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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75343 of 2026

(Arising out of Order-in-Appeal No. KOL/CUS/CC(P)/DC/20-24/2026 dated 16.01.2026 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

Commissioner of Customs (Preventive) **: Appellant**
15/1, Custom House, Strand Road,
Kolkata – 700 001

VERSUS

(1) Abhishek Mundhra **: Respondent(s)**
S/o. Late Bhikhanchand Mundhra,
83, NSC Bose Road, Sowcarpet,
Chennai – 600 001

(2) Ashish Mundhra
S/o. Late Bhikhanchand Mundhra,
83, NSC Bose Road, Sowcarpet,
Chennai – 600 001

(3) M/s. Mundhra Jewellers Private Limited
83, NSC Bose Road, Park Town,
Chennai – 600 001

(4) M/s. Mundhra Bullion Private Limited
83, NSC Bose Road, Park Town,
Chennai – 600 001

(5) Vijay Kumar alias Pintu
S/o. Gopal Lal Sharma,
26, Adi Banstalla Lane,
Kolkata – 700 007

APPEARANCE:

Shri Sameer Chitkara, Authorized Representative,
Shri Subrata Debnath, Authorized Representative,
for the Appellant / Revenue

Shri Aditya Dutta, Advocate,
For the Respondent(s)

CORAM:

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

FINAL ORDER NO. 75650 / 2026

DATE OF HEARING: 21.05.2026

DATE OF DECISION: 25.05.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed by the Revenue against the Impugned Order-in-Appeal dated 16.01.2026, wherein the Ld. Commissioner (Appeals) has set aside the Order-in-Original dated 27.08.2025.

2. The facts leading to the present appeal are summarized as under:

(i) Pursuant to an intelligence to the effect that a substantial quantity of foreign origin gold are smuggled into India from Bangladesh and subsequently transported under the guise of 'gold jewellery' through the courier named 'M/s. Sequel Logistics Pvt. Ltd.' [SLPL], the officers of DRI intercepted some consignments of 'gold jewellery' kept for transport through NSCBI Airport to Chennai by Indigo Airlines on 01.08.2020. Such consignments were allegedly booked by one Shri Vijay Kumar alias Pintu allegedly a key member of the smuggling syndicate in the name of M/s. Olympia Impex Pvt. Ltd. [subsequently found to be non-existent].

(ii) The DRI officers examined the said jewellery kept in two containers at the office premises of SLPL at ECC terminal NSCBI Airport. During the course of examination, the said Shri Vijay Kumar was present. On questioning, Shri Vijay Kumar admitted that the gold had been smuggled into India from Bangladesh and subsequently was melted into the present form but no document could be produced by him against such claim. During such examination a Govt. approved valuer was also present.

(iii) Detailed examination revealed a total of 271 number of yellow coloured metal strips/bangles allegedly to be of 24 Carat purity weighing 15000 grams in total and as per the valuer those gold in strip form could not be classified as 'jewellery'. Vijay Kumar also made confession to the effect that he was an employee of Mundhra Jewellers Pvt. Ltd. (MJPL)/Mundhra Bullion Pvt. Ltd. (MBPL) at their Kolkata office at 4th Floor Room No. 2, Gold Plaza, 26, Adi Banstala Lane, Kolkata- 700007.

(iv) Shri Vijay Kumar submitted two challans named as "Manufacturing Receipt Voucher (outstation delivery note)" bearing no. RV/026 and RV/027 both dated 31.07.2020 for despatch of 10028.550 grams and 5020.150 grams of Gold Round Strips to Chennai. The Challans have declared the goods as "Gold Jewellery". Subsequent assay report at CRCL revealed the gold to have purity of **99.5% -99.7%**.

(v) In his statement, Shri Vijay Kumar submitted that the gold strips were made out of 1 Kg Gold Bars smuggled from Bangladesh and melted at the melting shop of Shri Jiten Shah at Bir Anantram Mondal Lane, Kolkata-90 near Shitirmore. He further submitted that under instruction of Mukesh Kumar Sharma another employee of Mundra Group of Companies at Chennai, he had gone to Jiten Shah's melting shop at Shitirmore with such 15 pieces of 1KG gold bars which he had received from 'one Laltu' after being smuggled from Bangladesh.

(vi) Subsequently, based on such statement of Vijay Kumar, the gold bangles weighing a total of

15000 grams [271 pieces] were seized. As a follow-up, Mundhra Bullion Pvt. Ltd. (MBPL) Kolkata office at 4th Floor Room No. 2, Gold Plaza, 26, Adi Banstala Lane, Kolkata- 700007 was searched which led to the recovery of 1754.290 grams of silver granules believed of foreign origin valued at Rs. 99,994 and some incriminating documents.

(vii) During subsequent follow-up action, Ashish Mundra and Abishek Mundra (both brothers) owning Mundhra Jewellers Pvt. Ltd. (MJPL)/Mundhra Bullion Pvt. Ltd. (MBPL) were arrested and put under judicial custody. Their statements were also recorded when they were under judicial custody. In their statements, they admittedly revealed the smuggled nature of the gold in question. However, subsequently they retracted their statements.

2.1. On completion of the investigation, a Show Cause Notice was issued to the Respondents under DRI F No. DRI/KZU/AS/ENQ-13/2020 dated 28.01.2021 proposing: -

(a) Confiscation of 271 pieces of gold strips in round shape, having total weight of 15 Kg valued at Rs. 8,19,00,000/- u/s 111(b) and 111(d) of the CA, 1962,

(b) Confiscation of silver granules having total weight of 1754.29 grams valued at Rs. 99,994/- u/s 111(b) and 111(d) of the CA, 1962,

(c) Imposition of penalty on each of the 10 Noticees as below:-

(1) Vijay Kumar alias Pintu, (2) Ashish Mundhra, (3) Abhishek Mundra, (4) Prashant Kumar Jha of Olympia Impex Pvt. Ltd., (5) Mukhesh Kumar Sharma of Olympia Impex Pvt. Ltd., (6) Shri Ankit Gosalia, Director, Olympia Impex Pvt. Ltd., (7) M/s. Mundhra Jewellers Pvt. Ltd, (8) Mundhra Bullion Pvt Ltd., (9) M/s. Olympia Impex Pvt. Ltd., (10) Jitendra Kisan Jadhav.

2.2. The above Show Cause Notice was adjudicated by the Additional Commissioner of Customs (Prev), CC(P), W.B, Kolkata vide Order-in-Original No.34/ADC/CC(P)/WB/2025-26 dated 27.08.2025 passing order to the following effect:-

(a) Absolute Confiscation of seized gold valued at Rs. 8,19,00,000/-.

(b) Absolute Confiscation of 1754.290 grams of Silver Granules valued at Rs.99994/-

(c) Absolute Confiscation of wrapping material, concealing material, transparent plastics, plastic box having no commercial value used for concealment seized materials.

(d) Penalty of Rs. 2,00,00,000/- upon Shri Vijjay Kumar alias Pintu (Noticee No. 1)

(e) Penalty of Rs. 2,00,00,000/- upon Shri Ashish Mundra. (Noticee No. 2)

(f) Penalty of Rs. 2,00,00,000/- upon Shri A Abishek Mundra (Noticee No. 3)

(g) Penalty of Rs. 50,00,000/- upon Shri Prashant Kumar Jha (Noticee No. 4)

(e) Penalty of Rs. 1,00,00,000/- upon Shri Mukesh Kumar Sharma (Noticee No. 5)

(f) Penalty of Rs. 1,00,00,000/- upon Shri Ankit Gosalia (Noticee No. 6)

(g) Penalty of Rs. 2,00,00,000/- upon M/s. Mundra Jewellers Pvt. Ltd. (Noticee No. 7)

(h) Penalty of Rs. 2,00,00,000/- upon M/s. Mundra Bullion Pvt. Ltd. (Noticee No. 8)

(i) Penalty of Rs. 2,00,00,000/- upon M/s. Olympia Impex Pvt. Ltd. (Noticee No. 9)

(j) Penalty of Rs. 50,00,000/- upon Shri Jitendra Kishan Jadhav, (Noticee No. 10)

(k) One old and used mobile as was seized under the inventory of the seized goods was released unconditionally in absence of any proposal for confiscation.

2.3. On appeal, the Ld. Commissioner of Customs (Appeals), Kolkata vide his Order-in-Appeal No. KOL/CUS/CC(P)/DC/20-24/26 dated 16.01.2026 [hereinafter referred to as the 'impugned order'] has allowed the appeals filed by the appellants (the Respondents in the present appeal) to the following effect: -

(a) Confiscation of the gold (15 Kgs) has been set aside.

