

simply assume that the gold in question were of smuggled in nature.

14.2. It is a fact that in the present case, the gold biscuits do not have clear foreign markings except for disputed markings on a few biscuits, and no further evidence was adduced to prove foreign origin. Hence, in the facts and circumstances of the case, we observe that the burden of proof under Section 123 of the Customs Act does not shift to the owner. The Customs authorities must first establish the foreign origin before invoking the presumption of smuggling. So, we find that the responsibility was on the Department to show that the gold in question was smuggled into the country without payment of appropriate duties of Customs thereon, which the Department has failed to discharge in this case.

14.3. We find that the issue has been examined by this Tribunal at Hyderabad in the case of *Balanagu Naga Venkata Raghavendra vs CC Vijayawada [2021 (378) ELT 493 (Tri-Hyd)]*, wherein it has been held that the burden under Section 123 *ibid.* will not shift on the appellants when the seizure of gold without foreign markings are seized from city.

14.4. In this regard, we also find that a similar view has been expressed in the case of *Sarvendra Kumar Mishra & Anr. v. Commissioner of Customs [2021 (9) TMI 405 – CESTAT, Allahabad]*. The relevant observation of the Tribunal, Allahabad in the said order are as under: -

"14. Having considered the facts and circumstances, we find that admittedly this is a case of town seizure wherein, the impugned gold was intercepted, initially taken possession of by the officer of GRP and then handed over to the Customs. Admittedly, the

gold did not have any tell-tale foreign markings and it was merely accused that the markings were removed to hoodwink investigation. The place where seizure took place is not Customs Area. Hon'ble Supreme Court in the case of Gian Chand & Ors(Supra), wherein in case of seizure by the Police and thereafter the possession was shifted to the Customs Officer held that the pre-requisite of seizure is not satisfied. Accordingly, it is held that the circumstances as required under the Customs Act are not satisfied and consequentially the whole burden or onus to establish the smuggled nature of gold is on the Revenue."

14.5. Thus, we hold that the burden of proof under Section 123 of the Customs Act does not shift to the appellant no. 1, who has claimed the ownership of the gold in this case. Accordingly, we answer the issue framed at paragraph 11(iii) supra, in the negative.

Issue No. (iv): Whether the documents produced by the appellant no. 1 evidences licit purchase of the gold from domestic sources or not.

15. We observe that appellant no. 1 has produced evidence regarding legal purchase of the gold by means of three tax invoices dated 05.06.2016, 08.06.2015 and 11.06.2016. It is his submission that the appellant no. 2, namely, Shri Soibam Subhash Singh, was carrying the said invoices, but was unable to produce the same due to nervousness and/or fright. The said invoices are reproduced below for the sake of ready reference: -

ANNEXURE C Series

58

Sangham Diamonds Pvt. Ltd.
DIAMOND EXPORTER, IMPORTER & MFG.

Office No. 12, 2nd Floor,
Renuka Bldg., 1st Bhatwadi,
Opera House, Mumbai - 400 004.
Tel.: +91 22 3394 9562
Email : sanghamdiamonds2013@gmail.com

TAX INVOICE

TO,
M/S.R.N. TRADING
MORNING BAZAR ROAD,
W/NO. 3 MOREH
MANIPUR
14922640149 V
14922512231 C

IN. NO. : SD/JEW/JUN/003/2015-16
DATE : 05/06/2015

PAN. : AHTPN 8760 G

SR.	ITEM	DIA/COL. ST.	@	AMOUNT	GOLD	@	AMOUNT	LABOUR	AMOUNT
		PCS	CTS.	PER CTS.		GHS.	PER GHS.		
1	GOLD 166.32*8					1330.000	2695.00	3584350.00	
									35,84,350.00

Add V.A. TAX 1.00 % 35844.00

TOTAL 36,20,194.00

TOTAL RUPEES THIRTY SIX LAKHS, TWENTY THOUSAND, ONE HUNDRED NINETY FOUR ONLY.

VAT TIN NO.27231014975
VAT TIN NO.27231014975

AATCS 2120 D

GOODS SOLD & DELIVERED AT MUMBAI

I/We hereby certify that my/our registration certificate under the Maharashtra Value Added Tax Act, 2002 is in force on the date on which sale of goods specified in this tax invoice is made by me/us and that the transaction of sale covered by this tax invoice has been effected by me/us and it shall be accounted for in the turnover of sales while filing of return and the due tax, if any, payable on the sale has been paid or shall be paid.

FOR SANGHAM DIAMONDS PVT. LTD.

महेश्वरी गोपनी

DIRECTOR/AUTH. SINGHTRE



Sangham Diamonds Pvt. Ltd.

DIAMOND EXPORTER, IMPORTER & MFG.

Office No. 12, 2nd Floor,
Renuka Bldg., 1st Bhatwadi,
Opera House, Mumbai - 400 004. H
Tel.: +91 22 3394 9562
Email : sanghamdiamonds2013@gmail.com

TAX INVOICE

TO,
M/S.R.N. TRADING
MORNING BAZAR ROAD,
W/NO.3 MOREH
MANIPUR
14922640149 V
14922512231 C

IN.NO.: SD/JEW/JUN/004/2015-16
DATE : 08/06/2015

PAN. : AHTPN 8760 G

SR. ITEM	DIA/COL.ST.	@	AMOUNT	GOLD	@	AMOUNT	LABOUR	AMOUNT
	PCS	CTS.	PER CTS.		GMS.	PER GMS.		
1 GOLD 166.23*7	----	----	----	----	1164.240	2580.00	3120163.20	31,20,163.20

31,20,163.20

Less 0.20

Add V.A. TAX 1.00 % 31202.00

TOTAL 31,51,365.00

TOTAL RUPEES THIRTY ONE LAKHS, FIFTY ONE THOUSAND, THREE HUNDRED SIXTY FIVE ONLY.

VAT TIN NO.27231014975
VAT TIN NO.27231014975

AATCS 2120 D

GOODS SOLD & DELIVERED AT MUMBAI

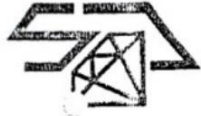
I/We hereby certify that my/our registration certificate under the Maharashtra Value Added Tax Act, 2002 is in force on the date on which sale of goods specified in this tax invoice is made by me/us and that the transaction of sale covered by this tax invoice has been effected by me/us and it shall be accounted for in the turnover of sales while filing of return and the due tax, if any, payable on the sale has been paid or shall be paid.

FOR SANGHAM DIAMONDS PVT.LTD.

विकासी-मिथरी

DIRECTOR/AUTH. SINGHTRE

Appeal No(s): C/75055 & 75056/2020-DB



Sangham Diamonds Pvt. Ltd.
DIAMOND EXPORTER, IMPORTER & MFG.

Office No. 12, 2nd Floor,
Renuka Bldg., 1st Bhatwadi,
Opera House, Mumbai - 400 004.
Tel.: +91 22 3394 9562
Email : sanghamdiamonds2013@gmail.com

TAX INVOICE

TO,
M/S.R.N. TRADING
MORNING BAZAR ROAD,
W/NO.3 MOREH
MANIPUR
14922640149 V
14922512231 C

IN.NO.: SD/JEW/JUN/005/2015-16
DATE : 11/06/2015

PAN. : AHTPN 8760 G

SR. I	ITEM	DIA/COL.ST.	@	AMOUNT	GOLD	@	AMOUNT	LABOUR	AMOUNT
		PCS	CTS.	PER CTS.		GMS.	PER GMS.		
1	GOLD 166.25'S	----	----	----	----	831.250	2660.00	2211125.00	22,11,125.00

22,11,125.00

Add V.A. TAX 1.00 % 22111.00

TOTAL 22,33,236.00

TOTAL RUPEES TWENTY TWO LAKHS, THIRTY THREE THOUSAND, TWO HUNDRED THIRTY SIX ONLY.

VAT TIN NO.27231014975
VAT TIN NO.27231014975

AATCS 2120 D

GOODS SOLD & DELIVERED AT MUMBAI

I/We hereby certify that my/our registration certificate under the Maharashtra Value Added Tax Act, 2002 is in force on the date on which sale of goods specified in this tax invoice is made by me/us and that the transaction of sale covered by this tax invoice has been effected by me/us and it shall be accounted for in the turnover of sales while filing of return and the due tax, if any, payable on the sale has been paid or shall be paid.

FOR SANGHAM DIAMONDS PVT.LTD.

संलग्नित माला

DIRECTOR/AUTH. SINGHTRE

15.1. We observe that the Order-in-Original, at paragraph 45, records that the said appellant had produced valid purchase tax invoices issued by M/s. Sangham Diamonds Pvt. Ltd., Mumbai, in relation to the seized gold. From the invoices, we observe that the quantity mentioned in all the three three invoices together precisely corresponds to the total quantity of 3,325.49 grams. The details of the invoices are as follows:

(i) Invoice No. SD/JEW/JUN/003/2015-16 dated 05.06.2015 – 1330.000 grams

(ii) Invoice No. SD/JEW/JUN/004/2015-16 dated 08.06.2015 – 1164.240 grams

(iii) Invoice No. SD/JEW/JUN/005/2015-16 dated 11.06.2015 – 831.250 grams

Total: 3325.49 grams

15.2. Further, it is on record that the aforesaid seller, M/s Sangham Diamonds Pvt. Ltd., had duly discharged VAT liability amounting to Rs.3,17,582/- for the month of June 2015 through Challan in MTR Form No. 6, in compliance with the Maharashtra VAT Rules, 2005. This further reinforces the genuineness of the purchase transactions and the lawful acquisition of the gold. We also observe that the authenticity of the purchase documents submitted by the appellant no. 1 stands duly verified by the Department itself. Paragraph 10 of the Supplementary Show Cause Notice dated 17.03.2016 records the outcome of the follow-up investigation conducted with the supplier, M/s Sangham Diamonds Pvt. Ltd., Mumbai. The relevant portion is reproduced below:

"10. As a part of the follow-up investigation, the matter was referred to Sangham Diamonds Pvt. Ltd., Mumbai. It was communicated by the said supplier that they had sold 3325.49 grams of gold bars at Mumbai under tax invoices No. SD/JEW/JUN/003/2015-16 dated 05.06.2015, SD/JEW/JUN/004/2015-16 dated 08.06.2015, and SD/JEW/JUN/005/2015-16 dated 11.06.2015. It was further stated that the said gold bars were made by melting gold jewellery and that there were no markings on the gold bars so sold."

15.3. We observe that this confirmation by the supplier corroborates the claim of the appellant no. 1 regarding the lawful purchase of gold through verifiable and documented transactions. It is also noteworthy that the gold seized corresponds exactly in weight to the quantity mentioned in the aforesaid invoices, and that the supplier has acknowledged the absence of any foreign markings on the gold bars, nullifying any presumption of foreign origin. Accordingly, the verification undertaken by the Department establishes the genuineness of the purchase documents beyond reasonable doubt and supports the appellant's claim of lawful acquisition.

15.4. Further, a perusal of the Test Report furnished by the Revenue also indicates that the gold pieces in question have their Karat (Avg.) as '23.9' and purity in the range of 994.5 to 996.3. For ease of reference, the relevant portion of Annexure-I to the said Test Report dated 11.03.2016 is reproduced below: -

ANNEXURE-I1. Case No.11/CL/IMP/CUS/MOR/2015-16, Dtd.24/07/2015.

Sample No	Fineness of Gold piece in p.p.t.by XRF Machine(Average)	Karat (Avg.)
1	996.1	23.9
2	995.5	23.9
3	995.5	23.9
4	995.5	23.9
5	995.4	23.9
6	995.0	23.9
7	996.3	23.9
8	995.8	23.9
9	994.6	23.9
10	994.5	23.9
11	995.6	23.9
12	995.3	23.9
13	995.5	23.9
14	995.4	23.9
15	995.5	23.9
16	994.9	23.9
17	995.7	23.9
18	995.5	23.9
19	995.3	23.9
20	995.8	23.9

15.5. From the Test report reproduced above, we observe that the purity of gold is not 999, which is normally associated with pure 24 carat gold of foreign origin. Thus, we find merit in the submission of the appellants that the gold pieces have been made after melting of old jewellery whose purity is less than 999. Thus, the sale invoices along with the purity of gold less than that associated with 24 carat gold, establish the licit purchase of the gold by appellant no. 1 from M/s. Sangham Diamonds Pvt. Ltd., Mumbai.

15.6. In view of the above, we hold that the documents produced by the appellant no. 1 evidence licit purchase of the gold in question from domestic sources. Accordingly, we answer the issue framed at paragraph 11(iv) supra in the affirmative.

Issue No. (v) Whether the confiscation of the seized gold and vehicle under Sections 111(b), 111(d) and 115(2) of the Customs Act, 1962, is legally justified or not.

16. We have gone through the reasoning recorded by the Id. adjudicating authority in the impugned order for holding the gold in question liable for confiscation under Section 111(b) and (d) of the Customs Act, 1962. The relevant findings of the Id. adjudicating authority in the said order are reproduced below: -

"45. I have perused the petition of R Rajesh Naykar claiming the ownership of the seized gold. He has produced the three tax invoices from M/s Sangham Diamonds Pvt. Ltd, Mumbai IN No. SD/ JEW/ JUN/003/2015-16 dated 05-06-2015, IN No. SD/ JEW/ JUN/004/2015-16 dated 08-06-2015, and IN No. SD/JEW/ JUN/005/2015-16 dated 11-06-2015 under which he has claimed to have purchased the seized gold. I have perused the above tax invoices. I find that the details in the invoices are:- (i) - Tax invoice No. SD/ JEW/JUN/003/2015-16 dated 05-06-2015 have mentioned GOLD 166.32-1330 gms valued at Rs 36,20,194.00 (including tax) (ii) No. SD/ JEW/ JUN/ 004/ 2015-16 dated 08-06-2015 have mentioned GOLD 166.23-1164.240 gms valued at Rs 31,51,365.00 (including tax) and (iii) No. SD/ JEW/ JUN/ 005/2015-16 dated 11-06-2015 have mentioned GOLD 166.25-831.250 gms valued at Rs 22.33,236.00 (including tax), However, no mention has been made regarding no. of pieces or shape and size of the gold. In their letter dated 16.01.2016, Sangham Diamonds Pvt. Ltd, Mumbai while clarifying the sale of the gold to M/s RN Trading, has stated that the gold sold by them was

made from melting of jewellery and bore no markings.

46. In case of the seized 20 gold biscuits, I find that the although the inventory dated 24.07.2015, the seizure list and the Panchnama does not mention any markings, the weighment sheet, and valuation certificate dated 24.07.2015 clearly mentions "THOON" markings. The weighment and valuation was conducted before two independent witnesses as well as before Sri Soibam Subhash Singh who put their signatures in approval and was also produced before the CJM Chandel There was no evidence of any protest by Sri Soibam Subhash Singh. **The seized goods were verified again by Shri R Rajesh Nayakar at Customs office Moreh along with his witnesses where it was found that 5(Five) biscuits bore markings of "THOON". Although, Shri R Rajesh Nayakar later alleged that the markings were made post seizure, he kept silent on about the seals on the packet which were found intact.**

47. Shri R. Rajesh Naykar has produced three Tax invoices for purported purchase of 3325.49 gms of gold from M/s Sangham Diamonds. I observe that the three invoices are printed on letter head and TAX INVOICE is printed on computer separately. The invoice nos are serially printed as 003 dated 5/6/15, 004 dated 08/06/15 and 005 dated 11/06/15. It is improbable that a firm dealing in Diamond Import Export in a busy metro had issued only five invoices in three months and that it had no other sales for six days between 5/6/15 to 11/6/15 other than to M/s RN Trading. It raises a doubt regarding their credibility. Further, the last purported purchase was made in 11/6/15 and the seized gold of 3320 gms was being transported back

on 24/7/15. It is short period to consider any trend for deciding to send it back to Mumbai for resale. I also find that the premise of M/s RN Trading was verified but no signboard of any such shop could be found at the given address. His brother Shri R. Jesudas informed that another shop was there at ward no. 3 Moreh which was closed. It was verified from the neighbouring shops that Shri R. Rajesh Naykar was dealing with steel items but the said shop was empty Photographic evidence in this regard was also collected. Shri R Jesudas also said that R Rajesh Naykar had yet to start his business. It was also verified that there was no vehicle strike on Imphal Moreh Road from 24.07.2015 to 27.07.2015 as claimed by Shri R Rajesh Naykar."

(Emphasis supplied)

16.1. We observe that the Id. adjudicating authority has failed to record any conclusive finding that the "THOON" marking constitutes a foreign marking indicative of foreign origin. Further, as already observed by us in the preceding paragraphs, there is no evidence on record to establish that "THOON" is an internationally recognized brand, hallmark, or refinery identifier linked to any foreign manufacturer. In the absence of such proof, the mere presence of the disputed marking, if at all, cannot form the basis for presuming the gold to be of foreign origin. It is a settled principle of law that confiscation under the Customs Act requires cogent and credible evidence, not assumptions or unverified inferences.

16.2. It is also a fact on record that the gold was originated and seized in Moreh-Imphal High way, far away from international border with Myanmar. Most of the gold pieces bore no marking. Thus, a few markings in the name and style of "THOON" in the

absence of any corroborative evidence, would not be adequate to justify foreign origin to consider the same liable for confiscation under the Customs Act. It has not been ascertained by the investigation as to the country of origin of the gold and the route followed for its alleged illegal importation. In absence of any finding with regard to the origin and/or route, the allegation of violation of the Section 7 (c) of the Act is not sustainable. It is also a settled position of law that presumption cannot be a substitute to evidence. In the absence of foreign markings, there should be cogent evidence to establish that the gold is of foreign origin. Moreover, the issue of town seizure of unmarked gold is no longer *res integra* as there have been numerous laid down ratio squarely applicable to the case in hand.

16.3. We find that a similar issue came up for consideration before this Tribunal in the case of *Balwant Raj Soni & ors. v. Commissioner of Cus. (Prev.), Patna [Final Order Nos. 75455-75457 of 2023 dated 18.05.2023 in Customs Appeal No. 75414 of 2022 – CESTAT, Kolkata]*, wherein it was held as under: -

"31. We find that the Impugned Order mainly relied upon the statements of the Noticees 1 to 5 to establish the foreign origin nature of the gold. Other than the statements, there is no other evidence available on record to show that the gold were smuggled into the country from Bangladesh. It is incorrect to rely only on the statements of the co-accused without any corroboration, to prove the smuggled nature of the gold. It is a settled law that the statement of the co-accused cannot be relied without any independent corroboration.

31.1 In the case of Commissioner of Customs (Preventive), Lucknow vs Shakil Ahmad Khan, it has been held that confiscation based on retracted

statements not sustainable. The gist of the order is reproduced below:

Smuggling Burden of proof Retracted confessional statements of co-accused No efforts made to prove that confessional statements were voluntary Accused were not examined during adjudication - HELD: Confiscation and penalty order based only on retracted statements of accused persons were not sustainable - It was contrary to settled legal position, illegal, arbitrary and liable to be set aside Sections 108, 111, 112 and 123 of Customs Act, 1962. (paras 22, 25, 26]

Evidence Confessional statement of co-accused - It is not substantive evidence against another co-accused- It can at best be used for assurance to Court In absence of any substantive evidence, it was inappropriate to base conviction of accused on statements of co-accused Section 108 of Customs Act, 1962. [para 25]

31.2 The Tribunal in the cases of Principal Commissioner of Customs (Prev.), Delhi Vs. Ahmed Mujjaba Khaleefa [2019 (366) ELT 337 (T) dismissed the appeal of Revenue holding that jewellery not bearing any foreign marking other than statement of passenger no other proof produced by Revenue to substantiate the claim that jewellery were smuggled into India.

31.3 In view of the above discussion and relying upon the the decisions cited above, we hold that the gold bars/pieces cannot be confiscated based on the retracted statements alone. Accordingly answer to question no (iii) is negative."

16.4. Further, in the case of *Commissioner of Cus (Prev.), Patna v. Lalit Krishna Agarwal [Final Order No. 77506 of 2023 dated 08.11.2023 in Customs Appeal No. 75499 of 2022 – CESTAT, Kolkata]*, it has been observed that: -

"6. In fact, during the course of investigation, it is a fact on record that boondi silver and silver jewellery were recovered from the shop of the respondent. **So, the question arises that in the absence of any seizure of Port or Airport or not having any foreign markings on the goods seized from the respondent, how the officers came to the conclusion that the goods are third country origin goods. Therefore, first, onus on the Revenue is to make a reasonable belief that the goods are of third country.** Admittedly, no such evidence has been produced by the Revenue to allege that to make a reasonable belief, the goods are of third country origin. In the absence of that, the goods in question cannot be confiscated."

(Emphasis supplied)

16.5. We also find that a similar case has been dealt with by the Tribunal in the case of *Commissioner of Cus., Chennai-III v. Mohammed Ali Jinnah [Final Order No. 40289 of 2023 dated 20.04.2023 in Customs Appeal No. 40099 of 2020 – CESTAT, Chennai]*. The relevant observations of the Tribunal in the said case are as follows: -

"38. The evidence put forward by the department to allege that the gold is smuggled from Sri Lanka is too flimsy to be accepted. The Commissioner (Appeals) in para 34 has held as under:-

"34. In view of the above findings, it is held that the essential things for confiscation namely proof of the gold having been smuggled into India was not proved. The investigation has assumed that the impugned gold was smuggled from Sri Lanka and no corroborative evidence was produced by the DRI. More so, it was certified by the Court that the gold bars do not have foreign markings. AA has proceeded on wrong premises that the impugned crude Gold bars are of foreign origin. There was no positive evidence except the statement of the appellant. The retracted

statement has not been corroborated with findings/evidence/statements of others ie the person supposed to have handed over the same to the appellant for transporting and the person who was supposed to receive. The burden of proof has not been discharged by the department. It has been proved that there was a violation of principles of natural justice by not allowing cross examination. Respectfully following the ratio of the Hon'ble Supreme Court in M/s. Oudh Sugar Mills Vs. UOI, I am constrained to set aside the order of the adjudicating authority confiscating the impugned gold and imposing penalty on the appellant. It is ordered to release the two crude gold bars weighing 3.097 kg to the appellant Mohammed Ali Jinnah

39. After appreciating the facts and evidence discussed above, we are of the opinion that the view arrived by the Commissioner (Appeals) is legal and proper and does not require any interference. The issue on merits is found against the appellant / Revenue and in favour of the respondent. We make it clear that in this appeal we have not addressed the issue as to whether the Show Cause Notice issued by DRI is valid and proper.”

16.6. Moreover, as already observed by us in the preceding paragraphs, the appellant no. 1 has produced tax invoices issued by M/s Sangham Diamonds Pvt. Ltd., Mumbai, in support of the seized gold, which precisely corresponds to the total quantity of 3,325.49 grams. Further, it is on record that the aforesaid seller, M/s Sangham Diamonds Pvt. Ltd., had duly discharged VAT liability amounting to Rs.3,17,582/- for the month of June 2015 through Challan in MTR Form No. 6, in compliance with the Maharashtra VAT Rules, 2005. This further reinforces

the genuineness of the purchase transactions and the lawful acquisition of the gold.

16.7. It is also pertinent to note here that paragraph 10 of the Supplementary Show Cause Notice dated 17.03.2016 records the outcome of the follow-up investigation conducted with the supplier, M/s Sangham Diamonds Pvt. Ltd., Mumbai, in the course of which the purchase documents have been found to be genuine. The relevant portion of the same is reproduced below, at the cost of repetition:

"10. As a part of the follow-up investigation, the matter was referred to Sangham Diamonds Pvt. Ltd., Mumbai. It was communicated by the said supplier that they had sold 3325.49 grams of gold bars at Mumbai under tax invoices No. SD/JEW/JUN/003/2015-16 dated 05.06.2015, SD/JEW/JUN/004/2015-16 dated 08.06.2015, and SD/JEW/JUN/005/2015-16 dated 11.06.2015. It was further stated that the said gold bars were made by melting gold jewellery and that there were no markings on the gold bars so sold."

16.8. The above confirmation by the supplier further corroborates the claim of the appellant no. 1 regarding the lawful purchase of gold through verifiable and documented transactions. In this regard, the supplier has acknowledged the absence of any foreign markings on the gold bars, nullifying any presumption of foreign origin.

16.9. Considering the above facts, the order of confiscation of the said vehicle carrying the gold in question under Section 115(2) also appears to be devoid of merit.

16.10. From the above, we are of the considered view that the confiscation of the seized gold and vehicle under Sections 111(b), 111(d) and 115(2) of the Customs Act, 1962, in this case is legally not sustainable. Accordingly, we find the answer to the issue framed at paragraph 11(v) supra, to be in the negative.

Issue (vi): Whether the imposition of a penalty under Section 112(b) of the Customs Act, 1962, is legally warranted, or not.

17. Regarding the imposition of penalties on the appellants under Section 112(b) of the Customs Act, we take note of the fact that the gold in question is not liable for confiscation and the appellants were having valid documents to establish legal purchase of the said gold, as already discussed in the preceding paragraphs. Shri R. Rajesh Naykar has produced evidence for legal purchase of the gold and he has no role in the alleged offence. For the same reasons, penalty cannot be envisaged on Shri Soibam Subhash Singh, the driver of the Maruti Vehicle carrying the gold, in the absence of any cogent evidence establishing the smuggled character of the gold. In these circumstances, we find that the ingredients enshrined in Section 112(b) of the Customs Act, 1962 are not applicable to the present case for imposition of penalties on the appellants. Accordingly, we hold that the penalties imposed on the appellants are not sustainable. Thus, we answer the issue raised at paragraph 11(vi) in the negative.

18. To summarize, the issues framed under paragraph 11 (supra) stand answered in the following manner: -

- (i) There is no reasonable belief existing in this case for seizure of the gold in question under Section 110 of the Customs Act, 1962.
- (ii) The "THOON" markings available on the said gold pieces cannot be considered as sufficient evidence to be indicative of foreign origin of the gold in question.
- (iii) The 'burden of proof' as envisaged under Section 123 of the Customs Act, 1962 does not shift to the appellants in the absence of any conclusive evidence proving foreign origin of the gold in question.
- (iv) The documents produced by the appellant no. 1 in the instant case are sufficient to indicate licit purchase of the gold in question, from domestic sources.
- (v) The confiscation of the seized gold and vehicle under Sections 111(b), 111(d) and 115(2) of the Customs Act, 1962, is not legally justified.
- (vi) Imposition of penalties under Section 112(b) of the Customs Act, 1962, is unwarranted in the facts and circumstances of the case.

19. In view of the above discussion, we hold that the gold in question cannot be construed to be of foreign origin and/or smuggled in nature. Thus, we hold that the 20 pieces of gold seized in this case are not liable for confiscation under Section 111(b) and (d) of the Customs Act, 1962, in the absence of any cogent and corroborative evidence to substantiate the allegation of smuggling. Therefore, the order of confiscation of the seized gold in the impugned order under Section 111(b) and (d) of the Act is set aside.

19.1. As the gold in question is found to be not liable for confiscation, we hold that the vehicle used for transportation of the gold cannot also be held liable for confiscation. Accordingly, the order of confiscation of the Maruti vehicle bearing No. MN-06L-6803 under Section 115(2) of the Customs Act, 1962 is also set aside.

19.2. In view of the above observations, as the confiscation of the gold is not sustained, we also hold that the penalties imposed on the appellants are not sustainable and hence, the same are set aside.

20. Additionally, we have also examined the prayer of the appellant no. 1 herein by way of written submissions filed on 06.08.2025, seeking refund of the value of the seized gold at the average market price prevailing on the date of its disposal, as approved by the Joint Pricing Committee, along with payment of interest at the rate of 12% per annum on the aforesaid amount from the date of disposal till the date of actual refund, in the light of disposal of the seized gold during pendency of the present appeal. In this context, the appellant no. 1 has cited CBIC's Instruction No. 11/2022-Customs dated 08.09.2022, read with Instruction No. 27/2021-Customs dated

03.12.2021, which explicitly lays down that in case the seized gold is disposed of and the appellate authority orders its return, the appellant is to be refunded the value of the gold, calculated either as per tariff value or average market price, based on the date of disposal, as approved by the Joint Pricing Committee. We have also perused the relevant case laws cited by the appellant no. 1 in this regard.

20.1. We find that the Hon'ble Apex Court in the case of *Northern Plastics Ltd. Vs Collector of Customs [1999 (113) E.L.T .3 (S.C)]* has held that :-

"9. It was contended by Mr. Dave that the applicants are not liable to pay any duty as the goods were not cleared by the respondent and they were subsequently confiscated and sold by the respondent and, therefore, the applicants cannot be said to have imported the goods. On the other hand, it was contended by Mr. C.S. Vaidyanathan, learned Additional Solicitor General that the import of the goods was by the applicants and as soon as the said goods landed on the land mass of India proper amount of duty, became payable thereon. In our opinion, Mr. Vaidyanathan, is right in his submission particularly, when full impact has to be given to the order passed by us declaring retention and confiscation of the goods to be illegal. Mr. C.S. Vaidyanathan, learned Additional Solicitor General, however, further submitted that value of the goods as shown in the import documents was only Rs. 33.04 lacs and as the duty and the Warehousing charges payable are more than the said amount, the applicant is not entitled to recover anything from the respondent. What is over-looked by the learned Counsel is the consequence of setting aside the order of confiscation on the ground that it was illegal. The applicant has become entitled to the

value of the goods as on the date or time when the goods ought to have been cleared by the respondent for home consumption. If the value of the goods in India after importation and payment of duty, in January 1989, was Rs. 33.04 lacs only then the applicant, and for that matter any sensible person, would not have imported the goods at all. It would be reasonable to presume that an importer would have imported the goods of the value of Rs. 33.04 lacs if its value in Indian market at the relevant time was more than CIS value of the goods plus the duty payable thereon (Rs. 33.04 lacs + 47.07 lacs = Rs. 80.11 lacs). It is also not the stand of the respondent that such goods were available in the Indian market at that time at a lesser price. Therefore it is now the obligation of the respondent to return at least Rs. 80.11 lacs - 47.07 lacs, the amount of duty payable thereon. As the applicant has been deprived of the use of the goods worth Rs. 33.04 lacs the respondent is under a legal obligation now to refund that amount to the applicant. The respondent cannot now be permitted to take the advantage of his own wrong and contend that the value of the goods should be determined only at Rs. 48.50 lacs inclusive of its value and the amount of duty payable thereon because they could be sold at that price only. We also cannot accept the contention of the learned Counsel for the respondent that if the applicant has suffered any loss as a result of the wrongful act of the respondent then he should file an action in tort and this Court cannot order payment of any amount in these applications. No doubt it would be open to the applicant to initiate such an action if it feels that the loss suffered by it is more than Rs. 33.04 lacs. Merely because it is open to the applicant to initiate such an action it would not be just and proper to refuse the claim made in these applications as in any case the applicant is entitled to return of the money value of the goods which were illegally confiscated

by the respondent. Even though the applicant has claimed interest @ 21% we do not think it proper to award interest at such a high rate and considering the facts and circumstances of the case it would be in the interest of justice if the respondent is directed to return the amount of Rs. 33.04 lacs with interest at the rate of 12% from 1-2-1989 till the date of payment as the Collector by its order dated 31-1-1989 had held that the goods were properly described and the import was legal."

20.2. Further, in the case of *Ratan Lal Jain Versus Union of India* [2017 (349) E.L.T. 468 (Cal.)], a similar view has been taken by the Hon'ble High Court. The relevant portion of the said judgement reads as under: -

"6. On the basis of the evidence, it appears that the aggregate value of the goods at the time of seizure could not have been more than Rs. 26,65,600/-. The Seizure List was prepared on 7th February, 1999. The order of adjudication in favour of the plaintiff was passed on 16th December, 1999. The Adjudicating Authority directed unconditional release of 33320 kgs. of betel nuts valued at Rs. 47,95,200/- in favour of the plaintiffs and in case the goods have already been sold by auction, the sale proceeds thereof would be refunded to the rightful claimants. The order of adjudication does not disclose the basis of the valuation of the seized articles and from the order itself, the valuation of the betel nuts at Rs. 47,95,200/- is not discernible. Although, the defendant did not appear and contest the proceeding but having regard to the observation made by the Hon'ble Division Bench while disposing of the appeal, I feel that the plaintiff would be required to establish that as on 16th December,

1999 the value of such betel nuts would be Rs. 47,95,200/-.

7. The learned Counsel appearing on behalf of the plaintiff in all fairness has relied upon the decisions reported in [2004 \(164\) E.L.T. 239](#) (Cal.) (Bhogilal Mehta v. Union of India), [2008 \(221\) E.L.T. 203](#) (P & H) (Commissioner of Customs, Amritsar v. Harinder Singh), [2002 \(143\) E.L.T. 60](#) (Del.) (Kailash Ribbon Factory Ltd. v. Commr. of Cus. & C. Ex., New Delhi), [1999 \(113\) E.L.T. 3](#) (S.C.) (Northern Plastics Ltd. v. Collector of Customs and Central Excise), [2002 \(140\) E.L.T. 3](#) (S.C.) (Shilps Impex v. Union of India) and an unreported decision of this Court in WP No. 951 of 2013 [Ahsan Waris v. Commissioner of Customs (Preventive) & Ors.] decided on 5th March, 2014 [[2014 \(305\) E.L.T. 78](#) (Cal.)] and submitted that the plaintiff would be only entitled to get the price of the goods as declared and accepted in the seizure list by the department. This submission is made on the basis of ratio laid down in the aforesaid decisions. In WP No. 951 of 2013 the learned Single Judge of this Court after considering some of the decisions cited today also held that the authorities concerned are bound to pay the value of the goods assessed at the time of seizure and not the value which it fetched from the sale of the said goods. After the seizure is declared to be illegal by the adjudicating authority in absence of any rebuttable evidence and contrary evidence to dislodge the testimony of the witness, I feel that the plaintiff is entitled to a decree for a sum of Rs. 26,65,600/- and accordingly a decree is passed for the aforesaid sums. However, during the pendency of the proceeding the plaintiff has received a sum of Rs. 12,31,200/- on January 18, 2001."

20.3. In the case of *Dejero Logix Pvt. Ltd. v. CC (Imports)*, AIR CARGO, NCH, New Delhi [2017 (351)

E.L.T. 213 (Del.)], the Hon'ble High Court of Delhi has held as under: -

"23. Clearly, the Customs authorities wrongly disposed off the petitioner's property during the period when the petitioner's appeal was pending. Furthermore, in terms of the order of 25-10-2012, the goods were absolutely confiscated by the Customs authority, so the goods ending up in the custody of M/s. DIAL Ltd. could not have been without the respondent's consent as M/s. DIAL Ltd. had no jurisdiction over the goods, let alone authority to sell. In these circumstances, the petitioner's claim has to succeed. The first two respondents are accordingly directed to pay the amount of ` 51,70,619/-, i.e., the declared value of the confiscated goods to the petitioner, after deducting the customs duty payable on it, in accordance with law. The said amount shall carry interest at the rate of 9% per annum from the date of unauthorized auction of the confiscated goods till payment. The writ petition is allowed in the above terms; no order as to costs."

20.4. In view of the above judicial pronouncements, we find that the prayer of the appellant no. 1 in this regard merits consideration. Accordingly, we hold that if the gold has already been disposed of, then the value of the seized gold in question shall be refunded to the appellant no. 1 at the average market price prevailing on the date of its disposal, as approved by the Joint Pricing Committee, along with interest at the rate of 12% per annum thereon, from the date of disposal till the date of actual refund, in terms of CBIC's Instruction No. 11/2022-Customs dated 08.09.2022, read with Instruction No. 27/2021-Customs dated 03.12.2021.

21. In the result: -

- (i) We set aside the impugned order and allow the appeals filed by the appellants, with consequential relief, if any, as per law.
- (ii) We hold that if the gold has already been disposed of, then the value of the seized gold in question shall be refunded to the appellant no. 1 at the average market price prevailing on the date of its disposal, as approved by the Joint Pricing Committee, along with interest at the rate of 12% per annum thereon, from the date of disposal till the date of actual refund, in terms of CBIC's Instruction No. 11/2022-Customs dated 08.09.2022, read with Instruction No. 27/2021-Customs dated 03.12.2021.

(Order pronounced in the open court on **20.08.2025**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd