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

REGIONAL BENCH–COURT NO. 2

Customs Appeal No. 76453 of 2025

(Arising out of Order-in-Appeal No. Kol/Cus(CCP)/KS/622/2024 dated 30.10.2024 passed by the Commissioner of Commissioner of Customs(Appeals) 3RD Floor, Custom House, 15/1, Strand Road, Kolkata-700001

M/s. Narru Guru Shantha Siva Kamal **: Appellant**
S/o Narru Durga Rao, D. NO. 21-06-27/3,
Uppativarri Street, Near Chaitanya Children Hospital,
Government Press, Vijayawada, Andhra Pradesh

VERSUS

Commissioner of Customs(Appeals), **: Respondent**
3RD Floor, Custom House, 15/1, Strand Road,
Kolkata-700001

APPEARANCE:

ShriP.S.Sastry,Consultant for the Appellant
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 NO.77776/ 2025

DATE OF HEARING: 19.11.2025
DATE OF PRONOUNCEMENT: 26.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed by Narru Guru Shantha Siva Kamal of Vijayawada (herein after referred as the Appellant) against the impugned Order-in-Appeal No. Kol/Cus(CCP)/KS/622/2024 dated 30.10.2024 passed by the Commissioner of Customs(Appeals), wherein the Ld. Commissioner (Appeals) has upheld the confiscation of 2,333.02 grams of gold valued Rs.1,21, 66, 699/- seized from the Appellant. In the impugned order,

the Ld. Commissioner (Appeals) also upheld the penalty of Rs. One Lakh imposed on the Appellant. Aggrieved against the confiscation of the gold and imposition of penalty on him, the Appellant has filed this appeal.

2. The facts of the case are that on the basis of intelligence gathered that one person by name Shri. Kamal of Andhra Pradesh would be carrying substantial amount of gold smuggled into India from Bangladesh and would be travelling to Santragachi Railway Station for onward travel to Visakhapatnam, the officers of DRI, intercepted one person occupying seat number 62 of Coach No. B 8 of Train Number 22807, Santragachi-MGR Chennai AC Super Fast Express. The said person disclosed his identity as Narru Guru Shantha Siva Kamal of Vijayawada. He was brought to the office of DRI in Kolkata and was searched in the presence of two independent witnesses. During his personal search, he was found to be wearing a waist belt and on opening, it was found to contain 20 numbers of gold biscuits weighing 2,333.02 grams. As the gold biscuits were having foreign markings and the Appellant was not having any documents for the licit purchase of the gold, the said gold was seized under Section 110 of the Customs Act, 1962.

2.1. Representative samples were drawn from five gold biscuits and sent for testing at Custom House Chemical Laboratory, Kolkata. On testing, the gold seized was found to be having purity as detailed below:

Marking	Net Wt. of the sample received in gm	Wt of recovered gold in gm	Wt of the remnant gold in gm	% of gold by wt.
1/20	1.90	0.29	1.56	99.8
2/20	1.71	0.32	1.34	99.8
3/20	1.81	0.32	1.44	99.7
7/20	2.07	0.31	1.71	99.7
14/20	2.39	0.30	2.04	99.8

2.2. Statements of the Appellant was recorded on 4.03.2022, 05.03.2022 and 23.03.2022. In the statements the Appellant *inter alia* stated that all the twenty pieces of gold recovered from him on 04.03.2022 was meant to be delivered to Shri. Manchukonda Ramji Vinodh of Visakhapatnam. He said Shri. Vinodh was the owner of the gold biscuits. He used to come to Kolkata, to collect smuggled gold biscuits on behalf of Vinodh.

2.3. On a follow up, searches were conducted at the premises of Mr. Vinodh. During the course of search four gold biscuits weighing 400 grams, having foreign markings 'Valcambi-Suisse' were seized from Mr. Vinodh. In his statements Shri. Vinodh admitted that the said four gold biscuits seized from his pocession was purchased from Shri. Siva Kamal, the Appellant herein. He stated that he has purchased eighteen (18) gold biscuits from Shri. Siva kamal and sold 14 gold biscuits and the four left over gold biscuits were seized by the officers. Cash amounting to Rs.62,71,000/- was also seized, on the belief that the said currency was sale proceeds of the fourteen pieces of smuggled gold sold by Shri. Vinodh. He further stated that Shri. Siva Kamal was to deliver another 10 gold biscuits on 05.03.2022, but he has not come to deliver the same. However, he is not the owner of the twenty pieces of gold said to have been seized from Shri. Siva Kamal at Kolkata Railway station on 04.03.2022.

2.4. On completion of the investigation, a Show cause Notice dated 23.08.2022 was issued to the Appellant proposing confiscation of the twenty pieces of gold seized from Shri, Siva Kamal. After due process, the said Notice was adjudicated by the Additional Commissioner of Customs, Customs Preventive Commissionerate, Kolkata. The gold was absolutely confiscated under Section 111(b) and 111(d) of the Customs Act, 1962. A penalty of Rs. 1 lakh was also imposed on the Appellant herein. Separate action has been initiated against the seizure of 400 grams of gold and cash amounting to Rs.62,71,000/-seized from Shri. Vinodh. As the action taken against Shri. Vinodh with respect to seizure of 400 grams of gold and cash amounting to Rs.62,71,000/- is not on appeal before this Tribunal, the said issue is not discussed further.

2.5. Aggrieved against the order of the Additional Commissioner, confiscating the gold and imposing penalty on him, Shri. Siva Kamal filed an appeal before Commissioner (Appeals), Kolkata, who vide the impugned Order-in-Appeal dated 30.10.2024 upheld the confiscation of the twenty pieces of gold and imposition of penalty of Rs. one lakh on him. The present appeal has been filed by the Appellant against the impugned order dated 30.10.2024 passed by the Commissioner (Appeals).

3. The submissions made by the Appellant against confiscation of the gold and imposition of penalty on him are summarized as under:

(i) The gold is of Indian origin only and not of foreign origin;

(ii) The gold cannot be treated as of foreign origin merely because there are foreign markings on the same;

(iii) The gold is not of 999.9 purity, which is normally associated with foreign origin gold. In the present case the purity ranges from 99.7 to 99.8 purity;

(iv) All the 20 biscuits were not tested for purity by the Chemical Examiner, but only 5 biscuits were tested for purity and the said test report cannot be attributed to the remaining 15 biscuits. Thus, the purity of the remaining 15 biscuits have not been tested by the department;

(v) The gold is seized in the midst of the town, of Kolkata where gold with foreign markings is freely available in the market. The gold is seized far away from the Bangladesh Boarder. The seizure is not at the airport or sea port and the person in possession of the gold was not intercepted in any port while arriving from abroad;

(vi) The root of import of the gold i.e. who imported the gold, when it was imported, who handed it over to the Appellant etc. are not made known before or even after seizure;

(vi) The department did not prove that the gold was imported from Bangladesh in contravention of the provisions violating the conditions prescribed for importation of gold

(vii) Mere absence of documents cannot make the gold in issue as smuggled gold;

(viii) The Officers opinion or certificate of assayer or chemical examiner cannot form the basis for holding

the view that the gold is of foreign origin and to effect the seizure, in as much as the India Government Mint, Bombay which is having the better infra structure and facility should have been asked to conduct the test.

(ix) The origin of the gold cannot be decided on the basis of purity of the gold.

3.1. In support of the above contentions, the Appellant relied on the following decisions:

1. KEWAL KRISHAN VS. STATE OF PUNJAB 1993(67) ELT 17(S.C)

2. GIAN CHAND AND OTHERS VS. STATE OF PUNJAB 1983(13) ELT 1365(S.C)

3. COMMR OF CUS. (PREV) SHILLONG VS. SRI SANGPUIA 2005(189) ELT 321 (TRIB.KOLKATA)

4. NAND KISHORE MODI VS. COMMR. OF CUS(PREV) W. BENGAL 2015 (325) ELT 781(TRIB.KOLKATA)

5. COMMR. OF CUS. EX. & S.T. SILIGURI VS. NAND KISHORE SOMANI 2016 (337) ELT 10 (CAL)

6. BALAJI TRADING COMPANY VS. COMMR. CUS(PREV) 2021 (375) ELT 174(ALLAHABAD) UPHELD BY HIGH COURT(writ tax no. 486 of 2020 decided on 22-10-2020 920211(375) ELT 174 (ALL)

7. MADHUKAR SONABA BHAGAT VS. COMMISSIONER OF CUSTOMS (PREV) WEST BENGAL 2019 (368) ELT 990 (TRIB. KOLKATA)

8. ASHOK PREMJI PATEL VS. COMMR. OF CUSTOMS MUMBAI 2003(157) ELT 568 (TRIB. MUMBAI)

3.2. In all the above cases, it has been held that it is the responsibility of the seizing officer to establish

that the gold is of foreign origin and smuggled in nature, before effecting the seizure (requirement of Section 110 of the Customs Act, 1962). Otherwise, burden cannot be shifted to the person from whom it is seized, as prescribed under Section 123 of the Customs Act, 1962. Also, section 111(d) of the Customs Act, 1962 is not attracted in town seizures. In those cases, the confiscation and imposed penalties were set aside. Accordingly, the Appellant submits that the provisions of the Customs Act, 1962 cannot be made applicable to the gold seized in this case.

3.3. The Appellant submits that the gold in this case was seized on the belief that it was of foreign origin as it contained foreign markings and no documents supporting its licit acquisition were available with the person who possessed the same, at the time of seizure of the gold. The Appellant submits that the gold was certified to be of 24 Carat Purity and of foreign origin by the Govt. Approved Valuer. In this regard, the Appellant submits that 24 carat purity ranges from 995 to 999 milli fineness and in international standards only 999.9 milli fineness gold is treated as gold of foreign origin. In the present case, the test conducted by CRCL, Kolkata reveals that the purity ranges from 99.7 to 99.8 only. Further, the said purity has been tested only in respect of 5 biscuits out of the 20 gold biscuits seized. The said test report obtained for 5 gold biscuits cannot be extended to the remaining 15 gold biscuits. Thus, the appellant submits that purity of the remaining 15 gold biscuits have not been tested by the department. Thus, it is the submission of the Appellant that the test conducted does not establish that the gold seized was of foreign origin.

3.4. The appellant submits that the provisions of Section 123 of the Customs Act, 1962 are not applicable in this case. Section 123 of Customs Act, 1962, prescribes that the burden of proving that goods which have been seized under the Act are not smuggled in nature is on the person who claims the ownership of the goods when they were seized under reasonable belief that they are smuggled. Here the gold is not seized under reasonable belief that it was smuggled. Thus, in the present case the burden shifts on the appellant only if the department establishes first that the gold is of foreign origin and smuggled in nature. Similarly, the Appellant can be asked to provide the documentary evidence for licit purchase of the gold only after establishing that the gold in question were of smuggled in nature. As the foreign nature of the gold is not established, and the gold is not seized under the reasonable belief it is smuggled, the department is not justified in directing the appellant to prove that the gold held under seizure is not smuggled in nature. Accordingly, the Appellant submits that the provisions of Section 123 of Customs Act, 1962 are not applicable in this case.

3.5. Regarding the imposition of penalties on the appellants under Section 112(b) of the Customs Act, the Appellant submits that that the gold in question is not liable for confiscation.

4. The Ld. A.R. has reiterated the findings in the impugned order. He submits that there were foreign markings on the gold seized from the Appellant. On testing the gold was found to be having purity of 99.5% to 99.7%. The foreign markings and purity of the gold in standard form are sufficient enough to the authorities to have the 'reasonable belief' that

the gold in question were smuggled in nature. In support of his contention, the Ld. A.R. reiterated the following decisions:

(i) *State of Gujarat vs. Mohanlal Jitamalji Porwal and Another.1987 (29) E.L.T. 483 (S.C.)*
(ii) Indru Ramchand Bharvani vs. Union of India 1992 (59) E.L.T. 201 (S.C.)
(iii) Tirupati Trading Corporation vs. Collector of Customs 1998 (104) E.L.T.618 (Cal.) Calcutta High Court.

4.1. Regarding testing purity of only five gold biscuits, the Ld. A.R. submits that they were only representative samples. The testing of these samples proved that they were of purity between 99.5% to 99.8%, which is enough to establish that the gold is of foreign origin. The remaining 15 gold biscuits were also of the same type having similar foreign markings on it. Hence, it is his submission that the test report received in respect of the five gold biscuits can be adopted for the remaining 15 gold biscuits also. In support of this view, the Ld. A.R. relied on the following decisions:

(i) CUS AA 37/2021 & CM APPL. 34847/2023- HIGH COURT OF DELHI, Commissioner of Customs (Export) Vs. Shri Ashwini Kumar alias Amanullah

(ii) WP(C) 8902/2021 ,9561/2021, WP(C) 13131/2022,CM APPL. 11400/2023, WP(C) 531/2022, CM APPL 1519/2022 and W.P.(C) 8083/2023,CM APPL 31146/2023- HIGH COURT OF DELHI, Nidhi Kapoor & Others vs. Principal Commissioner and Addl. Secy. to GOI & Ors.

(iii) 2023 (12) TMI 1156 - CESTAT NEW DELHI -- CA- 50070 of 2020, F.O. No. 51685/2023
Shankar Lal Goyal Vs. Commissioner of Customs, New Delhi.

4.2. The Ld. A.R. further submits that the Appellant could not produce any documentary evidence to substantiate their claim of licit purchase of the gold. Accordingly, he submitted that the Ld. adjudicating authority has rightly confiscated the gold and imposed penalty on the appellant for his role in the offence. In support of their contentions, the Ld. A.R. also relied upon the following decisions:

(i) 2024 (5) TMI 730 - CUSTA No. 16 of 2023--CALCUTTA HIGH COURT

Commr. of Customs(Prev.) Vs Rajendra Damani @ Raju Damani

(ii) 2019 (368) E.L.T. A 155 (Supreme Court.)

Om Prakash Khatri Vs. Commissioner

(iii) 2024 (388) E.L.T. 90 –CESTAT PRINCIPAL BENCH, NEW DELHI-

C.A.Nos. C/50934 with 51257 & 51737/2018 (DB)

Commr. of Customs (Prev.), NCH, New Delhi Versus Suresh Bhonsle

(iv) C.A. No. 52922 of 2019 & 52923 of 2019,

F.O. No. 51520-21 /2021- CESTAT, PRINCIPAL BENCH, NEW DELHI.

Deepak Handa vs. Principal Commissioner of Customs(Prev.), New Delhi &

Ravi Handa vs. Principal Commissioner of Customs(Prev.), New Delhi.

4.3. Accordingly, the Ld. Authorized Representative of the Revenue has supported the absolute confiscation of the gold and imposition of penalty on the Appellant in the impugned order.

5. Heard both sides and perused the appeal documents and the submissions made by both the sides.

6. We find that 20 numbers of gold biscuits weighing 2,333.02 grams have been seized from the Appellant when he was sitting at seat number 62 of Coach No. B 8 of Train Number 22807, Santragachi-MGR Chennai AC Super Fast Express. As the gold biscuits were having foreign markings and the Appellant was not having any documents for the licit purchase of the gold, the said gold biscuits were seized under Section 110 of the Customs Act, 1962, on the reasonable belief that the said gold was liable to confiscation. The Appellant submitted that the gold in question was seized in the midst of the town, of Kolkata where gold with foreign markings is freely available in the market. The gold was seized far away from the Bangladesh Boarder. The seizure was effected not at the airport or sea port and the person in possession of the gold was not intercepted in any port while arriving from abroad. Further, the Appellant submitted that the root of import of the gold i.e. who imported the gold, when it was imported, who handed it over to the Appellant etc. are not made known before or even after seizure. It is his submission that the department did not prove that the gold was imported from Bangladesh in contravention of the provisions violating the conditions prescribed for importation of gold. He contended that mere absence of documents cannot make the gold in question as smuggled gold. In addition the certificate of purity of gold reflecting 99.7 and 99.8 is after seizure,but not before affecting seizure.Accordingly,he submitted that the seizure and related confiscation of the gold and consequent imposition of penalty on the Appellant is legally not sustainable.

6.1. Thus, we observe that the issues to be decided in this appeal are as under:

1. Whether the seizure of the gold was based on a 'reasonable belief' as required under Section 110(1) of the Customs Act, 1962 or not.

2. Whether the gold recovered from the appellant was established to be of foreign origin and believed to be smuggled in contravention of the provisions of the Customs Act, 1962 and the gold recovered from the Appellant is liable for seizure and consequent confiscation.

3. Whether the foreign markings available on the gold biscuits are sufficient to establish smuggled nature of the gold and consequently liable for confiscation?

4. Whether invocation of the provisions of Section 123 of the Customs Act, 1962 is legal and justified in directing the appellant to prove that the gold held under seizure is not smuggled.

5. Whether imposition of penalty under Section 112(b)(ii) of the Customs Act, 1962 on the appellant is justified.

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

Issue 2:.Whether the gold recovered from the appellant was established to be of foreign origin and believed to be smuggled in contravention of the provisions of the Customs Act, 1962 and the gold recovered from the

Appellant is liable for seizure and consequent confiscation.

7.1. We find that in the instant case, gold weighing 2,333.02 grams of gold valued Rs. 1,21, 66, 699/- was seized from the Appellant. We observe that seizure in this case centres around the exercise of authority by the Custom Officials under section 110 (1) of the Customs Act, which reads as under: -

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

7.2. We have gone through the Panchanama drawn at the time of seizure of the gold. From the provisions of Section 110 extracted above, we observe that for seizure of the gold, there must be a 'reasonable belief' that the gold in question is liable for confiscation. The Ld. A.R. cited the decision of the Hon'ble High Court of Kolkata and submitted that the intelligence gathered by the officers of DRI that the Appellant is bringing smuggled gold is sufficient to have the 'reasonable belief' that the goods are liable for confiscation. Thus, it is necessary to examine the intelligence available on record and the circumstances that led to the seizure of the gold.

7.3. A perusal of the Panchanama drawn in this case reveals the following:

1. The DRI officials explained the panchas that they have a specific intelligence that one person namely Kamal of Andhra Pradesh would be carrying substantial quantity of gold smuggled into India from Bangladesh. (Para 1 of Page 1 of Panchanama)

2. Initially Sri. Narru Guru Santha Siva Kamal denied carrying the gold, but on repeated questioning, he admitted that he is carrying gold biscuits smuggled into India (Last lines of Para 3of page 1 of 4 of Panchanama)

3. Thereafter, personal search of Sri. Narru Guru Santha Siva Kamal was conducted in the presence of panchas and in the presence of one Gazetted Officer of the DRI. 20 (twenty) nos. of yellow coloured, metallic biscuits all having foreign marking engraved on them, believed to be gold of foreign origin wrapped with brown coloured adhesive tapes were recovered. (Para 3 on Page 2 of 4 of Panchanama)

4. On demand Sri. Narru Guru Santha Sivakamal could not produce any licit documents in support of his acquisition /possession/carrying/transporting/ or dealing with the said recovery of 20 (twenty) numbers of yellow metallic biscuits believed to be gold of foreign origin. (Para 4 on Page 2 of 4 of Panchanama)

5. The DRI officers informed the Panchas that for preliminary assaying/examination of 20 (twenty)numbers of yellow metallic biscuits believed to be gold of foreign origin under recovery, Sri. Sanjib Kundu, a Govt. Approved valuer came to DRI Kolkata Zonal Unit Office, who after examining all of them inter alia certified in writing that to the best of his knowledge those 20(twenty) numbers of yellow metallic biscuits were 24 carat gold of foreign origin and also certified their individual weight as well as collective weight. The collective weight as reported by him is 2333.020gms. and valued at Rs.1,21,66, 699/-(para 2 on page 3 of 4 of Panchanama)

6. After assaying and sampling the 20 (twenty) numbers of yellow coloured, metallic biscuits, believed to be gold of foreign origin totally weighing 2333.020 gms. and valued at Rs.1,21.66.699/- , recovered from the possession of Sri. Narru Guru Santha Siva Kamal were seized by the Officers of under the provisions of Customs Act, 1962 on the reasonable belief that those are liable for confiscation under the provisions of the Customs Act,1962 by preparing a detailed inventory cum seizure list and Annexure. (Para 3 on page 3 of 4 of the Panchanama)

7. The panchanama was drawn by one DRI officer who explained the contents of the entire panchanama in vernacular language.(Last para on page 4 of 4 of the Panchanama)

7.4. From the above narrations, we observe that:-

a. Though, it was mentioned that the DRI officers had a specific intelligence, the intelligence is not specific for the reason, that the intelligence specifies only the name of the person, but the other details such as age, address etc, are not known

b. It does not specify how he is carrying the gold; to which place he is carrying the gold; who handed over him the gold; the approximate quantity of gold being carried by him etc,

c. The intelligence only mentions that he would be carrying substantial quantity of gold smuggled into India from Bangladesh. It is not known who smuggled it, when it was smuggled, at what place it was smuggled. It is not the case that the said person travelled from Bangladesh and trying to carry it further onward by train. There is no mention about

the person who smuggled it from Bangladesh and handed over the smuggled gold to the appellant.

d. Though it is mentioned that the personal search of Sri. Siva Kamal was conducted in the presence of one gazetted officer of DRI, the panchanama does not have the endorsement of the said gazetted officer and it has only the signature of intelligence officer who is not gazetted officer.

e. Had it been a fact that Shri. Siva Kamal told that he is carrying gold biscuits smuggled into India, then there is no necessity for the officers to question about production of document of licit acquisition.

f. It is mentioned that the DRI officers informed the panchas that assaying was done by Govt. Approved valuer which means that the assaying was not done in the presence of the panchas as well the person who possessed the gold. It is also seen that the certificate was not enclosed to the panchanama.

g. It is mentioned in the panchanama that the valuer certified the purity of the gold as of 24 carat and the gold is foreign origin. It is a fact that 24 carat gold in fineness ranges from 995.0 mille finness to 999.9 mille fineness and generally gold with fineness of 999.9 mille is considered as standard gold of foreign origin. All gold of 24 carat gold cannot be considered as foreign origin gold. It was certified to be gold of foreign origin by the valuer. The basis for him to arrive at this conclusion has not been specified.

7.5. The facts and circumstances narrated above would prove that the seizing officers were not sure about the foreign nature of the gold. Further, there is no other evidence brought on record by the

investigation officers to establish the smuggled nature of the gold.

7.6. The panchanama reads as

> " …….. were seized by the DRI officers under the provisions of the Customs Act,1962 on the reasonable belief that those are liable for confiscation under the provisions of the Customs Act, 1962".

However, we observe that the basis of forming the reasonable belief has not been specified in the Panchanama.

7.7. From the above analysis, we observe that:

1. Gold held under seizure was not established to be of foreign origin before affecting the seizure.

2. The root of import is not known. In other words, it is not known who imported the gold, where from the gold is imported, and when the gold was imported and how it reached the hands of the person who acquired and possessed the gold from whom it was recovered.

3. Gold was not seized under the reasonable belief that it was smuggled.

4. There is no specific mention in the panchanama that the gold is of foreign origin and reasonably believed to have been smuggled into India. All these salient aspects will prove the fact that prerequisite for affecting seizure, under Section 110 of the Customs Act did not exist in this case. Under such circumstances, we hold that the seizure of the gold in this case under Section 110 of the Customs Act, 1962 is legally not sustainable.

7.8. The above view is supported by the following decisions:

A. In the case of MADHUKAR SONAB BHAGAT Versus COMMISIONER OF CUSTOMS (PREV) WEST BENGAL it was held that mere markings are not enough to hold the view that the gold is of foreign origin and smuggled

B. In the case of COMMISSIONER OF CUSTOMS(PREV) SHILLONG versus SRI SANGPUIA it was held that foreign nature cannot be inferred merely on certain names, symbols etc. Mere presence of goods with foreign markings could not be considered to be goods of foreign origin which have been imported without payment of customs duty. Place of seizure far away from border. No expert or trade panel /satisfactory investigation pointing to foreign origin or smuggled nature of goods- Opinion of officer that goods are of foreign origin and smuggled, therefore would be liable to confiscation cannot be accepted - confiscation set aside.

C. In the case of BALAJI TRADING CO versus COMMISSIONER OF CUSTOMS (PREV) it was held Seizure of good-Reasons to believe-Panchanama /Seizure Order based upon only three factors namely (i) Prima Facie examination of goods; (b) opinion of local traders and inscription on some bags—said reasons not adequate for exercising of power under Section110 of the Customs Act, 1962.

D. In the case of Nand Kishore Modi versus Commissioner of Customs (Prev) West Bengal it was held that – in view of the above observations and settled position of law, every piece of gold person in

India considered to be of smuggled nature and 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 boarder. Accordingly, it is held that in the present appeals, Revenue has failed to establish that the seized gold was of smuggled nature.

E. In the case of COMMISSIONER OF CUS. EX & S.T SILIGURI versus NAND KISHORE SOMANI it was held that (a) a certificate has no evidentiary value (b) The contents of any 11 certificate cannot be used against an accused without first giving him an opportunity of cross examining the person who issued the certificate F. IN THE CASE OF ASHOK PREMJI PATEL versus COMMISSIONER OF CUSTOMS MUMBAI it was held that Sec. 111(d) of the Customs Act, 1962 is not attracted as it is a town seizure.

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

> *"6. In fact, during the course of investigation, it is a fact on record that boondi silver and silver jewellary 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."

7.10. We have gone through the decisions cited by the Ld. A.R. in support of their contention that availability of intelligence is sufficient enough to have the 'reasonable belief' that the goods were of foreign origin. We find that the intelligence gathered is not very specific in this case. Further, there is no evidence available on record to indicate foreign origin of the gold found in procession of the Appellant. Thus, we find that the decisions cited by the Revenue are distinguishable on the facts and circumstances of this case.

7.11. In view of the above discussions, we hold that there was no 'reasonable belief' in this case for seizure of the gold in question in terms of Section 110(1) of the Customs Act, 1962. Accordingly, by relying on the ratio of the decisions cited above, we answer to the question (i) and (ii) raised in para 6.1 supra, in the negative.

8. Issue 3:Whether the foreign markings available on the gold biscuits is sufficient to establish smuggled nature of the gold and consequently liable for confiscation?

8.1. As per the panchanama drawn in this case, we find that there were foreign markings on the gold

biscuits. The officers concluded that the gold in question were smuggled in nature and seized the gold bars mainly on the ground that they had foreign markings on them. In this regard, we observe that it is a settled law that foreign markings on gold bars do not, by themselves, establish the smuggled nature of the gold. We observe that the place of seizure is Railway station, which is located in the midst of the city of Kolkata where gold with foreign markings are freely available in the market. The gold is seized far away from the Bangladesh Border. The seizure is not at the airport or sea port and the person in possession of the gold was not intercepted in any port while arriving from abroad. We find that the gold is not of 999.9 purity, which is normally associated with foreign origin gold. In the present case the purity ranges from 99.7 to 99.8 purity. Further, we find that the purity has been tested only in respect of 5 biscuits out of the 20 gold biscuits seized. The said test report obtained for 5 gold biscuits cannot be adopted as the purity for the remaining 15 gold biscuits. Thus, we observe that purity of the remaining 15 biscuits have not been tested by the department. From the above, it is evident that the test report conducted does not establish that the gold seized was of foreign origin. Under these circumstances, we observe that additional evidence is required to prove that the gold was illegally imported, which we find not available in this case.

8.2. In this regard, we refer to the decision of this Tribunal in the case of *Rajesh Kumar v. Commissioner of Cus. (Prev.), New Delhi [Final Order No. 51030 of 2022 dated 31.10.2022 in Customs Appeal No. 51709 of 2021 – CESTAT, New Delhi].*

The relevant observation in the said decision is reproduced below:-

> *"23. ……..*
>
> *Admittedly, the seized gold was of 99.5% purity, whereas normally the smuggled gold is of 99.9% purity. On this score also there can be no presumption of gold being smuggled only on the basis of foreign marking. In absence of any chain of events supporting movement of smuggled gold from the border area or customs area to town or a person coming from an international border, I hold that simply possession of foreign marking gold without a bill does not lead to the conclusion that it is smuggled."*

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

> *"19. The burden was, therefore, on the prosecution to prove that the goods were smuggled. For this the prosecution relied upon the evidence of Hebbar who stated that he believed the goods to be smuggled, because watches and watch straps were of foreign origin, the import of which was heavily restricted and prohibited and they were found in huge quantity. The foreign origin of the watches is tried to be shown from the foreign markings on the watches. The question whether the foreign markings of goods can be treated as admissible in evidence was considered by Naik J. in Criminal Appeal No. 3 of 1966, decided on 22nd December, 1966.*

Among the property involved in that case were some gold slabs. The slabs bore the marking "Johnson Mathey 9990 London". Naik J. observed in his judgment that the markings do not speak for themselves and that evidence would be hearsay evidence. There was nothing to indicate that the markings were really done by Johnson Mathey in London. No presumption can arise in regard to the markings, unless there is evidence to show that those markings were made by a particular company in the ordinary course of business. A Division Bench of the Gujarat High Court has also taken a similar view in Asstt. Collector of Customs, Baroda, v. M. Ibrahim Pirjada, 1970 Criminal Law Journal, 1305. There, the Gujarat High Court has held that mere markings cannot be taken as proof of the fact of foreign origin of the goods as such markings and labels would be hearsay evidence. With respect, I agree with the above view."

8.4. We also find that there are no specific findings in the impugned order to prove that such markings, even if present, prove illicit importation. It has not been ascertained by the investigation as to the country of origin of the gold and the route followed for its alleged illegal importation. It is also a settled position of law that presumption cannot be a substitute to evidence. In the absence of foreign markings, there should be cogent evidence to establish that the gold is of foreign origin. Moreover, the issue of town seizure of unmarked gold is no longer res integra as there have been numerous laid down ratio squarely applicable to the case in hand.

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

> *"31. We find that the Impugned Order mainly relied upon the statements of the Noticees 1 to 5 to establish the foreign origin nature of the gold. Other than the statements, there is no other evidence available on record to show that the gold were smuggled into the country from Bangladesh. It is incorrect to rely only on the statements of the co-accused without any corroboration, to prove the smuggled nature of the gold. It is a settled law that the statement of the co-accused cannot be relied without any independent corroboration.*
>
> *31.1 In the case of Commissioner of Customs (Preventive), Lucknow vs Shakil Ahmad Khan, it has been held that confiscation based on retracted statements not sustainable. The gist of the order is reproduced below:*
>
> > *Smuggling Burden of proof Retracted confessional statements of co-accused No efforts made to prove that confessional statements were voluntary Accused were not examined during adjudication - HELD: Confiscation and penalty order based only on retracted statements of accused persons were not sustainable - It was contrary to settled legal position, illegal, arbitrary and liable*

to be set aside Sections 108, 111, 112 and 123 of Customs Act, 1962. (paras 22, 25, 26]

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

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

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

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

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

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

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

"34. In view of the above findings, it is held that the essential things for confiscation namely proof of the gold having been smuggled into India was not proved. The investigation has assumed that the impugned gold was smuggled from Sri Lanka and no corroborative evidence was produced by the DRI. More so, it was certified by the Court that the gold bars do not have foreign markings. AA has proceeded on wrong premises that the impugned crude Gold bars are of foreign origin. There was no positive evidence except the statement of the appellant. The retracted statement has not been corroborated with findings/evidence/statements of others ie the person supposed to have handed over the same to the appellant for transporting and the person who was supposed to receive. The burden of proof has not been discharged by the department. It has been proved that there was a violation of principles of natural justice by not allowing cross examination. Respectfully following the ratio of the Hon'ble Supreme Court in M/s. Oudh Sugar Mills Vs. UOI, I am constrained to set aside the order of the adjudicating authority confiscating the impugned gold and imposing penalty on the appellant. It is ordered to release the two crude gold bars weighing 3.097 kg to the appellant Mohammed Ali Jinnah

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

8.8. We have perused the decisions relied upon by the Ld. A.R. that foreign marking available on the gold is sufficient to established foreign origin of the gold. In this regard, we observe that the gold cannot be treated as of foreign origin merely because there are foreign markings on the same. In the present case, the gold is not of 999.9 purity, which is normally associated with foreign origin gold. In the present case the purity ranges from 99.7 to 99.8 purity. Further, all the 20 biscuits were not tested for purity by the Chemical Examiner, but only 5 biscuits were tested for purity and the said test report cannot be attributed to the remaining 15 biscuits. Thus, the purity of the remaining 15 biscuits have not been tested by the department. We also observe that the gold was seized in the midst of the town, of Kolkata where gold with foreign markings is freely available in the market. The gold is seized far away from the Bangladesh Boarder. The seizure was not at the airport or sea port and the person in possession of the gold was not intercepted in any port while arriving from abroad. We also observe that the root of import of the gold i.e. who imported the gold, when it was imported, who handed it over to the Appellant etc. are not made known before or even

after seizure. We observe that the department did not prove that the gold was imported from Bangladesh in contravention of the provisions violating the conditions prescribed for importation of gold. Thus, we find that the decisions referred by the Revenue are distinguishable on comparison with the facts and circumstances of the case on hand.