(b) Confiscation of the silver granules (1754.29 Grams) has been set aside.

(c) Penalties of Rs. 2,00,00,000/- each imposed on the appellants i.e. Noticee No. 1, Noticee No. 2, Noticee No. 3, Noticee No. 7, Noticee No. 8 have been set aside.

(d) Order-in-Original No. 34/ADC/CC(P)/WB/2025-26 dated 27.08.2025 has been set aside in its entirety.

(e) Confiscated gold and silver items have been ordered to be released to the appellant (respondent in the present appeal) within 3 months from the date of receipt of this order.

3. Being aggrieved, the Department has filed the instant Appeal. The grounds raised by the Revenue in the appeal are summarized as under:-

(i) Vijay Kumar alias Pintu (Noticee No. 1) did not claim ownership of the seized goods. So, it is apparent that the appellate authority has passed an erroneous order in as much as release of the confiscated gold and silver was made to the appellants (Respondents in this appeal).

(ii) The seizure had been effected on the basis of specific intelligence to the effect that the impugned goods had been smuggled from Bangladesh into India and would be transported to Chennai in the guise of 'gold jewellery'. The seized goods were found to be gold strips deliberately worked upon to give the shape of bangles and had the purity of 24 Carat. Furthermore, the consignee address was found to be vague and non-existent. In view of the above, the seizing officer had enough reason to believe that the gold from which strips were drawn to give shape of bangles was of foreign origin smuggled from Bangladesh.

(iii) Gold bars having 99.9% purity of 1 Kg was smuggled from Bangladesh and at the time of

melting the purity was deliberately marginally reduced to the range of 99.5% to 99.7% at the time of melting and drawing into round strips with the ulterior motive to extinguish the features signifying foreign origin of gold. The primary gold after being smuggled from Bangladesh was consciously worked upon and transformed into a form that resembled indigenous, processed gold.

(iv) The appellate authority turned a blind eye in spite of being aware of sinister design being adopted by syndicates in smuggling gold. Further attention is drawn to the decision of the Hon'ble Calcutta High Court in the matter of *Commissioner of Customs (Preventive) v Rajendra Kumar Damani [2024(389) ELT 444(Cal)]* in which Hon'ble High Court had dealt with a similar situation where the gold bars seized by DRI was without foreign markings, claimed to have been made by melting old jewellery and purity was 99.5% only. In Para 11 and 12 of the said order, the Hon'ble High Court had vividly explained the situation under which the burden of proving that those are not smuggled goods shifts on the person from whose possession goods were seized. It was held that presence of three elements ensures such burden of proof shifts to the accused to show that they are not smuggled goods. They are -

- Seizure of goods to which Section 123 of CA, 1962 applies,
- Seizure must be in terms of provisions of Customs Act and

- Seizure on the reasonable belief that they are smuggled goods.

This judgment was upheld by the Hon'ble Supreme Court [2025 (394) ELT 46 (SC)].

(v) Relying on the Kerala High Court judgment in the case of *Commissioner of Customs Cochin v OM Prakash Khatri [2019 TIOL 629(HC-Kerala-CUS)]* upheld by Supreme Court [2019(368) ELT A155(SC)], the department emphasized that none of the appellants and other affected persons were able to give satisfactory explanation about the source of the gold seized.

(vi) In the matter of *Commissioner of Customs (preventive) vs Shri Anil Kumar Soni as reported in 2026(04) TMI 85* – the Hon'ble Calcutta High Court has taken a similar view and held that "Reasonable Belief" mandated by statute is not a final conviction of guilt, but a prima facie satisfaction derived from the totality of the circumstances. The reasonable belief that the gold in question are smuggled goods existed in this case because of the specific intelligence available in this case. Accordingly, the Ld. A.R. submits the jurisdictional prerequisite of Section 123 are fully satisfied, and the burden of proof shifted squarely and inextricably to the Respondents.

3.1. On the basis of the above submissions, the Revenue prayed for setting aside the impugned order passed by the Ld. Commissioner (Appeals) and restoration of the Order-in-Original passed by the Adjudicating Authority.

4. The Respondents' contention is that the departmental appeal is overwhelmingly based upon the concepts of assumptions and presumptions. The submissions of the Respondents are summarized as under:

(i) The appellate authority had made order for the release of the seized gold and silver to the Respondents on the basis of documentary evidences submitted by them supporting their claim. The Ld. Commissioner (Appeals) has not specifically ordered for release of the gold jewellery and silver granules to Shri Vijay Kumar alia Pintu. Though Shri Vijay Kumar is one of the Respondent, he is actually an employee of M/s. Mundra Jewellers Pvt. Ltd. /Mundhra Bullion Pvt. Ltd. and the ownership actually rests upon Ashish Mundhra and Abhishek Mundra, owners of M/s. Mundhra Jewellers Pvt. Ltd/ Mundhra Bullion Pvt Ltd.

(ii) The appellate authority has extensively discussed and elaborated the implication of the terms 'reason to believe' at Page 296 to 298 of the paper book. The crux of his observation has been to the effect that the Department has failed to adduce any cogent and irrefutable evidence that the goods were smuggled goods. There is no other independent and corroborative evidence towards establishment of the charge that the goods were smuggled in nature. In the instant case, the 'reason to believe' has been very much superfluous and vague in nature.

(iii) That melting of gold bars reduces its purity is an absurd truth. On the contrary, it may increase its purity. So the allegation that melting of gold

bar was done deliberately to reduce its purity is based on conjecture and surmises. Furthermore, no concrete evidence was brought by the Department that gold bars were allegedly smuggled from Bangladesh.

(iv) The Department has heavily relied upon the decisions of the Hon'ble Calcutta High Court, in the case *Commissioner of Customs (Preventive) v Rajendra Kumar Damani [2024(389) ELT 444(Cal]* and the decision in the case of *Commissioner of Customs (Preventive) vs Shri Anil Kumar Soni [2026(04) TMI 85]* – to shift the burden of proof on the person who claims ownership of the goods. In this regard, the Respondents submit that the said decisions are distinguishable from the facts and circumstances of the present case due to the following reasons:

- In the case of *Commissioner of Customs (Preventive) v Rajendra Kumar Damani [2024(389) ELT 444(Cal)]*, simultaneous search operations were conducted by DRI, Kolkata resulted in recovery and seizure of nine pieces of yellow metallic coins believed to be of gold of foreign origin from one premises and 11 pieces of yellow coloured metallic bars believed to be of foreign origin were recovered from the second premises and also seizure of huge amount of Indian Currency notes amounting to Rs. 1,74,76,500/- was seized by the DRI officials. Similarly, in the case of *Commissioner of Customs (preventive) vs Shri Anil Kumar Soni as reported in 2026(04) TMI 85*, the intelligence was very specific. However, in the present case, the intelligence was not very specific. Further,

the Respondents have submitted documentary evidence for domestic purchase of the gold and silver granules in question. So the factual background of the cited cases are entirely different from the present case both in tenor and texture.

(v) The Department also relied upon the judgment of the Hon'ble Kerala High Court in the case *Commissioner of Customs Cochin v OM Prakash Khatri [2019 TIOL 629(HC-Kerala-CUS)]* whereby the Department tried to establish that none of the appellants and other affected persons were able to give satisfactory explanation about the source of the gold seized. In this regard, the Respondents submits that it is an admitted fact that the present case was a case of 'town seizure' and the gold in question did not have any foreign marking. In this perspective Hon'ble Supreme Court in the case of *Shanti Lal Mehta v UOI [1983 (14) ELT 1715 (SC)]* has settled the legal position of burden of proof holding that *"The burden of proving that the goods are smuggled goods is on the Department….merely because the accused failed to account for the goods in his possession, the inference that the goods are smuggled goods cannot be drawn".*

(vi) The Respondent Shri Vijay Kumar alias Pintu, at the earliest stage of the investigation has produced specific documents namely, Manufacturing Receipt Vouchers issued by M/s. Mundra Bullion Private Limited accounting for the specific quantity of gold namely 10028.550 grams and 5020.150 grams being sent for job

work. Furthermore, GST invoices also clearly evidenced the licit nature of the transaction.

4.1. In view of the aforementioned submissions, the Respondents submit that the Departmental Appeal No. C/75343/2026 does not survive and accordingly they prayed for upholding the Order-in-Appeal No. KOL/CUS/CC(P)/DC/20-24/26 dated 16.01.2026 and rejection of the appeal filed by the Revenue in its entirety.

5. Heard both sides and perused the case records.

6. From the facts on record, we find that 271 number of yellow coloured metal strips/bangles, allegedly of 24 Carat purity, weighing 15,000 grams in total, has been seized by officers of DRI from the office premises of the Courier named 'M/s. Sequel Logistics Pvt. Ltd.' located at ECC terminal NSCBI Airport, Kolkata. Subsequent follow up at the office of M/s. Mundhra Bullion Pvt. Ltd. (MBPL), at 4th Floor Room No. 2, Gold Plaza, 26, Adi Banstala Lane, Kolkata, resulted in the recovery of 1754.290 grams of silver granules believed of foreign origin. The consignment of gold jewellery was booked by one Shri Vijay Kumar alia Pintu allegedly a key member of the smuggling syndicate in the name of M/s. Olympia Impex Pvt. Ltd. On questioning, Shri Vijay Kumar admitted that the gold had been smuggled into India from Bangladesh and subsequently was melted into the present form but no document could be produced by him against such claim. Thus, the officers of DRI seized the 'gold jewellery' and the 'silver granules' on the 'reasonable belief' that the said gold jewellery and silver granules were smuggled into the country without payment of appropriate customs duties as payable on legal importation of the same.

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

(i) Whether the seizure of the gold jewellery and silver granules were based on a 'reasonable belief' that the said goods were smuggled in nature, as required under Section 110(1) of the Customs Act, 1962.

(ii) Whether the burden of proof under Section 123 of the Customs Act, 1962, can be shifted to the Respondents in the absence of any conclusive evidence proving the foreign origin of the gold.

(iii) Whether the documents produced by the Respondents evidence licit purchase of the gold and silver granules in question from domestic sources.

(iv) Whether the confiscation of the seized gold and silver granules under Sections 111(b) and 111(d) of the Customs Act, 1962, is legally justified.

(v) Whether the imposition of penalties under Section 112(b) of the Customs Act, 1962, is legally warranted.

8. Issue No. (i): Whether the seizure of the gold jewellery and silver granules were based on a 'reasonable belief' that the said goods were smuggled in nature, as required under Section 110(1) of the Customs Act, 1962

8.1. We observe that seizure in this case centers around the exercise of authority by the Custom Officials under section 110 (1) of the Customs Act, which reads as under: -

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

8.2. In the present case, we observe that 271 gold bangles weighing 15,000 grams in total were seized from the office of the courier named 'M/s. Sequel Logistics Pvt. Ltd.'. We find that Mr. Vijay Kumar, an employee of Mundhra Jewellers Pvt. Ltd, who booked the goods with the courier for onward transport to Chennai was available at the Courier office at the time of examination of the goods by officers of DRI, Kolkata. It is also on record that Shri Vijay Kumar submitted two challans named as "Manufacturing Receipt Voucher (outstation delivery note)" bearing no. RV/026 and RV/027 both dated 31.07.2020 for despatch of 10028.550 grams and 5020.150 grams of Gold Round Strips to Chennai. The Challans have declared the goods as "Gold Jewellery". Subsequent assay report at CRCL revealed the gold to have purity of **99.5% -99.7%**. The documentary evidences submitted by the Respondents indicate that prima facie, the goods were procured from domestic sources and returned back to Chennai after undertaking the job work at Kolkata. Unless the documents submitted

by the Respondents are disproved as false or fabricated, there is no 'reason to believe' that the goods are of smuggled in nature. The Hon'ble Supreme Court in *Union of India v. Mohammed Nawaz Khan, (2021) 10 SCC 100*, has held that the authority effecting the seizure must demonstrate a subjective satisfaction based on objective material, failing which the seizure is invalid.

8.3. The allegation that the gold was smuggled from Bangladesh to Kolkata, subsequently melted in a melting house in Kolkata, and thereafter transported to Chennai, is based purely on assumptions and conjectures, without any supporting evidence. It is on record that later during the course of investigation, the Respondents had produced GST invoice for the procurement of the said gold from domestic sources on payment of VAT. Mere absence of purchase documents at the time of interception cannot render the gold smuggled, particularly when manufacturing vouchers were produced immediately thereafter. Since the seizure occurred within India, the burden to establish the foreign origin and smuggled nature of the gold rests entirely on the Department, and the Department has failed to discharge this burden. It is also on record that the seized gold did not bear any foreign markings, and the purity certificates reflected fineness of 99.5%, 99.6%, and 99.7%, which are below international standards. Further, the allegation of the Department that the seized gold were melted at Sinthi More, by a person named Jitesh Shah has not been supported by any evidence as the said person was not examined.

8.4. The Customs authorities must first establish the foreign origin before invoking the presumption of smuggling. We observe 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, which the Department has failed to discharge in this case. Thus, we hold that there was no 'reasonable belief' that existed prior to seizure of the gold, as mandated under Section 110 of the Customs Act, 1962. In view of the above findings, we answer the question raised at paragraph 7(i) supra in the negative.

9. **Issue No. (ii): Whether the burden of proof under Section 123 of the Customs Act, 1962, can be shifted to the Respondents in the absence of any conclusive evidence proving the foreign origin of the gold**

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. 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 proved that the goods are smuggled in nature. Once the foreign character of the gold/ silver is proved, then only the onus that the said gold/silver were not smuggled shifts on the person who claims the ownership of the same. 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 smuggled in nature.

9.3. In the present case, it is a fact on record that the gold bangles and the silver granules seized were not in the standard form and did not have any foreign markings on it. On testing, the purity of the gold bangles were found to be 99.5%, 99.6%, and 99.7%, which are below the pure form of gold with foreign origin. Hence, in the facts and circumstances of the case, we observe that the burden of proof under

Section 123 of the Customs Act does not shift to the person who claims the ownership of the gold.

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, 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 observations 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. In the case of *Nand Kishore Modi v. Commissioner of Customs (Preventive), West Bengal,* it has been held that the presumption under Section 123 of the Customs Act, 1962 does not apply universally to all gold found within India. The burden under Section 123 arises primarily when gold is seized from a customs area or from a person arriving from an international border. In cases where the seizure is effected within the town limits and not from a customs area or incoming passenger, the Revenue must independently establish the smuggled nature of the gold. In the absence of such proof, confiscation is not sustainable.

9.7. To shift the burden of proof on the person who claims ownership of the goods, the Department has relied upon the decisions of the Hon'ble Calcutta High Court, in the case *Commissioner of Customs (Preventive) v Rajendra Kumar Damani [2024 (389) ELT 444 (Cal.)]* and the decision in the case *of Commissioner of Customs (preventive) vs Shri Anil Kumar Soni as reported in 2026(04) TMI 85*. We have gone through the decisions cited by the Ld. Authorized Representatives of the Revenue.

9.8. In the case of *Commissioner of Customs (Preventive) v Rajendra Kumar Damani [2024 (389) ELT 444 (Cal)]*, simultaneous search operations were conducted by DRI, Kolkata which resulted in recovery and seizure of nine pieces of yellow metallic coins believed to be of gold of foreign origin from one premises and 11 pieces of yellow coloured metallic bars believed to be of foreign origin were recovered from the second premises; also huge amount of Indian Currency notes amounting to Rs. 1,74,76,500/- was seized by the DRI officials. Similarly, in the case of *Commissioner of Customs*

(preventive) vs Shri Anil Kumar Soni as reported in 2026(04) TMI 85, the intelligence was very specific. However, in the present case, the intelligence was not very specific. Further, the Respondents have produced documentary evidence for domestic purchase of the gold and silver granules in question. So, the factual backgrounds of the above cited cases are entirely different from that of the present case both in tenor and texture.

9.9. The Department has also relied upon the judgment of the Hon'ble Kerala High Court in the case *Commissioner of Customs Cochin v OM Prakash Khatri [2019 TIOL 629 (HC-Kerala-CUS)]* whereby the Department tried to establish that none of the appellants and other affected persons were able to give satisfactory explanation about the source of the gold seized. In this regard, we observe that the present case is a case of 'town seizure' and the gold in question did not have any foreign marking. In this perspective, the Hon'ble Supreme Court in the case of *Shanti Lal Mehta v UOI [1983 (14) ELT 1715 (SC)]* has settled the legal position of burden of proof holding that *"The burden of proving that the goods are smuggled goods is on the Department….merely because the accused failed to account for the goods in his possession, the inference that the goods are smuggled goods cannot be drawn".*

9.10. Thus, by relying on the decision of the Hon'ble Supreme Court cited supra, we hold that the burden of proof under Section 123 of the Customs Act does not shift to the Respondents, who has claimed the ownership of the gold in this case. Accordingly, we answer the issue framed at paragraph 7 (ii) supra, in the negative.

10. Issue No. (iii): Whether the documents produced by the Respondents evidence licit purchase of the gold/silver from domestic sources

10.1. We observe that Shri Vijay Kumar alias Pintu, at the earliest stage of the investigation has produced specific documents namely, Manufacturing Receipt Vouchers issued by M/s. Mundra Bullion Private Limited accounting for the specific quantity of gold namely 10028.550 grams and 5020.150 grams being sent for job work. Furthermore, GST invoices also clearly evidenced the licit nature of the transaction. Both the Manufacturing Receipts and GST Invoices were duly looked into by the Learned Commissioner (Appeals) at Paragraph 11, Point E (2) of the impugned Order-in-Appeal and after verification of these documents, he has come to the conclusion that the transactions are licit.

10.2. The documentary evidences submitted by the Respondents and verified by the Ld. Commissioner (Appeals), prima facie shows that the gold in question were procured from domestic sources and returned back to Chennai after undertaking the job work at Kolkata. We find that the investigation has not established that the documents submitted by the Respondents are false or fabricated. As the genuineness of the documents is not in question, we hold that Respondents have produced enough evidence to substantiate their claim that the gold in question were procured from domestic sources. Similarly, the silver granules seized from the office has been properly accounted in their books of accounts and there is no evidence available on record to indicate the illegal purchase of the silver granules. Thus, we hold that the documents produced by the

Respondents evidence licit purchase of the gold bangles and silver granules in question from domestic sources. Accordingly, we answer the question raised in paragraph 7(iii) supra in the affirmative.

11. Issue No.(iv): Whether the seizure and the subsequent confiscation of the seized gold and silver granules under Sections 111(b), 111(d) of the Customs Act, 1962, is legally justified

11.1. We have gone through the reasoning recorded by the Ld. Commissioner (Appeals) in the impugned order for holding the gold bangles and silver granules in question are not liable for confiscation under Section 111(b) and (d) of the Customs Act, 1962. The relevant findings of the Ld. Appellate authority in the said order are reproduced below:

> *"Further, since the seizure was effected during the transportation of the goods from Kolkata to Chennai, and not from a customs area such as an international airport, port, or border, and as the goods did not bear any foreign markings, it is observed that, for forming a "reasonable belief that the goods were smuggled into India, there must exist cogent and irrefutable evidence to substantiate such an allegation. In the present case, no such evidence is available to establish that the goods were of foreign origin or had been smuggled into India.*
>
> *Thus, there ought to have been some other independent and corroborative evidence available to justify the formation of a reasonable belief that the gold was of a smuggled nature. The Revenue has failed to establish a reasonable belief that the gold was of smuggled origin or of third-country origin. Consequently, the provisions of Sections 111(b) and 111(d) of the Customs Act, 1962 were held to be inapplicable, the initial onus cast upon the Revenue was not discharged, and the confiscation was, therefore, held to be unsustainable in law.*

Conclusion on Issue A: In view of the foregoing discussion, I find that:

The intelligence relied upon was vague and non-specific.

No material evidence existed at the time of seizure to establish foreign origin or smuggling.

Purity of gold alone cannot form the basis of reasonable belief.

The statutory preconditions under Section 110(1) of the Customs Act, 1962 were not satisfied.

Accordingly, I hold that the seizure of the gold in the present case was effected in the absence of "reasonable belief and is therefore legally unsustainable."

[paragraph 11(A) of the Order-in-Appeal No. KOL/CUS/CC(P)/DC/20-24/2026 dated 16.01.2026]

11.2. We fully agree with the reasoned findings given by the Ld. Commissioner (Appeals) in holding that the seizure and subsequent confiscation of the gold bangles and silver granules is illegal. It is a settled principle of law that confiscation under the Customs Act requires cogent and credible evidence, not assumptions or unverified inferences. In the absence of foreign markings, there should be cogent evidence to establish that the gold is of foreign origin. In the present case, the investigation could not identify the country of origin of the gold and the route followed for its alleged illegal importation. Mere claim that the gold is of Bangladesh origin is not sufficient to allege the smuggled nature of the gold.

11.3. The Hon'ble Supreme Court in *Shanti Lal Mehta vs. Union of India [1983 (14) E.L.T. 1715 (S.C.)]* settled this legal position regarding 'town seizures'

holding that the burden of proving that the goods are smuggled goods is on the Department. Merely because the accused failed to account for the goods in his possession, the inference that the goods are smuggled goods cannot be drawn.

11.4. Regarding confiscation of Silver granules weighing 1,754.29 grams, we observe that Government has clearly stated that the provisions of Section 123 of the Customs Act, 1962 should not be invoked when persons are found to be in possession of silver bullion weighing less than 100 kg. Only when silver bullion is in the form of bars of approximately 30 kg each, or when the silver bullion bears foreign markings, even if the quantity is less than 100 kg, can seizure be considered and proceedings initiated. In the instant case, we find that the quantity of silver was found in the procession of the Respondents was 1,754.29 grams, which is far less than 100 kg. The parameter of 30 kg bars is also not applicable. We also find that the bars seized do not contain any foreign inscriptions. Therefore, we hold that the onus under Section 123 of the Customs Act, 1962 does not apply to the Respondents in this case. In this case, the burden lies upon the Department to prove that the seized silver is of foreign origin and smuggled, which they failed to discharge. Thus, we hold that there is no ground available for confiscation of the silver granules in this case.

11.5. We find that the Ld. Commissioner (Appeals) has followed the ratios of various decisions of the Hon’ble Supreme Court, High Courts and Tribunals and concluded that the goods in question in this case are not liable for confiscation. We do not find any infirmity in the impugned order setting aside the confiscation of the gold bangles and silver jewellery.

Accordingly, our answer to the question raised in paragraph 7 (iv) supra is in the negative.

12. Issue(v): Whether the imposition of penalties on the Respondents under the Section 112(a) and 112(b) of the Customs Act, 1962, are legally sustainable.

12.1. Regarding the imposition of penalties on the Respondents under Section 112(a) and (b) of the Customs Act, we take note of the fact that the gold bangles and silver granules in question are not liable for confiscation and the Respondents were having valid documents to establish legal purchase of the said gold and silver granules. Section 112(a) applies to any person who, in relation to any goods, does or omits to do any act which renders such goods liable to confiscation. Section 112(b) applies to any person who acquires possession of, or in any manner deals with goods which he knows or has reason to believe are liable to confiscation. A person cannot be penalized under both clauses simultaneously for the same transaction involving the same goods. The simultaneous invocation of both provisions and imposition of composite penalties on the Respondents in the impugned order is legally not sustainable. For imposition of penalties under Section 112(a) and 112(b), mala fide intention on the part of the Respondents must be established, which the Department has failed to do in this case. Thus, we agree with the reasoned findings of the Ld. Commissioner (Appeals) that no penalty is imposable on the Respondents in this case. Accordingly, the answer to the issue raised at paragraph 7(v) supra is in the negative.

13. To summarize, the issues framed under paragraph 7 of this Order (supra) stand answered in the following manner: -

(i) There is no reasonable belief that existed in this case for seizure of the gold bangles and silver granules in question under Section 110 of the Customs Act, 1962.

(ii) The 'burden of proof' as envisaged under Section 123 of the Customs Act, 1962 does not shift to the Respondents in the absence of any conclusive evidence for proving foreign origin of the gold and silver granules in question.

(iii) The documents produced by the Respondents in the instant case are sufficient to indicate licit purchase of the gold bangles and silver granules in question, from domestic sources.

(iv) The confiscation of the seized gold bangles and silver granules under Sections 111(b) and 111(d) of the Customs Act, 1962, is not legally justified. Accordingly, the setting aside of the order of confiscation of the gold bangles and silver granules vide the impugned order is upheld.

(v) The confiscated gold and silver items should be released to the Appellant within one month from the date of receipt of this order.

(vi) Imposition of penalties under Section 112(a) and 112(b) of the Customs Act, 1962, is not sustainable in the facts and circumstances of the case. Accordingly, the setting aside of all the penalties in the impugned order is upheld.

14. In the result, the impugned order passed by the Ld. Commissioner (Appeals) is upheld and the appeal filed by the Revenue is rejected.

(Order pronounced in the open court on **25.05.2026**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd