CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 30009 of 2015

(Arising out of **Order-in-Original** No.VJD-CUSTM-PRV-COM-023-15-16 dated 30.09.2015 passed by Commissioner of Customs Preventive, Vijayawada)

Shri Kishore Kumar Gilda .. **APPELLANT**
Gilda Jewellery,
door No. 11-58-37,
Rajyalakshmi Complex,
Shop No.3,
Matham Line,
Vijayawada,
Andhra Pradesh – 520 001.

VERSUS

Commissioner of Cusotms Vijayawada .. **RESPONDENT**
D.No. 55-17-3,
2nd Floor,
C-14, Road No.2,
Industrial Estate,
Vijayawada,
Andhra Pradesh – 520 007.

APPEARANCE:
Shri Y. Sreenivasa Reddy, Advocate for the Appellant.
Shri K. Sreenivasa Reddy, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30272/2026

Date of Hearing: 22.04.2026
Date of Decision: 08.05.2026

[ORDER PER: ANGAD PRASAD]

This appeal is directed against Order-in-Original No.VJD-CUSTM-PRV-COM-023-15-16 dated 30.09.2015 passed by the Commissioner of Customs, Vijayawada Customs, whereby, the Adjudicating Authority has ordered absolute confiscation of gold valued at Rs. 28,20,000/- under Section 111 of the Customs Act, 1962, confiscation of Indian Currency amounting to Rs. 33,56,000/- under Section 121 of the Customs Act, and imposition of penalty of 3,10,000/- under Section 112 and 117 of the Customs Act.

2. The fact, in brief, is that the appellant is engaged in the business of trading in gold and silver ornaments. On 05.02.2015 the officers of Customs conducted a search at the premises of the appellant and seized 10 gold biscuits of 100 grams each bearing foreign marking along with Indian currency of Rs. 33,56,000/-.

3. The seizure was made on the allegation that the gold biscuits were smuggled into India and that the cash represented sale proceeds of such smuggled gold. A statement of the appellant was recorded under Section 108 of the Customs Act, wherein, certain admissions were allegedly made. However, the appellant subsequently retracted the said statement. Based on the above, a Show Cause Notice was issued and the Adjudicating Authority passed the impugned order confirming confiscation and penalty.

4. Learned Counsel for the appellant submitted that the seizure itself is illegal, that there is no evidence to establish that the gold is of smuggled origin, that the burden under Section 123 has been wrongly invoked, and that absolute confiscation and penalty are not sustainable in law.

5. Learned Counsel for the appellant submitted that the Show Cause Notice was issued and confiscation was made vide impugned order under Section 111 of the Act without referring to which clause of the said section of applies to him is not sustainable. Learned Counsel for the appellant has placed reliance on the following case laws:

(a) Commissioner of Central Excise, Daman Vs Al Amin Exports [2007 (211) E.L.T. 305 (Tri-Ahmd)] and maintained by Bambay High Court as reported in Commissioner Vs Al-Amin Exports [2008 (232) E.L.T. A197 (Bom.)]

(b) Amrit Food Vs CCE, UP [2005 (190) E.L.T. 433 (S.C.)]

(c) Syniverse Mobile Solutions Pvt Ltd., Vs Commissioner of Customs, Central Excise and Service Tax, Hyd IV, [2024 (21) Centax 246 (Tri-Hyd)]

(d) Palecha Trade Services Pvt Ltd., Vs uOI [2018 (14) G.S.T.L. 351 (Raj.)]

(e) Mohd. Farhan A. Shaikh Vs ACIT [(2021) 434 ITR 1 (Bom.) (LB)]

(f) B. Laxmichand Vs GOI [1983 (12) E.L.T. 322 (Mad.)]

(g) CCE, Goa Vs Swapnil Asnodkar [2018 (10) G.S.T.L. 479 (Tri.-Mumbai)]

(h) Metro Enterprises Vs CCE, Thane [2014 (311) E.L.T. 785 (Tri. – Mumbai)

(i) Sarada Synthetics Ltd., Vs CCE, Raigad [2014 (314) E.L.T. 411 (Tri.-Mumbai)]

6. It is further submitted that this specific submission was made by the appellant in his reply to the Show Cause Notice. Learned Adjudicating Authority has not given any finding in this regard. Learned Counsel for the appellant submitted that prior to seizure of goods the officer of Customs has legally bound to record reasons separately and then seize the goods. Except drawing panchanama that he has reason to believe that the gold was liable for confiscation, such reasons were not recorded separately prior to such seizure, such seizure was made without recording reasons to believe is against CBIC Instruction No. 1/2017-Cus dated 08.02.2017 and also against decision of Hon'ble Delhi High Court in the case of Worldwide Trades Pvt Ltd., Vs Commissioner of Customs [2016 (340) E.L.T. 174 (Del.)]

7. It is further submitted that the gold was purchased from local market and there is no evidence that the appellant had travelled out of India. The confiscation of gold even notified, all mere suspicion without proof of smuggling is wrong, in this regard Learned Counsel for the appellant has relied on the following decisions:

(a) Ratan Kumar Saha Vs CC, Patna [2021 (375) E.L.T. 435 (Tri.-Kolkata)]

(b) Gian Chand Vs State of Punjab [1961 (11) TMI 1 – SC]

8. Learned Counsel for the appellant further submitted that seizure and consequential confiscation of the gold on the only ground that they carry foreign markings without even checking the purity of the gold is not correct. Appellant had clearly stated that he has purchased in an open market and clients brought it for making ornaments, absolute confiscation of gold is not warranted. It is not prohibited item, and it's absolute confiscation is illegal and improper. Learned Counsel for the appellant has relied in this regard following judgments:

(a) Smt. Jhansi Rani Vs The Prinicipal commissioner of Customs, the Joint Commissioner of Customs (Adjudication-Air), [2025 (2) TMI 30 – Madras High Court]

(b) N. Kaliyamoorthy Vs The Commissioner of Customs, The Joint Commissioner of Customs [2025 (1) TMI 1465 – Madras High Court]

(c) Commissioner of Customs, Aliganj Lucknow Vs Rajesh Jhamatmal Bhat, [2022 (382) E.L.T 345 (All)]

(d) Shaik Jamal Basha Vs Government of India [1997 (91) E.L.T. 277 (A.P.)

9. Learned Counsel for the appellant submitted that appellant is a manufacture of gold ornaments and also a trader of gold. There is no evidence that the cash was sale proceeds of any smuggled gold. Therefore, seizure of cash is not illegal and not within jurisdiction. It is also submitted that currency cannot be seized basing on confessional statement that too when it was retracted. Learned Counsel for the appellant has relied in this regard following judgments:

(a) Shri Bijoy Kumar Agarwala and others Vs Commissioner of Customs (Preventive) [2024 (5) TMI 529 – CESTAT – Kolkata]

(b) Hanumansingh Lakhavat Vs C.C. Ahmedabad [2024 (1) TMI 986 – CESTAT Ahmedabad]

(c) Samir Saha Vs Commissioner of Customs (Preventive), Shillong [2020 (371) E.L.T. 189 (Meghalaya)]

(d) Deepak Handa and Ravi Handa Vs Principal Commissioner of Customs (Preventive) New Delhi [2021 (5) TMI 837 – CESTAT New Delhi]

(e) S. Premgiri Vs CC, Madras [2000 (124) ELT 868 (Tribunal)]

10. Learned Counsel for the appellant further submitted that imposition of penalty under Section 112 of the Act without specifying which clause applies to him is improper, in this regard Learned Counsel for the appellant has cited following decisions:

(a) Amrit Foods Vs CCE, Delhi [2005 (190) E.L.T. 433 (S.C.)]

(b) Shri Jaison James and Shri P.S. Sarath Vs Commissioner of Customs, Chennai-I, [2021 (11) TMI 962 – CESTAT – Chennai]

11. Learned AR reiterates the findings given by Adjudicating Authority and also submitted that CBIC instruction is not applicable in the present case, since, it has been issued subsequently.

12. We have heard Learned Counsel for the appellant and representative of the Department and perused the records with their submissions.

13. In the present case the following issues arise for consideration:

i) Whether the seizure of gold satisfies the satisfactory requirement of "reasonable belief" under Section 110 of the Customs Act?

ii) Whether the presumption under Section 123 of the Customs Act has been correctly invoked?

iii) Whether foreign markings on gold are sufficient to hold that the gold is smuggled?

iv) Whether confiscation under Section 111 of the Customs Act without specifying of the clause is valid?

v) Whether absolute confiscation of gold legally justified.

vi) Whether confiscation of currency under Section 121 of the Customs Act is sustainable?

vii) Whether penalty under Section 112 is legally tenable?

14. Section 110 of the Customs Act provides that the proper officer must have "reason to believe" that the goods are liable to confiscation before effecting seizure. In the present case, we find that except a general statement in the panchanama, there is no material on record to indicate that any independent reasons were recorded prior to seizure. The formation of belief must be based on objective material and cannot be a mere formality.

15. Hon'ble Delhi High Court in the case of Worldline Tradex Pvt Ltd., supra, held that the power of seizure under Section 110 of the Act has to obviously be exercised for valid reasons. The proper officer has to record his reasons to believe that the goods that he proposes to seize are liable to confiscation. The said reasons for exercise of the power have to be recorded prior to the seizure. The relevant paras of the judgment as thus:

> "22. In Om Udyog v. Union of India (supra), in similar circumstances, the Court directed immediate release of the goods since "the Department had not shown prima facie case for exercise of powers of confiscation and has only relied upon existence of power". The Gujarat High Court in Baboo Ram Hari Chand v. Union of India (supra) negatived the plea of the Department that seizure and confiscation were one and same thing. In that case the panchnama was projected as the seizure order. The Court observed that "such composite order is unheard of". It further observed:
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> "27. Technically, asking the party to submit fresh PD Bonds for a period of six months on one hand and proceeding to seize the goods on the other hand may not perhaps be faulted with, however, burden lies on the authority to explain rationale to rush into seizure/ confiscation of the goods in such circumstances, the reason is the „proper officer" cannot proceed to seize the goods under Section 110 of the Act unless he has reason to believe. The authority would exercise drastic powers to seize the goods only in case wherein it has reason to believe that the goods is liable to be

confiscated. The powers to seize and the power to confiscate are quite drastic powers. Little elaboration would show apparent inconsistency in the conduct of the respondent, from which it can be said that formation of belief for seizure by the respondent is vitiated...."

23. The power of seizure under Section 110 of the Act has to obviously be exercised for valid reasons. The proper officer has to record his reasons to believe that the goods that he proposes to seize are liable to confiscation. The said reasons for exercise of the power have to be recorded prior to the seizure. In the present case, as already noticed, apart from the panchnama, there is no separate order passed under Section 110(1) of the Act by the proper officer recording the reasons to believe that the goods are liable for confiscation. Since till date no other order exists and no such order has been communicated to the Petitioner, it is not possible to accept the plea of Mr Agarwala, learned counsel for the DRI, that the 'detention' of the goods by the DRI was with the authority of law and in any event should be treated as a seizure in terms of Section 110(1) of the Act.

24. The net result is that the detention by the DRI of the goods imported by the Petitioner under the aforementioned B/E from 13th May, 2016 onwards is entirely without the authority of law."

16. Thereafter CBIC issued Instruction No. 01/2017-Cus dated 08.02.2017 & directed that separate orders for seizure of goods ought to have been passed. Learned Authorized Representative has submitted that it is applicable in all future cases. In the present case, instruction is not applicable.

17. Although it is correct that the instructions are prospective in nature and intended to govern future cases, the findings of the court constitute a binding precedent carrying mandatory legal force, which the proper officer has failed to comply with.

18. In this regard, the principle laid down by courts is that where statute requires recordings of "reason to believe", such requirements are mandatory and not directory. If such reasons were not recorded, the entire proceedings become vitiated.

19. Therefore, we hold that the seizure in the present case suffers from a legal infirmity, thereby rendering subsequent proceedings unsustainable.

20. The revenue has invoked Section 123 of the Customs Act, which shifts the burden of proof upon the person from whose possession the goods are seized. However, it is well settled that the Section 123 of the Customs Act can be invoked only when the initial seizure itself is valid and based on reasonable belief. In the absence of valid seizure, the burden does not shift. Even otherwise the appellant has explained that the gold was purchased locally in the course of business.

21. The Hon'ble Supreme Court in Amrit Foods, supra, has emphasized that penalty provisions shifting burden must be strictly construed and cannot be applied in a casual / mechanical manner. Accordingly, we hold that the invocation of Section 123 of the Customs Act is not illegal sustainable.

22. The entire case of the Department is premised on the fact that the gold biscuits bear foreign markings. It is now well settled that foreign markings by themselves do not establish that the goods are smuggled. Gold is a commodity which circulates widely in the domestic market and may bear foreign inscriptions even when legally acquired. In Ratan Kumar Saha, supra, it was held that mere foreign markings cannot lead to the conclusion that the gold is smuggled in the absence of any corroborative evidence. Similarly, in Gian Chand, supra, the Hon'ble Supreme Court held that suspicion, however, strong cannot take the place of proof.

23. In the present case, no investigation has been conducted to establish the origin of gold, nor any link has been established with any act of smuggling. Therefore, we hold that the allegation of smuggling is not supported by any tangible evidence.

24. The Adjudicating Authority has heavily relied upon the statement recorded under Section 108 of the Customs Act. It is not in dispute that the said statement was subsequently retracted by the appellant. The law is well settled that a retracted confession cannot be relied upon unless it is corroborated by independent evidence. In Gian Chand, supra, the Hon'ble Supreme Court has clearly held that a confessional statement, particularly when retracted must be corroborated in material particulars before it can be relied upon. In the present case, no such corroboration exists. Therefore, the reliance placed by the Adjudicating Authority on the retracted statement is mis-placed and unsustainable.

25. From perusal of the impugned order shows that confiscation has been ordered under Section 111 without specifying the particulars clause under which the goods are liable to confiscation.

26. The issue is no longer res-integra, in Amrit Foods, supra, the Hon'ble Supreme Court held that failure to specify the relevant clause of the confiscation provision is a serious defect which vitiates the proceedings. The relevant para is cited for ready reference:

> "5. The Revenue has preferred an appeal from the order of the Tribunal setting aside the imposition of penalty under Rule 173Q of the Central Excise Rules, 1944. The Tribunal has set aside the order of the Commissioner on the ground that neither the show cause notice nor the order of the Commissioner specified which particular clause of Rule 173Q had been allegedly contravened by the appellant. We are of the view that the finding of the Tribunal is correct. Rule 173Q contains six clauses the contents of which are not same. It was, therefore, necessary for the assessee to be put on notice as to the exact nature of contravention for which the assessee was liable under the provisions of the 173Q. This not having been done the Tribunal's finding cannot be faulted. The appeal is, accordingly, dismissed with no order as to costs."

27. Similarly, in Al-Amin Exports, supra, affirmed by Bombay High Court, it was held that confiscation without specifying clause is not sustainable.

28. Following the above decisions, we hold that the confiscation in the present case is legally not sustainable.

29. The Adjudicating Authority has ordered the absolute confiscation of gold. It is a settled position that gold in not a prohibited item but a restricted item, and therefore, even where confiscation is justified, the option of redemption under Section 125 of the Customs Act must be given ordinarily. In Shaik Jamal Basha, supra, it was held that absolute confiscation of gold is not justified in routine cases. Further, in Smt. Jhansi Rani, the Hon'ble Madras High Court reiterated that redemption should be allowed unless exceptional circumstances exist. Allahabad High Court in the case of Rajesh Jhamatmal Bhat, supra, confiscated Gold not being prohibited goods, should be offered for redemption. Therefore, absolute confiscation is not justified. The relevant paras of the judgment as thus:

> "21. Section 125 of the Act deals with confiscation of two separate categories of goods. It provides that in the case of goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force, the Officer adjudicating may give an option to pay in lieu of confiscation such fine as the said officer thinks fit. However, in case of any other goods, the officer adjudicating shall give an option to pay in lieu of confiscation such fine as the said officer thinks fit. The Commissioner (Appeals) has held that the gold is not a prohibited item, it should be offered for redemption in terms of Section 125 of the Act and this finding has not been assailed by the Appellants in this Appeal.
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> 22. In view of the aforesaid discussion, our answer to the first substantial question of law framed in this Appeal is that the Additional Commissioner, Customs (P.) Commissionerate, Lucknow had passed the order of confiscation of Gold without taking into consideration the fact that gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act and thus the Customs Excise & Service Tax Appellate Tribunal, Allahabad has not committed any error in upholding the order dated 27.08.2018 passed by the Commissioner (Appeals), holding that Gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act."

30. In the present case, no such exceptional circumstances have been demonstrated.

31. Section 121 of the Customs Act provides for confiscation of sale proceeds of smuggled goods. The burden is entirely upon the Department to prove that there was a sale, the sale was smuggled gold and the money represents such sale proceeds. Tribunal Kolkata in the case of Bijoy Kumar, Agrawala, supra, where in, it was held that in the absence of clear nexus between cash and smuggled goods, confiscation of currency is not sustainable. The relevant paras are as thus:

> "13.1.We observe that this view has been taken by the Tribunal in the case of Ramachandra v. Collector of Customs [1992 (60) E.L.T. 277 (Tribunal)], wherein it has been held that the Indian currency cannot be held as sale proceeds of smuggled gold and the same is not liable for confiscation. The relevant part of the decision is reproduced below: -
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> "4. At the outset it is pertinent to note that no gold was seized either from the appellant or Shri Satram Das or Shri Bhaghu Sindhi. Therefore, it is not understood as to how the currency seized from the appellant can be said to represent the sale proceeds of smuggled gold. The appellant was produced before the Chief Judicial Magistrate, Economic Affairs, Jaipur on 12-1-1987. On 10-1-1987 itself a telegram was sent to the Assistant Collector of Customs, Udaipur by the son of the appellant wherein he had stated that his father was forcibly taken to the Customs Office. Another telegram was sent on 11-1-1987 to the same effect, as the appellant was not released by them. After release on 15-1-1987 the appellant got himself examined by a Government Doctor who furnished a certificate certifying the presence of injuries like bruises on the right upper lip, left wrist and swellings and dislocation of tooth. The Doctor has certified that one of the injuries is of a grievous nature. On 20-1- 1987 the appellant wrote to the Assistant Collector retracting his statement of 10-1-1987. None of this has been discussed in the impugned order which merely brushes aside the defence of the appellant for the reason that he did not complain of forcible detention and extorted statement at the earliest opportunity viz. when he was produced before the Magistrate by the Customs Officers. In addition the opportunity to cross-examine Shri Satram Das and Shri Bhaghu Sindhi and the panch witnesses has been denied to the appellant.
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> 5. It is also seen that the charges under the Gold (Control) Act has been dropped against all the persons to whom show cause notice has been issued and the charges under the Customs Act has been dropped against the other

two. It would appear that the penalty of Rs. 50,000/- on the appellant has been imposed for breach of Section 121 of the Customs Act. Before violation of Section 121 is established the following ingredients must be satisfied:

(i) there must be a sale. .

(ii) the sale must be of smuggled goods.

(iii) the sale must be by a person having knowledge or reason to believe that the goods were of smuggled origin.

(iv) the seller and purchaser and the quantity of gold must be established by the Customs authorities.

6. In this case, however, none of the requisites of Section 121 have been fulfilled - no sale has been established, identity of the buyer and seller has not been established. As a consequence, the currency cannot be considered to represent the sale proceeds of the contraband goods and, therefore, no violation of Section 121 has been made out. Since the charge under Section 121 of the Customs Act has not been proved against the appellant the currency notes cannot be retained by the Department and have to be returned to the appellant. Imposition of penalty is also not legal and proper in the absence of proof of violation of any provisions of the Customs Act."

13.2. The same view has been held in the case of Sudesh Kumar Mittoo v. Collector of Cus. & C.Ex., Jaipur [2001 (136) E.L.T. 100 (Tri. - Del.)] wherein it was held as under: -

"8. ...

As regards the confiscation of Rs. 25,000/- Indian currency, it is not possible to say that this currency was as a result of transaction of smuggled gold biscuits. Gold biscuits have been sold by the jewellers to Shri Sudesh Kumar. The cash pertained to him and this cash was not out of smuggled gold. Therefore, confiscation of Indian currency is set aside. It is also seen that the Collector has not given detailed reasoning for confiscation of Indian currency in terms of reply given by Shri Sudesh Kumar. Therefore, confiscation of Indian currency is set aside.

..."

13.3. In view of the above, we hold that the confiscation of Indian currency of Rs.46,00,000/- under Section 121 of Customs Act, 1962 is not sustainable. Accordingly, we set aside the confiscation of the Indian currency in the impugned order."

32. Similarly, CESTAT Ahmedabad in the case of Hanumansingh Lakhavat, it was held that currency cannot be confiscated merely on suspicion. In the present case, there is absolutely no evidence to establish any nexus between

the seized cash and alleged smuggled gold. Therefore, confiscation of currency is also not sustainable.

33. Penalty has been imposed under Section 112 of the Customs Act without specifying the clause or establishing the role of the appellant. In Amrit Foods, supra, the Hon'ble Supreme Court held that penalty provisions must be strictly interpreted and cannot be invoked without clear findings. In the absence of any evidence of conscious involvement in smuggling penalty is not sustainable.

34. In view of the above discussion, we find that appeal is liable to be allowed and impugned order is liable to be set aside.

35. Therefore, appeal is allowed with consequential relief, if any, as per law.

(Pronounced in the open court on 08.05.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha