CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70074 of 2026

(Arising out of Order-in-Appeal No.222-224-Cus/Appl/LKO/2025 dated 04/07/2025 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

Commissioner of Customs (Preventive), Lucknow

.....Appellant

(7-A, Ashok Marg, Hazratganj, Lucknow)

VERSUS

Mr. Gaurav Tiwari, **....Respondent**

(173/59, Chamunda Colony,
Jai Singh Pura, Mathura, UP)

WITH

Customs Appeal No.70075 of 2026

(Arising out of Order-in-Appeal No.222-224-Cus/Appl/LKO/2025 dated 04/07/2025 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

Commissioner of Customs (Preventive), Lucknow

.....Appellant

(7-A, Ashok Marg, Hazratganj, Lucknow)

VERSUS

Mr. Mukul Agarwal, **....Respondent**

(Prop. M/s Kalindi Traders,
E-4, E-5, Hari Complex, Gurahi Bazar,
Kachchi Sadak, Guppi Tea Stall, Chowk Bazar, Mathura)

AND

Customs Appeal No.70076 of 2026

(Arising out of Order-in-Appeal No.222-224-Cus/Appl/LKO/2025 dated 04/07/2025 passed by Commissioner (Appeals) Customs, Central Excise & CGST, Lucknow)

Commissioner of Customs (Preventive), Lucknow

.....Appellant

(7-A, Ashok Marg, Hazratganj, Lucknow)

VERSUS

Mr. Rakesh Chaudhary, **....Respondent**

(Prop. M/s Shubham Overseas,
Shop No.35, Brijwasi Complex, Mathura)

APPEARANCE:

Shri A.K. Choudhary, Authorised Representative for the Appellant
Shri Kapil Vaish, Chartered Accountant for the Respondent

CORAM: HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.-70099-70101/2026

DATE OF HEARING : 10.03.2026
DATE OF DECISION : 15.04.2026

P. ANJANI KUMAR:

These appeals are filed by Commissioner of Customs (Preventive) Lucknow against the impugned Orders-In-Appeal No. 222-224-Cus/Appl/LKO/2025 dated 04/07/2025 passed by Commissioner (Appeals), Customs, CGST & Central Excise, Lucknow.

2. Brief facts of the case are that on the basis of intelligence received to the effect that one person carrying foreign origin smuggled gold in a Maruti Suzuki Swift car bearing Registration No. DL 5CQ 9162 and would be travelling on 23.11.2023 towards Mathura from Delhi; when the vehicle was about to cross the toll plaza, the Officers of DRI apprehended the vehicle and Shri Gaurav Tiwari (Respondent No.1) was driving the vehicle. On search of the vehicle, 10 pieces of yellow metal weighing 4253.96 gram and 03 Silver metal pieces weighing 12736 grams were recovered from the cavity created. The same was seized under the reasonable believe that the gold was smuggled. Statement of Shri Gaurav Tiwari was recorded on 24.11.2023 wherein he stated that he belongs to Mathura and was transporting silver and silver items on commission basis for Shri Mukul Aggarwal (Respondent No.2) and Shri Rakesh Choudhary (Respondent No.3) who were running their respective jewelry

and bullion shops in Mathura. He did not have any documents showing the licit purchase of the recovered gold and silver which were made by melting smuggled foreign origin gold. On 25.11.2023 Shri Gaurav Tiwari (Respondent No.1) was arrested and was remanded to the judicial custody by the CJM, Meerut. Search was conducted at the residence of Shri Gaurav Tiwari (Respondent No.1) on 26.12.2023. and the search did not reveal any incriminating evidence. Search was also conducted at the shop of Shri Mukul Aggarwal (Respondent No.2) and Shri Rakesh Choudhary (Respondent No.3) at Mathura. Both were not present at the time of search of the premises. They did not appear on summons either. The analysis of call data record revealed that Shri Gaurav Tiwari (Respondent No.1) was in continuous contact with Shri Mukul Aggarwal (Respondent No.2) and Shri Rakesh Choudhary (Respondent No.3) during the period from 01.11.2023 to 23.11.2023. Show cause notice dated 22.01.2024 and corrigendum dated 23.07.2024 was issued to the Appellant proposing to confiscate Gold seized and to impose penalties. Shri Gaurav Tiwari (Respondent No.) in his reply dated 24.06.2024, submitted that his father and brother were in the business of testing silver from the shop at Mathura. He is also engaged in small business of silver ornaments and took orders for purchase of silver ornaments from local dealers and gets it manufactured on job work basis. The seized gold and silver bars were purchased by his parents and grandparents during the Financial Year 2007-08 by spending their savings, sale proceeds of 32 Bighas of Land in 2002, sale proceeds of gold and silver ornaments from M/s Brijwasi Bullion & Jewellers Pvt. Ltd. Shri Mukul Aggarwal (Respondent No.2) and Shri Rakesh Choudhary (Respondent No.3) filed reply dated 24.06.2024 submitting that they have no connection whatsoever with the seized gold Bar/ Silver Bar/Maruti Suzuki Car. Shri Gaurav Tiwari (Respondent No.1) was in the business of purchase of silver jewelry on commission basis and had shop near to their shop. They have never purchased or sold gold or silver to Shri Gaurav Tiwari

(Respondent No.1). They were in contact with each other to exchange the rate of gold and silver.

3. Shri Kapil Vaish, learned Chartered Accountant appeared before the adjudicating authority for personal hearing on behalf of Respondent No.1 whereas Respondent No.2 & 3 did not appear for personal hearing but submitted that they have already filed their defence reply dated 24.06.2024 and the case may be decided on merits. The Adjudicating Authority vide Order-In-Original dated 28.01.2025, confiscated absolutely the gold and silver and the Maruti car and imposed penalty of Rupees 25 lakhs each on the Respondents. On appeal filed by the Respondents, the learned Commissioner (Appeals) vide the impugned order set aside the order of the Original Authority. Hence, this appeal.

4. Learned Chartered Accountant submits that it is the case of town seizure and as such there can be no presumption of them being smuggled goods as the goods were not seized from any international border or in any customs notified area. There is no foreign markings on the seized gold or silver and the bars were also not of international standard size of 1000 grams. The purity of gold and silver was much less than the international standard of 99.99% purity. Revenue has not got purity tested by sending to any laboratory. The Respondent have submitted copies of the purchase invoices in the name of family members of Respondent No.1, showing the purchase from M/s Brijwasi Bullion & Jewellers Pvt. Ltd. Though M/s Brijwasi Bullion & Jewellers Pvt. Ltd. was the most recognized dealer in Gold, no action has been taken to verify the genuineness of invoices and as such the claim of the Respondent cannot be disbelieved. Searches conducted at the residence of Shri Gaurav Tiwari (Respondent No.1) and shops of Shri Mukul Aggarwal (Respondent No.2) and Shri Rakesh Choudhary (Respondent No.3) did not yield any incriminating evidence. He submits that the entire case has been built upon the statement of Shri Gaurav Tiwari (Respondent No.1) which

has however been retracted on 24.7.2023 through his brother Shri Sourav Tiwari. No reason for confirming a reasonable believe have been established to confiscate the gold and silver. The gold and silver are not prohibited items and they can be legally imported on payment of duty. There was no evidence of smuggling.

5. Learned Chartered Accountant submits further that merely because the Respondents were in touch with each other on telephone, collaboration in smuggling cannot be established. Respondent No. 2 & 3 have no connection with the seized goods and the Respondent No.1.

6. Shri A. K. Choudhary learned Authorized Representative for the Revenue reiterates the grounds of appeal.

7. Heard both the sides and perused the records of the appeals.

8. On going through the grounds of appeal it is seen that the revenue opposes the impugned order on the following grounds.

- Learned Commissioner (Appeals) erred in holding that the seizure being in a town, no grounds for reasonable believe that the goods are not liable for confiscation. The learned commissioner has misread the provisions relating to seizure. Section 110 does not prohibit town seizure and the place of seizure has nothing to do with the confusability of the goods.
- Learned Commissioner (Appeals) have erred in holding that the seizure was made only on the basis of statement of Shri Gaurav Tiwari (Respondent No.1). In addition to the statement, the fact of the case bore sufficient reasons to believe that the gold was smuggled; Shri Gaurav Tiwari (Respondent No.1) did not produce any documents showing either import or purchase of gold in a legal manner; the appraisal report dated 23.07.2022 indicated that average purity of the gold was 99.5 to 99.9.

- The Adjudicating Authority passed the order judiciously and correctly which is based on facts and evidences on record, which learned Commissioner (Appeals) has failed to appreciate.

9. Forensic analysis of resumed mobile phone of Shri Gaurav Tiwari conducted, photos of the gold bar, receipt of gold purity test report dated 20.12.2022 of M/s Sai Tunch, gold purity receipt dated 16.02.2023 of M/s Bombay Tunch were found. We find that Learned Commissioner (appeals) has dropped the proceedings on the grounds that the very first condition of invoking the provisions of Section 123 do not exist and there were no valid circumstances to entertain the reasonable believe preceding the seizure and importantly seizure was not made at any international border not within the crescent of any notified customs area like international airport, land customs, ICD etc. None of the seized goods had foreign marking. We find that learned Commissioner has also dropped the proceedings. The entire case is made on the basis of the statement of Shri Gaurav Tiwari (Respondent No.1). The follow up search operation at the premises of the Respondent No.1 and shops of Respondents No.2 & 3 did not yield in any incriminating and clinching evidence and no follow up was conducted to foreign origin of gold and its smuggling into India; therefore, no reasonable believe or any evidence at any stage of investigation that would conclusively prove that gold/silver is of foreign origin and have been smuggled into India.

10. We find that learned Commissioner relies on the judgement of the Hon'ble Supreme court in the case of **Collector of Customs v. Sampathu Chetty, AIR 1962 S.C. 316**; **Shreyas Agrawal V/s Commissioner of Customs in Customs Appeal No.75324 of 2023 Order dated 12.07.2023** & **Balwant Rai Soni & Others vide Final Order No.75455-75** and this Bench's decision in the case of **Girish Mitruka & Harish Mitruka V/s Commissioner of Customs (Preventive) Lucknow in Customs Appeal No.70305 &**

70306 of 2022 having Final Order No.70251-70252 of 2025 dated 05.05.2025.

11. We find that Learned Commissioner has found no reasons to believe that the goods were smuggled and that it was not established that the goods were smuggled in nature. The entire case was built up on the statement of a single person and the follow up searches at places did not yield any corroborative evidences. The purity of the gold or the smuggled nature has not been established by the reasonable means. We find that in the impugned case no evidence other than the initial statement of Shri Gaurav Tiwari which was later retracted has been produced. We find that the Revenue's appeals on the ground that provisions of Customs do not bar seizure in a town. While we principally agree on this ground of appeal, we find that seizure in a custom station or custom area would certainly be a strong reason to entertain a believe that the goods are smuggled from a foreign country. Such reason for a strong believe does not exist in a case of town seizure. To that extent we are in agreement with the finding of Commissioner (Appeals). Moreover, there were no foreign markings found on the seized gold even though Shri Gaurav Tiwari initially admitted that the gold was melted from the foreign gold, it was incumbent upon the investigating officer to ascertain the place of smuggling, the person who have smuggled the gold and the place where such melting has taken place. We find that there are no evidences about these vital facts. There is not even a mention of conjecture and probability of the same. Under these circumstances, the findings of the Commissioner (Appeals) cannot be brushed aside. More so, because the follow up actions conducted at the residence/shop of the Respondents did not yield any iota of evidences to corroborate the initial statement of Shri Gaurav Tiwari which has been retracted. To our surprise we find that there is not even rebuttal to the retraction filed by the Respondent No.1. Moreover Respondent No.2 and 3 have contradicted the statement of Respondent No.1. The agency or

the officers did not make any efforts to record a joint statement confronting the different persons involved with each other. We further find that the investigating officer had lying time more than a year to fortify their case by conducting further investigation in the matter. However, to the reasons and limitation best known to them, there was no action in this direction from the seizure in November 2023 to the issuance of show cause notice in 22.01.2024. Moreover, the Adjudicating Authority was in the receipt of the claim by the Respondent No.1 that the gold was purchased by him by investing money from the selling of ancestral gold and from the selling of property. We find that Respondent No.1 produced copies of the invoices, at the time of filing bail application and before learned Commissioner (Appeals). The copies of the same were also made available to the Bench. A perusal of the copies indicates that the particulars as seen in the copies produced are similar/ comparable. Revenue submits that the format of the invoices is different and thus invoices cannot be relied upon. Revenue did not place on record investigation conducted, if any, at the end of the sellers so that the claim of the respondent can be negated. We are of the considered opinion that the invoices produced by the respondent cannot be considered to be fake in the absence of any investigation at the seller's end. A simple enquiry in this regard to fortify or to falsify the case of the Respondent should have taken place. We find that nothing of that sort has been resorted to by the Adjudicating Authority. Under these circumstances, we find that Respondent have *prima facie* established the claim of licit purchases of gold though in a belated manner, the same could not have been brushed aside without a reasonable verification falsifying the claim. Therefore, we find that learned Commissioner (Appeals) was correct in holding that the Revenue has not shown valid reasonable believe that the impugned gold was smuggled and hence was liable for confiscation. We find that learned Commissioner (Appeals) have correctly relied upon the case of M/s Sampathu Chetty (Supra) wherein it was held that the officers seizing the goods should entertain a reasonable

believe that the goods seized are smuggled; reasonable believe as required by Section 110 refers to the point of time when the goods in question are seized and not to a stage subsequent to the act of seizure; the condition precedent that there was such a reasonable belief anterior to the seizure must exist before the presumption under Section 123 can be invoked.

12. We find that the Hon'ble Supreme Court in the case of **M/s Tata Chemicals Ltd Vs Commissioner of Customs (Preventive), Jamnagar reported in (2015) 11 SCC 628** held as under: -

> *"reason to believe" by opining it to be not the subjective satisfaction of the officer concerned, for "such power given to the officer concerned is not an arbitrary power and has to be exercised in accordance with their strains imposed by law" and that such belief must be that of an honest and reasonable person based upon reasonable grounds. Further, if the authority would be acting without jurisdiction or there is no existence of any material or conditions leading to the belief, it would be open for the Court to examine the same, though sufficiency of the reasons for the belief cannot be investigated.*

13. Further, we find that the Tribunal in the case of **Balanagu Naga Venkata Raghavendra Vs CC Vijayawada 2021 (378) ELT 493 (Tri-Hyd)** held as under:-

> *"14. The confiscation of the gold by the adjudicating authority was set aside by the Tribunal and on appeal by the Revenue the Hon'ble High Court of Kerala, in the above factual matrix, has overturned the decision of the Tribunal. Therefore, it was not merely the purity of the gold in question but also the statements made during the investigation which formed the basis of the reasonable belief of the officers. In the present case, none of the statements recorded by the Department admit to or even suggest that the gold was smuggled gold. It has also not been brought*

out in the show cause notice that the purity of the seized gold is such that it could only have been of foreign origin. It is true that the conduct of the appellants was suspicious inasmuch as the gold pieces were being carried in newspapers and a letter was found written to one Shri Vijay in Trissur for requesting the gold to be handed over to the bearer of the letter. It is also confirmed by the DCM, Railways that the appellants had travelled from Trissur to Vijayawada by train. However, we note that Trissur is not even a port in itself. The gold was apparently collected from one Shri Vijay in Trissur. There were also several contradictions between different statements as recorded in para 16 of the show cause notice. All these would show that Shri Kanaka Ratnam (Appellant in Appeal No. 30496 of 2017) wrote a letter to Shri Vijay of Trissur to hand over gold to the bearer of the letter and both the letter and the gold were recovered from his son Shri Naga Venkata Raghavendra (Appellant in Appeal No. 30495 of 2017). Both the appellants had travelled by train from Trissur to Vijayawada. Naga Venkata Raghavendra was acting suspiciously when the Officers approached him. Subsequent statements were contradictory to each other. These factors by themselves cannot, in our considered opinion, constitute the basis for forming a reasonable belief that the seized gold was smuggled. Therefore, the Officers did not have a reasonable belief in the first place to assert that the seized primary gold was smuggled gold which is essential to shift the burden on to the accused under Section 123. The case of Om Prakash Khatri (supra) was different inasmuch as in that case while the foreign markings were missing on the gold in that case the carriers had admitted that they were carrying smuggled gold for Shri Khatri and that it was smuggled through Kerala and they were carrying it to Bombay and marks and numbers have been deleted to avoid being caught. They also admitted that they avoid air travel as there is a high risk of being caught. Coupled with

these statements was the fact the gold of very high purity. The ratio of this judgment does not apply to the present case and the facts are quite different.

15. In view of the above, we find that the officers of the Department had no reasonable belief that the gold was smuggled and therefore they have not discharged their responsibility of forming reasonable belief under Section 123 without which the burden of proof will not shift to the person from whom the gold is seized."

14. In view of the above we find that Department could not establish any reasons to believe that the impugned goods were smuggled and liable for confiscation. Further, we find that the Adjudicating Authority has relied upon the statement of Shri Gaurav Tivari, Respondent No.1. However, he did not follow the procedure laid down under Section 138B of the Customs Act. It was held by the Tribunal in the case of **Flamingo DFS Pvt. Ltd., Vs. Commissioner of Customs, Visakhapatnam reported in 2018 (363) ELT 450 (Tri-Hyderabad)** that if Revenue chooses not to examine any person in the adjudication proceedings, it amounts to giving up that witness and such statement cannot be considered relevant.

15. We also find that the Hon'ble Punjab and Haryana High Court held, in the case of **G-Tech Industries Vs. Union of India- 2016 (339) ELT 209 (P&H)** that the statement of any person cannot be relied upon directly. The Hon'ble High Court held as under: -

"15. The rationale behind the above precaution contained in clause (b) of Section 9D (1) is obvious. The statement recorded during inquiry/investigation, by the Gazetted Central Excise Officer, has every chance of having been recorded under coercion or compulsion. It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. It is obviously in order to

neutralize this possibility that, before admitting such a statement in evidence, clause (b) of Section 9D (1) mandates that the evidence of the witness has to be recorded before the Adjudicating Authority, as in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned."

16. In view of the above we find that Revenue has not made any case to interfere with the impugned order passed by Commissioner (Appeals), Lucknow. Accordingly, we are not inclined to interfere with the impugned order.

17. In result, the appeals are dismissed.

(Pronounced in open court on 15.04.2026)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Nihal