

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Customs Appeal No.76102 of 2025

[Arising out of Order-in-Appeal No.Kol/Cus(CCP)/KS/131-136/2025 dated 28.03.2025 passed by Commissioner of Customs (Preventive), Kolkata]

Commissioner of Customs (Preventive), Kolkata
(15/1, Strand Road, Kolkata)

Appellant

VERSUS

Rakesh Kumar Soni

(S/o Hari Prasad Soni, Jalpa Devi Ward, Murwara, Katni, MP-483501)

Respondent

APPEARANCE :

Shri Sameer Chitkara, Commissioner & Shri Subrata Debnath, Authorized Representative for the Appellant-Revenue

Shri Sudhir Malhotra & Ms.Konika Malhotra, both Advocates for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NO.77961/2025

DATE OF HEARING : 16 DECEMBER 2025

DATE OF DECISION : 16 DECEMBER 2025

Per Ashok Jindal :

The Revenue is in appeal against the impugned order wherein the Id.Commissioner (Appeals) held that the gold bars which are subject matter of this case, are not liable for confiscation and no penalty is imposable on the respondent.

2. Aggrieved from the said order, the Revenue is before us.
3. The facts of the case are that a specific intelligence has been received to the effect that four persons, named Shri Rakesh Pyasi, Shri Durgesh Kumar, Shri Lalit Kumar Soni and Shri Shankar Lal Patel would be carrying huge quantity of smuggled gold, by concealing the same in a white coloured Mahindra XUV 300 car bearing

Registration No. MP-2IZA. 5705, while travelling back to Madhya Pradesh from Kalyani, Nadia by road.

3.1 Acting on the above intelligence, at about 06:00, p.m. on 11.04.2023, a team of DRI officers alongwith two independent witnesses started from the office of the DRI, Kolkata in two departmental vehicles and reached near Ishwar Gupta Bridge of Kalyani at about 08:15 p.m. The DRI officers then mounted surveillance at the Kalyani side entry point of Ishwar Gupta Bridge.

3.2 At about 09:00 p.m. the said vehicle which was a white coloured Mahindra XUV 300 Car bearing registration No. MP-21ZA-5705 was seen coming towards Ishwar Gupta Bridge from Kalyani side. As soon as it reached the entry point of Ishwar Gupta Bridge, the DRI officers immediately signaled to stop the vehicle. Four passengers including a young boy aged about 16 years, apart from the Driver, were found inside the vehicle. On enquiry the driver introduced himself as Shri Shankar Lal Patel, the other passengers introduced themselves as Shri Rakesh Pyasi, Shri Durgesh Kumar, Shri Lalit Kumar Soni and the young boy introduced himself as Shri Suryansh Soni. As the identities of Shri Rakesh Pyasi, Shri Durgesh Kumar, Shri Lalit Kumar Soni and Shri Shankar Lal Patel matched with the intelligence available with the DRI officers, they were questioned by the DRI officers, whether they were carrying any contraband items in their person or possession or concealed in the vehicle. Initially all of them denied but on repeated enquiry they admitted that they were carrying smuggled gold bars which were concealed inside the specially built chamber made under the foot rest of the rear seat of their vehicle. The DRI officers informed

them that they alongwith their belongings and their vehicle were needed to be searched thoroughly.

3.3 Given option in terms of Section 102 of the Customs Act, 1962, all of them opted in writing, that they wanted to be searched in presence of a Gazetted Officer of DRI and requested the DRI officers to conduct their personal search as well as search of their vehicle and their belongings at a safer place other than the place of interception, as they were afraid of their safety and security as well as the safety and security of the smuggled Gold being carried in their vehicle. As the place was not conducive to carry out search proceedings and also considering their request, DRI Officers offered them to conduct the search proceedings at DRI Kolkata Office, to which all of them readily agreed and they wished to accompany the DRI Officers upto the DRI Office for conduction of their search proceedings. Then all the five persons were issued spot summons under Section 108 of the Customs Act, 1962, requiring their presence at DRI Kolkata office. All of them acknowledged the summons. Accordingly, all the five apprehended persons along with their intercepted vehicle and the DRI officers along with the two independent witnesses started for DRI office.

3.4 On reaching the DRI office, the DRI officers before proceeding for personal search of the apprehended persons, first offered themselves to be searched which were politely denied by all of the five apprehended persons.

3.5 Then the DRI officers, thoroughly searched the white coloured Mahindra XUV 300 Car bearing Registration No.MP-21ZA-5705, in the presence of all the five apprehended persons and two independent

witnesses. After removal of the foot mats from the vehicle, it was observed that specially made chambers were made under the foot rests of the rear seats as well as the front passenger seat of the vehicle, which were wrapped with black coloured carpet. Those black coloured carpets covering the foot rests of the rear seats and the front passenger seat of the vehicle were removed and all the three chambers made under the foot rests of the rear seats and the front passenger seat of the vehicle were opened. A black coloured cotton hand bag with white dots printed on it, was found concealed inside the chamber, made under the foot rest of the left rear seat of the vehicle. On opening the handbag 05 packages containing metallic objects, having considerable weight, wrapped with brown coloured adhesive tapes were found. All of such 05 packages, were cut opened and yellow coloured rectangular heavy metallic bars, believed to be gold of foreign origin were found from each of such package. In addition to that 01 (One) yellow coloured tiny metallic cut piece was also recovered from one of such package. In total 05 rectangular yellow coloured metallic bars and 01 (One) yellow coloured tiny metallic cut piece, all believed to be gold of foreign origin were recovered from the said black coloured cotton hand bag with white dots printed on it, which were at first wrapped with newspaper cutting and then further wrapped with brown coloured adhesive tapes. The other two chambers, made under the foot rests of the right rear seat and the front passenger seat of the said vehicle bearing registration No. MP-21ZA-5705 were found empty.

3.6 Each of the five intercepted persons namely, Shri Shankar Lal Patel. Shri Rakesh Pyasi, Shri Durgesh Kumar, Shri Lalit Kumar Soni

and the young boy Shri Suryansh Soni were having a backpack with them, which were kept at the boot of their Mahindra XUV 300 Car bearing registration No. MP-21ZA-5705. All of such five backpacks were searched in presence of the intercepted persons and two independent witnesses, but nothing incriminating was found from any of such backpacks.

3.7 Thereafter, personal search of all the five apprehended persons were carried out, in the presence of a Gazetted officer of DRI and two independent witnesses. At first from the personal search of Shri Rakesh Pyasi, one old and used Pearl Blue coloured smart phone of make "OPPO" Model: CPH2269 with IMEI numbers 862106056084934 & 862106056084926 having JIO connection number 6266353151 was recovered. Then from the personal search of Shri Durgesh Kumar one old and used Mystery Blue coloured smart phone of make "OPPO" Model: CPH2185 with IMEI numbers 863769050451638 and 863769050451620 having JIO connection number 7067872206 was recovered. Then the personal search of the driver of vehicle Shri Shankar Lal Patel was carried out and one old and used Sunset Orange coloured smart phone of make "OPPO" Model: CPH2385 with IMEI numbers 866768064034957 and 866768064034940 having Airtel connection number 7898378288 was recovered from him. Upon searching the person of Shri Lalit Kumar Soni one old and used Black coloured feature phone of make "SAMSUNG" Model: SM-B310E with IMEI numbers 357510380349586 and 358216440349587, having Airtel connection number 7869275923 was recovered. Lastly, from the personal search of the young boy Shri Suryansh Soni, nothing

incriminating was found. From enquiry and the confessions made by the accused persons, it appeared that the young boy Shri Suryansh Soni, is a close neighbour of Shri Lalit Kumar Soni. He came to visit Kolkata with him and he had no knowledge or complicity with the acquisition/possession/carrying of the recovered yellow-coloured metallic bars, believed to be gold of foreign origin.

3.8 On being asked, none of the apprehended persons could produce any licit document in support of the legal possession/acquisition/carrying/transporting dealing with the recovered yellow coloured rectangular metallic bars and cut-piece believed to be gold of foreign origin.

3.9 For preliminary identification purpose, the recovered 05 rectangular yellow coloured metallic bars, believed to be gold of foreign origin, were serially marked as 1/6,2/6,3/6 4/6,5/6 respectively and the recovered 01 (One) yellow coloured tiny metallic cut piece, believed to be gold of foreign origin was marked as 6/6.

3.10 Then the facsimile of all the recovered 05 rectangular yellow coloured metallic bars and 01 (One) yellow coloured tiny metallic cut piece, all believed to be gold of foreign origin were taken on white paper and the signatures Shri Rakesh Pyasi, Shri Durgesh Kumar, Shri Lalit Kumar Soni and the two independent witnesses were obtained on it.

3.11 For preliminary assaying and examination of the recovered goods, the service of Shri Sanjiv Kundu, a Govt. approved valuer was requisitioned by the DRI officers. Shri Sanjiv Kundu after detailed examination, in presence of the accused persons and two independent witnesses, certified in writing that all the recovered 05 rectangular

yellow coloured metallic bars and 01 (One) yellow coloured tiny metallic cut piece were of Gold of 24 Carat purity, collectively weighing 4999.830 gram and collectively valued at INR 3,02,98,970/- (INR Three Crore, Two Lakh. Ninety Eight Thousand. Nine Hundred and Seventy Only), taking the prevalent market value @ INR 6060/-per gram.

3.12 05(five) representative samples weighing 2.730 gm, 2.300 gm, 2.230 gm, 2.180 gm and 3.080 gm were drawn from the recovered 05 rectangular yellow coloured metallic bars, believed to be gold of foreign origin, marked as 1/6, 2/6 3/6 4/6 5/6 respectively and kept those samples in five separate transparent plastic zip pouches and further marked them as S1, S2, S3, S4 and S5 respectively.

Sl.No.	DRI marking on the biscuits	Sample marking	Weight of the sample (in gram)
1.	1/6	S1	2.730
2.	2/6	S2	2.300
3.	3/6	S3	2.230
4.	4/6	S4	2.180
5.	5/6	S5	3.080

3.13 On enquiry, the three accused persons i.e. Shri Rakesh Pyasi, Shri Lalit Kumar Soni and Shri Durgesh Kumar produced a Tax Invoice for purchase of the Mahindra XUV 300 vehicle, having Order No.- OTF23A003814 dt. 28.11,2022, issued in the name of Shri Rakesh Kumar Soni, by Star Automobiles (M.P.) Ltd. having address at 60. Tripuri Chowk, Garha, Nagpur Road, Jabalpur, Madhya Pradesh, PIN-482001. He also produced a copy of Insurance paper having policy number 86170175 dt. 28.11.2022. for their Mahindra XUV 300 vehicle, bearing registration No. MP-21ZA-5705. The insurance copy was issued by IFFCO Tokio General Insurance Co. Ltd. The engine number and chassis number of the vehicle as found from the subject insurance copy was TYNZJ38250 and MAINM2TY1N2J64943 respectively. None of the

accused persons i.e. Shri Rakesh Pyasi, Shri Durgesh Kumar and Shri Lalit Kumar Soni could produce the RC copy for their Mahindra XUV 300 vehicle bearing registration No. MP-21ZA-5705.

3.14 All of the three apprehended persons i.e. Shri Rakesh Pyasi, Shri Durgesh Kumar and Shri Lalit Kumar Soni admitted the fact that the recovered 05 rectangular yellow coloured metallic bars and 01 (One) yellow coloured tiny metallic cut piece were of gold of foreign origin, which were smuggled into India through illicit routes. Further none of them could produce any licit documents in support of the legal possession/acquisition/carrying/transportation of the recovered 05 rectangular yellow coloured metallic bars and 01 (One) yellow coloured tiny metallic cut piece, all believed to be gold of foreign origin. Considering the manner, in which the impugned goods. were being carried, by concealing inside the specially made chamber under the foot rest of the vehicle, and coupled with confessions of the apprehended persons to the effect that the impugned goods were gold of foreign origin and smuggled in nature, the DRI officers seized the recovered 05 rectangular yellow coloured metallic bars and 01 (One) yellow coloured tiny metallic cut piece, all believed to be gold of foreign origin under the provisions of Customs Act 1962, as the impugned goods were liable to confiscation under Section 111(b) and 111(d) of the Customs Act 1962.

3.15 The wrapping materials of the recovered goods, i.e. the torn newspapers and brown coloured adhesive tapes and the carrying material i.e. black coloured cotton hand bag with white dots printed on it, were also seized under the Customs Act 1962 as the same were liable to confiscation under Section 119 of the Customs Act 1962.

3.16 The white coloured Mahindra XUV 300 car, bearing registration No. MP-21ZA-5705, which was used for carrying and concealing the recovered 05 rectangular yellow coloured metallic bars and 01 (One) yellow coloured tiny metallic cut piece, all believed to be gold of foreign origin, was seized by the officers of DRI, as the same was liable for confiscation under Section 115 of the Customs Act 1962. The Tax Invoice having Order No.-OTF23A003814 dt. 28.11.2022, for the Mahindra XUV 300 vehicle. bearing registration No. MP-212A-5705, issued in the name of Shri Rakesh Kumar Soni and the copy of the Insurance paper having policy number 86170175 dt. 28.11.2022. as produced by the driver of the vehicle Shri Shankar Lal Patel were seized by the DRI officers under Customs Act 1962, as the same would be useful for future investigation process.

3.17 The three mobile phones recovered from Shri Rakesh Pyasi. Shri Durgesh Kumar and Shri Lalit Kumar Soni, as mentioned above were also seized by the DRI officers under Customs Act 1962, as the same would be useful for and relevant to the future investigation process.

3.18 Thereafter, the recovered 05 rectangular yellow coloured metallic bars and 01 (One) yellow coloured tiny metallic cut piece, all believed to be gold of foreign origin, excluding the samples drawn, were kept inside a metallic box, locked with key, wrapped with white coloured cloth and sealed with DRI seal in presence and under the signatures of Shri Rakesh Pyasi, Shri Durgesh Kumar. Shri Lalit Kumar Soni, the DRI officer effecting the seizure and two independent witnesses.

3.19 The five representative samples, drawn from the recovered 05 rectangular yellow coloured metallic bars, believed to be gold of foreign origin, kept in transparent plastic pouches and marked as S1, S2, S3, S4 and S5 were kept in one brown coloured envelop and sealed with DRI Seal. Signatures of Shri Rakesh Pyasi, Shri Durgesh Kumar, Shri Lalit Kumar Soni, two independent witnesses and the DRI officer were obtained on it.

3.20 The wrapping materials of the recovered goods. i.e. the torn newspapers and brown coloured adhesive tapes were kept in one brown coloured envelop and sealed with DRI Seal in presence and under the signatures of Shri Rakesh Pyasi, Shri Durgesh Kumar, Shri Lalit Kumar Soni, the DRI officer effecting seizure and two independent witnesses.

3.21 The carrying material i.e. black coloured cotton hand bag with white dots printed on it, was kept in a big green coloured envelop and sealed with DRI Seal in presence and under the signatures of Shri Rakesh Pyasi, Shri Durgesh Kumar, Shri Lalit Kumar Soni, the DRI officer effecting the seizure and two independent witnesses.

3.22 The Tax Invoice having Order No.- OTF23A003814 dt. 28.11.2022, for the Mahindra XUV 300 vehicle, bearing registration No. MP-21ZA-5705, issued in the name of Shri Rakesh Kumar Soni and the copy of the Insurance paper for that vehicle having policy number 86170175 dt. 28.11.2022 as produced by Shri Rakesh Pyasi, Shri Durgesh Kumar and Shri Lalit Kumar Soni were also kept in one brown coloured envelop and sealed with DRI Seal in the presence of the intercepted persons and two independent witnesses. Signatures of Shri

Rakesh Pyasi, Shri Durgesh Kumar, Shri Lalit Kumar Sõni, two independent witnesses and the DRI officer were obtained on it.

3.23 The three mobile phones recovered from Shri Rakesh Pyasi, Shri Durgesh Kumar and Shri Lalit Kumar Soni were kept in one brown coloured envelop and sealed with DRI Seal in presence and under the signatures of Shri Rakesh Pyasi, Shri Durgesh Kumar, Shri Lalit Kumar Soni, the DRI officer effecting the seizure and two independent witnesses.

3.24 The statements of the apprehended persons were recovered. On the basis of their statements, it is concluded that the seized gold in question was received from Shri Mahesh Patil, which is to be delivered to Shri Rakesh Soni, the respondent herein. The test report confirmed the samples of biscuits and biscuit cut pieces as "Gold" having purity of 99.8% by weight. Later on, the statements given by Shri Rakesh Pyasi and Shri Rakesh Kumar Soni, were also retracted. After the statements were taken, the respondent joined proceedings with a prayer of provisional released of the seized gold vide letter dated 31.05.2023, wherein he stated as under :

- (i) He is running gold jewellery business under name and style of M/s Amamath Enterprises, since 2002 having its place of business at Sarafa Bazar, Raghunathganjkatni, Katni, Madhya Pradesh-483501 having GST registration 23AWJPS1734LIZ9;*
- (ii) He also looks after and he is the power of attorney holder in two other business firms namely M/s Shree Venkatesh Abhushan, owned by Srnt. Ranjna Soni having GST registration no. 23CCMPS5014C1ZV and M/s Nakul Jewellers, owned by Nakul Soni having GST registration no. 23GNFPS8615R1Z3:*
- (iii) All these business units are engaged in procuring gold in bullion forms and in selling the same to local customers and*

sometime the same are subjected to different process for getting into different jewellery products:

iv) After procuring gold bullions from bullion merchants with proper purchase invoices, some portion are sent to different karigars/workshops for getting into manufactured gold:

v) But the demand of Kolkata and surrounding area made jewellery are cheap and multi-designed and from one person named Subhas Patil of a hall marking centre, Chawk Bazar, Benaras, he came to learn that Kanchrapara area is one such area where cheap and fancy gold jewellery items are available:

vi) As the demand of bullions was declining, he thought of getting of getting be bullions of the three firms in stock in ornaments from Kanchrapara and for this purpose. Shri Subhas Patil suggested one person named Shri Mahesh Patil whom he contacted over phone:

vii) After getting confirmation from Shri Mahesh Patil, he arranged for sending 5 Kgs of gold in bullion form (altogether 6 pcs.) through 04(four) persons namely- 1) Shri Rakesh Pyasi, 2) Shri Durgesh Kumar, 3) Shri Lalit Kumar Soni, (4) Shri Suriyansh Soni along with driver Shri Sankar Patel by his own vehicle bearing No. MP-21ZA-5705 and left Katni for Kanchrapara on 09.04.2023:

viii) The aforesaid persons reached Kolkata on 10.04.2023 and handed over the 5 Kgs gold in gold bullion to Shri Mahesh Patil as per verbal agreement. Due to EID & Ranjan festival, the Karigars were not turning up and he advised the aforesaid persons to return back with the goods so handed over to them and accordingly they started for Katni from Kanchrapara via Kalyani on 11.04.2023:

ix) He came to learnt of DRI seizure of the gold and vehicle through the wife of Shri Rakesh Pyasi on 12.04.2023:

x) All the goods so seized by the officers of DRI, Kolkata on 11.04.2023 are properly procured and accounted for and the same have been duly incorporated in all the relevant

Books/Registers viz. Stock Registers/GSTR Returns, Balance Sheets etc. and supported by purchase/sale invoices, bills etc.

xi) He also submitted GSTR Returns and all the related documents in respect of all the three units viz. M/s Amarnath Enterprises. M/s Shree Venkatesh Abhu Shan and M/s Nakul Jewelers:

xii) He prayed for provisional release of the seized goods under section 110A of the Customs Act, 1962 on the conditions as to be imposed by the adjudicating authority:

xiii) He also quoted the judgment laid down in the case of My NAME (P) Ltd. vs Additional Director (General Adjudication) reported in 2021 (375) ELT 545 (Del).

He also prayed for provisional release of the seized vehicle i.e. Mahindra XUV 300 bearing Regn. No. MP-212A-5705 in terms of the provisions of the Customs Act, 1962. However, in this regard, no communication has been received from the Adjudicating Authority i.e. the Additional Commissioner of Customs, CC(P), WB, Kolkata.”

3.25 On the basis of the statement of the respondent, it is stated that the respondent sent the seized gold from Katni to Kanchrapara for making jewellery, which the Revenue found that it was not a reliable statement. Therefore, a show-cause notice was issued to absolute confiscate the said gold and to impose penalty on the respondent as well as on the co-noticees.

3.26 The matter was adjudicated. The adjudicating authority absolutely confiscated the gold along with the vehicle in question and allowed to redeem the vehicle payment of 30% of the value of the seized vehicle. No penalty was imposed on the respondent, but penalties were imposed on the co-noticees.

3.27 Against the said order, the respondent along with the co-noticees were filed appeals before the Id.Commissioner (Appeals), who held that the gold in question is not liable for confiscation and ordered to be released of the same.

3.28 Aggrieved from the said order, the Revenue is before us.

4. The Revenue has taken a ground that the Id.Commissioner (Appeals) accepted the documents, i.e. stock register, purchase bill, GST returns, etc., which are post-facto documents as these documents were not brought at the time of seizure of the gold. Further, the respondent has failed to discharge his burden under Section 123 of the Customs Act.

4.1 Further, at the time of interception, the person, who was carrying the gold, could not explain the possession of the gold. The contention of the respondent is that his persons reached Kolkata on 10.04.2023 and handed over the 5 Kgs. gold in gold bullion to Shri Mahesh Jagannath Patil as per verbal agreement. Due to EID and Ramjan Festival, the artisans were not turning up and he advised the said persons to return back with the gold so handed over to them and accordingly, they started for Katni from Kanchrapara via Kalyani on 11.04.2023. In fact, the Appellate Authority has failed to appreciate that the Call Details Record of the respondent, shown the constant communication between him and Shri Mahesh Jagannath Patil between 01.04.2023 to 12.04.2023. Therefore, it is difficult to believe that any person would ever sent his entire stock of gold valued at Rs.3.00 Crores (Approx.) for manufacturing jewellery to a person, who is located at a distance of around 1000 Kms and who is in constant touch

through mobile with the person without asking even once about the availability of artisans at the shop where the jewellery would be manufactured.

4.2 It is further argued that the Id.Appellate Authority failed to appreciate that every person, including the staff of Shri Rakesh Kumar Soni, who joined the investigation conducted by DRI admitted in their statements recorded under Section 108 of the Customs Act, 1962, about the smuggled nature of the impugned gold. They argued that the claim of the respondent for lawful procurement of the gold was bogus and the staff once retracted their statements. But Shri Rakesh Pyasi and Shri Durgesh Kumar in their statements dated 03.07.2023 revealed that it was the respondent, who made them sign over their retraction letters dated 30.05.2023 and again they admitted that the seized gold has been smuggled. The retraction of statements was itself later retracted.

4.3 It is further argued that the retraction letter was dated 30.05.2023 just one day before the letter dated 31.05.2023 of the respondent to DRI for claiming the ownership of the impugned gold. Mere submission of some documents by a person purportedly showing availability of 5 Kgs. gold in his stock cannot be accepted to be sufficient for establishing him as the lawful owner of the gold.

4.4 It is further submitted that the Id.Appellate Authority failed to appreciate that the Panchanama and Search List dated 26.09.2023, the DRI officers conducted search of the shop of Shri Mahesh Jagannath Patil situated at North 24 Parganas, West Bengal. There were only instruments of melting of gold/silver and no tools/instruments related

for making jewellery were found and it was also noted that Shri Mahesh Jagannath Patil has never claimed that the respondent sent the impugned gold to him for making jewellery. It is further submitted that in the absence of transport and transactional documentation, the gold cannot be released to the respondent. Therefore, the impugned order is to be set aside.

5. Heard the Id.Counsel for the respondent, who has reiterated the findings of the Id.Commissioner (Appeals).

6. Heard both the parties and considered the submissions.

7. We find that in this case, 5 seized gold bar and one cut-piece of gold bar collectively weighing 4999.830 kg. were recovered and seized from pearl white color Mahindra and Mahindra XUV 300 bearing Registration No.MP-21ZA 5705 Car intercepted on 12.04.2023 at entry point of Ishwar Gupta Bridge of Kalyani, West Bengal by DRI, Kolkata.

8. The core question involved in this case is whether the gold in question is smuggled into India or not ?

9. We find that that Shri Rakesh Kumar Soni, Prop. of M/s Amarnath Enterprises and power of attorney holder of M/s Shree Venkatesh Abhu Shah and M/s Nakul Jewellers claimed ownership of seized gold and vehicle bearing registration No.MP-21ZA 5705 seized by DRI, Kolkata on 12.04.2023 and requested for provisional release of seized goods. The respondent vide letter dt. 31.05.2023 submitted that he sent 5 kg of gold bullion through his employee Shri Lalit Kumar Soni, Shri Rakesh Pyasi and Shri Durgesh Kumar from Katni to Kanchrapara to Shri Mahesh Jagannath Patil for making jewellery. The respondent submitted documents viz. GSTR-3B, Chartered Accountant's certificate certifying

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gold stock, purchase and sale ledger in support of his claim to discharge the onus to prove the possession of gold under section 123 of the Customs Act, 1962. The stock position of gold duly certified by Shri Shashank Premchand & Co., Chartered Accountant are as under:-

SNo.	Firm Name M/s	Pan & GST No.	Gold Bullion as on 09.04.2023	Gold ornaments as on 09.04.2023
1.	2.	3.	4.	5.
1.	Shree Amarnath Enterprises	AWJPS1734L & 23AWJPS1734L1Z9	2180.631 gram	135.145 gram
2.	Shree Venkatesh Abhushan	CCMPS5014C & 23CCMPS5014C1ZV	2027.391 gram	Nil
3.	Nakul Jewellers	GNFPS8615R & 23GNFPS8615R1Z3	807.647 gram	0.284 kilogram
	Total		5015.669 gram	

10. We find that in this case, the gold in question is neither seized from Customs Area nor from border area and the same has been seized from the vehicle and intercepted at entry point of Ishwar Gupta Bridge at Kalyani by DRI, Kolkata. The gold was recovered from the said vehicle at office premises of DRI, Kolkata. We find that the said gold neither bears any foreign marking nor it was seized from Customs bonded area nor from specified area defined under Section 11H of the Customs Act, 1962. The Central Government vide Notification No.31/2008 Cus (NT) dated 25.03.2008 issued under Clause (c) of Section 11H of the Customs Act, 1962, having regard to vulnerability to smuggling of the area mentioned in schedule therein, specified the area as "specified area" as under :

"The inland area, 50 KM in width, from India's land border with Bangladesh falling within the territories of West Bengal, Tripura, Assam, Meghalaya and Mizoram."

The place where the gold were intercepted is more than 200 KM from the international border of Bangladesh and there is no foreign marking on the seized gold nor the said gold has been smuggled into India nor from any foreign country.

11. We further take note of the facts that the foreign origin gold is having purity of 99.99% whereas the seized gold is of purity 99.8% as the respondent provided the documents for claiming the ownership of such gold by way of GSTR-3B, C.A. Certificate certifying gold stock, purchase and sale ledger etc. which were not found fake by the Revenue. In that circumstances, the respondent has discharged their onus under Section 123 of the Customs Act, 1962. As neither the gold bears any foreign marking nor having purity of 99.9% and have not been seized in specified area as defined under Section 11H of the Customs Act, 1962, therefore, the respondent has discharged their onus under Section 123 of the Customs Act, 1962. In that circumstances, if the Revenue believe that the gold in question is of foreign origin, then, the Revenue has to come with positive evidence to show that the gold in question is of foreign origin, which the Revenue has failed to do so. Accordingly, the observations made by the Id.Commissioner (Appeals) in the impugned order are affirmed.

12. For better appreciation, the said findings of the Id.Commissioner (Appeals) are reproduced below :

"13. After going through the available records, I find that the gold bars were recovered from the appellants 1, 3 & 4. I find that in absence of possession of licit documents for the impugned gold bars, they were initially treated as smuggled under section 2(39) of the Customs Act 1962 and seized under section 110 of the Customs Act 1962 and the onus to prove that the goods are not smuggled was transferred to the appellants in terms of

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section 123 of the Customs Act' 62. Later, Appellant-2 made claim over the impugned gold and produced some documents for the same. Now the main point of consideration is that whether the impugned gold bars that are seized by the department, are smuggled and liable for confiscation, or the appellant-2 discharged his onus in term of section 123 by submitting documents

14. In this regard, I find that appellant-2 applied for release of the seized gold vide letter dated 31.05.2023 and claimed that he had sent 5 kg of gold bullion with appellant-1, 3 & 4 to appellant-5 for making jewellery in Kanchrapara, WB. Appellant-2 has submitted documents like GTSR-3B, CA certified copy of Gold stocks, purchase and sale ledgers in support of his claim and prima facie took the onus to prove the possession of the gold under section 123.

15. After going through the documents, I find that the closing stock produced by the appellant-2 is verified by Shri Shashank Premchand & Co., CA for the following firms:

Firm name	PAN & GST No.	GOLD Bullion As on 09.04.2023	Gold Ornaments As on 09.04.2023
Shree Amarnath Enterprises	AWJPS1734L & 23AWJPS1734L1Z9	2180.631 Gms	135.145 Gms
Shree Venkatesh Abhushan	CCMPS5014C & 23CCMPS5014CC1ZV	2027.391 Gms	-
M/s Nakul Jewellers	GNFPS8615R & 23GNFPS8615R1Z3	807.647 Gms	0.284 kilograms

Appellant-2 has submitted the stock register of the firm M/s Amarnath Enterprises for the period of 01.04.2022 to 31.03.2023, wherein, gold bullion of quantity 2180.631 grams is mentioned as closing balance on 10.04.2023. I also find that the purchase

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register of gold for the period of 01.04.2022 to 31.03.2023 for the firm M/s Shree Amarnath Enterprises is submitted. It is find that the said gold purchases were done by the firm from M/s Ishan Gold, Indore and for each purchase Tax Invoice has been produced by the appellant-2.

16. Appellant-2 has submitted the stock register of the firm M/s Sho Venkatesh Abhushan for the period of 01.04.2022 to 31.03.2023, wherein, gold bullion of quantity 2027.391 grams is mentioned as closing balance on 10.04.2023. I also find that the purchase register of gold for the period of 01.04.2022 to 31.03.2023 for the firm M/s Shri Venkatesh Abhushan is submitted. It is found that the said gold purchases were done by the firm from i) M/s Ishan Gold, Indore ii) M/s Nakul jewelers and M/s Shree Amarnath Enterprises and for each purchase Tax Invoice has been produced.

17. Appellant-2 has submitted the stock register of the firm M/s Nakul Jewellers for the period of 01.04.2022 to 31.03.2023, wherein, gold bullion of quantity 807.647 grams is mentioned as closing balance on 10.04.2023. It is find that the purchase register of gold for the period of 01.04.2022 to 31.03.2023 for the firm M/s Nakul jewelers is submitted. It is found that the said gold purchases were done by the firm from i) M/s Ishan Gold, Indore ii) M/s Shree Amarnath Enterprises and for each purchase Tax Invoice has been produced by the appellant-2.

18. I find that appellant-2 has submitted in his grounds of appeal that out of his bonafide stock of 5012.669 grams of gold bullion (for M/s. Amarnath Enterprises 2180.61 gram, for M/s. Shree Venkatesh Abhushan 2027.391 gram and for M/s Nakul Jewellers 807.647 grams) as on 09.04.2023, he had given delivery of 4999.830 grams (approx. 5 kgs) of gold bar in 05 [five] pcs. Gold bar/Bullion and 01 [one] tiny cut piece through the aforesaid employees (herein appellants-1, 3 & 4), who boarded the Mahindra XUV 300 (Registration No. MP-21ZA-5705).

Whereas, for the possession of the gold bars the Adjudicating Authority observed that "The claims of Shri Rakesh Kumar Soni

(appellant-2) that the gold bullion was taken from the CA certified joint stock of the three firm viz. M/s Amarnath Enterprises, M/s Shree Venkatesh Abhushan, and M/s Nakul Jewellers was not tenable as the seized 05 nos. of defaced gold bar and 01 tiny cut-piece of gold bars are weighing 999.990 gm, 1000.020 gm, 999.860 gm, 999.200 gm, 1000.010 gm, and 0.750 gm, although Shri Rakesh Soni submitted vide his letter dated 31.05.2023 that he sent 5 Kgs of gold in bullion form (altogether 6 pcs) to Shri Mahesh Patil (appellant-5) after procuring the same from Bullion Merchants, but could not produce the documents in support of identical weight and purity of gold in bullion form. Though Shri Rakesh Kumar Soni tried to establish his legal claim over the seized goods by way of submitting certain documents, but his effort is found to be a product of afterthought as the document has been found to be totally irrelevant suitably to establish his claim over the seized goods.)". In this connection, it appears from the records of the appellant-2 that he was in possession of 5 KGS gold bullions/bars on 09.04.2023 and the department could not establish that the appellant-2's documents are forged, fabricated the way of refuting the verified documents of CA.

19. It is also seen from the documents submitted by Appellant-2 that he had the power of attorney for M/s Venkatesh Abhushan and M/s Nakul Jewellers given by these firm's proprietor. The dates of authorization for the same are 01.07.2017 and 01.09.2019, which is much prior than the date of seizing of the impugned gold bars. It is also seen that regarding these authorizations, the department did not produce any effective evidence in form of documents or otherwise to prove them false. Regarding these firm's tax invoices for purchases of gold, the same were tallied with the bank statements of the respective firms and appear to be correct. The department in neither way verified the documents from the purchasing firm nor proved them false/fabricated.

20. On the basis of above, it appears that the documents produced by appellant-2 prima facie emphasizes that he was in

possession of 5 KGS gold bullion which could not be proved false by the department, therefore, the observation of the adjudicating authority that Appellant-2's claims are afterthought does not seem justifiable. Since, the documents submitted by the appellant-2 could not be proved false/fabricated by the department, therefore, I am of the opinion that the gold bars/bullion is not liable for confiscation. I would like to refer the judgement of COMMISSIONER OF CUSTOMS (PREV.), KOLKATA Versus ASHOK KUMAR AGARWAL, 2017 (348) E.L.T. 555 (Tri. Kolkata) wherein the Hon'ble tribunal observed that:

"4. Respondent produced bill No. 527, dated 30-11-1997, issued by M/s Laljibhai Kanjibhai Soni of Ahmedabad, regarding purchase of foreign marked gold bars.

Once respondent has produced such a bill then the burden under Section 123 of the Customs Act, 1962 stands discharged. It has also been observed by Hon'ble Calcutta High Court in second last Para of order dated 22-2-2016, quoted above, that department is required to do something more to demonstrate that the gold bars confiscated were not purchased by the respondent under the documents produced. Revenue is not able to demonstrate with documentary evidence that the seized gold bars were procured from any other source, except raising some suspicion. It is a well settled legal proposition that a case cannot be held to be established on the basis of assumptions, presumptions and surmises. In view of the above observations there is nothing wrong in the findings of first appellate authority, as contained in Para 10 of OIA dated 10-8-2001 and no interference is called for to set aside the same."

21. It is find that the department raided appellants-1. 3, 4 & 5 premises/residences, but could not make any material production of evidences by which the department could prove that the gold bars seized were smuggled one. It is also find that the department did not make any search in premises/residences of Appellant-2 who is said to be kingpin of the syndicate and

therefore lacked in production of material evidences with which way the documents submitted by the appellant-2 could be proved wrong or the seized gold bars could be proved smuggled.

22. It is find that the place where the gold bars are seized from appellants are away from the border area. The gold bars are not seized while being smuggled either at Port/Airport or Customs area. The seizure of the gold bars place the onus to the appellants for their legal possession/procurement, which I find that the appellant-2 after producing documents shifted his onus under section 123. For the same, I would like to cite the case of Nand Kishore Modi v. Commr. of Cus. (Prev.), West Bengal 2015 (325) E.L.T. 781 (Tri. -Kolkata), wherein, the Hon'ble Tribunal has held as under :-

"In view of the above observations and settled proposition of law every piece of gold possessed by a person in India cannot be considered to be of smuggled nature and that the possessor of such gold has to discharge the onus under Section 123 of the Customs Act, 1962, However, it may be a requirement from a person in a Customs area who imported gold as baggage. In the instant case the foreign marked gold was not seized from a customs area or a person coming from an international border. Accordingly, it is held that in the present appeals, Revenue has failed to establish that seized gold was of smuggled nature."

23. After going through appellant-5's statements it appears that the department relied upon his statement that the gold bars were smuggled one but could not make any further investigation for the persons whose names were taken for the smuggling of gold by the appellant-5. During the course of statements all appellants had stated that Rs.2.8 crores were paid by appellant-2 to appellant-5 in exchange of impugned gold bars which was also relied by the department, however, during the search of appellant-5's premises department did not find any currency which could prove that the money were received as sale proceeds of the smuggled gold bars. From the above, the appellant had proved the legal procurement of the seized gold which was

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verified by CA and the department's view that the gold bars were smuggled seems not sustainable."

13. We have gone through the impugned order, we do not find any infirmity in the impugned order and the same is upheld.

14. In view of this, the appeal filed by the Revenue is dismissed.

(Operative part of the order was pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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