CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70155 of 2026

(Arising out of Order-in-Appeal Nos.545-551-CUS/APPL/LKO/2024 dated 19.09.2024 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

Commissioner of Customs (Preventive)
Lucknow, **.....Appellant**
(7-A, Ashok Marg, Hazaratganj, Lucknow)

VERSUS

Shri Atul Gaur, **....Respondent**
(S/o Balram Gaur, Police Station Maharajganj, Village Rakaura,
Post Bakarganj, District Faizabad-224161)

WITH

Customs Appeal No.70156 of 2026

(Arising out of Order-in-Appeal Nos.545-551-CUS/APPL/LKO/2024 dated 19.09.2024 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

Commissioner of Customs (Preventive)
Lucknow, **.....Appellant**
(7-A, Ashok Marg, Hazaratganj, Lucknow)

VERSUS

Shri Suresh Tewari, **....Respondent**
(Village Gajapur, Payakpur, Block Badagaon, District-Varanasi)

WITH

Customs Appeal No.70157 of 2026

(Arising out of Order-in-Appeal Nos.545-551-CUS/APPL/LKO/2024 dated 19.09.2024 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

Commissioner of Customs (Preventive)
Lucknow, **.....Appellant**
(7-A, Ashok Marg, Hazaratganj, Lucknow)

VERSUS

Shri Narpat Singh, **....Respondent**
(S/o Bajrang Lal, Police Station Anokhoo,
District-Sikar, Rajasthan-332002)

WITH

Customs Appeal No.70162 of 2026

(Arising out of Order-in-Appeal Nos.545-551-CUS/APPL/LKO/2024 dated 19.09.2024 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

Commissioner of Customs (Preventive)
Lucknow, **.....Appellant**
(7-A, Ashok Marg, Hazaratganj, Lucknow)

VERSUS

Shri Rahul Tripathi, **....Respondent**
(S/o Nagendra Nath Tripathi, Police Station Harraiya,
Village: Danwarapara, Post: Vishesarganj, District Basti, U.P.-272124)

WITH

Customs Appeal No.70163 of 2026

(Arising out of Order-in-Appeal Nos.545-551-CUS/APPL/LKO/2024 dated 19.09.2024 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

Commissioner of Customs (Preventive)
Lucknow, **.....Appellant**
(7-A, Ashok Marg, Hazaratganj, Lucknow)

VERSUS

Shri Rajneesh Tripathi, **....Respondent**
(S/o Nagendra Nath Tripathi, Police Station Harraiya,
Village: Danwarapara, Post:Vishesarganj, District Basti, U.P.-272128)

WITH

Customs Appeal No.70164 of 2026

(Arising out of Order-in-Appeal Nos.545-551-CUS/APPL/LKO/2024 dated 19.09.2024 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

Commissioner of Customs (Preventive)
Lucknow, **.....Appellant**
(7-A, Ashok Marg, Hazaratganj, Lucknow)

VERSUS

Shri Rajesh Kumar, **....Respondent**
(S/o Ram Sumere, Police Station-Parsarampur, Village-Sandi
Post-Dufedi, District-Basti, U.P.-272130)

WITH

Customs Appeal No.70209 of 2026

(Arising out of Order-in-Appeal Nos.545-551-CUS/APPL/LKO/2024 dated 19.09.2024 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

Commissioner of Customs (Preventive)

Lucknow, **.....Appellant**
(7-A, Ashok Marg, Hazaratganj, Lucknow)

VERSUS

Shri Shivnath, **....Respondent**
(S/o Ram Sumere, Police Station-Parsarampur, Village-Sandi Post-Dufedi, District-Basti, U.P.-272130)

APPEARANCE:

Shri Krishna Mohan & Ms. Chitra Srivastava, Authorized Representative for the Revenue
Shri Vineet Kumar Singh, Advocate for the Respondent

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

FINAL ORDER NOs.-70267-70273/2026

DATE OF HEARING : 08.07.2026
DATE OF DECISION : 11.08.2026

K. ANPAZHAKAN:

Revenue has filed these appeals wherein the issue involved are common in nature. Accordingly, all these appeals are taken up together for decision by a common order.

2. The facts of the case are that the officers of DRI, SRU-Varanasi intercepted a passenger, Shri Vinay Kumar Tiwari from Purva Express at Pt. Deen Dayal Upadhyay Junction on 07.06.2023 and recovered 30 yellow metallic pieces in the form of circular wires from the said passenger. The Government Approved Valuer vide report dated 07.06.2023, has confirmed that the recovered metallic pieces were of Gold, totally weighing 1164.950 grams, valued at Rs. 69,43,102/-. Shri Vinay Kumar Tiwari, in his statement recorded during the course of investigation has admitted that the recovered Gold is of foreign origin, brought into India by way of smuggling from Dubai to Kolkata through Airways; that he was carrying them from Kolkata and he had no document regarding the licit purchase of the said Gold. He also stated that he had been going to Kolkata for the last 4-5 months to bring such smuggled foreign origin

Gold pieces from Kolkata. He also stated that he had information from Gold sellers in Bada Bazar that these Gold pieces were smuggled from Dubai through air route and brought to India illegally and then its foreign marks were erased after being moulded and it has been sold at a good margin. This illegal business is in practice on a large scale and the payments for the said transactions are done through cash and hawala. The recovered foreign origin Gold weighing 1164.950 gram & valued at Rs. 69,43,102/-was seized under Section 110 of the Customs Act, 1962, on a 'reasonable belief' that the said gold were smuggled into India without payment of appropriate customs duties in violation of the provisions of Section 7,11, 33, 34, 46 & 47 of the Customs Act, 1962 read with Section 3 (2 & 3) of Foreign Trade (Development & Regulation Act, 1992) & Rule 11 & 12 of Foreign Trade (Regulation) Rules, 1993.

3. Statement of Shri Vinay Kumar Tiwari was recorded under Section 108 of the Customs Act, 1962 on 07.06.2023 wherein, he inter-alia stated that, he was to deliver this Gold to Suresh Tiwari, who worked in Bright Courier. On the basis of statement of Shri Vinay Kumar Tiwari, the office of Bright Logistics Services at Lucknow was searched from where the officers seized foreign origin Gold & Gold Jewellery totally weighing 3633.98 grams, valued at Rs. 1,93,01,590/-, Diamond Jewellery valued at Rs. 49,45,676/-. Indian Currency of Rs. 11,65,250/- was also seized being the sale of such foreign origin Gold.

3.1. The voluntary statements of three persons namely Shri Atul Gaur, Shri Shivnath & Shri Rajesh Kumar who were present in the office during the search were also recorded on 08.06.2023 u/s 108 of the Customs Act, 1962 wherein inter alia, they admitted the facts of the 'Panchnama and Recovery/Seizure Memo' dated 07-08.06.2023; they further stated :

a. that Shri Rahul alias Rajan Tripathi is the owner of Bright Logistics Services who mainly looks after the work of the company from Kanpur and Lucknow;

b. that, the said company is involved in the transportation and courier work of foreign origin Gold bullion, jewellery etc.

4. Summons were issued to Shri Suresh Tiwari, Shri Rahul Tripathi, Shri Rajneesh Tripathi and Shri Narpat Singh for examination of their role in the instant case but none of them complied with the summons. Scrutiny of CDR of mobile number of above persons revealed that they all were interconnected with each other and their nexus was established in the illicit business of Gold smuggling. Accordingly, a Show Cause Notice dated 03.08.2023 was issued to the offenders proposing therein the confiscation of seized goods and Indian Currency u/s 111(a), (b), (d) & (h) and Section 121 of the Act, and imposition of penalties under Section 112 (a) & (b) of the Act. On adjudication, Order-in-Original No. 126/ADC/2023-24 dated 28.12.2023 was issued, wherein the Ld. Adjudicating authority has passed the following order:

I. ordered for absolute confiscation of Gold, Gold jewellery made thereof weighing 4798.930 grams valued at Rs. 2,62,44,692/- and Diamond studded Gold jewellery made thereof valued at Rs. 49,45,676/- under the provisions of Section 111(a), (b), (d) & (h) read with Section 120 of the Customs Act, 1962.

II. Ordered for absolute confiscation of seized Indian Currency of Rs. 11,65,250/- so recovered, which is part of sale proceeds of smuggled foreign origin Gold under Section 121 of the Customs Act, 1962.

III. Imposed penalty of-

- Rs. 10,00,000/- each upon Shri Vinay Kumar Tiwari, Shri Rajesh Kumar, Shri Atul Gaur and Shri Shivnath;

- Rs. 5,00,000/- each upon Shri Rahul Tripathi, Shri Rajneesh Tripathi, Shri Narpat Singh, Shri Kuldeep Modi and Shri Suresh Tiwari

5. Being aggrieved, the Respondent preferred appeal before the learned Commissioner (Appeals). The learned Commissioner (Appeals) acceded to the contention of the Appellants and set aside the confiscation of the impugned Gold & Gold Jewellery weighing at 3633.98 gram valued at Rs. 1,93,01,590/-, Diamond Jewellery of Gold valued at Rs. 49,45,676/-.The Cash amounting to Rs. 11.65.250/- confiscated was also ordered to be released. The penalties imposed upon the offenders was also vacated.

6. Aggrieved against the setting aside the confiscation and dropping of the penalties, Revenue has filed these appeals before the Tribunal.

7. In the grounds of appeal Revenue has raised the following grounds:-

- The learned Commissioner (Appeals) has erred in appreciating the findings of adjudicating authority and details of facts mentioned in the SCN.
- With respect to the finding of the Ld. Commissioner (Appeals) that no ‘reasonable belief’ existed prior to the seizure of the subject goods, it is submitted by the Revenue that the Respondents Shri Atul Gaur, Shri Rajesh Kumar and Shri Shiv Nath in their voluntary statements dated 08.06.2024 stated that all the gold, ornaments, diamond jewellery of gold, Indian currency, which were recovered from the office of the Bright Logistics Services, were related to the trade of foreign origin gold, Furthermore, Shri Vinay Kumar Tiwari vide his voluntary statement dated 07.06.2023 under section 108 of the Customs Act, 1962 stated that such gold is smuggled from Dubai and its form and foreign mark were erased by remolding it and he would have delivered the same to the

office of the Bright Logistics Services in Varanasi which clearly indicates that the Bright Logistics Courier is involved in the trading of smuggled gold and jewellery made thereof. The above information is sufficient to form a 'reasonable belief' for effecting seizure of the recovered gold, jewellery and cash from the premises of M/s Bright Logistics Services and for shifting the burden of proof upon the Respondents under Section 123 of the Customs Act, 1962.

- As regards to the consideration of the Ld. Commissioner (Appeals) that- "who smuggled the gold and how, who melted this smuggled gold to convert into shape of gold as recovered", it is argued that the Ld. Commissioner (Appeals) failed to consider the facts mentioned in the SCN that the main accused Shri Vinay Kumar Tiwari vide his voluntary statement dated 07.06.2023 under section 108 of the Customs Act, 1962 stated that he was told by Kuldeep (supplier of the foreign gold) that to hide the identity of foreign gold brought from Dubai, the form of foreign origin gold is changed so that its foreign origin can be suppressed. He further stated that he would have handed over the smuggled gold at the office of the Bright Logistics Services and such smuggled gold used to be transported across India from the office of the Bright Logistics Services. The Ld. Commissioner (Appeals) has failed to consider the fact that the identification of the gold has been tampered with so as to avoid being detected, as also admitted by accused persons in the case in their voluntary statements recorded under Section 108 of the CA, 1962. Such type of modus operandi is prevalent and adopted by them to evade law enforcing agencies.
- The finding of the learned Commissioner (Appeals) that "the purity of imported gold bullion is 99.99% which also differs in this case as the purity of seized gold is 99.50% which indicates otherwise" has failed to consider the fact

that foreign gold smuggled into the country is re-melted and moulded into various forms like bars, small cut-pieces, jewellery, etc, to escape identification. In such scenario, the purity of gold will definitely undergo a change and that a low purity does not indicate that the said gold has not been smuggled.

- The finding of the Ld. Commissioner Appeals that "The appellant has also produced before me the copy of consignment notes/ delivery notes and copy of invoices of the seized gold and gold/ diamond ornaments which clearly establish that he had received the seized gold and diamond jewellery from his customers to deliver the same to different consignees in different cities" has completely failed to appreciate and take note of the detailed investigation done in this respect which is mentioned in the Show Cause Notice and relied upon in the Order-in-Original which clearly proves that the said invoices bear no relation to the seized goods and are merely being used as a cover for claiming the same.
- Further, the Ld. Commissioner (Appeals) has held the voluntary statements to be having no evidentiary value at all while the settled position of law indicates otherwise. The statements in this case are corroborated by circumstantial evidence like CDR, lack of any licit documents evidencing source/ownership of the seized gold and cash in the case.
- The standard of evidence in departmental adjudication proceedings is "preponderance of probability" and not "beyond reasonable doubt". In the instant case, enough evidences have been made out to establish that the seized goods are liable to confiscation; however, the same appear to have not been appreciated while passing of the instant Order-in-Appeal.

8. In view of the above submissions Revenue prayed for setting aside the impugned order and allow the appeal filed by them.

9. Learned Counsel appearing on behalf of the Respondents submits that the learned Commissioner (Appeals) has passed a reasoned order while setting aside the confiscation in the impugned Order-In-Appeal No.545-551-CUS/APPL/LKO/2024 dated 27.03.2024. Learned counsel submits that before exercising the power to seize under Section 110 of the Customs Act. the Revenue has to form 'reasonable belief' that the goods in question are liable for confiscation; subjective satisfaction is therefore a condition precedent for the exercise of power under Section 110 ibid.

9.1. In the present case there is no evidence available on record to indicate that the gold and diamond ornaments which were seized by the Revenue were of foreign origin. Accordingly, there is no 'reasonable belief' existed prior to the seizure of the gold. It is a fact on record that the seized goods consisted of 20 items of ornaments and diamonds out of which six items were released before the issuance of Show Cause Notice and one item was released by the Adjudicating Authority. Six items were released by the Board on appeal. Only 7 items have been confiscated. These consist of 2 packets of diamonds and 5 ornaments. At the time of seizure neither the diamonds nor the ornaments had any foreign markings or label to suggest that the said goods were smuggled in nature.

9.2. Further, the purity of the said gold in the jewellery has not been checked. In such circumstances, Revenue failed to prove that the gold and diamond ornaments were smuggled one. Learned Counsel submits that in the absence of any foreign marking and purity which is not 999.00, the goods were not liable for seizure under **Section 110 of the Customs Act, 1962.** The learned Counsel further submits that this is a matter of common knowledge that the standard purity of foreign origin

Gold is 999.0. In the present case no test of the seized gold was conducted nor any report was placed on record. It is a fact on record that the foreign origin gold means that its purity must be 99.5% or more than 99.5%. This fact can be ascertained only through chemical test report and in all cases, department relies on CRCL report but in the instant matter, sample was not sent for lab to check its purity. Thus, learned Counsel submits that purity of the seized gold establishes that the gold could not be of foreign origin. The only evidence relied upon by the Revenue against the Respondents is the statement recorded from them during the course of investigation. However, the learned Counsel submits that the Respondents have produced evidences to the effect that they have procured the gold from another trader after payment of GST. It is a well settled proposition of law that confessional statement needs independent corroboration. However, in the present case the statement recorded has not been corroborated by independent evidences. In this regard, the learned Counsel has relied upon the decision of the Hon'ble High Court of Kolkata in the case of Commissioner of Customs (Preventive) V/s Dhapa Lokeswara Rao reported in 2009 (248) E.L.T. 141 (Cal.).

9.3. The Learned Counsel submits that the confession statements does not have evidentiary value in the eyes of law when the documentary evidence is contradictory to such statements. In the case of Sevantilal Karsondas Modi Vs State of Maharashtra & Another reported at 1999 (109) E.L.T. 41 (S.C.) the Hon'ble Apex Court has held that coercion cannot be basis of conviction under Section 135(1) (a) (b) of the Customs Act.

9.4. The Counsel for the Appellants further submits that they have submitted following invoices as evidence for the purchase of gold from the local market: -

a. Invoice No 1 dated 27/05/2023 weighing 278.200 grams.
b. Invoice No 2 dated 30/05/2023 weighing 456.180 grams,
c. Invoice No 3 dated 02/06/2023 weighing 430.570 grams

9.5. From the perusal of the invoices, it is evident that all particulars are available in the invoices and all the three invoices are available in the GST portal. Hence the allegation that the gold was of foreign origin is not supported by any evidence. The invoices also contain GST and PAN Number and the Department has never doubted the genuineness of documents produced by the Respondent and hence, the documentary evidences submitted by them would prevail over the oral statements.

9.6. In view of the above submissions, the learned Counsel submits that the Appeals filed by the Revenue does not merit consideration. Accordingly, he prayed for rejecting the appeals filed by the Revenue.

10. Heard both the sides and perused the appeal documents.

11. We observe that the gold and diamond jewellery in question were seized from the office of Bright Logistics Services, Lucknow. We find that out of the 20 items, only 7 items containing 2 Packets of diamonds and 5 packets of ornaments were confiscated. Neither the diamonds nor the ornaments confiscated had any foreign markings or labels on them. We find that there is no evidence available on record to show that the said Gold Ornaments and Diamond jewellery seized and subsequently confiscated were of foreign origin. No evidence brought on record to substantiate the allegation that the said gold and diamond jewellery were of smuggled in nature. Accordingly, we find that there is no ground for exercising the 'reasonable belief' that the gold in question were smuggled in nature. As there was no 'reasonable belief' available on record, we are of the considered opinion that the seizure of gold at initial stage itself was invalid.

11.1. In the present case, we find that the gold and diamond jewellery in question does not bore any foreign markings whatsoever. It had been seized inland at a railway station, not at any border, port, airport, or notified customs area. The Revenue's contention that the gold smuggled into India with foreign markings on it have been erased generally, cannot be a ground to justify the formation of 'reason to believe'. A generalized suspicion entertained by the officers regarding the smuggled nature of the gold does not constitute specific, particularized 'reason to believe' required to effect seizure of the goods 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.

11.3. Thus, we observe that the officers of DRI, SRU- Varanasi when intercepted the passenger, Shri Vinay Kumar Tiwari, in Purva Express at Pt. Deen Dayal Upadhyay Junction on 07.06.2023, did not have the 'reasonable belief' which is mandatory for effecting the seizure under section 110(1) of the Customs Act, 1962. Thus, we hold that the seizure effected on

07.06.2023 was not a seizure within the meaning of Section 110(1) of the Customs Act, 1962.

12. Regarding the applicability of the provisions of section 123 of Customs Act in this case, we find that the seizure was neither made on international border or any notified customs area. The gold and diamond jewellery in question also does not contain any foreign marking and purity of the gold is not 999.0 which is normally associated with gold of foreign origin. We also find that the 'reasonable belief' which is mandatory condition required for seizure are absent in this case. We find that there is no forensic, documentary, or testimonial evidence adduced by the Department to establish that the seized gold and diamond jewellery is of foreign origin. Under such circumstances, we hold that the provisions of Section 123 are not applicable to the facts and circumstances of this case.

12.1. 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.

12.2. 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 in that case, as it involved town seizure of unmarked gold.**

12.3**.** 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

12.4. We find that the learned Commissioner (Appeals) has given a categorical finding in this regard in the impugned order. As there is no reasonable belief that the goods are smuggled in nature there was no obligation on the part of the Appellant to prove that the goods were not smuggled, since the provisions of Section 123 are not applicable. In this case, the burden of proof that the gold and diamond jewellery in question were of smuggled in nature, is on the Department, which they failed to prove. In view of the above, we hold that provisions of Section 123 cannot be made applicable in the present case.

13. We find that the Appellant has produced copies of invoices mentioned at para 9.4 supra, evidencing purchase of the said gold and diamond jewellery from the local traders. We find that invoices are available in GST Portal. The Invoices also contains GST and PAN numbers. We find that the Department has never doubted the genuineness of the invoices. Thus, we find from the evidences available on record that the gold and diamond jewellery in question were procured from domestic market. Accordingly, we find that the learned Commissioner (Appeals) has accepted the documents submitted by the Appellant and held that the gold and diamond jewellery were not liable for confiscation.

14. We find that the other evidences relied upon by the Department are the statements recorded during the course of investigation. We find that the mandatory requirements prescribed under Section 138B of the Customs Act, 1962 have not been complied with during adjudication. There is nothing on record to indicate that the procedure contemplated under the said provision was followed before treating the statements as relevant evidence in the proceedings. It is now well settled that a statement recorded during investigation does not automatically acquire the character of substantive evidence unless the

conditions stipulated under Section 138B of the Customs Act, 1962 are duly satisfied. In the absence of compliance with the said provision, such statements lose much of their evidentiary significance and cannot, by themselves, constitute the sole foundation for sustaining serious consequences such as confiscation and imposition of penalties. Therefore, we are of the considered view that the statements attributed to the Respondents herein being untested and remaining substantially uncorroborated by any independent evidence, cannot be accorded decisive evidentiary value so as to establish the allegations levelled against the Respondents. Consequently, we hold that the reliance placed upon such statements by the adjudicating authority, without complying with the mandate of Section 138B of the Customs Act, 1962, cannot be sustained in law.

15. Regarding confiscation of the gold and diamond jewellery under Section 111 of the Customs Act, 1962, we find that the said section 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 and diamond jewellery in question were seized from a Railway station, which is located inland and not a border crossing, port, airport, land customs station, or notified customs area. The gold and diamond jewellery 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 inadmissible statements, which we have already held to carry no evidentiary value. The alleged supplier of the gold and diamond jewellery 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. Thus, we find that Ld. Commissioner (Appeals) has rightly set aside the confiscation of the gold and diamond jewellery in question. The Cash amounting to Rs. 11.65.250/- confiscated was also ordered to be released, as there was no evidence that the said cash was related to the sale proceeds of smuggled gold. The penalties imposed upon the Respondents were rightly vacated by the Ld. Commissioner (Appeals) as the allegation against the Respondents have not sustained.

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.1,67,98,278was 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, thegoods 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 **<u>Shri Mohammed Ali Jinnah</u>** <u>Customs Appeal No.40099 of 2020</u> 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 <u>gold bars weighing 3.097 kg to the appellant Mohammed Ali Jinnah."</u>

> 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 gold and diamond jewellery in question does not sustain. Thus, we find that the Ld. Commissioner (Appeals) has rightly set aside the confiscation of the goods as ordered in the Order-in-Original. As there is no evidence available regarding the smuggled nature of the gold and documentary evidences submitted by the Respondent establishes that the gold in question were procured from the domestic market, we do not find any infirmity in the impugned order passed by the Ld. Commissioner (Appeals).

16. Accordingly, we uphold the impugned order passed by the Commissioner (Appeals) and reject the appeals filed by the Revenue.

(Pronounced in open court on 11.08.2026)

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

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Nihal