CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70148 of 2026

(Arising out of Order-In-Appeal No.120-124-CUS/APPL/LKO/2025, dated - 07.05.2025 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

Commissioner, Customs (Preventive) Lucknow

.....Appellant

(Apratyaksh Kar Bhawan, Vibhuti Khand,
Gomti Nagar, Lucknow, Uttar Pradesh 226010)

VERSUS

Shri Shubham Soni S/o Pradeep Kumar Soni,

....Respondent

(5. R/o Ward No.7, Rajghat, Harraiya, Basti, Uttar Pradesh-272155)

WITH

Customs Appeal No.70149 of 2026

(Arising out of Order-In-Appeal No.120-124-CUS/APPL/LKO/2025, dated - 07.05.2025 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

Commissioner, Customs (Preventive) Lucknow

.....Appellant

(Apratyaksh Kar Bhawan, Vibhuti Khand,
Gomti Nagar, Lucknow, Uttar Pradesh 226010)

VERSUS

Shri Diler Abbas S/o Jaki Hasan,

....Respondent

(R/o Saray Hizara, Bara Banki, Uttar Pradesh-225121)

WITH

Customs Appeal No.70150 of 2026

(Arising out of Order-In-Appeal No.120-124-CUS/APPL/LKO/2025, dated - 07.05.2025 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

Commissioner, Customs (Preventive) Lucknow

.....Appellant

(Apratyaksh Kar Bhawan, Vibhuti Khand,
Gomti Nagar, Lucknow, Uttar Pradesh 226010)

VERSUS

Shri Gopi Krishna Soni S/o Mangal Prasad Soni,
....Respondent

(R/o Gram- Nagar Khas, Near Junior High School,
Post-Nagar Khas, Naghra, Basti, Uttar Pradesh-272302)

WITH

Customs Appeal No.70151 of 2026

(Arising out of Order-In-Appeal No.120-124-CUS/APPL/LKO/2025, dated - 07.05.2025 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

Commissioner, Customs (Preventive) Lucknow
.....Appellant

(Apratyaksh Kar Bhawan, Vibhuti Khand,
Gomti Nagar, Lucknow, Uttar Pradesh 226010)

VERSUS

Shri Shyam Soni, S/o Pradeep Kumar Soni,
....Respondent

[(Prop. of M/s G.S. Gold, Mumbai)
H.No. 133, Gopal Niwas Building, Rm No. 14,
4th Floor, Princess Street, Mumbai 400002]

AND

Customs Appeal No.70152 of 2026

(Arising out of Order-In-Appeal No.120-124-CUS/APPL/LKO/2025, dated - 07.05.2025 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow)

Commissioner, Customs (Preventive) Lucknow
.....Appellant

(Apratyaksh Kar Bhawan, Vibhuti Khand,
Gomti Nagar, Lucknow, Uttar Pradesh 226010)

VERSUS

Shri Mahesh Kumar Soni S/o Shri Ram Kripal Soni,
....Respondent

(R/o Gram Tirukha, Jagdeeshpur, Basti, Uttar Pradesh – 272130)

APPEARANCE:

Shri Santosh Kumar, Authorised Representative for the Appellants
Shri Vimal G. Jain, Chartered Accountant for the Respondents

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

FINAL ORDER NO.70289-70293/2026

DATE OF HEARING : 10.08.2026
DATE OF DECISION : 14.08.2026

K. ANPAZHAKAN:

These appeals are filed by the Revenue against the impugned Order-In-Appeal No. 120-124-CUS/APPL/LKO/2025, dated 07.05.2025 passed by Commissioner (Appeals) CGST & Central Excise, Lucknow wherein the learned Commissioner (Appeals) has set aside the Order-In-Original No.23/ADC/2024-25 dated 17.05.2024 passed by the Additional Commissioner of Customs (Preventive), Lucknow.

2. The facts of the present case are that acting on a special intelligence officers of DRI intercepted Shri Mahesh Kumar Soni S/o Shri Ram Kripal Soni and Shri Gopi Krishna Soni S/o Mangal Prasad Soni, who were supposed to take the Train No.12533 Pushpak Express to Mumbai. During the course of personal search of the trolly bag recovered from Shri Mahesh Kumar Soni, 43 cut pieces of yellow coloured bars, 02 pieces of yellow colour metal and some ornaments were recovered. Indian currency of Rs.68,80,000/- was also recovered from their procession.

3. Samples were drawn from the 43 cut pieces and two pieces of yellow colour metal and ornaments and tested. On testing, the said yellow coloured metal were found to be gold.

The details of test report is as under:-

S. No.	Sample	Lab No.	Report
1	S-1	CRCL/71/753(DRI)	Seized goods is composed of mainly Gold, with gold content 99.49% (by wt.)

2	S-2	CRCL/71/ 836(DRI)	Seized goods is composed of an alloy containing gold, silver and Copper, with gold content 84.82% (by wt.)
3	S-3	CRCL/71/ 837 (DRI)	Seized goods is composed of an alloy containing gold, silver and copper having gold content 64.56% (by wt.)

3.1. As the Respondents were not having any licit documents, the said gold pieces recovered were seized under the Customs act. The Indian Currency recovered was also seized, as the same appeared to be sale proceeds of the ornaments made from smuggled gold.

4. As a follow up, searches were conducted at the residences of Shri Gopi Krishna Soni and Shri Mahesh Kumar Soni and their statements were recorded. On completion of the investigation, a Show Cause Notice dated 09.02.2024 was issued, proposing confiscation of the 5541 grams of gold totally valued at Rs. 3,32,28,900/-, under Section 111 of the Customs Act. The Notice also proposed confiscation of the Indian Currency of Rs. 68,80,000/- under Section 121 of the Customs Act, 1962.

5. On adjudication, the learned Additional Commissioner has absolutely confiscated the gold vide Order-in-Original No.23/ADC/2024-25 dated 17.05.2024. He also absolutely confiscated the Indian Currency. Penalties have also been imposed on Shri Mahesh Kumar Soni, Shri Gopi Krishna Soni, Shri Shyam Soni, Shri Diler Abbas and Shri Shubhan Soni.

6. On appeal the learned Commissioner (Appeals), has set aside the confiscation of the gold bars and Indian currency. He also set aside the penalties imposed on all the Respondents.

7. Aggrieved against the setting aside of the confiscation of gold and imposition of penalties, Revenue has filed these appeals.

8. The submissions made by the Revenue in these appeals are summarized as under:-

(i) The subject order passed by the Commissioner (Appeals) is not acceptable due to it's inconsistent findings.

(ii) The word "smuggling" is defined in Section 2(39) of the Customs Act, 1962, as- "in relation to any goods, means any act or omission which will render such goods liable to confiscation under Section 111 or Section 113." In this case, the Respondents could not prove the lawful procurement of the impugned gold. hence the same are liable to confiscation under Section 111 of the said Customs Act. This suggests the smuggled nature of seized gold and accordingly onus of burden of proof as required under Section 123 of the Customs Act, 1962 has to be discharged by the party. Further, as per provisions of Sub-Section (c) to (f) of Section 11 read with Notified Goods (Prevention of Illegal Import) Rules, 1969, a list of mandatory requirements is specified the compliance of which is to be observed by the person, who is found in possession of 'Foreign Origin Gold' at the time of its recovery. But, in this case the Respondents failed to comply the said mandatory requirement envisaged under the above statutory provisions, as they failed to produce any documentary evidence regarding transport, possession or accounting of the seized gold. Moreover. 'the Respondents' have violated the provisions of Section 7(1)(b), 7(1) (c), 12, 33, 34, 46, 47 read with Section 123 of the said Act, in respect of smuggled 'Foreign Origin Gold'. Besides, in terms of Section 112 of the Customs Act. 1962, any person who:

(a) in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111 or abets the doing or omission of such an act, or

(b) acquires possession of or is in any way concerned in carrying, removing. depositing, harboring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111 of the Customs Act, 1962 is liable for the Penalty.

(iii) Shri Mahesh Kumar Soni, Shri Gopi Krishna Soni and Shri Diler Abbas were consciously possessing and carrying the said 'Foreign Origin Gold'. The said gold has been kept in the trolley bag, without any legal document for possession and transportation. In their respective statements, they categorically stated that they did not possess any paper or document for licit possession and transportation of the said gold.

(iv) With regard to the existence of reasonable belief, the Cominissioner (Appeals) has not considered two broad features of this seizure which cannot be ignored. The first feature on which the officers relied is the quantity of smuggled gold in question. It was found that the carriers Shri Mahesh Kumar Soni. Shri Gopi Krishna Soni and Shri Diler Abbas were carrying forty-three (43) cut pieces of yellow coloured bars, 02 pieces of gold weighing 5541.00 grams (including sample drawn from the same). This large quantity of gold valued at nearly Rs. 3,32,28,900/-, carrying without any legal document, itself justified a reasonable belief in the mind of the Officers that the gold may be smuggled. In that connection, it may not be irrelevant to remember that the said officer had received positive information regarding the smuggling of gold. That is why Shri Mahesh Kumar Soni, Shri Gopi Krishna Soni and Shri Diler Abbas were intercepted by the Officers of DRI around 20:30 Hrs on 12.12.2023, at Charbagh Railway Station, Lucknow. The second aspect of this seizure was that Shri Mahesh Kumar Soni, Shri Gopi Krishna Soni and Shri Diler Abbas did not possess any Receipt/Bill/Document related to the aforesaid 'Foreign Origin Gold' pieces smuggled into India nor did they produce any document relating to its import, local purchase or transportation. An ordinary person carrying a large quantity of gold and found travelling without Receipt/Bill/Document, have raised a 'reasonable belief' in the mind of the officers that the gold was smuggled. Therefore, the aforementioned grounds in itself prima facie justify the said ‘reasonable belief’.

(v) It is held by the Hon'ble Bombay High Court in the case of Ramdas Bhikaji Satpute vs Joint C'omnissioner-2016 (332) E.L.T. A86 (Bom) that;

> "...In the absence of any other evidence showing licit procurement of gold the inescapable conclusion is that the gold is smuggled. Under the circumstances the goods have to be held as "prohibited goods....".

(vi) Also in the case of Sheikh Mohd. Omer Vs. Collector of Customs. Calcutta and Others [(1970) 2 SCC 7281, It has been held by the Hon’ble Apex Court that: "that any goods which are imported or attempted to be imported contrary to any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in Section 111 (d) of the Customs Act. 1962 includes restrictions. Merely, because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions "prohibiting", "restricting" or "otherwise controlling", we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of the Act. "Any prohibition" means every prohibition. In other words, all types of prohibitions & restrictions are one type of prohibition".

(vii) As such, applying the ratio of above judgments, the Respondents did not fulfill the basic eligibility criteria and as such impugned gold is rendered as 'prohibited goods' and its absolute confiscation as held in the impugned OIO is justified.

(viii) The impugned gold as admitted by Shri Mahesh Kumar Soni. Shri Gopi Krishna Soni and Shri Diler Abbas, in their respective statements dated 13.12.2023 under Section 108 of the Customs Act, were of Foreign Origin and the non-submission of any documents by the party clearly shows their willful act of smuggling and such acts come under the purview of prohibition of import of 'Foreign Origin Gold' and the party have failed discharge the burden of proof as required under Section 123 of the Customs Act, 1962 and as such the same had rightly been confiscated absolutely by the adjudicating authority without an option to redeem the same. Also at any stage of hearing/consideration of the case, the party could not produce any licit documents for possession/purchase of impugned seized gold pieces.

(ix) With regards to the argument that the said seizure is a town seizure and no foreign markings were found on the gold seized, it is submitted that it is an established modus-operandi of gold smugglers to melt 'Foreign Origin Gold' at the time of its entry into the country so that its foreign markings are removed and the said gold cannot be identified as foreign with visual inspection. Such gold is supplied throughout the country through various routes and is seized by enforcement agencies upon specific information. The Order of The Commissioner (Appeals) has completely ignored the fact that the instant seizure was effected upon such specific information of transportation of smuggled gold. Further, Shri Mahesh Kumar Soni, Shri Gopi Krishna Soni and Shri Diler Abbas themselves admitted in their statement under Section 108 of the Customs Act, 1962 that the seized gold is of foreign origin smuggled from Nepal and brought to India and gold smugglers got melted the Foreign Origin Gold' at the time of its entry into the country so that its foreign markings are removed to disguise its foreign origin proof. Further, this is also to add that smuggled goods do not lose their tainted character, only on the basis of that they are seized inland and not on port or airport. The place of seizure is immaterial. Thus, there exist sufficient grounds and circumstances to establish that the said gold is foreign origin in nature.

(x) Shri Mahesh Kumar Soni, Shri Gopi Krishna Soni and Shri Diler Abbas were involved in illegal procurement of sale proceeds of foreign origin smuggled gold into India. They have also failed to produce any documents related to the cash of Rs. 68.80,000/-received from traders to whom he has sold jewellery made from smuggled gold which has been recovered and seized during the search dated 12.12.2023. For this whole act, Shri Gopi Krishna Soni, made arrangements for procuring 'Foreign Origin Gold' smuggled from Nepal from different smugglers. And that on the direction of Shri Shyam Soni (Prop. of M/s. G.S. Gold. Mumbai), they take this smuggled gold to Mumbai from Gorakhpur via Lucknow. CDR analysis revealed that Shri Shyam Soni has been in regular contact over phone with Shri Mahesh Kumar Soni, Shri Gopi Krishna Soni and Shri Diler Abbas during relevant time.

(xi) The Commissioner (Appeal) held that statement of co-accused cannot be relied upon without corroboration. It is submitted that statement made under Section 108 of the Customs Act before Gazetted Officer to be admitted as evidence. In the case of Naresh J. Sukliwani Vs Union of India-1996 it is held that:

> "The statement made before the Customs Official is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973 and therefore, it is a material piece of evidence collected by Customs Officials under Section 108 of the Customs Act 1962. Apart from this multiple interlinked, confession statement. lack of the documents in respect of goods shows that the contraband is of foreign origin and is smuggled into India."

(xii) The Commissioner (Appeals) has relied on the Stock Register and cash balance of the party, submitted at the time of defence reply dated 29.02.2024, after much delay from the date of seizure i.e. on 13.12.2023, while no licit document was produced by the party at the time of seizure of Foreign Origin Gold' and recovered cash. The Commissioner (Appeals) has also failed to appreciate the fact that as per purchase register and purchase bills there is a purchase of only 124.449 gms gold from April'23 to November 23 and during the month of December from 01.12.2023 to 12.12.2023, 5 purchases of 5 Kgs Gold has been shown by M/s. G.S. Gold, Mumbai just to cover the seizure quantity of Gold to the tune of 5.541 Kgs. The same trend has also been adopted in the case of Cash Balance shown by the Noticee as the caslı balance shown during the period from April, 23 to November 23 was Rs. 4.5 Lakh only and during the month of seizure i.e. in December, 2023, it has been reached to 73.5 Lakh while cash sale of M/s. G.S. Gold, Mumbai have never been exceeding Rs. 40,000/- during the period April-2023 to November, 2023. The Respondents could not produce the reason for higher purchase and cash sale during the month of December. Thus, it appears that these documents were prepared & submitted well after the seizure and appears to have been manipulated or fabricated, evidently with the intent to retrospectively legitimize the seized smuggled gold.

(xiii) Further, this is also to add that the documents submitted by the applicant (Stock Register, Cash Book, Invoices etc.) were not linked to the seized goods and cash, and no purchase invoice for the impugned Gold and copy of sale invoices in respect of recovered Cash, were submitted at the time of Seizure. Hence the burden under Section 123 remains on the Respondents.

(xiv) The Cominissioner (Appeals) has not considered the fact that in response to DRI's request for conducting necessary follow-up enquiry at the premises of M/s. G.S. Gold, Mumbai situated at Chira Bazar, 1st Floor, 9/11 Poddar Mansion, Sewantilal Somachand Shah Marg. Vanka Mohalla, Mumbai 400002, the Deputy Director. O/o. Directorate of Revenue Intelligence, Mumbai Zonal Unit, vide his letter dated 15.12.2023, forwarded the visit report dated 13.12.2023 vide which it was informed that a team of Officers of DRI, Mumbai Zonal Unit, Mumbai visited the said premises and the same was found locked. On enquiry from the nearby offices, it was revealed that M/s. G.S. Gold rarely opens and also they do not have any idea about the work that was performed at the said premises. Further, another Summon dated 02.01.2024 was issued to Shri Shyam Soni (Prop. M/s. G.S. Gold, Mumbai). However, he deliberately dis-honoured the aforesaid summons and did not join and cooperate in the present investigation. This clearly shows his 'malafide intention' with the sole aim to dodge the investigation and manipulate his stock register and records to give it legitimate look in the eyes of law.

(xv) Shri Gopi Krishna Soni, during his statement dated 13.12.2023 under Section 108 of the Customs Act, claimed the ownership of seized gold and cash. But, later on Shri Shyam Soni (Prop. G.S. Gold. Mumbai), who was fugitive throughout the investigation, claimed the ownership of gold at the stage of adjudication. The controversial and contradictory submissions made by the parties at different fora indicates that it is clearly a case of outright smuggling & the non-submission of valid & legal documents in this respect renders the good as Prohibited. Section 11 (c) & (d) clearly emphasizes for the prevention of smuggling & prevention of injury to the economy of the country by uncontrolled Import/Export of Gold & Silver and it had been established beyond any reasonable doubt that the impugned goods have been brought by way of smuggling and the burden to prove that the impugned goods are not smuggled shifts to the persons from whose possession it was seized, which the party have miserably failed to do so.

(xvi) The Ld.Commissioner (Appeals), while passing the impugned order has not considered the facts as mentioned in the 'Show Cause Notice' as well as the findings in the 'Order in Original'. Thus, it appears that Order in Appeal Nos. 120-124-CUS/APPL/LKO/2025 dated 07.05.2025 passed in the instant case is bad in law and is inconsistent with the facts of the case.

(xvii) In view of the above submissions, the Order in Appeal Nos. 120-124-CUS/APPL/LKO/2025 dated 07.05.2025 passed by the Commissioner (Appeals) is not legal and proper. Accordingly, Revenue prayed for setting aside the impugned Order-in-Appeal.

9. In their cross-objection, the Respondent have made the following submissions:-

Ground 1:THE IMPUGNED GOLD WAS LEGITIMATELY OWNED AND FULLY ACCOUNTED — CUSTOMS ACT, 1962 IS NOT APPLICABLE

9.1. The Respondent, M/s G.S. Gold (Proprietor: Shri Shyam Soni), is engaged in the legitimate business of trading in gold and gold jewellery since 2016. The impugned gold was lawfully procured through tax-paid purchase invoices (GST-compliant) from local suppliers in Mumbai.

9.2. Each and every purchase bill was duly entered in the stock register maintained by M/s G.S. Gold. GST at the rate of 3% was properly paid on all purchase transactions. The Input Tax Credit (ITC) on these purchases was duly reflected in the GST returns filed by M/s G.S. Gold.

9.3. M/s G.S. Gold has a total turnover (sales) of Rs. 18 Crores for the period from 01/04/2023 to 30/11/2023, on which GST @ 3% amounting to Rs. 53 Lakhs has been paid to the government. All GST returns, tax paid challans, purchase bills, sale bills, and stock registers were duly submitted to the Additional Commissioner at the time of adjudication.

9.4. The stock on hand as on 12/12/2023 was 6731.538 grams valued at approximately Rs. 3.97 Crores, out of which only 5541 grams (valued at Rs. 3.32 Crores) was seized. Thus, the closing stock of the firm exceeded even the quantity seized, clearly establishing legitimate ownership and complete accounting.

9.5. The Customs Act, 1962 has been erroneously applied to goods that are of domestic origin, legitimately owned, and properly accounted. The Department has failed to demonstrate any basis for invoking the Customs Act against the respondent.

10.GROUND 2: THE DEPARTMENT FAILED TO DISCHARGE ITS INITIAL BURDEN OF PROVING THAT THE GOLD IS OF FOREIGN ORIGIN / SMUGGLED

10.1. The DRI /Department has made sweeping assumptions and presumptions that the gold seized was smuggled, without adducing any cogent evidence or proof to establish that the gold is of foreign origin or was smuggled into India.

10.2. There are no foreign markings, embossing, or any other indicia of foreign origin on the seized gold. The Department could not point to a single piece of evidence to establish the foreign origin of the seized gold.

10.3. As held by the Hon'ble Tribunal in the following decisions, the initial onus to prove that goods are of foreign origin lies squarely on the Customs Department:

(a) Ram Binoy Prasad v. Comm. of Customs, Patna – 2001 (132) E.L.T. 721 (Tri. – Kolkata)

(b) Harendra Prasad v. Comm. of Customs, Patna – 2001 (133) E.L.T. 668 (Tri. – Kolkata)

10.4. In the case of Commissioner of Customs (Preventive) v. Bajrang Ingole – 2024 (387) E.L.T. 437 (Tri.–Cal.) [03-11-2023], it was held that where seized gold bars had a Swastika symbol and there was no embossing of any foreign mark, Revenue failed to prove reasonable belief that impugned gold was smuggled; hence confiscation and penalty were held unsustainable.

10.5. In the case of Dharmesh B. Bhavsar v. Principal Commissioner, Customs, Jaipur – 2023 (384) E.L.T. 73 (Tri.–Del.) [17-01-2023], the Tribunal held that where the Customs Department had not discharged onus to prove smuggled nature of goods, and sale-purchase of goods in India was supported by levy of GST, goods were not liable to confiscation.

10.6. The DRI miserably failed to prove that the gold was of foreign origin, or that it was smuggled. The Department's case is built entirely on unsubstantiated assumptions which have been rightly rejected by the Ld. Commissioner (Appeals).

11.GROUND 3: STATEMENTS RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 WERE NOT VOLUNTARILY MADE AND CANNOT BE RELIED UPON

11.1. The statements purportedly recorded under Section 108 of the Customs Act, 1962 from Shri Mahesh Soni, Shri Gopi Soni, and Shri Diler Abbas were not handwritten voluntarily. On the contrary, the statements were pre-typed and signatures were obtained after typing, raising serious doubts about their voluntary nature.

11.2. All three persons — Shri Mahesh Soni, Shri Gopi Soni, and Shri Diler Abbas — are illiterate persons who were unable to comprehend the proceedings and were in a state of fear and apprehension when the gold was seized. No reliance can be placed on such statements.

11.3. In view of the suspicious circumstances surrounding the recording of such statements, and the manner in which they were prepared (typed, not handwritten), there is sufficient doubt on the veracity of these statements. The Ld. Commissioner (Appeals) has correctly discarded reliance on such statements.

12. GROUND 4: THE GOLD WAS BEING LEGITIMATELY TRANSPORTED FROM MUMBAI TO LUCKNOW FOR SALE — NO IRREGULARITY

12.1. M/s G.S. Gold is a Mumbai-based firm engaged in gold trading. Its office, books of accounts, purchase bills, sale bills, and stock registers are all maintained at its Mumbai office. The gold seized was being carried from Mumbai to Lucknow by Shri Mahesh Soni, Shri Gopi Soni, and Shri Diler Abbas for the purpose of legitimate sale.

12.2. Since all accounting documents were in the Mumbai office, they could not be produced instantly at the time of seizure in Lucknow. This was not an act of evasion, but a practical impossibility, which was adequately explained and substantiated before the adjudicating authority and the Commissioner (Appeals).

12.3. As a natural business requirement, large quantities of gold need to be transported to the place of sale. The mere carrying of a large quantity of gold does not, by itself, establish that it is smuggled. The Department has failed to connect this transportation with any smuggling activity.

13. GROUND 5: NO E-WAY BILL WAS REQUIRED FOR INTERSTATE SUPPLY OF GOLD — NOTIFICATION NO. 3/2018-CENTRAL TAX DATED 23/01/2018

13.1. As per Notification No. 3/2018-Central Tax dated 23/01/2018, no e-way bill is required to be generated for interstate supply of gold. Therefore, the absence of an e-way bill cannot be used as a ground to allege smuggling or irregularity in transportation.

13.2. The Department's reliance on the absence of an e-way bill as evidence of smuggling is completely misconceived and contrary to law. The Ld. Commissioner (Appeals) has correctly given due weightage to this notification.

14. GROUND 6: CASH SEIZED WAS LEGITIMATE BUSINESS PROCEEDS — FULLY ACCOUNTED IN BOOKS

14.1. The Indian currency of Rs. 68,80,000/- (Rupees Sixty-Eight Lakhs Eighty Thousand) found was the legitimate proceeds of cash sales of gold ornaments, made against valid GST Tax Invoices. Full GST at 3% was paid on all such sales.

14.2. In the case of Sanjay Agrawal v. Comm. of Customs (Airport) Mumbai – 2017 (357) E.L.T. 364 (Tribunal Mumbai), it was held that goods with a domestic passenger, either at an airport or at a railway station, is not the basis of smuggled goods when there is no proof of smuggling, and confiscation is not sustainable when the amount is duly accounted in books of accounts.

15. GROUND 7: THE SHOW CAUSE NOTICE WAS REPLIED TO IN TIME — NO DELAY

15.1. The Show Cause Notice dated 09/02/2024 was received with delay and the Reply was promptly given on 29/02/2024. There was no delay whatsoever on the part of the in filing a reply. The Department's contention of delay is factually incorrect and deserves to be rejected.

16. GROUND 8: SHRI SHYAM SONI FULLY CO-OPERATED IN ALL PROCEEDINGS — WRONGFUL ARREST AFTER ORDER IN HIS FAVOUR

16.1. Shri Shyam Soni, proprietor of M/s G.S. Gold, did not receive any summons and has fully co-operated with the authorities at all times. The allegation of non-cooperation is completely baseless and contrary to facts.

16.2. It is submitted that despite the Commissioner (Appeals) having passed an order in favour of Shri Shyam Soni, he was wrongly arrested, which itself demonstrates the prejudiced nature of the Department's action. The Ld. Commissioner (Appeals) has correctly appreciated this fact.

17. GROUND 9: THE ORDER OF THE COMMISSIONER (APPEALS) IS WELL-REASONED AND DESERVES TO BE UPHELD

17.1. The Ld. Commissioner (Appeals) has carefully considered all documentary evidence, including purchase bills, sale bills, stock registers, cash book, GST returns, tax paid challans, and the supporting judgements cited by the Repondents and has rightly passed the order in favour of M/s G.S. Gold.

17.2. The Additional Commissioner erred in not appreciating the voluminous documentary evidence adduced by the Respondents. The Commissioner (Appeals) has correctly remedied this error and the order passed by the Ld. Commissioner (Appeals) does not call for any interference.

17.3. The Department's appeal is devoid of any new facts or legal grounds. Accordingly, the Respondents prayed for upholding the impugned Order passed by the Commissioner (Appeals) and reject the appeal filed by the Revenue.

18. Heard both sides and perused the appeal documents.

19. We have carefully considered the rival submissions advanced by both sides, perused the records of the case, the impugned order and the materials placed before us. Upon such consideration, in our considered view, the following issues arise for determination:

(I) Whether, in the facts and circumstances of the present case, the Revenue had entertained a valid and reasonable belief that the seized gold was of smuggled origin so as to justify the seizure and consequent invocation of the statutory presumption under Section 123 of the Customs Act, 1962, or not. Whether the evidence submitted by the Respondents regarding domestic purchase of the gold is sufficient to conclude that the gold in question are not smuggled in nature

(II) Whether the statements recorded during investigation, forming the principal basis of the Revenue's case, are legally admissible and sufficiently corroborated so as to sustain the findings of confiscation and penal liability against the Respondents, or not.

Issue No. (I): Reasonable belief and burden of proof under Section 123 of the Customs Act, 1962

Whether the evidence submitted by the Respondents regarding domestic purchase of the gold is sufficient to conclude that the gold in question are not smuggled in nature

20. The principal plank of the Revenue's case rests upon the applicability of Section 123 of the Customs Act, 1962, whereby the burden of proving that the seized gold was not smuggled is sought to be shifted upon the Respondents. Before such statutory burden can operate, however, the jurisdictional requirement contained in the provision itself must first stand satisfied, namely, that the goods were seized under the Act on a "reasonable belief" that they constituted smuggled goods. The existence of such 'reasonable belief' is, therefore, not a matter of formality but a foundational fact, the absence whereof would render the statutory presumption incapable of being invoked.

20.1. In the present case, it is an admitted position that the seizure is a town seizure and not one effected at or near an international border, customs station or port of import. Equally significant is the fact that the 43 pieces of gold bars weighing 5541.00 grams, recovered from the possession of the Respondents Shri Mahesh Kumar Soni, Shri Gopi Krishna Soni and Shri Diler Abbas were admittedly bereft of any foreign markings, inscriptions, serial numbers or embossments indicative of foreign manufacture or origin. The Panchnama, the Inventory-cum-Seizure Memo and the materials brought on record are conspicuously silent as to the existence of any foreign markings upon the seized gold. Yet, the seizure records proceed to describe the country of origin as "Nepal". Save and except such recital, no independent material has been brought on record explaining the basis upon which the investigating authority could, at the very inception, attribute such an origin to the seized gold. Such a conclusion, unsupported by any contemporaneous objective material, appears to rest more on assumption than demonstrable evidence.

20.2. Before the statutory presumption embodied under Section 123 of the Customs Act, 1962 can be pressed into service, the Revenue is first required to establish the foundational fact, namely, that the goods were seized under a 'reasonable belief' that they were smuggled goods. Such reasonable belief cannot be founded upon conjectures, assumptions or mere suspicion, but must be supported by objective circumstances existing at the time of seizure itself. It is only upon the existence of such foundational facts that the reverse burden contemplated under Section 123 becomes operative. Conversely, where the very foundation of such belief is found wanting, the statutory presumption itself becomes unavailable and the ordinary rule of evidence would govern the matter, thereby requiring the Department to independently establish that the goods were in fact smuggled into India. Applying the aforesaid principle to the facts of the present case, we find that the seizure was effected from a town area and not from any notified border or customs area. More importantly, the impugned gold bars admittedly bore no foreign inscriptions, refinery marks, serial numbers or any other identifying feature suggestive of foreign origin. The Chemical Examiner's report merely certifies the purity of the seized gold as 99.4%, which, by itself, cannot constitute conclusive evidence of foreign origin, particularly when no material has been brought on record to establish that such purity is exclusively attributable to imported or smuggled gold. In absence of any intrinsic characteristic connecting the seized gold with a foreign source, the mere quantity of gold recovered or the circumstances of possession cannot, by themselves, furnish the reasonable belief contemplated under Section 123 of the Act.

20.3. Even assuming for the sake of argument that the initial burden under Section 123 had validly shifted upon the Respondents, we find that the said burden stood sufficiently discharged by the claimant/Respondent, namely, M/s G.S. Gold (Proprietor: Shri Shyam Soni). It is an admitted fact that M/s. G.S.Gold is engaged in the legitimate business of trading in gold and gold jewellery since 2016. The impugned gold was lawfully procured through tax-paid purchase invoices (GST-compliant) from local suppliers in Mumbai. In support of this claim, they have produced GST invoices. It is a fact on record that each and every purchase bill was duly entered in the stock register maintained by M/s G.S. Gold. GST at the rate of 3% was properly paid on all purchase transactions. The Input Tax Credit (ITC) on these purchases was duly reflected in the GST returns filed by M/s G.S. Gold. M/s G.S. Gold has a total turnover (sales) of Rs. 18 Crores for the period from 01/04/2023 to 30/11/2023, on which GST @ 3% amounting to Rs. 53 Lakhs has been paid to the government. All GST returns, tax paid challans, purchase bills, sale bills, and stock registers were duly submitted to the Additional Commissioner at the time of adjudication. The stock on hand as on 12/12/2023 was 6731.538 grams valued at approximately Rs. 3.97 Crores, out of which only 5541 grams (valued at Rs. 3.32 Crores) was seized. Thus, the closing stock of the firm exceeded even the quantity seized, clearly establishing legitimate ownership and complete accounting. Once such documentary evidence was produced, the burden necessarily shifted back upon the Revenue to affirmatively establish that the said documents were fabricated, forged or otherwise unrelated to the seized goods. In the present case, the Revenue has merely relied upon uncorroborated statements recorded during the course of investigation instead of leading independent and legally admissible evidence. Though reliance has been placed upon the statements of the Respondents recorded at the time of initial seizure of the gold, such assertions were negated by the documentary evidences submitted later. We observe that the investigation has not culminated in any forensic examination, expert opinion, prosecution for forger to question the genuineness of the documents produced by the Respondents. We find that the material evidences submitted by M/s. G.S.Gold conclusively demonstrate that the GST records, stock registers, invoices or business records were not fabricated or manipulated. The Revenue has not produced any substantive material evidence to establish that the transactions reflected therein were fictitious or that the seized gold could not have emanated therefrom. The Revenue has also not been able to trace any other person linking the impugned gold with any act of illegal importation.

20.4. We also find substance in the contention advanced on behalf of the Respondents that the purity report does not materially advance the Revenue's case. The Chemical Examiner has certified the seized gold to possess a purity of 99.4%, as already observed hereinbefore, whereas the Revenue has not placed any technical or scientific material demonstrating that such purity, by itself, is indicative of foreign origin or that it constitutes a distinguishing characteristic of smuggled gold. In the absence of any foreign markings or corroborative scientific evidence connecting the seized gold with any foreign source, mere purity of the gold cannot by itself furnish the reasonable belief contemplated under Section 123 of the Act.

20.5. In the present case, we find that except for the statements recorded during investigation, no contemporaneous material, call data analysis, financial trail, or any other independent evidence has been brought on record to substantiate such allegation. Serious allegations necessarily require equally cogent proof; they cannot be sustained merely on conjecture or investigative suspicion.

20.6. In this connection, we find it relevant to refer to the decision of the Hon'ble Patna High Court in the case of *Om Sai Trading Company v. Union of India [2020 (372) E.L.T. 542 (Pat.)],* wherein it was observed as follows: -

> *"18. The consignor and the consignee are recorded and are identified. The goods are not seized at any notified custom zone or area. Save and except for what is recorded in the seizure memo, there is no other material available on record. The Learned Additional Solicitor General has tried to supplement the reasons for formation of 'reason to believe', which also are on mere suspicion, through the affidavit of the authority. In the light of what is laid down by the Apex Court in Mohinder Singh Gill and Another v. The Chief Election Commissioner, New Delhi and Others, AIR 1978 SC 851, it would be impermissible for the authority to do so. When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise, for a bad order, with the passage of time, and supplementing the reasons would become good, which is not how the authorities are required to function, more so, in a case of confiscatory legislation. But assuming hypothetically, accepting the reasons furnished by the officer, even then it is nothing more than a mere suspicion. A general practice in trade cannot be, ipso facto, applied and adopted to the instant case, for unless it is shown that the act and the conduct of the petitioner makes him to be a part and parcel of the trading community, based in the area or dealing with the illegal activities of such like nature. There is no track record of past history of the instant petitioners."*

20.7. In *Madhukar Sonaba Bhagat v. Commissioner of Customs (Prev.), West Bengal [2019 (368) E.L.T. 990 (Tri. – Kol.)],* this Tribunal has held that: -

"11. The allegation is that the appellant has smuggled gold, which is liable for confiscation under Section 111 of the Customs Act, 1962. The gold was not seized while it was being smuggled either at the Port or at the Airport. It was seized from his shop in the City. In such cases, Section 123 of the Customs Act, 1962, provides in respect of the gold and some other notified goods, if the seizure was under reasonable belief, that they are smuggled, the onus of proving that they are not rests upon the person from whom the goods were seized. The first question is whether there was reasonable belief. In this case, we find that the seizure was based on the information that they had received and that the documents pertaining to the gold, were not found in shop at the time of seizure. There is nothing on record to suggest that the pieces which were seized had any foreign markings. Under these circumstances, we find that there was no reasonable belief for the seizure. Further, we find that the appellant had produced various documents to show how he came in the possession of gold and these documents, on investigation, were found to be genuine. It is for this reason that the Ld. Commissioner has refrained from imposing any penalty upon the appellant under Section 114AA of the Customs Act, 1962. Under the circumstances, we find that not only was there no reasonable belief for seizure of the gold and the Currency in the first place, but also that the appellant has satisfactorily explained that the gold and currency which were in his possession. The confiscation of gold and the currency and imposition of penalty upon the appellant under Section 112 of the Customs Act, 1962, are, therefore, not sustainable and the impugned order needs to be set aside and we do so."

20.8. Similarly, an identical issue has been examined in the case of *Samir Kumar Roy & ors. v. Commissioner of Customs (Prev.), West Bengal [2001 (135) E.L.T. 1036 (T.)].* The relevant portion of the said order reads as under: -

> *"Onus as placed under Section 123 was discharged when the appellant produced the sale/purchase vouchers showing the sale of the goods from the gold dealers who admitted having sold the same."*

20.9. We have also gone through the case-laws relied upon by the Revenue in support of its contentions. However, the factual matrix of the said cases being different from those involved herein, we are of the view that the same are distinguishable on facts and not applicable to the instant case before us.

20.10. Viewed cumulatively, the absence of foreign markings on the seized gold, the fact that the seizure was effected in the course of a town interception, the absence of any scientific or technical material connecting the seized gold with a foreign source, the production of contemporaneous commercial records by the claimant, and the absence of any independent evidence dislodging the authenticity of those documents, collectively create a substantial doubt as to whether the foundational requirement of a 'reasonable belief' stood satisfied at the time of seizure. Consequently, we are of the considered opinion that, in the peculiar facts obtaining in the present case, the invocation of the statutory presumption under Section 123 of the Customs Act cannot be sustained solely on the basis of suspicion. The burden, therefore, cannot be said to have shifted upon the Respondents. Thus, we hold that the provisions of Section 123 of the Customs Act are not applicable to the facts and circumstances of this case. Hence, it is the responsibility of the Revenue to establish that the gold in question were smuggled in nature, which they failed. Accordingly, we hold that the initial seizure was effected without having any 'reasonable belief' that the gold in question were smuggled in nature.

Issue No. (II): Revenue's reliance on the statements recorded during the course of investigation

21. Having held that the statutory presumption under Section 123 of the Customs Act, 1962 cannot, in the peculiar facts of the present case, be mechanically invoked, we now proceed to examine whether the independent evidence relied upon by the Revenue—principally the statements recorded during the course of investigation— would, by itself, be sufficient to sustain the allegations contained in the impugned order. Upon a careful examination of the record, we find that the Revenue's case substantially rests upon the statements purportedly recorded under Section 108 of the Customs Act, 1962 from Shri Mahesh Soni, Shri Gopi Soni, and Shri Diler Abbas. We find that the said statements were not handwritten. The Respondents claimed that the statements were pre-typed and signatures were obtained after typing. These assertions cannot be simply brushed aside. It is an admitted fact that all three persons — Shri Mahesh Soni, Shri Gopi Soni, and Shri Diler Abbas — are illiterate persons. Their contention is that they were unable to comprehend the proceedings and were in a state of fear and apprehension when the gold was seized. Accordingly, the Respondents contended that no reliance can be placed on such statements. We find that the Ld. Commissioner (Appeals) has examined the issue and given a categorical finding on this issue before concluding that reliance cannot be placed on such statements. For ready reference, the relevant paras from the impugned order are extracted below:

21.1. We find considerable substance in the grievance of the Respondents that the statements have been relied upon without adherence to the mandatory statutory safeguards prescribed under Section 138B of the Customs Act, 1962, which is in pari materia with Section 9D of the Central Excise Act, 1944. The legislative scheme does not contemplate automatic admission of statements recorded during investigation as substantive evidence against a noticee. The adjudicating authority is first required to examine the maker of such statement as a witness, record its satisfaction regarding admissibility and thereafter afford the affected noticee an effective opportunity to test such evidence through cross-examination. These safeguards are not empty formalities but constitute substantive facets of the principles of natural justice. The record before us does not disclose compliance with the aforesaid mandatory requirements before placing reliance upon the statements in question. As the statements have not been subjected to the statutory safeguards embodied under Section 138B of the Customs Act, 1962, we hold that such statements cannot be relied upon and equated as conclusive evidence for discarding the documentary evidence furnished by the Respondents in support of their case.

21.2. It is also pertinent to take note of the submissions advanced on behalf of Respondents regarding the circumstances under which their statements under Section 108 of the Customs Act came to be recorded. It has been specifically contended that the statement was electronically typed by the investigating officers and the Respondents were merely directed to append their signature without being afforded an opportunity to meaningfully verify its contents. Although the statements recorded under section 108 of Customs Act can be relied upon in the instant proceedings, the fact remains that once its voluntariness stood seriously disputed, prudence demanded that the Department substantiate the same by leading independent corroborative evidence before placing exclusive reliance thereon. No such corroboration is forthcoming from the record. Therefore, in the peculiar facts and circumstances of the case, we are of the opinion that the statements recorded from the Respondents alone cannot be relied upon so as to conclude as to the foreign character or smuggled nature of the gold in question. We observe that the Revenue's case rests predominantly upon the untested statements recorded during investigation, which are not supported by independent documentary or scientific evidence capable of withstanding judicial scrutiny. The documentary evidence relied upon by the Respondents has not been displaced by any cogent material except such statements. In view of all the aforesaid reasons, we are of the considered opinion that the evidence relied upon by the Revenue does not attain the standard of legal admissibility and probative value necessary to sustain the findings recorded in the impugned orders. The reliance placed upon uncorroborated and procedurally untested statements, creates sufficient doubt regarding the allegations levelled against the Respondents. The cumulative effect of the evidentiary deficiencies noticed hereinabove creates sufficient doubt as to the correctness of the Revenue's case, and such doubt must, in law, be resolved in favour of the Respondents.

21.3. In view of the foregoing discussion and for the reasons recorded hereinabove, we are of the considered opinion that the Revenue has failed to establish the allegations of smuggling by legally admissible and cogent evidence. We find that the Ld. Commissioner (Appeals) have examined all these issues and given a categorical findings before setting aside the confiscation of the gold and the penalties imposed on the Respondents herein. We do not find any infirmity in the impugned order passed by the Ld. Commissioner (Appeals). Consequently, we uphold the impugned order passed by the Commissioner(Appeals) setting aside the absolute confiscation of the impugned gold under Sections 111(b) and 111(d) of the Customs Act, 1962.

21.4. As regards the aspect of imposition of penalty under Section 112 of the Customs Act, 1962, having held that the Revenue has failed to establish, by legally admissible and cogent evidence, that the impugned gold was of smuggled origin and having consequently found the order of confiscation to be unsustainable, the foundation upon which the penalties imposed under Section 112 of the Customs Act, 1962 rest, itself ceases to exist. Penalty under Section 112 is consequential in nature and necessarily presupposes the existence of goods liable to confiscation under the Act. Once the very basis for confiscation fails, the consequential penal liabilities cannot survive independently.

21.5. We are also of the view that the penalty imposed upon the Respondents under Section 114AA of the Customs Act, 1962 is equally unsustainable. Section 114AA contemplates a deliberate act of knowingly or intentionally making, signing or using a declaration, statement or document which is false or incorrect in any material particular for the purposes of the Customs Act. Such penal provision, being quasi-criminal in nature, necessarily requires the Revenue to establish the requisite element of conscious knowledge and deliberate falsity by cogent and convincing evidence. In the present case, however, the allegation that the documents relied upon by the Respondents, were forged or fabricated, has itself not been established by any independent evidence. As discussed hereinbefore, the Revenue has principally relied upon uncorroborated statements recorded during investigation, nor has any forensic, expert or other objective evidence been brought on record to conclusively establish fabrication of the documents in question. In such circumstances, the essential ingredients necessary for invoking Section 114AA remain unproved. Accordingly, we hold that the Ld. Commissioner (Appeals) has rightly set aside all the penalties imposed on the Respondents herein and hence we uphold the setting aside the penalties in the impugned order.

22. Regarding the confiscation of Indian currency of Rs. 68,80,000/- (Rupees Sixty-Eight Lakhs Eighty Thousand), we find that the Ld. Adjudicating authority has confiscated the currency on the presumption that the said currency pertains to sale proceeds of smuggled gold. The submission of the Respondent is that the said currency was the legitimate proceeds of cash sales of gold ornaments, made against valid GST Tax Invoices. Full GST at 3% was paid on all such sales.

22.1. In this regard, we find that the Department has failed to place on record any cogent material establishing any nexus between the seized currency and the alleged act of smuggling of gold. As already held by us hereinabove, the very foundation of the proceedings alleging smuggling of gold has failed. Consequently, the question of appropriating the said seized amount towards any non-existent customs liability does not arise.

It is also well settled that currency seized during investigation cannot be retained indefinitely in the absence of legally admissible evidence establishing its connection with the alleged offence. A similar view has been taken by this Tribunal in *Rajendra Roy & anr. v. Commissioner of Cus. (Prev.), Kolkata [Final Order Nos. 75615-75616 of 2026 dated 20.05.2026 in Customs Appeal Nos. 75021 & 75022 of 2022 – CESTAT, Kolkata],* wherein it was observed that, in the absence of any investigation establishing the source of the seized currency or its nexus with the alleged offence, the Department is not justified in retaining the same. The relevant portion of the said order is reproduced below as ready reference:
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> *"14.2. It is a settled position of law that statements recorded during investigation, in the absence of corroborative evidence, cannot ipso facto form the sole basis for sustaining a serious charge such as confiscation of currency on the ground of it being sale proceeds of smuggled goods. The allegation of the Revenue requires to be supported by cogent material indicating a clear nexus between the seized currency and the alleged smuggling activity. In the present case, it is seen from the record that no investigation appears to have been conducted to trace the source of the currency, nor has any attempt been made to establish a linkage between the seized gold and the alleged generation of sale proceeds in the form of the impugned currency. There is no iota of evidence on record so as to arrive at the conclusion that the seized amount represents proceeds of smuggled gold. Further, the formation of a "reasonable belief", which is a sine qua non for seizure and confiscation under the provisions of the Customs Act, is not discernible from the records insofar as the Indian currency is concerned. Mere suspicion, howsoever strong, cannot take the place of proof."*

22.2. The same view has been taken in the case of Sanjay Agrawal v. Comm. of Customs (Airport) Mumbai – 2017 (357) E.L.T. 364

(Tribunal Mumbai), wherein it was held that goods with a domestic passenger, either at an airport or at a railway station, is not the basis of smuggled goods when there is no proof of smuggling, and confiscation is not sustainable when the amount is duly accounted in books of accounts.

23. In view of the above, we pass the following order:-

(i) We uphold the impugned order passed by the Commissioner(Appeals) setting aside the absolute confiscation of the impugned gold under Sections 111(b) and 111(d) of the Customs Act, 1962.

(ii) We hold that the Ld. Commissioner (Appeals) has rightly set aside all the penalties imposed on the Respondents herein and hence we uphold the setting aside the penalties in the impugned order.

(iii) We direct that the amount Rs.68,80,000/- seized from the Respondent be released to them forthwith along with applicable interest.

24. The appeals filed by the Revenue are dismissed, with consequential relief, if any, as per law for the Respondents.

(Pronounced in open court on 14.08.2026)

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

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

Nihal