8.9. Thus, by relying on the ratio of the decisions cited supra, we hold that the confiscation of the gold on this ground is legally untenable and unsupported by the evidence on record. Hence, we answer the issue(iii) framed at para 6.1 supra, in the negative.

9. Issue (iv): Whether invocation of the provisions of Section 123 of the Customs Act, 1962 is legal and justified in directing the appellant to prove that the gold held under seizure is not smuggled.

9.1. Section 123 of Customs Act, 1962, prescribes that the burden of proving that goods which have been seized under the Act are not smuggled in nature is on the person who claims the ownership of the goods,when seizure was affected under the reasonable belief that the said goods are smuggled. For the sake of ready reference, the said Section is extracted below: -

> ***"SECTION 123. Burden of proof in certain cases.*** *— (1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -*

(a) in a case where such seizure is made from the possession of any person, -

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

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

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

9.2. In this regard, we observe that for shifting the onus on the person who claims the ownership of gold, it is required to be proven first that the gold under seizure were of foreign origin and secondly once foreign character is proved, then the seizure must have been affected under reasonable that the gold is smuggled,only then the onus is shifted on the person who claims the ownership, to show that the same were not smuggled. In this regard, it is relevant to cite the judgement of the Hon'ble Supreme Court in *Ganesh Das v. Collector of Central Excise [1994 (70) ELT 441 (SC)]* wherein it was held that before the burden shifts to the person from whom the goods were seized, it must first be established that the goods were of foreign origin and mere suspicion or presence of certain disputed

markings is not sufficient. Further, the Hon'ble Supreme Court in *Commissioner of Customs v. Abdul Gani [2012 (278) ELT 474 (SC)]* has reiterated that reasonable belief must be backed by sufficient evidence of foreign origin. If there are no foreign markings or documentation, the Customs authorities cannot simply assume that the gold in question were of smuggled in nature.

9.3. It is a fact that in the present case, the investigation has not brought in any evidence to prove foreign origin of the gold or smuggled nature of the gold. Hence, in the facts and circumstances of the case, we observe that the burden of proof under Section 123 of the Customs Act does not shift to the owner. The Customs authorities must first establish the foreign origin of the gold before invoking the presumption of smuggling. So, we find that the responsibility was on the Department to show that the gold in question was smuggled into the country without payment of appropriate duties of Customs thereon, which the Department has failed to discharge in this case.

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

9.5. In this regard, we also find that a similar view has been expressed in the case of *Sarvendra Kumar Mishra &Anr. v. Commissioner of Customs [2021 (9) TMI 405 – CESTAT, Allahabad].* The relevant

observation of the Tribunal, Allahabad in the said order are as under: -

> *"14. Having considered the facts and circumstances, we find that admittedly this is a case of town seizure wherein, the impugned gold was intercepted, initially taken possession of by the officer of GRP and then handed over to the Customs. Admittedly, the gold did not have any tell-tale foreign markings and it was merely accused that the markings were removed to hoodwink investigation. The place where seizure took place is not Customs Area. Hon'ble Supreme Court in the case of Gian Chand &Ors(Supra), wherein in case of seizure by the Police and thereafter the possession was shifted to the Customs Officer held that the pre-requisite of seizure is not satisfied. Accordingly, it is held that the circumstances as required under the Customs Act are not satisfied and consequentially the whole burden or onus to establish the smuggled nature of gold is on the Revenue."*

9.6. Thus, we hold that in this case, the burden of proof under Section 123 of the Customs Act does not shift to the appellant, who has claimed the ownership of the gold. Accordingly, we answer the issue(iv) framed in para 6.1 supra, in the negative.

10. Issue:(v). Whether imposition of penalty under Section 112(b)(ii) of the Customs Act, 1962 on the appellant is justified.

10.1. Regarding the imposition of penalties on the appellants under Section 112(b) of the Customs Act, we take note of the fact that in view of the

discussions in the preceeding paras, it has been held that the gold in question is not liable for confiscation. In the absence of any cogent evidence establishing the smuggled character of the gold, the appellant cannot be held liable for abetting any offence under the Customs act, 1962. In these circumstances, we find that the ingredients enshrined in Section 112(b) of the Customs Act, 1962 are not applicable to the present case for imposition of penalties on the appellants. Accordingly, we hold that the penalties imposed on the appellants are not sustainable. Thus, we answer the issue (v) raised in para 6.1 supra in the negative.

11. To summarize, the issues framed in paragraph 6.1 (supra) stand answered in the following manner:

(i) There is no reasonable belief existing in this case for seizure of the gold in question under Section 110 of the Customs Act, 1962.

(ii) The gold recovered from the appellant was neither established to be of foreign origin nor established to be smuggled in contravention of the provisions of the Customs Act, 1962. Thus, the gold recovered from the Appellant is not liable for confiscation.

(iii) The foreign markings available on the gold biscuits are not sufficient to establish smuggled nature of the gold.

(iv) The provisions of Section 123 of the Customs Act, 1962 are not applicable in this case. Accordingly, It is not justified in directing the appellant to prove that

the gold held under seizure is not smuggled.

(v) No penalty imposable on the Appellant under Section 112(b)(ii) of the Customs Act, 1962 and hence the same are set aside.

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

12.1. As the gold in question is found to be not liable for confiscation, the penalties imposed on the appellants are not sustainable and hence, the same are set aside.

13. In their submissions, the Appellant submitted that, in case the department has already sold the gold during pendency of the present appeal, then they are liable to be paid the sale proceeds of the gold along with applicable interest.

13.1. We have examined the prayer of the appellant seeking the sale proceeds of the confiscated gold at the average market price prevailing on the date of its disposal, as approved by the Joint Pricing Committee, along with interest at the applicable rate from the date of disposal till the date of actual refund. In this context, the appellant has cited CBIC's Instruction No. 11/2022-Customs dated

08.09.2022, read with Instruction No. 27/2021-Customs dated 03.12.2021, which explicitly lays down that in case the seized gold is disposed of and the appellate authority orders its return, the appellant is to be refunded the value of the gold, calculated either as per tariff value or average market price, based on the date of disposal, as approved by the Joint Pricing Committee. We have also perused the relevant case laws cited by the appellant in this regard.

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

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

payable are more than the said amount, the applicant is not entitled to recover anything from the respondent. What is over-looked by the learned Counsel is the consequence of setting aside the order of confiscation on the ground that it was illegal. The applicant has become entitled to the value of the goods as on the date or time when the goods ought to have been cleared by the respondent for home consumption. If the value of the goods in India after importation and payment of duty, in January 1989, was Rs. 33.04 lacs only then the applicant, and for that matter any sensible person, would not have imported the goods at all. It would be reasonable to presume that an importer would have imported the goods of the value of Rs. 33.04 lacs if its value in Indian market at the relevant time was more than ClS value of the goods plus the duty payable thereon (Rs. 33.04 lacs + 47.07 lacs = Rs. 80.11 lacs). It is also not the stand of the respondent that such goods were available in the Indian market at that time at a lesser price. Therefore it is now the obligation of the respondent to return at least Rs. 80.11 lacs - 47.07 lacs, the amount of duty payable thereon. As the applicant has been deprived of the use of the goods worth Rs. 33.04 lacs the respondent is under a legal obligation now to refund that amount to the applicant. The respondent cannot now be permitted to take the advantage of his own wrong and contend that the value of the goods should be determined only at Rs. 48.50 lacs inclusive of its value and the amount of duty payable

thereon because they could be sold at that price only. We also cannot accept the contention of the learned Counsel for the respondent that if the applicant has suffered any loss as a result of the wrongful act of the respondent then he should file an action in tort and this Court cannot order payment of any amount in these applications. No doubt it would be open to the applicant to initiate such an action if it feels that the loss suffered by it is more than Rs. 33.04 lacs. Merely because it is open to the applicant to initiate such an action it would not be just and proper to refuse the claim made in these applications as in any case the applicant is entitled to return of the money value of the goods which were illegally confiscated by the respondent. Even though the applicant has claimed interest @ 21% we do not think it proper to award interest at such a high rate and considering the facts and circumstances of the case it would be in the interest of justice if the respondent is directed to return the amount of Rs. 33.04 lacs with interest at the rate of 12% from 1-2-1989 till the date of payment as the Collector by its order dated 31-1-1989 had held that the goods were properly described and the import was legal."

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

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

7. The learned Counsel appearing on behalf of the plaintiff in all fairness has relied upon the decisions reported in 2004 (164) E.L.T. 239 (Cal.) (Bhogilal Mehta v. Union of India), 2008 (221)E.L.T. 203 (P & H) (Commissioner of Customs, Amritsar v. Harinder Singh), 2002 (143) E.L.T. 60 (Del.) (Kailash Ribbon Factory Ltd. v. Commr. of Cus. & C. Ex., New Delhi), 1999 (113) E.L.T. 3 (S.C.) (Northern Plastics Ltd. v. Collector of Customs and Central Excise), 2002 (140) E.L.T. 3 (S.C.) (Shilps

Impex v. Union of India) and an unreported decision of this Court in WP No. 951 of 2013 [Ahsan Waris v. Commissioner of Customs (Preventive) & Ors.] decided on 5th March, 2014 [2014 (305) E.L.T. 78 (Cal.)] and submitted that the plaintiff would be only entitled to get the price of the goods as declared and accepted in the seizure list by the department. This submission is made on the basis of ratio laid down in the aforesaid decisions. In WP No. 951 of 2013 the learned Single Judge of this Court after considering some of the decisions cited today also held that the authorities concerned are bound to pay the value of the goods assessed at the time of seizure and not the value which it fetched from the sale of the said goods. After the seizure is declared to be illegal by the adjudicating authority in absence of any rebuttable evidence and contrary evidence to dislodge the testimony of the witness, I feel that the plaintiff is entitled to a decree for a sum of Rs. 26,65,600/- and accordingly a decree is passed for the aforesaid sums. However, during the pendency of the proceeding the plaintiff has received a sum of Rs. 12,31,200/- on January 18, 2001."

13.4. In the case of *Dejero Logix Pvt. Ltd. v. CC (Imports), AIR CARGO, NCH, New Delhi [2017 (351) E.L.T. 213 (Del.)],* the Hon'ble High Court of Delhi has held as under: -

"23. Clearly, the Customs authorities wrongly disposed off the petitioner's property during the period when the petitioner's appeal was

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

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

14. In the result: -

(i) We set aside the impugned order and allow the appeals filed by the appellants, with consequential relief, if any, as per law.

(ii) We hold that if the gold has already been disposed of, then the value of the seized gold in question shall be refunded to the appellant at the average market price prevailing on the date of its disposal, as approved by the Joint Pricing Committee, along with interest at the applicable rate, from the date of disposal till the date of actual refund, in terms of CBIC's Instruction No. 11/2022-Customs dated 08.09.2022, read with Instruction No. 27/2021-Customs dated 03.12.2021.

(Order Pronounced in Open court on 26.11.2025)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP