CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70085 of 2026

(Arising out of Order-in-Appeal No.213-215-CUS/APPL/LKO/2025 dated 30.06.2025 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

Shri Shyam Kishore Johari, **.....Appellant**
(S/o Shri Roop Kishore Johari, R/o 31-A/1,
Om Purwa, Chakeri Road, Lal Bangla, Kanpur Nagar-208007 U.P.)

VERSUS

Commissioner of Customs (Preventive)
Lucknow, **....Respondent**
(3rd Floor Aprtakshya Kar Bhawan, Vibhuti Khand,
Gomti Nagar, Lucknow)

WITH

Customs Appeal No.70094 of 2026

(Arising out of Order-in-Appeal No.213-215-CUS/APPL/LKO/2025 dated 30.06.2025 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

Shri Roop Kishore Johari, **.....Appellant**
(S/o Shri Mohan Lal Johari, R/o 31-A/1,
Om Purwa, Chakeri Road, Lal Bangla, Kanpur Nagar-208007 U.P.)

VERSUS

Commissioner of Customs (Preventive)
Lucknow, **....Respondent**
(3rd Floor Aprtakshya Kar Bhawan, Vibhuti Khand,
Gomti Nagar, Lucknow)

APPEARANCE:

Shri Dushyant Kumar, Advocate & Shri Vipnesh Kumar, Advocate for the Appellant
Shri Prashant Kumar & Shri Abhishek Mukherjee, Authorized Representative for the Respondent

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

FINAL ORDER NOs.- 70198-70199/2026

DATE OF HEARING : 06.05.2026
DATE OF PRONOUNCEMENT : 05.06.2026

P. K. CHOUDHARY:

The above two appeals have been filed by the Appellants assailing the common Order-in-Appeal No.213-215-CUS/APPL/LKO/2025 dated 30.06.2025 passed by the learned Commissioner (Appeals), Customs, CGST & Central Excise, Lucknow by which he has upheld the penalty of Rs.8 lakhs each on the Appellants.

2. Briefly stated, the facts of the case are that the DRI officers of Lucknow Zonal Unit Lucknow intercepted one car Toyota Urban Cruiser Registration No. UP78GX1363 on 21.03.2023 near Indira Canal, Ayodhya Road, Lucknow and recovered Gold weighing 2485 grams valued at Rs.1,49,10,000/- alongwith Silver Ornaments weighing 8.550 kgs valued at Rs.3,61,465/- from the car in which the Appellants were travelling. The Appellants have not claimed the gold and silver ornaments and have contested levy of penalties upon them.

3. The learned Advocate appearing for the Appellants submitted that both the Appellants had gone to Deoghar (Jharkhand) to have darshan of Baba Baidyanath and while they well returning from there, their car was intercepted and the aforementioned gold and silver ornaments were recovered from the cavity of the seat of their car. The Ld. Advocate emphasized that the present appeals are confined to only the levy against the exorbitant penalties of Rs.8 Lakhs imposed upon both the Appellants.

4. The learned Advocate has also submitted that both the Appellants have never visited Nepal and have not brought any gold/silver with them. He also submitted that statement recorded by the DRI officers were not voluntary and has been obtained under coercion. It was further argued that the investigation conducted by the DRI failed to establish that the seized gold has been imported from Nepal and no credible as well corroborative evidence have been adduced in support of

such allegation. The entire proceedings hinges merely upon presumption, assumption and suspicion. No evidence could be submitted by the DRI regarding import/smuggling by the Appellants from Nepal.

5. The learned Advocate has also stated that confessions must be established to have been made voluntary and true and has relied upon the following case laws:-

(i) Sharan Kumar Singh Vs. State of Punjab – AIR 1957 SC 637.

(ii) Mahabir Biswas Vs. State of West Bengal (1995) 2 SCC 25 (3 Mumbai Bench).

6. The learned Advocate further stated that the Tribunal in the following cases has held that mere confessional statement without any corroborative evidence are not sufficient to sustain proceedings.

(a) Customs Vs. Mohammad Bagour 2012 (275) E.L.T. 513 (Del.) *[Affirmed by Hon'ble Supreme Court reported in 2019 (368) E.L.T. A232 (SC)].*

(b) Portland Cement (I) Ltd. Vs Commissioner of C.Ex. Lucknow 2015 (326) E.L.T. 304 (Tri.-Del.).

7. *Per contra*, Ld. Departmental Authorized Representatives submitted that the foreign origin gold was deliberately concealed in cavity of the seat of the car and has been smuggled from Nepal, and the role of Appellants in smuggling activities stood established from the facts and evidence available on record. The Appellants were constantly in conversation with Shri Shambhu Nath Verma Alias Pattan who has given the gold to the Appellants. They pleaded that penalty has been rightly imposed and it did not warrant any waiver or reduction. The learned Departmental Authorized Representative also relied upon the case of ***"Commissioner of Customs Preventive Kolkata VS. Shri Anil Kumar Gaur, CUSTA 31 of 2025 IA No.: GA 02 OF 2025"*** wherein it was observed:–

"A voluntary statement recorded in such proceedings cannot be displaced by a subsequent denial unless the attending circumstances clearly demonstrate coercion. In this instance, the Respondents' prolonged silence speaks louder that their belated protestations."

8. Heard both the sides and perused the appeal records.

9. I find that both the Appellants were traveling in a car bearing Registration No. UP78GX1363 in the name of Shri Shyam Kishore Johari when it was intercepted by the DRI officers near Lucknow and gold bars and silver ornaments were recovered from the cavity designed in the back of the seat of the car. The recovered gold weighing 2485 grams along with silver ornaments weighing 8.550 kgs were sent to Central Revenue's Control Laboratory[1] Delhi for testing and determination of purity of gold and the chemical examiner CRCL Delhi vide letter dated 19.05.2023 forwarded two test reports and details of the such reports as appended at page 17 of the Show Cause Notice[2] are as under:-

S.No.	Sample	Lab No.	Report
1.	S-1	CRCL/71/753(DRI)	Seized goods is composed of Gold and Silver, with gold content 98.15% (by wt.)
2.	S-2	CRCL/71/754(DRI)	Seized goods is composed of an alloy containing Silver and Copper, with silver content 53.96% (by wt.)

10. I also note that the mark 'AL ETIHAD' appears to pertain to a bullion refinery and precious metal manufacturer based in Dubai, UAE. After going through the records and the sequence of the evidence, I find that the investigation have not established that gold has been imported from Nepal. The entire investigation and conclusion of smuggling is based on the same converge i.e.

[1] CRCL
[2] SCN

on the presumption that the Appellants have visited Nepal/gold has been imported from Nepal. The central issue for determination is whether the Appellants deserve penal liability under Section 112(b) of the Customs Act, 1962.

11. I find that a penalty under Section 112(b) is sustainable in town seizures only when Department establishes the following essential elements/ingredients:-

> **(i) Evidence of Foreign Origin:** Confiscation of gold and imposition of penalty cannot be sustained in absence of clinching evidence that the goods were of foreign origin and have been illicitly imported into country.
>
> **(iii) Proof of smuggling/knowledge:** Department must establish that the person concerned had conscious knowledge that the goods were smuggled and liable to confiscation.
>
> **(iii) Nexus:** There must be concrete evidence linking the specific individual to the physical handling, harboring, concealing, or transporting of the offending goods.

11.1 As regards the first ingredient, I find that the investigation has failed to conclusively establish foreign origin or smuggling from Nepal. The CRCL report indicates gold's purity of 98.15% which suggests that the gold is containing silver. Ordinarily, the imported foreign gold is of purity exceeding 99.9%.

11.2 Regarding smuggling from Nepal and conscious knowledge thereof, I find that no reliable evidence has been adduced to establish importation from Nepal. The evidence relied upon by the department is insufficient to conclusively establish deliberate involvement and conscious knowledge on the part of the Appellants.

11.3 Insofar as nexus is concern, the same loses significance in absence of satisfactory proof regarding foreign origin and smuggling.

12. I further observe that various judicial pronouncements have constantly held that in absence of proof regarding foreign origin and smuggling of gold, imposition of penalty is not sustainable.

13. In view of foregoing discussion and findings, penalty imposed under Section 112(b) upon both the Appellants are liable to be set aside and I do so. Accordingly, both the appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in open court on - **05.06.2026**)

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

LKS