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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75382 of 2025

(Arising out of Order-in-Original No. CCP/NER/29/2024 dated 30.09.2024 passed by the Commissioner of Customs (Preventive) North Eastern Region 110 MG Road, Shillong, Meghalaya-793001)

M/s. Shri O. Dorendra Singh **: Appellant**
Son of Shri (L) O. Amu Singh
R/o Thoubal Ningombam Thongju,
Leikai, Thoubal Sub-Division, Thoubal District Manipur-795138

VERSUS

Commissioner of Customs (Prev.) **: Respondent**
N. E. R., Customs House, 110 MG Road,
Shillong Meghalaya-793001

APPEARANCE:

Shri Pranab Sikdar, Cunsultant for the Appellant
Shri Ashwini Kr. Choudhary, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.75826/ 2026

DATE OF HEARING: 24.06.2026
DATE OF PRONOUNCEMENT: 02.07.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. CCP/NER/29/2024 dated 30.09.2024 passed by the Commissioner of Customs (Preventive), North Eastern Region, Shillong ("impugned order"), whereby twelve gold bars/biscuits, totally weighing 1992.500 grams and valued at Rs. 1,05,60,988/-, recovered from the Appellant on 01.11.2019, have been confiscated absolutely under Sections 111(b) and 111(d) of the Customs Act, 1962. Penalties have also been imposed on the Appellant and six other connected persons under Sections 112(a), 112(b)(i) and 114AA of the Customs Act, 1962.

2. The facts of the case are that on 01.11.2019, at a routine police naka at Mawryngkneng, Meghalaya, the Appellant, accompanied by one Shri K. Sanjit Singh, was intercepted by the Police while travelling in a Mahindra Scorpio from Imphal towards Guwahati. On search, twelve gold bars weighing 1992.500 grams were recovered concealed in the Appellant's clothing. FIR No. 28/2019 was registered under Sections 120B and 379 IPC, and the gold was taken into police custody. The Appellant's elder brother, Shri Okram Ibohal Singh, filed an application claiming family ownership of the gold and produced a purchase receipt dated 04.07.1992 issued by M/s S.K. Johari & Jewellers, Chandni Chowk, Delhi. The application was declined by the learned JMFC, Shillong on 22.11.2019 pending verification, and not upon any finding of smuggling. On the prayer of the Investigating Officer that the matter concerned smuggling and fell outside police jurisdiction, the case was ordered to be transferred to the Customs Department on 07.09.2020. The Customs Department formally took custody of the gold and drew a Panchnama on 05.11.2020. The Appellant and several family members were thereafter examined under Section 108 of the Customs Act between January 2021 and October 2021. In the statements, the family members uniformly asserted that the gold constituted ancestral family property, divided amongst three

brothers, and was being carried for sale to meet family needs.

2.1. On completion of the investigation, a Show Cause Notice dated 25.10.2021 was issued to the appellant and others alleging that the gold was of foreign origin and smuggled into India, and was liable to confiscation under Sections 111(b) and 111(d) of the Act. On adjudication, the Ld. Adjudicating authority has passed the impugned order.

3. Various submissions made by the Appellant are summarized as under:

3.1. SCN is barred by limitation; The Appellant submits that the Show Cause Notice is barred by limitation under Section 110(2) of the Act. The gold was seized by the police on 01.11.2019 on the allegation of smuggling, as recorded in the Investigating Officer's own submission before the learned JMFC that

> "*the gold bars seized from the accused were meant for smuggling for which the police have no functional jurisdiction*."

3.2. The Appellant submits that in respect of the cases where seizure is involved, the maximum period permissible under Section 110(2) of the Customs Act is six months, extendable by a further six months on sufficient cause. The said one year period, including the extension, if any, granted expired on 01.11.2020, as the gold was seized by the police on 01.11.2019. The available record indicates that no extension was ever granted by the Commissioner. Thus, the Appellant submits that the Show Cause Notice, which was issued only on

25.10.2021, nearly two years after the original seizure and well beyond even the outer limit.

3.3. In support of the above contention, the Appellant placed their reliance on the decision in the case of Gian Chand & Ors. v. State of Punjab, 1983 (ELT) 1365 (SC), wherein it has been held that limitation under Section 110(2) runs from the date of the initial seizure on the smuggling allegation, irrespective of the agency effecting it, and that a subsequent inter-agency transfer of custody does not give rise to a fresh period of limitation.

4. **No 'reason to believe' for seizure:** The Appellant further submits that the purported Customs seizure of 05.11.2020 is itself void for want of independent 'reason to believe' under Section 110(1) of the Act. The Customs officers did no more than receiving the gold pursuant to a transfer ordered by the learned JMFC; no independent inquiry, technical examination, or contemporaneous material was placed on record to show application of mind by the seizing officer prior to seizure.

4.1. In this regard, the Appellant placed their reliance on the decision in the case of Om Sai Trading Company v. Union of India, 2020 (372) ELT 542 (Pat.), as affirmed by the Hon'ble Supreme Court at 2022 (382) ELT 9 (SC), and on the decision of this Tribunal in Shri Balwant Raj Soni v. Commissioner of Customs, Customs Appeal No. 75414/2022, and contended that 'reason to believe' must rest on the objective material existing prior to seizure and cannot be supplemented by reasons gathered thereafter.

5. **Section 123 of the Act never shifted to the Appellant:** It was submitted by the Appellant that the burden under Section 123 of the Act never shifted to the Appellant. The twelve gold bars seized by the police bore no foreign markings; they were intercepted at an inland location far away from any border, port or airport; and the Assam Hallmarking Centre's report dated 04.12.2020 recorded only the fineness of the gold (23.9 Karat) without any finding of foreign origin. Thus, there was no 'reason to believe' that the gold in question was smuggled in nature at the time of seizure of the gold.

5.1. In support of their contention that the provisions of section 123 of Customs Act cannot be made applicable to this case, the Appellant placed their reliance on the decision in the case of *Collector of Customs v. Ganesh Das, 1994 (70) ELT 441 (SC), and Commissioner of Customs v. Abdul Gani, 2012 (278) ELT 474 (SC),* as well as on this Tribunal's decisions in Daleep Kumar Verma v. Commr. of Customs, Customs Appeal No. 75315/2022, and *B.N. Venkata Raghavendra v. CC, Vijayawada, 2021 (378) ELT 493 (Tri.-Hyd.).* It is a settled position of law that the proof of foreign origin is a sine qua non before the burden under Section 123 can shift. As there was no evidence of foreign origin at the time of seizure of the gold, the burden is on the department to establish the smuggled nature of the gold.

6. **Family property.** The Appellant further submitted that licit, ancestral ownership of the gold stands affirmatively established, and that the sole material relied upon by the Revenue, ie, the Appellant's statement before the police at the time of his arrest, recorded by police officers in custody

which was promptly and consistently retracted in his subsequent statements under Section 108 of the Act. The Appellant submitted that the family ownership of the gold has been corroborated by the statements of eight family members recorded at Imphal in the presence of independent witnesses, and by the purchase receipt dated 04.07.1992, which neither the Central Forensic Laboratory nor the State Forensic Science Laboratory found to be forged or fabricated.

6.1. In this regard, the Appellant placed their reliance on Shri Balwant Raj Soni v. Commr. of Customs (Patna), Customs Appeal No. 75414/2022, and Mohammed Ali Jinnah v. Commissioner of Customs, Customs Appeal No. 40099/2020 (decided 20.04.2023), for the proposition that a retracted custodial statement, uncorroborated by independent evidence, cannot sustain confiscation or penalty.

7. The learned Authorised Representative for the Revenue supported the impugned order. It was submitted that the Appellant, a serving police officer, was found carrying an unusually large quantity of gold concealed on his person under circumstances that aroused legitimate suspicion; that no documentary proof of licit possession was forthcoming at the time of interception, the purchase receipt having surfaced only after seizure; that the State Forensic Science Laboratory had noted physical irregularities on the receipt; that verification of the Delhi jeweller remained inconclusive; and that the prevailing pattern of cross-border gold movement through Manipur lent credence to the Department's case. It was contended that, in these circumstances, the presumption under Section 123 stood validly

attracted and that the Appellant had failed to discharge the onus cast upon him.

8. Heard both sides and perused the appeal documents.

9. We find that, twelve gold bars weighing 1992.500 grams were recovered from the procession of the Appellant. As the appellant was not having any document for the licit purchase, the said gold was initially seized by the Police and later handed over to Customs authorities for further necessary action under the Customs Act. The Appellant claimed that the said gold belonged to the property of the family and submitted the purchase receipt dated 04.07.1992, which was not accepted by the investigation. Consequently, the said gold was absolutely confiscated. Thus, we observe that the following questions arise for determination in this case:

(i) Whether the Show Cause Notice dated 25.10.2021 is void ab initio and without jurisdiction, being barred by the mandatory limitation prescribed under Section 110(2) of the Customs Act, 1962?

(ii) Whether the purported seizure of the gold by Customs authorities on 05.11.2020, by mechanically receiving the gold from the police/treasury pursuant to a court order without any independent inquiry, constitutes a valid seizure under Section 110(1) of the Customs Act, 1962, in the absence of the pre-condition of 'reason to believe'?

(iii) In the absence of any proof that the seized gold is of foreign origin, whether the burden of proof under Section 123 of the Customs Act, 1962 was legally shifted to the Appellant?

(iv) Whether the custodial statement recorded by the police on 01.11.2019 — while the Appellant was under arrest, possesses any evidentiary value in Customs adjudication proceedings?

(v) Whether the Appellant and his family have affirmatively established licit ancestral ownership of the 12 gold bars and whether the Department has produced any cogent evidence to rebut this proof submitted by the Appellant?

(vi) Whether the confiscation of the gold under Sections 111(b) and 111(d) of the Customs Act, 1962 is legally sustainable?

(vii) Whether the penalties imposed under Section 112(a) and 112(b)(i) and under Section 114AA are legally sustainable in the facts of the present case?

On question (i) — Limitation under Section 110(2)

10. We have heard the submissions made on behalf of the Appellant and perused the record carefully. The gold in question was first seized on 01.11.2019 by the police at Mawryngkneng, Meghalaya, on the allegation of smuggling. The Investigating Officer himself stated before the learned JMFC, Shillong, that the gold bars seized from the accused were meant for smuggling and that the police had no functional jurisdiction in the matter. This statement constitutes a clear acknowledgment that the seizure of 01.11.2019 was a seizure effected on the allegation of smuggling under the Customs Act, 1962. Thus, we observe that the limitation period under Section 110(2) must

accordingly be reckoned from 01.11.2019. In that case, the mandatory period of six months prescribed under Section 110(2) expired on 01.05.2020. No Show Cause Notice was issued by that date. From the available records, we find that no extension was granted by the Commissioner of Customs. Thus, we find that the outer statutory ceiling of twelve months expired on 01.11.2020.

10.1. The Customs Department drew a Panchnama on 05.11.2020, four days after even the outer limit had expired and formally took custody of the gold from the police/treasury pursuant to a court order. The Show Cause Notice was ultimately issued on 25.10.2021, that is, twenty-three months and twenty-four days after the initial seizure on the smuggling allegation, and approximately eleven months and twenty-four days beyond the outer statutory limit.

10.2. In this regard, we refer the decision of the Hon'ble Supreme Court in Asstt. *Collector of Customs v. Charan Das Malhotra — AIR 1972 SC 689 = (1971) 1 SCC 697 = (1983) 13 ELT 1477 (SC),* wherein it has been held that the civil right to have the seized goods restored accrues upon the expiry of the initial period of six months, and that an order of extension passed after the expiry of an earlier extended period is of no avail to the Customs authorities. The Constitution Bench of the Hon'ble Supreme Court in I.J. Rao, Asstt. Collector of Customs v. Bibhuti Bhushan Bagh — (1989) 3 SCC 202 — held in unequivocal terms that if notice is not issued within six months from the date of seizure, the person from whose possession the goods were seized becomes immediately entitled to the return of the goods, and that this right to immediate restoration is defeated only by a valid extension granted with prior notice to the person concerned. The Hon'ble Supreme Court in Harbans Lal v. Collector of Central Excise & Customs, Chandigarh — (1993) 3 SCC 656 = AIR 1993 SC 2487 — confirmed that Section 110(2) operates independently and that the right to return of goods under it is a distinct and enforceable statutory entitlement.

10.3. In the present case, we find from the records that no extension was ever sought or granted. Thus, the Appellant's statutory right to the return of the gold crystallised on 01.05.2020. The Show Cause Notice dated 25.10.2021, issued in complete disregard of the mandatory statutory period and without any extension, is void ab initio and without jurisdiction. All adjudication proceedings flowing from a void Show Cause Notice are equally void. Thus, Question (i) is answered in favour of the Appellant.

On Question (ii) — Validity of the Customs seizure under Section 110(1)

11. Section 110(1) of the Customs Act, 1962 vests in the proper officer the power to seize goods if he has 'reason to believe' that the goods are liable for confiscation. The expression 'reason to believe' is not a mere formality. It is the jurisdictional foundation of the power of seizure. It must pre-exist the act of seizure, must be based on objective material, and must be honest and reasonable in the view of a prudent person. Reasons cannot be supplemented or rationalised after the event.

11.1. In the present case, we find that on 05.11.2020, the Customs officers drew a Panchnama and took formal custody of the gold from the police/treasury pursuant to an order of the learned JMFC. The record does not disclose any independent inquiry conducted by Customs prior to this act. No intelligence report preceded the Panchnama. No technical examination of the gold for foreign markings was undertaken before custody was taken. No statement was recorded from the Appellant before the act of seizure. No contemporaneous satisfaction was recorded by any Customs officer. We also find that the gold bore no foreign markings whatsoever. It had been seized inland at a routine road check post, not at any border, port, airport, or notified customs area. The Adjudicating Authority's reliance on prevailing trends of gold smuggling in the North-East region to justify the formation of 'reason to believe' is, in our considered view, legally impermissible. A regional trend or generalised suspicion does not constitute specific, particularised 'reason to believe' in respect of specific goods seized from a specific individual.

11.2. The Hon'ble Supreme Court, in **Gian Chand v. State of Punjab (1962 AIR 496)**, has categorically held that mere suspicion is not sufficient to justify seizure, and the prosecution must provide substantive evidence of foreign origin. In **Union of India v. Mahesh Raj (1990 SCC (3) 115)**, the Hon'ble Supreme Court ruled that the burden under Section 123 arises only if there is prima facie evidence indicating foreign origin, which is entirely absent in this case. In **D. Bhoormull (1974 AIR 859)**, the Hon'ble Supreme Court emphasized that suspicion alone is not a substitute for evidence. In ***Umrao Lal v. Commissioner of Customs (2016 (331) ELT 216 (Tri.-Del.)****,* it was explicitly held that in the absence of markings or material evidence proving foreign origin, confiscation is not sustainable. The Tribunal, Kolkata in **Commissioner of Customs, Patna** *VERSUS M***/s Lalit Krishna Agrawal** in Customs Appeal No.75499 of 2022. The Tribunal, Kolkata in *Om Sai Trading Company v. Union of India — 2020 (372) ELT 542 (Pat.), affirmed 2022 (382) ELT 9 (SC),* held that the reason to believe must be that of an honest and reasonable person based on material available prior to seizure and that grounds cannot be supplemented by fresh reasons gathered after the fact. Thus, we observe that Customs seizure of 05.11.2020 was no more than a mechanical receipt of goods transferred between agencies on court directions. It is not a seizure within the meaning of Section 110(1). Accordingly, Question (ii) is answered in favour of the Appellant.

Question (iii) — Burden of proof Under Section 123

12. Section 123 of the Customs Act, 1962 places the burden of proving that notified goods are not smuggled upon the person from whom they are seized, but only after the Department has first discharged its obligation of establishing that the goods are of foreign origin. This is the sine qua non. Without foreign origin being established, Section 123 cannot be made applicable.

12.1. In the present case, we find that the 12 gold bars bore no foreign markings of any description. They were seized at an inland location at a routine police check post. The Assam Hallmarking Centre's Test Report dated 04.12.2020 established purity of

23.9 Karat and nothing more — it made no finding whatsoever as to foreign origin. The Central Forensic Laboratory, Guwahati, declined to undertake the age determination of the purchase receipt. The State Forensic Science Laboratory, Assam, made no finding of forgery or fabrication. The verification request to the Delhi Police Crime Branch dated 13.03.2020, followed by a reminder on 26.08.2020, yielded no conclusive adverse response. Thus, we observe that there is no forensic, documentary, or testimonial evidence adduced by the Department to establish that the seized gold is of foreign origin.

12.2. The Hon'ble Supreme Court in *Collector of Customs v. Ganesh Das Bhojraj — 1994 (70) ELT 441 (SC),* held that before the burden shifts to the person seized under Section 123, it must first be established that the goods are of foreign origin, and that mere suspicion is insufficient for this purpose. In *Commissioner of Customs v. Abdul Gani — 2012 (278) ELT 474 (SC),* the Hon'ble Supreme Court held that in the absence of foreign markings or documentation establishing foreign origin, the Section 123 presumption cannot be invoked by mere assertion.

12.3. We find that CESTAT, Kolkata in Customs Appeal No.75315 of 2022 - in **Daleep Kumar Verma proprietor of M/s. Shreeji Traders and Manufacturers**. Relying on the case law in *Balanagu Naga Venkata Raghavendra vs CC Vijayawada 2021 (378) ELT 493 (Tri-Hyd),* has held that **the burden under Section 123 of Customs Act, to prove that the gold is not smuggled one, does not lie on the Appellants.**

12.4. The Tribunal, Kolkata in Shri Balwant Raj Soni in Customs Appeal No.75414 of 2022 has held that the burden under Section 123 of Customs Act, to **prove that the gold is not smuggled one, does not lie on the Appellants as it involved town seizure of unmarked gold.**

12.5. The Tribunal, Allahabad in Sarvendra Kumar Mishra & Anr. Vs. Commissioner of Customs – 2021 (9) TMI 405 CESTAT – Allahabad, has held that **the gold in that case did not have any foreign markings and the onus would be on the department to prove the smuggled nature of the goods**

12.6. In the present case, we observe that the Ld. Adjudicating Authority has erred in law in treating the Appellant as obliged to prove that the gold was not smuggled without first establishing the essential pre-condition of foreign origin. The entire edifice of the impugned order is built on a foundation that was never lawfully laid. Thus, we hold that the provisions of section 123 of Customs Act are not applicable to the facts and circumstances of the present case. Accordingly, Question (iii) is answered in favour of the Appellant.

On Question (iv) — Evidentiary value of the custodial police statement

13. The statement dated 01.11.2019 was recorded from the Appellant by Sub-Inspector S. Kharmawphlang, Mawryngkneng Police Station, while the Appellant was under arrest following seizure of the gold. The Appellant was not a free agent at that time. The statement was recorded by a police officer and not by a Customs officer under Section 108 of the Customs Act, 1962. A statement recorded by a police officer has no evidentiary value in Customs adjudication proceedings. We find that the Appellant

appeared voluntarily before the Customs Department on two separate occasions — 15.01.2021 and 18.02.2021 and provided detailed statements under Section 108 of the Customs Act. In both statements, he categorically retracted the custodial police statement as having been made under duress and maintained consistently that the gold was ancestral family property. A retracted custodial statement, standing entirely without independent corroboration, cannot form the sole foundation for confiscation or penalty under the Customs Act. It is settled that a statement made before the police while a person is in custody cannot be equated with a voluntary statement made before a Customs officer under Section 108, which alone carries the sanctity of evidence before a court of law. Thus, we hold that the custodial police statement of 01.11.2019 carries no evidentiary value in the present proceedings and cannot sustain any adverse finding against the Appellant. Accordingly, Question (iv) is answered in favour of the Appellant.

On Question (v) — licit ancestral ownership

14. The Appellant has placed the Gold Purchase Receipt dated 04.07.1992, issued by M/s S.K. Johari & Jewellers, Kinari Bazar, Chandni Chowk, Delhi, in support of his claim that the gold belonged to the family property. The Receipt submitted by the Appellant records a purchase of gold weighing 1992.240 grams — a quantity closely corresponding to the seized quantity of 1992.500 grams, with a variation of 0.26 grams, which is negligible and entirely within ordinary weighing tolerance. The receipt was found at the family home in Manipur

upon a search of family papers approximately three months after the seizure. We find that there is no forensic authority has found the receipt to be forged, fabricated, or manipulated. The Central Forensic Laboratory declined to undertake the analysis. The State Forensic Science Laboratory noted physical observations characteristic of a document of considerable age but made no adverse finding on genuineness. The verification at Delhi was inconclusive.

14.1. The Appellant gave two detailed voluntary statements under Section 108 of the Customs Act, maintaining ancestral family ownership. His elder brother, companion, and eight family members — wife, two brothers, sister-in-law, three sisters, and a nephew — gave independent statements under Section 108, the eight family members doing so at Imphal on 01.10.2021 in the presence of independent witnesses, all uniformly corroborating the same account of ancestral ownership and the collective decision to sell the gold to meet family needs. The consistency, independence, and mutual corroboration of eleven statements given by eleven persons on separate occasions before a statutory authority cannot be ignored as fabrication. Against this body of evidence, the Department has produced nothing of substance in rebuttal. The alleged supplier Akash Singh of Moreh — named only in the retracted and inadmissible custodial police statement — was never traced, arrested, or examined by police or Customs authorities at any stage. The Delhi jeweller was never positively found to be non-existent. Thus, we are of the view that the Appellant has affirmatively established licit ancestral family ownership of the 12 gold bars through consistent, corroborated, and unrebutted evidence. Accordingly, Question (v) is answered in favour of the Appellant.

On Question (vi) — Confiscation Under Sections 111(b) and 111(d)

15. Section 111 of the Customs Act, 1962 applies to goods imported or attempted to be imported in contravention of the Act or any prohibition or restriction imposed thereunder. The provision is directed at the point of importation. We find that it’s jurisdictional pre-conditions are entirely absent in the present case. The gold was seized inland at Mawryngkneng, Meghalaya — an ordinary road check post, not a border crossing, port, airport, land customs station, or notified customs area. The gold bore no foreign markings. No importation or attempted importation has been proved by any evidence. The sole basis for the allegation of smuggling was the retracted and inadmissible custodial police statement, which we have already held to carry no evidentiary value. The alleged supplier in the border trade has never been traced. No specific statutory prohibition or restriction applicable to these goods under Section 111(d) has been identified or proved. In the absence of proof of importation, foreign origin, or violation of any statutory prohibition, we hold that the essential jurisdictional pre-conditions for confiscation under Section 111 are wholly absent in this case.

15.1. Tribunal **Kolkata** in Customs **Appeal No.75315 of 2022** - Appellant **Mr. Daleep Kumar Verma proprietor of M/s. Shreeji Traders and Manufacturers** has set aside the Order of Confiscation by the Commissioner of Customs, Shillong, wherein Gold was seized from booked parcel containing 90 bangles through air cargo, Kolkata from Imphal by Indigo Airlines on 17.05.2019 having the weight of 5.22 kgs. It was held that the gold was purchased by them from indigenous sources, but DRI Officers have not taken into account the evidences submitted by them about their legal purchase in India (Para 18.3). There is no evidence available on record to prove that the gold were smuggled from Myanmar (Para 18.3)

15.2. In the **CESTAT, Kolkata** in **Shri Balwant Raj Soni** VERSUS the Commissioner of Customs (Preventive), Patna, Customs Appeal No.75414 of 2022, the Tribunal has set aside the Order of Confiscation by the Commissioner of Customs, Shillong, wherein Gold weighing 3999.590 gms. Valued Rs.1,67,98,278/- was seized from a passenger of a train. In this case, the Tribunal has held as under:

> 31. We find that the Impugned Order mainly relied upon the statements of the Noticees 1 to 5 to establish the foreign origin nature of the gold. Other than the statements, there is no other evidence available on record to show that the gold were smuggled into the country from Bangladesh. It is incorrect to rely only on the statements of the co-accused without any corroboration, to prove the smuggled nature of the gold. It is a settled law that the statement of the co accused cannot be relied without any independent corroboration.
>
> 31.2 The Tribunal in the cases of *Principal Commissioner of Customs (Prev.), Delhi Vs. Ahmed Mujjaba Khaleefa [2019 (366) ELT 337 (T)* dismissed the appeal of Revenue holding

> that jewellery not bearing any foreign marking – other than statement of passenger no other proof produced by Revenue to substantiate the claim that jewellery were smuggled into India.
>
> 31.3 In view of the above discussion and relying upon the decisions cited above, **we hold that the gold bars/pieces cannot be confiscated based on the retracted statements alone** Tribunal in the cases of Principal Commissioner of Customs (Prev.), Delhi Vs. Ahmed Mujjaba Khaleefa [2019 (366) ELT 337 (T) dismissed the appeal of Revenue holding that jewellery not bearing any foreign marking – other than statement of passenger no other proof produced by Revenue to substantiate the claim that jewellery were smuggled into India

15.3. **CESTAT, Kolkata** in the case of **Commissioner of Customs, Patna** *VERSUS M***/s Lalit Krishna Agrawal** in Customs Appeal No.75499 of 2022, has held as under:

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

has been produced by the Revenue to allege that to make a reasonable belief, the goods are of third country origin. In the absence of that, the goods in question cannot be confiscated.

15.4. Tribunal, Chennai, in the case of **Shri Mohammed Ali Jinnah** Customs Appeal No.40099 of 2020 has affirmed the findings of the Ld Commissioner of Appeals, wherein it is held that: *(Date of Pronouncement: 20.04.2023):*

> 34. In view of the above findings, it **is held that the essential things for confiscation namely proof of the gold having been smuggled into India was not proved. The investigation has assumed that the impugned gold was smuggled from Sri Lanka and no corroborative evidence was produced by the DRI. More so, it was certified by the Court that the gold bars do not have foreign markings. AA has proceeded on wrong premises that the impugned crude Gold bars are of foreign origin. There was no positive evidence except the statement of the appellant. The retracted statement has not been corroborated with findings/evidence/statements of others i.e. the person supposed to have handed over the same to the appellant for transporting and the person who was supposed to receive. The burden of proof has not been discharged by the department.** It has been proved that there was a violation of principles of natural justice by not allowing cross examination. Respectfully

following the ratio of the Hon'ble Supreme Court in M/s.Oudh Sugar Mills Vs. UOI, I am constrained to set aside the order of the adjudicating authority confiscating the impugned gold and imposing penalty on the appellant. It is ordered to release the two crude gold bars weighing 3.097 kg to the appellant Mohammed Ali Jinnah."

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

15.5. Thus, we hold that the order of absolute confiscation of the 12 gold bars valued at Rs.1,05,60,988/- cannot be sustained. Accordingly, Question (vi) is answered in favour of the Appellant.

On Question (vii) — Penalties Under Sections 112 and 114AA

16. Penalty under Section 112 of the Customs Act, 1962 is attracted only when goods are proved to be liable to confiscation under Section 111, and when the person is shown to have knowingly dealt in such goods. Since we have held that the confiscation itself is legally unsustainable, the foundation for the Section 112 penalty collapses entirely. There is further no cogent evidence that the Appellant, a

serving police officer of the Manipur Police, knowingly dealt in smuggled goods. The allegation is inherently improbable and required positive and direct proof — which is wholly absent.

16.1. Penalty under Section 114AA is a quasi-criminal provision requiring deliberate use of a false or fabricated document with knowledge of its falsity and intent to mislead the Customs Department. Not one of these ingredients has been established. The purchase receipt dated 04.07.1992 has not been proved false by any forensic authority. No finding of mensrea has been recorded against the Appellants. The Appellant produced the receipt in the genuine belief that they have accurately recorded their family's purchase of ancestral gold — a belief supported by eleven consistent corroborating statements and entirely unrebutted by the Department. Thus, we observe that the penalties of Rs.5,00,000/- each imposed on eight family members who appeared as witnesses and gave oral testimony about their family's property are not only legally unsustainable but manifestly disproportionate. Section 114AA applies to the making, signing, or use of a false document — it does not extend to oral witness testimony given voluntarily before a statutory authority. Accordingly, Question (vii) is answered in favour of the Appellant.

16.2. Tribunal, Kolkata in **Shri Balwant Raj Soni in Customs Appeal No.75429 of 2022** has held that:

> Under section 112 (a) and (b) penalty is imposable when the person is found to be dealing with goods for which prohibition is in force or the goods are liable for confiscation. The gold bars/pieces dealt by the Appellants were established to be of Indian origin and

> hence not prohibited goods…. They were carrying the gold which were domestically purchased and hence there is no offence established against them…. Hence, we hold that penalties under sections 112(a) and (b) and 114 AA of the Customs Act, 1962 are not imposable in this case

16.3. Tribunal, Kokata in **AJIT BHOSLE** Versus COMMISSIONER OF CUSTOMS (PREV.), KOLKATA, Final Order Nos. 77019-77022/KOL/2019, dated 9-8-2019 in Appeal Nos. C/75667-75670/2017 has held as under:

> Seizure - Gold seized on suspicion that it was smuggled - Seizure of gold in cut pieces having no marking and of different purity from melting house - Submission of documentary evidence in support of lawful possession by claimant - Not controverted in investigation - Claimant duly discharging his burden of proof - No evidence documentary or otherwise adduced by Department to show that gold illegally imported - Gold freely imported in country and abundantly available in market - Seized gold cannot be held to be smuggled **- Doubt and suspicion can invite investigation but not sufficient for penal action** - Sections 111, 112 and 123 of Customs Act, 1962. *[para 9].* Appeals allowed.

16.4. The ratio of the decisions cited are squarely applicable to the facts and circumstances of the present case. Accordingly, Question (vii) is answered in favour of the Appellant.

17. The findings on the issues raised at para 9 supra are summarized as under:

"(i) The Show Cause Notice dated 25.10.2021 was issued 23 months and 24 days after the police seizure of 01.11.2019 on the smuggling allegation. The mandatory period of six months under Section 110(2) of the Customs Act, 1962 expired on 01.05.2020. The outer limit of twelve months expired on 01.11.2020. No extension was ever sought or granted by the Commissioner at any stage. The SCN is therefore void ab initio. The appeal succeeds on this ground alone.

(ii) The Customs authorities took custody of the gold mechanically on court directions without any independent inquiry, objective material, or recorded satisfaction. Thus, the purported 'seizure' of gold 05.11.2020 is void for want of the jurisdictional pre-condition.

(iii) Police seizure on 01.11.2019 triggers limitation. Outer limit of 12 months expired on 01.11.2020. SCN issued on 25.10.2021 is 11+ months beyond outer limit. No extension was ever granted. Hence, the SCN issued beyond the prescribed time limit is void.

(iv) The statement of 01.11.2019 was recorded by police while the Appellant was under arrest, without caution, and without the sanctity of Section 108. It was specifically retracted in two subsequent voluntary Section 108

statements. A retracted custodial police statement without independent corroboration has no evidentiary value in Customs proceedings

(v) Purchase receipt of 1992 not proved false by any forensic authority. Eleven consistent and corroborating Section 108 statements, eight recorded before independent witnesses. The alleged supplier never traced or examined. The Department has produced no cogent rebuttal. Licit ancestral family ownership is held affirmatively established

(vi) No proof of foreign origin has been adduced by the Department. Hence, the burden as envisaged under Section 123 of Customs Act does not shift on the Appellants.

(viii) No proof of import, attempted import, foreign origin, or violation of any prohibition. Essential pre-conditions for Section 111 are not satisfied. Thus, the gold in question are not liable for confiscation and accordingly, the confiscation ordered in the impugned order is set aside.

(viii) Penalty under Section 112 presupposes valid confiscation — which fails. Penalty under Section 114AA requires proof of deliberate false documentation — also absent. Both penalties are unsustainable and hence set aside."

18. In view of the above findings, the impugned Order-in-Original No. CCP/NER/29/2024 dated 30.09.2024 is set aside in its entirety and the 12 gold bars/biscuits weighing 1992.500 grams are

ordered to be released forthwith. The appeal filed by the appellant is allowed on the above terms.

(Order Pronounced in Open court on 02.07.2026)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP