

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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 76113 of 2025

(Arising out of Order-in-Appeal No. 54-58/PAT/CUS/APPEAL/2025-26 dated 26.06.2025 passed by the Commissioner (Appeals), Customs, Central G.S.T. & Central Excise, Patna, 2nd Floor, C.R. Building (Annexe), Beer Chand Patel Path, Patna – 800 001)

Shri Vikash Kumar Agrawal

: Appellant

House No. 65, Kedarnath Road, P.O. & P.S.: Nagar,
Muzaffarpur – 842 001

VERSUS

Commissioner of Customs (Preventive)

: Respondent

5th Floor, Central Revenue Building, Bir Chand Patel Path,
Patna – 800 001

WITH

Customs Appeal No. 76114 of 2025

(Arising out of Order-in-Appeal No. 54-58/PAT/CUS/APPEAL/2025-26 dated 26.06.2025 passed by the Commissioner (Appeals), Customs, Central G.S.T. & Central Excise, Patna, 2nd Floor, C.R. Building (Annexe), Beer Chand Patel Path, Patna – 800 001)

Shri Shashank Agrawal

: Appellant

S/o. Sh. Vikash Kumar Agrawal,
House No. 65, Kedarnath Road, P.O. & P.S.: Nagar,
Muzaffarpur – 842 001

VERSUS

Commissioner of Customs (Preventive)

: Respondent

5th Floor, Central Revenue Building, Bir Chand Patel Path,
Patna – 800 001

AND

Customs Appeal No. 76115 of 2025

(Arising out of Order-in-Appeal No. 54-58/PAT/CUS/APPEAL/2025-26 dated 26.06.2025 passed by the Commissioner (Appeals), Customs, Central G.S.T. & Central Excise, Patna, 2nd Floor, C.R. Building (Annexe), Beer Chand Patel Path, Patna – 800 001)

Shri Santosh Kumar

: Appellant

Brahman Toli, Mali Gali, Garib Sthan, P.O. & P.S.: Nagar,
Muzaffarpur – 842 001
[And: Nai Bazar, Sabji Mandi, Near Radhe Kristia School,
P.O. & P.S.: Nagar, Muzzafarpur – 842 001]

VERSUS

Commissioner of Customs (Preventive)

: Respondent

5th Floor, Central Revenue Building, Bir Chand Patel Path,
Patna – 800 001

APPEARANCE:

Shri Amit Kumar, Advocate, for the Appellant(s)

Shri Ashwini Kr. Choudhary, Authorized Representative, for the Respondent

CORAM:

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

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

FINAL ORDER NOS. 77473-77475 / 2025

DATE OF HEARING: 22.09.2025

DATE OF DECISION: 25.09.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Customs Appeal No. 76113 of 2025 has been filed by Shri Vikash Kumar Agarwal [hereinafter referred to as the "appellant no. 1"] against the Order-in-Appeal No. 54-58/PAT/CUS/APPEAL/2025-26 dated 26.06.2025 *inter alia* seeking release of 160 kgs. of the Silver Granules, confiscated under clauses (b) and (d) of Section 111 of the Customs Act, 1962 read with Sub-section (1) of Section 120 of the said Act. The appellant no.1 also sought waiver of the penalties of Rs.50,000/- (Rupees Fifty Thousand only) each imposed under Sections 112(a), 112(b) and 114AA *ibid.*, totally amounting to Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only).

1.1. Customs Appeal No. 76114 of 2025 has been filed by Shri Shashank Agrawal [hereinafter referred to as the "appellant no. 2"], S/o. Shri Vikash Kumar Agrawal, against the Order-in-Appeal No. 54-58/PAT/CUS/APPEAL/2025-26 dated 26.06.2025 seeking waiver of the penalties of Rs.35,000/- (Rupees Thirty Five Thousand only) each imposed under Sections 112(a) and 112(b) of the Customs Act,

1962, totally amounting to Rs.70,000/- (Rupees Seventy Thousand only).

1.2. Customs Appeal No. 76115 of 2025 has been filed by Shri Santosh Kumar [hereinafter referred to as the "appellant no. 3"], against the Order-in-Appeal No. 54-58/PAT/CUS/APPEAL/2025-26 dated 26.06.2025 *inter alia* seeking release of 100 kgs. of the Silver Granules, confiscated under clauses (b) and (d) of Section 111 of the Customs Act, 1962 read with Sub-section (1) of Section 120 of the said Act. The appellant no. 3 also sought waiver of the penalties of Rs.50,000/- (Rupees Fifty Thousand only) each imposed under Sections 112(a), 112(b) and 114AA *ibid.*, totally amounting to Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only).

2. A common issue being involved in all these appeals, they are being taken up together for disposal by way of a common order.

3. The facts of the case are that specific intelligence was received by the Revenue that three persons travelling in a 'Hyundai i-20 sportz' car bearing Registration Number BR-06CN/8740 were carrying huge quantity of Silver Granules procured from Jaynagar (District Madhubani), which is located at the Indo-Nepal Border. The intelligence also suggested that these Silver Granules had been smuggled from Nepal into India through the Indo-Nepal Border and secreted in the specially built cavity in the above said vehicle to conceal from the enforcement agency and as a matter of *modus operandi* of smuggling and carrying the smuggled silver granules. Information was also gathered to the effect that these goods were destined to Kolkata for further sale. Acting on the said intelligence, the

Officers of Directorate of Revenue Intelligence (DRI), Muzaffarpur intercepted the said vehicle on 05.10.2021 at about 00:30 hours near Maniyari toll Plaza in the presence of two independent witnesses. The said vehicle was found to have been occupied by three persons who identified themselves as (1) Shashank Agrawal, S/o- Shri Vikas Kumar Agrawal, House no. 65, Kedarnath Road, Post+PS- Nagar, Distt- Muzaffarpur (the appellant no. 2 herein) (2) Subhan Malik, S/o Late Usman Malik, Address-Pakki Sarai Chowk, infront of SBI Bank, Post- Ramna, PS. Mithanpura, Distt. Muzaffarpur Pin 842001 and (3) Shri Ajay Kumar, S/o- Shri Shiv Dayal Singh, Ambedkar Nagar, Sikandarpur, Road No. 4, Ward No. 12 Po+PS- Nagar thana, Muzaffarpur. After confirmation of their identities, the officers of the DRI informed them about the intelligence and and made enquiries with them. During the course of such enquiry, it was inter alia admitted by the said persons that they were carrying around 260 kg of Silver Granules having secreted in the specially built cavity in the said vehicle. It was inferred by the officers that the silver granules were procured from Jaynagar and these goods are smuggled from Nepal into India through Indo-Nepal Border. None of the intercepted persons could produce documents evidencing import/sale/purchase/transportation and legal possession of the goods under movement.

4. The intercepted persons were also searched in the presence of the Senior Intelligence Officer of DIU, Muzaffarpur, being a Gazetted officer. During the course of search, secret cavities were found in middle portion of the back seat and back portion of the front seat adjacent to the driver's seat of the said vehicle. Upon detailed search, 47 packets of Silver Granules

were recovered from the secret cavity made in the back seat of the vehicle and 05 packets of Silver Granules were recovered from back portion of the front seat adjacent to the driver's seat of the said vehicle. Thus, 52 packets containing Silver Granules were recovered from the said vehicle, with all the packets being serially numbered. On being asked about documents related to legal possession of the recovered 52 packets containing Silver Granules, the said intercepted persons could not produce any valid documents evidencing legal possession/importation/purchase/sale/transportation , etc. of the said silver granules.

4.1. On preliminary enquiry, Shri Shashank Agrawal / appellant no. 2 had revealed that the recovered Silver Granules were smuggled from Nepal into India and he brought it from Jaynagar, which is situated near Indo-Nepal Border in Madhubani district of Bihar. The appellant no. 2 had further revealed that out of the recovered 52 packets of Silver Granules, 32 packets containing a total of 160 kgs. of Silver Granules were owned by his father, namely, Shri Vikash Kumar Agrawal (appellant no. 1 herein) and 20 packets containing a total of 100 kgs. of Silver Granules were owned by Shri Santosh Kumar (appellant no. 3 herein), a friend of Shri Vikash Kumar Agrawal.

4.2. Subsequent investigation was also initiated against Shri Vikash Kumar Agrawal (appellant no. 1 herein) and Shri Santosh Kumar (appellant no. 3 herein).

5. The recovered Silver Granules were thereafter examined and weighed by Shri Vivek Kumar, a Govt. Registered valuer having Registration No.-CAT

VIII/99 of 91, for the purpose of testing their purity & valuation, in the presence of two independent witnesses and before all five intercepted persons. On examination of the silver granules, he issued a certificate dated 05.10.2021 showing the goods as "Silver Bundiya, Purity 99.9%, quantity 2,60,671.300 Grams (Gross weight) 2,59,993.300 Gram (Net weight)" of value Rs. 1,61,93,162.70.

6. As per Notification No. 36/2015-20 dated 18.12.2019 issued by DGFT, Department of Commerce, GOI, Silver Granules/Silver Bundi comes under HSN Code 9100 7106 Unwrought and its import is restricted. Import is allowed only through nominated agencies as notified by RBI (in the case of banks) and DGFT (for other agencies).

7. Under the reasonable belief that the recovered 260.67kg (Gross weight), 259.99kg (Net weight) of Silver Granules/Silver Bundiya of value Rs. 1,61,93,162.70/- were smuggled from Nepal into India and are liable for confiscation under Section 111 of the Customs Act, 1962, the said goods were seized under Section 110 of the Act. The-said vehicle, Hyundai Car Model i-20 sportz Registration number BR-06CN/8740 used in the carriage and transportation of the smuggled Silver Granules has also been seized under Section 110 of the Act.

8. Shri Ajay Kumar intercepted with Shri Shashank Agrawal stated in his statement dated 05.10.2021 that he is a driver of the said vehicle and works on daily basis. He further added that he was not aware of the carriage/transportation of smuggled Silver Granules concealed in the specially built cavity in the said vehicle and he is not in any way related with the smuggled goods. The statements of other

intercepted persons namely Shri Shashank Agrawal, Shri Subhan Malik, Shri Vikash Kumar Agrawal also suggested that Shri Ajay Kumar is merely a driver and not concerned with the intercepted goods.

9. In respect of the other intercepted persons namely, (1) Shri Shashank Agrawal, S/o- Shri Vikash Kumar Agrawal, (2) Subhan Malik, S/o- Late Usman Malik, it was alleged that they had been consciously engaged in procuring, possessing, carrying & transporting of smuggled Silver Granules despite knowing that and have reason to believe that the said goods are liable for confiscation and hence they are liable to be prosecuted under Section 135 (1) (a) & (b) of the Act. Further, it was also alleged that (3) Shri Vikash Kumar Agrawal and (4) Shri Santosh Kumar were consciously engaged in purchase, carriage, selling of Smuggled silver Granules and involved in evasion of Customs duty chargeable thereon; that they were consciously involved in dealing in such smuggled goods despite knowing that the said goods are liable for confiscation and hence they are liable to be prosecuted under Section 135 (1) (a) & (b) *ibid*.

9.1. From the above, it appeared to the Revenue that the above said four persons namely Shri Shashank Agrawal, Shri Subhan Malik, Shri Vikash Kumar Agrawal, and Shri Santosh Kumar, had engaged in procuring, possessing, carrying & transporting, purchasing, selling and dealing in smuggled Silver Granules in a well-planned manner and were a part of smuggling syndicate despite knowing and having reason to believe that the said goods were liable for confiscation and hence were liable to be prosecuted. Thus the said four persons were arrested under section 104 of the said Act on

06.10.2021 and produced before the Special Court, Economic Offences, Muzaffarpur who remanded them to judicial custody.

10. A bail petition was filed by Shri Vikash Kumar Agrawal and Shri Santosh Kumar (appellant nos. 1 and 3 herein) before the learned Presiding Officer, Economic Offences Court, Muzaffapur, where in, they claimed the ownership of 160 kgs and 100 kgs of seized Silver Granules respectively. It was further claimed in their petitions, that they had purchased the said 160 kgs and 100 kgs of Silver Granules respectively from a firm AN Enterprises, 1186, Kucha Mahajani, Chandani Chowk, North Delhi-110096 (GSTIN 07DAOPA1993P1Z1). In support of their claim, they have submitted Invoice No. 390, 391, 392, 397, 398 and 399 all dated 01.10.2021 and Delivery Challans No. 390, 391, 392, 397, 398 and 399 all dated 01.10.2021.

10.1. Necessary enquiry was initiated against the said firm namely, M/s. AN Enterprises, 1186, Kucha Mahajani, Chandani Chowk, North Delhi-110096 (GSTIN 07DAOPA1993P1Z1) which has been claimed as supplier/seller of silver granules to Shri Vikash Kumar Agrawal and Shri Santosh Kumar under the invoices & delivery challans as stated above. In the report dated 28.10.2021 of DRI, (Hqrs) Delhi, it has been stated that there was no shop in the name of A.N enterprises, 1186 Kucha Mahajani Chandani chowk, North Delhi-110096 GSTIN 07DAOPA1993P121 at the said address; the name of proprietor of AN enterprises, GSTIN 07DAOPA1993P121 is Anil Kumar. In the course of enquiry, a person who introduces himself as Anil Kumar, who was found in the second floor of the building, is running the shop named NK

enterprises, GSTIN 07DNWPK8149E1ZD, Prop. Atulya Khandelwal (Son of Anil Kumar) situated at Second floor 1186 Kucha Mahajani Chandani chowk, North Delhi-110006. Mr. Anil Kumar in his statement dated 21.10.2021 under Section 108 of the Customs Act 1962 inter alia stated that he was aware of the seizure of 260 kgs of silver granules made by DRI, because he has received a phone call on 05.10.2021 intimating this seizure of silver granules in Muzaffarpur Bihar and asking for arranging Bills for that seizure but he readily denied for issuing any bill. Mr. Anil Kumar further added that there is no firm in the name and style of A N Enterprises in that address 1186, Kucha Mahajani Chandani Chowk, North Delhi-110006. It was also informed that address mentioned (Chandni Chowk, North Delhi-110096) in the said invoices Invoice No. 390, 391, 392, 397, 398 and 399 all dated 01.10.2021 was also wrong as the area of Chandni Chowk, Delhi comes under Pin code 110006 and not under Pin Code 110096.

10.2. A request was made to the Deputy Commissioner, CGST, New Delhi vide F.No. DRI/718(II) 06-Seizure/MRU/2021/566 dated 22.10.2021 to provide full details like name of proprietor, principal & additional place of business, Bank Account details, Mobile No. & Email ID of GSTIN 07DAOPA1993P1Z1 i.e., A N Enterprises, 1186, Kucha Mahajani, Chandani Chowk, North Delhi-110096 along with copy of GSTR3B, GSTR 1 & GSTR 2A from the period April 2021 onwards and also to ascertain through physical verification whether it is a bona fide firm or a fake firm. In response, the Jurisdictional Central GST Old Delhi Division, IAEA, House, New Delhi vide their report bearing no. C. No. II (1) Old Delhi/54/Misc. Corres./R-9/18-19/665 dated

27.10.2021 also intimated that on physical verification, the subject firm i.e. M/s AN Enterprise (GSTIN: 07DAOPA1993P121) was found non-existent at the registered principal place of business i.e. 1186, Kucha Mahajani, Delhi, 110006. He has also provided Form GST REG 30 meant for physical verification wherein it is mentioned that there are Ground + 4 floors at this address having multiple shops.

10.3. It was thus alleged that the appellants namely, Shri Vikash Kumar Agrawal and Shri Santosh Kumar had arranged fake/fabricated invoices and delivery challans from the non-existent firm/fake firm to legalize their smuggling activity and submitted these documents before the learned court of Presiding Officer, Economic Offences Court, Muzaffarpur to secure their bail in fraudulent manner.

10.4. Furthermore, Shri Shashank Agrawal, appellant no. 2, in his statement dated 05.10.2021 recorded under Section 108 of the Customs Act, 1962 inter alia stated that he had purchased the said consignment from a person named Kari Karak in Jaynagar, Madhubani on 04.10.2021. Thereafter, on the basis of further investigation and analysis of Call Data Records (CDR) of the concerned mobile numbers of the accused/co-accused, the said person namely Kari Karak, Age-43 years S/o-Raniashis Karak, resident of Viliage Khairamath, Post- Bela, P.S-Jaynagar, District-Madhubani-847226 was arrested on 17.11.2021 under Section 104 of the Customs Act, 1962 after taking prior permission of the competent authority. He was produced before the Special Court of Economic Offences, Muzaffarpur from where he was remanded to the judicial custody.

11. From further analysis of the CDR of the mobile numbers of the various persons/noticees concerned, it was inferred by the Revenue that they were in close contact with each other in procurement, possession, carriage and transportation of Silver Granules from Nepal into India through off-routes at Jaynagar and further its delivery at Kolkata.

12. One sample drawn from the seized Silver granules marked as A-1 of weight 2.6 grams was forwarded to CRCL, Kolkata for chemical analysis. The Chemical Examiner, Grade 1, Chemical Laboratory, Customs House, Kolkata vide his Lab Report No. 296/SZD/ (G) dated 26:10.2021 informed that "The Sample is in the form of shinning of white metallic Granules. It is composed of Silver containing 99.9% of Silver by weight."

13. From the above, it was alleged that the seized total 52 packets containing Gross Weight of 260.67 Kg (Net weight 259.99 Kg) Silver granules packed therein recovered from the said vehicle occupied by Shri Shashank Agrawal and Shri Subhan Malik had been smuggled through off routes and illicit channels in gross defiance of the provisions of Customs Act/Rules and Notification thereof and in contravention of the other provision of the Foreign Trade Policy. The said silver granules thus appeared to have been smuggled in the country from Nepal through off routes in contravention of provisions of section 7, 11, 11 (A to F), 46 & 47 of the Customs Act, 1962; the Silver Granules was being carried, transported and dealt with in contravention and defiance to the provision of Notification No. 36/2015-2020 dated 18.12.2019 issued by DGFT, Department of Commerce, GOI and hence, such seized Silver granules is liable to

confiscation in teams of provisions of section 111(b) and (d) of the said Act.

13.1. It was also alleged that the appellant no. 2, namely, Shri Shashank Agrawal, inter alia, had deliberately involved in procurement, carrying, transportation, dealing and possession of smuggled Silver granules from Nepal to India through off routes, had been illegally transporting the same from Jaynagar located at Indo-Nepal border to Kolkata without support of any documents evidencing licit possession of the same at the time of interception and for such acts of procurement, carrying, transporting, possessing, dealing in the seized alleged Silver Granules, which is liable to confiscation, the appellant no. 2 had made himself liable for penalty for the omissions and commissions in terms of provisions of Section 112 (a) and/or (b) of the Customs Act, 1962.

13.2. It had been alleged that the appellant No. 1, namely, Shri Vikash Kumar Agrawal is the kingpin of this syndicate as the other appellant no. 2, namely, Shri Shashank Agrawal had stated in his statement dated 05.10.2021 recorded under Section 108 of the Customs Act, 1962 that he was engaged by his father Vikash Kumar Agrawal in procurement, carrying, possessing of smuggled Silver Granules from Jaynagar and for its deliver in Kolkata; that he (Vikash Kumar Agrawal) and other Noticees were in close association with one another in course of smuggling of seized Nepali origin Silver Granules from Nepal into India and during its transportation from Jaynagar to Kolkata. For such acts of transporting, possessing, dealing in the seized alleged Silver granules, which are liable to confiscation, it was alleged that Shri Vikash Kumar Agrawal had made himself liable to

penalty for his omission and commissions in terms of provisions of Section 112 (a) and/ or (b) of the Customs Act, 1962. It also appeared that the appellant no. 1 had mens rea of procurement, carrying, transportation, dealing and possession of smuggled Silver Granules in a well-planned manner to evade eligible Customs duty.

13.3. Moreover, it was alleged that the appellant no. 3, namely, Shri Santosh Kumar was a close associate of Shri Vikash Kumar Agrawal / appellant no. 1 and he was knowingly and actively involved in procurement, carrying, possessing of smuggled Silver Granules from Jaynagar and for its delivery to Kolkata as Shri Shashank Agrawal had also stated that owner of 100 kgs. of the seized Silver Granules was Shri Santosh Kumar. For such acts of transporting, possessing, dealing in the seized Silver granules, which appeared liable for confiscation, it was alleged that the appellant no. 3 had made himself liable to penalty for his omission and commissions in terms of provisions of Section 112 (a) and/or (b) of the Customs Act, 1962.

14. On the basis of the allegations as contained in the above paragraphs, the Show Cause Notice dated 15.03.2022 came to be issued to the appellants herein, amongst others, proposing confiscation of the total seized 52 packets containing Silver Granules having a gross weight of 260.67 kg. (Net Weight 259.99 kg.) valued at Rs.1,61,93,162.70/- under Section 111(b) and (d) of the Customs Act, 1962 as well as the seized Hyundai i-20 sportz car bearing Reg. No. BR 06CN-8740 under Section 115(2) of the Customs Act, 1962. Penalty under the provisions of Section 112(a), Section 112(b) and Section 114AA of the said Act was also proposed, inter alia, on the

appellants herein for their alleged role in the present offence, as discussed in the foregoing paragraphs.

14.1. In the reply to Show Cause Notice, Shri Vikash Kumar Agrawal and Shri Santosh Kumar have inter alia stated: -

- a. that the seized goods are not of foreign origin
- b. That from perusal of the Seizure Memo & Panchnama itself would show that 160.100 kgs Silver Granules belongs to the Noticee No. 3 (Shri Vikash Kumar Agrawal) valued at Rs.96,57,232/- plus IGST @ 3% thereon and 100.200 kg Silver Granules valued at Rs. 60,82,140/- plus IGST 3% thereon of belongs to the Noticee No. 4 (Shri Santosh Kumar) to which Total Gross Weight 260.07 kg and the net weight 259.99 kg (as per DRI's Seizure Memo), which were purchased from M/s A.N. Enterprises, 186, Kucha Mahajan, Chandani Chowk, Dehi, North 110006 (GSTIN-070PA1993P1ZI) on 01.10.2021 under proper Tax Invoice and Delivery Challans; regarding these facts, Tax Invoice dated 01.10.2021, Delivery Challan dated 01.10.2021 and Goods and Services tax including GST, etc., were enclosed the same was produced also before the D.R.I. Officer during course of investigation.
- c. That no foreign marking was found upon the seized Silver Bundi.
- d. That the recovered papers regarding the said Silver Bundi from Shri Vikash Kumar Agrawal have been fully confirmed by the

authority during raid of his house & M/s Agrawal Gold House.

e. That the D.R.I has failed to do proper test of purity of Silver by way of testing Hallmarking Machine, rather it has been done by valuer.

14.2. Shri Santosh Kumar, proprietor and owner of M/s. Chain House and Jewellery, Garib Asthan Road, Chhata Bazar Muzaffarpur has produced all the relevant documents regarding the seized silver before the D.R.I.

15. During adjudication proceedings, the Additional Commissioner (Adjn.), Customs Preventive Commissionerate, Patna has, vide the Order-in-Original bearing No. 16-Cus/ADC/DRI/MUZ/2023-24 dated 30.05.2023, confiscated the impugned Silver Granules weighing 259.99 kg. (Net Weight) under Section 111(b) and (d) read with Section 120(1) of the Act and the seized Hyundai i-20 sportz car bearing Reg. No. BR 06CN-8740 under Section 115(2) ibid. The Id. adjudicating authority has also ordered for imposition of penalties, inter alia, on the appellants herein, as under: -

Appellant No.	Penalty imposed under Section 112(a)	Penalty imposed under Section 112(b)	Penalty imposed under Section 114AA
1 (Vikash Kumar Agrawal)	Rs.50,000/- (Rupees Fifty Thousand)	Rs.50,000/- (Rupees Fifty Thousand)	Rs.50,000/- (Rupees Fifty Thousand)
2 (Shashank Agarwal)	Rs.35,000/- (Rupees Thirty Five Thousand)	Rs.35,000/- (Rupees Thirty Five Thousand)	-
3 (Santosh Kumar)	Rs.50,000/- (Rupees Fifty Thousand)	Rs.50,000/- (Rupees Fifty Thousand)	Rs.50,000/- (Rupees Fifty Thousand)

16. The appellants challenged the above Order-in-Original dated 30.05.2023 before the Ld. Commissioner (Appeals), C.G.S.T. and Central Excise, Patna Commissionerate, who, vide the impugned Order-in-Appeal No. 54-58/PAT/CUS/APPEAL/2025-26 dated 26.06.2025, has rejected the said appeals.

16.1. Aggrieved, the appellants have filed the instant appeals.

17. During the course of arguments, the Ld. Counsel appearing on behalf of the appellants herein made various submissions, which can be broadly summarized as under: -

- (i) 'Silver Granules' is not a Notified item under Section 123 of the Customs Act'1962. Silver bullion is notified under Section 123 of the Customs Act 1962 vide Notification No. 103/2016-Customs (NT) dated 25.07.2016 and only silver bullion is notified for the purpose of the Section *ibid*. Therefore, the Revenue has to prove that the item is of foreign made and the same has been smuggled.
- (ii) There is no foreign inscription on the seized silver granules. Merely on suspicion it was held that that the same are smuggled from Nepal. However, in the Show Cause Notice, the Department has alleged that there is violation of DGFT Notification No. 36/2015-2020 dated 18.12.2019. It is pertinent to note that the said Notification pertains to import of Silver wherein all types of silver importation are made restricted with certain policy conditions. As the impugned goods are not imported ones, the said Notification is not invocable in the present case.

- (iii) Distance between distance of Maniyari toll plaza, Bihar from the Nepal border is about 281 Kilometres. The "specified area" under section 11H of the Customs Act, 1962 is not exceeding hundred kilometres in width from any coast or other border in India. Moreover, silver is not a Notified item under Section 11B of the Customs Act, 1962. Therefore, the appellants were not required to produce import documents at the place of seizure of the impugned goods.
- (iv) The Original authority and First Appellate Authority did not allow the cross examination under the provisions of Section 138B of the Customs Act, 1962 of Shri Kari Karak and Shri Anil Kumar, whose statements were used for confiscation of the seized goods and implication of the appellants.
- (v) The seized goods were confiscated under the provisions of Section 111(b) and Section 111(d) of the Customs Act, 1962. As silver is not a prohibited item as evidenced from the referred DGFT Notification showing that the same is a restricted item, the invocation of Section 111(d) is not legally sustainable. Section 111(b) deals with goods which are imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7. As the Department could not prove that the seized goods are imported ones, the said clause is not applicable in this factual position.
- (vi) The appellant discharges his duty by producing GST invoice pertaining to purchase of the seized goods.

- (vii) In the Order-in-Original, the adjudicating authority confiscated the goods under the Section 111(b), 111(d) and Section 120 of the Customs Act, 1962, whereas the Show Cause Notice is issued for confiscation of the seized goods under the provisions of 111(b) and 111(d) only. Therefore, it appears that the adjudicating authority has proceeded to confirm the proposals in the said Show Cause Notice in a lackadaisical manner without application of mind.
- (viii) In the Order-in-Original, the adjudicating authority confiscated the goods without giving an option to redeem the goods. As per section 125 of the Customs Act 1962 in case of goods those are not prohibited, the adjudicating authority shall give to the owner an option to pay fine in lieu of confiscation. In the instant case, the goods have not been absolutely confiscated, but any option to pay fine has also not been given.
- (ix) As the Department has failed to prove the smuggled character of the seized Silver Granules, the confiscation of the vehicle in question cannot be sustained in the eye of law.
- (x) The Ld. Commissioner (Appeals) has rejected the appeals of the appellants without giving any finding on the above point raised by the appellants.
- (xi) The appellants rely on the decision in the case of *Commissioner of Customs, Patna vs. Lalit Krishna Agrawal* [2024 (387) E.L.T. 424 (Tri. -

Kolkata)], wherein, in an identical case, the Tribunal has held the following:

"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."

(xii) The ratio of the above judgement is squarely applicable to the instant cases.

17.1. In view of the above submissions, the Ld. Counsel for the appellants prays for (a) release of the seized Silver Granules to the claimants, (b) release of the seized vehicle and (c) setting aside the penalties imposed on the appellants herein under Sections 112(a), 112(b) and 114AA of the Customs Act, 1962.

18. On the other hand, the Ld. Authorized Representative of the Revenue reiterates the findings of the authorities below. Accordingly, he prays for rejection of the instant appeals.

19. Heard both sides and perused the records of the case.

20. The present case pertains to seizure of 52 packets containing Silver Granules having a gross weight of 260.67 kg. (Net Weight 259.99 kg.) valued at Rs.1,61,93,162.70/- from a specially made cavity in a Hyundai i-20 sportz car bearing Reg. No. BR 06CN-8740. The vehicle was intercepted at Maniyari toll plaza, Bihar, which is at a distance of around 281 Kms from the Nepal border. We observe that the "specified area", as under section 11H of the Customs Act, 1962, is not exceeding hundred kilometres in width from any coast or other border in India. Thus, we find that the silver granules were not recovered anywhere near the international border and hence it was a 'town seizure'.

20.1. We find that the 'Silver Granules' in question were seized by the officers on the reasonable belief that they were smuggled goods brought from Nepal without payment of appropriate customs duties. In this regard, it is pertinent to note that Silver bullion is notified under Section 123 of the Customs Act, 1962 vide Notification No. 103/2016-Customs (NT) dated 25.07.2016 and only silver bullion is notified for the purpose of the Section. Thus, it is seen that the 'Silver Granules' in question is not a Notified item under Section 123 of the Customs Act, 1962. Therefore, we are of the view that the responsibility is on the Revenue to prove that the item is of foreign make and the same has been smuggled. In the present case, we observe that the Revenue has not brought in any evidence to establish that the 'Silver Granules' in question were smuggled in nature. We also take note of the fact that there is no foreign inscription on the

seized silver granules. Merely on suspicion it was held that that the same have been smuggled from Nepal. The Revenue cannot presume that such 'Silver Granules' are smuggled in nature without any corroborative evidence in support thereto. Thus, we hold that the Revenue cannot shift their responsibility and ask the appellants to prove that the 'Silver Granules' are not smuggled in nature. Thus, we are of the considered view that the appellants were not required to produce import documents at the place of seizure of the impugned goods.

20.2. In this regard, it is relevant to note that the mere finding of 'Silver Granules' does not render them 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, which is absent in this case.

20.3. 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.

20.4. 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.

20.5. In the instant case, we find that the officers seized the 'Silver Granules' solely on the suspicion that it was smuggled in nature. It is observed the officers proceeded with the seizure of the 'Silver Granules' 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 basis of assumptions and presumptions. It is a settled principle of law that confiscation under the Customs Act requires cogent and credible evidence, not assumptions or unverified inferences.

20.6. 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], observing 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."

20.7. In view of the above discussions, we hold that there was no 'reasonable belief' in this case for seizure of the 'Silver Granules' in question in terms of Section 110(1) of the Customs Act, 1962.

21. Regarding the documentary evidence submitted by the appellants to substantiate their claim that the 'Silver Granules' were domestically procured, it is observed from the records that the appellants have claimed that they had purchased the said 160 kgs and 100 kgs of Silver Granules respectively from a firm by name M/s. AN Enterprises, 1186, Kucha Mahajani, Chandani Chowk, North Delhi-110096 (GSTIN 07DAOPA1993P1Z1). In support of their claim, they submitted Invoice No. 390, 391, 392, 397, 398 and 399 all dated 01.10.2021 and Delivery Challans No. 390, 391, 392, 397, 398 and 399 all dated 01.10.2021. For ready reference, copies of the said invoices are extracted below: -

▪ **Invoice No. 390**

Tax Invoice								(Duplicate)
A N ENTERPRISES 1186,KUCHA MAHAJANI, CHANDNI CHOWK, NORTH DELHI-110006 GSTIN: 07DAOPA1993P1Z1				Invoice No.		Dated		
				390		01-Oct-2021		
				Delivery Note		Mode/Terms of Payment		
				Supplier's Ref.		Other Reference(s)		
Buyer CHAIN HOUSE & JEWELLERY GARIB ASTHAN ROAD MUZAFFARPUR-842001 GSTIN/UIN : 10AMZPK2510L1Z0 State Name : Bihar				Buyer's Order No.		Dated		
						01-Oct-2021		
				Despatch Document No.		Delivery Note Date		
				Despatched through		Destination		
				Bihar				
				Terms of Delivery				
Sl No	Description of Goods	HSN/SAC	GST Rate	Quantity	Rate	per	Amount	
1	STANDARD SILVER (SILVER GRANULES)	7106	3%	30.700	60,700.00	Kg	18,63,490.00	
							18,63,490.00	
	Output IGST @ 3%				3	%	55904.70	
	Round Off						+ 0.30	
Total							₹19,19,395.0	
Amount Chargeable(in words)								
INR Nineteen Lakhs Nineteen Thousand Three Hundred Ninety Five Only								
E. & O E								
HSN/SAC		7106	Taxable Value		Integrated Tax		Total	
			Amount		Rate	Amount	Tax Amount	
			18,63,490.00		3%	55,904.70	55,904.70	
Total			18,63,490.00			55,904.70	55,904.70	
Tax Amount (in words) : INR Fifty Five Thousand Nine Hundred Four Only								
Declaration We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.				For A. N. ENTERPRISES				
				for A. N. ENTERPRISES				
				Prepared by				
				Verified by				
				Authorised Signatory				

A N ENTERPRISES 1186, KUCHA MAHAJANI, CHANDNI CHOWK, NORTH DELHI-110096 GSTIN: 07DAOPA1993P121		Invoice No 391 Delivery Note Suppliers Ref Buyer's Order No Dispatch Document No Despatched through Terms of Delivery	
Buyer AGRAWAL GOLD HOUSE GARIB ASTHAN ROAD, CHATA BAZAR MUZAFFARPUR-842001 GSTIN/UIN : 10AAPPA6373H3ZV State Name : Bihar		Dated 01-Oct-2021 Mode/Terms of Payment Other Reference(s) Dated 01-Oct-2021 Delivery Note Date Destination Bihar	

SI No.	Description of Goods	HSN/SAC	GST Rate	Quantity	Rate per	Amount
1	STANDARD SILVER (SILVER GRANULES)	7106	3%	60.100	60,320.00 Kg	36,25,232.00
	Output IGST @ 3%				3 %	1,08,756.96
	Round Off					+0.04
	Total					37,33,989.00

Amount Chargeable(in words) E. & O. B.
INR Thirty Seven Lakhs Thirty Three Thousand Nine Hundred Eighty Nine Only

HSN/SAC	Taxable Value		Integrated Tax		Total
	Amount	Rate	Amount	Tax Amount	
7106	36,25,232.00	3%	1,08,756.96	1,08,756.96	
Total	36,25,232.00		1,08,756.96	1,08,756.96	

Tax Amount (in words) : INR One Lakh Eight Thousand Seven Hundred Fifty Six Only

Declaration
 We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.

FOR A.N.ENTERPRISES
for A N ENTERPRISES

(Signature)
PROPRIETOR

Prepared by _____ Verified by _____ Authorised Signatory _____

SUBJECT TO DELHI JURISDICTION

▪ **Invoice No. 392**

Tax Invoice							
A N ENTERPRISES 1186.KUCHA MAHAJANI, CHANDNI CHOWK, NORTH DELHI-110006 GSTIN: 07DAOPA1993P1Z1				Invoice No. 392		Dated 01-Oct-2021	
				Delivery Note		Mode/Terms of Payment	
Buyer CHAIN HOUSE & JEWELLERY GARIB ASTHAN ROAD MUZAFFARPUR-842001 GSTIN/UIN : 10AMZPK2510L1Z0 State Name : Bihar				Supplier's Ref.		Other Reference(s)	
				Buyer's Order No.		Dated 01-Oct-2021	
				Despatch Document No.		Delivery Note Date	
				Despatched through		Destination Bihar	
				Terms of Delivery			
SI No	Description of Goods	HSN/SAC	GST Rate	Quantity	Rate	per	Amount
1	STANDARD SILVER (SILVER GRANULES)	7106	3%	73.000	60,700.00	Kg	44,31,100.00
							44,31,100.00
	Output IGST @ 3%				3	%	1,32,933.00
	Round Off						
Total							₹45,64,033.0
Amount Chargeable(in words) INR Forty five Lakhs Sixty Four Thousand Thirty Three Rupees Only E. & O. E							
HSN/SAC		7106	Taxable Value		Integrated Tax		Total
			Amount		Rate		Tax Amount
			44,31,100.00		3%		1,32,933.00
Total			44,31,100.00		1,32,933.00		1,32,933.00
Tax Amount (in words) : INR One Lakh Thirty Two Thousand Nine Hundred Thirty Three Only							
for A. N. ENTERPRISES Declaration We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct. Prepared by Verified by for A N ENTERPRISES Authorized Signatory							

Tax Invoice

(Original For Recipient)

A N ENTERPRISES

1186, KUCHA MAHAJANI,
CHANDNI CHOWK, NORTH DELHI-110096
GSTIN 07DAOPA1993P1Z1

Buyer

AGRAWAL GOLD HOUSE

GARIB ASTHAN ROAD, CHATA BAZAR
MUZAFFARPUR-842001

GSTIN/UIN : 10AAPPA6373H3ZV
State Name : Bihar

Invoice No.

397

Delivery Note

Dated

01-Oct-2021

Model Terms of Payment

Supplier's Ref

Other Reference(s)

Buyer's Order No.

Dated

01-Oct-2021

Despatch Document No.

Delivery Note Date

Despatched through

Destination

Bihar

Terms of Delivery

SI No.	Description of Goods	HSN/SAC	GST Rate	Quantity	Rate	per	Amount
1	STANDARD SILVER (SILVER GRANULES)	7106	3%	30.300	60,320.00	Kg	18,27,696.00
							18,27,696.00
	Output IGST @ 3%				3	%	54,830.88
	Round Off						+0.12
	Total						₹18,82,527.00

Amount Chargeable(in words)

INR Eighteen Lakhs Eighty Two Thousand Five Hundred Twenty Seven Only

E & O E

HSN/SAC	7106	Taxable Value	Integrated Tax	Total
		Amount	Rate	Amount
		18,27,696.00	3%	54,830.88
				54,830.88
Total		18,27,696.00		54,830.88

Tax Amount (in words) : INR Fifty Four Thousand Eight Hundred Thirty Only

Declaration

We declare that this invoice shows the actual price of the
goods described and that all particulars are true and correct

FOR A N ENTERPRISES
for A N ENTERPRISES

Prepared by

Verified by

Proprietor

Authorised Signatory

SUBJECT TO DELHI JURISDICTION

SI No.		Description of Goods	HSN/SAC	GST Rate	Quantity	Rate	per	Amount
1		STANDARD SILVER (SILVER GRANULES)	7106	3%	29.600	60,320.00	Kg	17,85,472.00
								17,85,472.00
		Output IGST @ 3%				3	%	53,564.16
		Round Off						-0.16
		Total						₹18,39,036.00
E & OE								
Amount Chargeable (in words)								
INR Eighteen Lakhs Thirty Nine Thousand Thirty Six Only								
HSN/SAC		7106	Taxable Value		Integrated Tax		Total	
			Amount		Rate		Amount	
			17,85,472.00		3%		53,564.16	
			17,85,472.00				53,564.16	
		Total					53,564.16	
Tax Amount (in words) : INR Fifty Three Thousand Five Hundred Sixty Four Only								
Declaration We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct. for A N ENTERPRISES Prepared by _____ Verified by PROPRIETOR								

SUBJECT TO DELHI JURISDICTION

A N ENTERPRISES

1186.KUCHA MAHAJANI,
CHANDNI CHOWK, NORTH DELHI-110096
GSTIN: 07DAOPA1993P1Z1

Buyer
AGRAWAL GOLD HOUSE

GARIB ASTHAN ROAD, CHATA BAZAR
MUZAFFARPUR-842001

GSTIN/UIN : 10AAPPA6373H3ZV
State Name : Bihar

Tax Invoice

Invoice No
399

Delivery Note

Supplier's Ref

Buyer's Order No.

Despatch Document No.

Despatched through

Terms of Delivery

(Original For Recipient)

Dated
01-Oct-2021

Mode/Terms of Payment

Other Reference(s)

Dated
01-Oct-2021

Delivery Note Date

Destination
Bihar

Sl No	Description of Goods	HSN/SAC	GST Rate	Quantity	Rate	per	Amount
1	STANDARD SILVER (SILVER GRANULES)	7106	3%	40.100	60,320.00	Kg	24,18,832.00
							24,18,832.00
	Output IGST @ 3%				3	%	72,564.96
	Round Off						+0.04
	Total						24,91,397.0

Amount Chargeable(in words)

E & O E

INR Twenty Four Lakhs Ninety One Thousand Three Hundred Ninety Seven Only

HSN/SAC	Taxable Value	Integrated Tax	Total Tax Amount
	Amount	Rate	Amount
	24,18,832.00	3%	72,564.96
Total	24,18,832.00		72,564.96

Tax Amount (in words) : INR Seventy Two Thousand Five Hundred Sixty Four Only

Declaration
We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.

for **A N ENTERPRISES**
FOR AN ENTERPRISES

Prepared by _____ Verified by _____

PROPRIETOR **Signature**

SUBJECT TO DELHI JURISDICTION

21.1. From the impugned order, we find that the Revenue has contended that the invoices submitted by the appellants are fake as no such Firm in the name of AN Enterprises was found in the above mentioned address. In this regard, the appellants have contended that in the GST regime, the said Firm is a registered assessee under GST and they have been filing returns regularly in the GSTN portal. In support of this claim, the appellant submitted the copies of GSTR 2A and GSTR 2B returns filed by the appellants during the relevant period. For ready reference, the copies of the said documents are extracted below:

Goods & Service Tax (GST) | User Dashboard

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Goods and Services Tax

Government of India, States and Union Territories

VIKASH KUMAR AGRAWAL
10AAPP6373H3ZV

Dashboard > Returns > GSTR2A

English

B2B Invoice Summary

Uploaded by Supplier

Display/Hide Columns:
+5

Search: Search... Q

Invoice No.	Invoice Date	Invoice Type	Place Of Supply	Supply attract Reverse Charge	Total Invoice Value (₹)	Total Taxable Value (₹)	It
391	01-10-2021	R	Bihar	N	37,33,989.00	36,25,232.00	1,
397	01-10-2021	R	Bihar	N	18,82,527.00	18,27,696.00	
398	01-10-2021	R	Bihar	N	18,39,036.00	17,85,472.00	
399	01-10-2021	R	Bihar	N	24,91,397.00	24,18,832.00	

BACK

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Goods and Services Tax

Government of India, States and Union Territories

VIKASH KUMAR AGRAWAL
10AAPP637JHJZV

Dashboard > Search Taxpayer > Search by GSTIN/UIN

Search Taxpayer

* indicates mandatory fields

GSTIN/UIN of the Taxpayer*

07DAOPA1993P1Z1

SEARCH

Search Result based on GSTIN/UIN : 07DAOPA1993P1Z1

Note:

- Wherever data of % of Tax Payment in Cash is displayed for Composition Taxpayer, it pertains to the period where such Taxpayer was registered as a Normal Taxpayer.

Legal Name of Business

ANIL

Trade Name

A N Enterprises

Additional Trade Name

View

Profile

Place of Business

Administrative Office

(JURISDICTION - CENTER)

State - CBIC

Zone - DELHI

Commissionerate - DELHI NORTH

Division - OLD DELHI



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Goods and Services Tax

Government of India, States and Union Territories

SANTOSH KUMAR
10AMZPK2510L1Z0

Dashboard > Returns > GSTR2A

English

B2B Invoice Summary

Uploaded by Supplier

Columns:

Display/Hide +5

Search... Q

Search:

Invoice No.	Invoice Date	Invoice Type	Place Of Supply	Supply attract Reverse Charge	Total Invoice Value (₹)	Total Taxable Value (₹)	Integ Tax
390	01-10-2021	R	Bihar	N	19,19,395.00	18,63,490.00	55,9
392	01-10-2021	R	Bihar	N	45,64,033.00	44,31,100.00	1,32,9

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Goods & Services Tax (GST) | GSTR/12B

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SANTOSH KUMAR
10AMZPK2510L1Z0

English

Goods and Services Tax

Dashboard / Returns / GSTR-2B

GSTR-2B: AUTO-DRAFTED ITC STATEMENT

GSTIN: 10AMZPK2510L1Z0
Legal Name: SANTOSH KUMAR
Trade Name: CHAIN HOUSE & JEWELLERY
Financial Year: 2021-22
Return Period: October
Generation date: 14/11/2021

SUMMARY ALL TABLES View Advisory

Select table to view details

Taxable Inward supplies received from registered person - B2B

Supplier wise Details Document Details

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Records Per Page:

Apply Filter 10

Search...

S.NO.	GSTIN of supplier	Trade/legal name	Invoice number	Invoice type	Invoice Date	Invoice Value (₹)	Place of supply	Supply Attract Reverse Charge
1	07DAOPA1993P1Z1	A N Enterprises	390	Regular	01/10/2021	19,19,395.00	Bihar	No
2	07DAOPA1993P1Z1	A N Enterprises	392	Regular	01/10/2021	45,64,033.00	Bihar	No

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21.2. On perusal of the documentary evidences extracted above, we observe that the appellants have paid IGST @3% for the purchase of the 'Silver Granules' in question and the said purchase has been reflected in the GST returns 2A and 2B filed by them during the respective period. As these documents were filed online in the GSTN portal, we do not find any reason to doubt their genuineness. Just because the officers could not find any firm in the name of 'AN

Enterprises' during their visit at the address mentioned therein in the invoices, it cannot be concluded that the said firm was not in existence. Accordingly, we are of the view that the documentary evidences submitted by the appellants support their claim that the said 'Silver Granules' were domestically procured on payment of GST. Thus, we hold that the said 'Silver Granules' are not liable for confiscation under the provisions of Section 111(b) and Section 111(d) of the Customs Act, 1962.

22. We also observe that the Ld. adjudicating authority has relied upon statements of various persons to substantiate their allegation that the 'Silver Granules' were smuggled in nature. In this regard, we find that Revenue has relied upon the statements recorded from Shri Kari Karak and Shri Anil Kumar, for confiscation of the seized goods and to implicate the appellants in the alleged offence. We take note of the fact that the appellants had sought cross examination of these persons whose statements have been relied upon in the proceedings, but both the Original authority and First Appellate Authority did not allow the cross examination as provided under Section 138B of the Customs Act, 1962. Thus, in these circumstances, we find that their statements have no evidentiary value against the appellants. In the present case, it is pertinent to observe that other than the statements, there is no other evidence available on record to implicate the appellants in the alleged offence. As the statements have not been tested as required under section 138B of the Customs Act, 1962, we hold that the confiscation ordered in the impugned order on the basis of such untested statements is not sustainable and hence we set aside the same.

22.1. As the confiscation of the 'Silver Granules' in the impugned order is not sustained, we hold that the imposition of penalties on the appellants is not sustainable and hence, we set aside the same.

22.2. Regarding the confiscation of the vehicle used for transportation of the 'Silver Granules', in view of the findings in the preceding paragraphs wherein it has been held that the 'Silver Granules' in question are not liable for confiscation, we hold that the said vehicle used for transportation of the 'Silver Granules' is also not liable for confiscation. Accordingly, we set aside the confiscation of the said vehicle.

23. In view of the above findings, we pass the following order:

- (I) We set aside the order of confiscation of 52 packets of 'Silver Granules' weighing 259.99 kg. (Net Weight), valued Rs. 1,61,93,162.70/- in the impugned order.
- (II) We set aside the order of confiscation of Hyundai Car Model i-20 sportz bearing Registration number BR-06CN/8740 valued at Rs.7,21,905/- used in the carriage and transportation of the Silver Granules in the impugned order.
- (III) We set aside all the penalties imposed on the appellants herein.

24. The appeals filed by the appellants are disposed of on the above terms, with consequential reliefs, if any, as per law.

(Order pronounced in the open court on **25.09.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd