CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 30301 of 2025
(Arising out of **Order-in-Appeal** No.VJD-CUSTM-000-APP-138 to 143-2024-25 dated 01.01.2025 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

Commissioner of Customs Vijayawada .. **APPELLANT**
55-17-3, C-14,
Industrial Estate,
Autonagar,
Vijayawada,
Krishna,
Andhra Pradesh – 520 007.

VERSUS

Shri Rajendra Kumar Jain .. **RESPONDENT**
S/o Shri Bhawarlal Jain,
M/s Sri Jain Jewel Park,
D.No.5-6-14,
Court Street,
Narasapur,
Andhra Pradesh – 534 275.

APPEARANCE:
Shri V.R. Pavan Kumar, Authorized Representative for the Appellant.
Shri P.S, Sastry, Consultant for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30384/2026

Date of Hearing: 21.04.2026
Date of Decision: 21.07.2026

[ORDER PER: ANGAD PRASAD]

The present appeal has been preferred by the Department under Section 129A of the Customs Act, 1962 assailing the impugned Order-in-Appeal No. VJD-CUSTM-000-APP-138 to 143-2024-25 dated 01.01.2025 passed by Commissioner (Appeals), Guntur.

2. The respondent, Shri Rajendra Kumar Jain, has filed Cross Objection supporting the impugned order and passing the grounds taken in the

Departmental appeal. The Cross Objection has been treated as counter arguments by order dated 12.01.2026.

3. The dispute arises out of seizure of (i) Gold weighing 940.46 grams (comprising 415.93 grams without marking and 524.53 grams with foreign markings), and (ii) foreign currency equivalent Rs. 16,63,041/-.

4. The Adjudicating Authority had ordered absolute confiscation of entire gold and ordered confiscation of foreign currency and also imposed penalty of 8,00,000/- under Section 112 of the Customs Act, 1962.

5. The Commissioner (Appeals), after detailed examination, allowed the appeal and ordered that:

i) Set aside absolute confiscation regarding 415.93 grams without markings an ordered unconditional release.

ii) Upheld confiscation regarding 524.53 grams gold with markings but allowed redemption under Section 125 of the Customs Act, 1962.

iii) Set aside Confiscation of foreign currency and allowed redemption. and,

iv) Reduced penalty substantially.

6. The respondent raised preliminary objection regarding maintainability of the Departmental appeal. The respondent has objected to the maintainability of the appeal on the ground that the appeal is barred by the Monitory Limits Circulars issued by the Board under Section 131BA of the Customs Act, 1962. Learned Counsel for the respondent submits that in terms of Board Circular F.No.390/MISC/163/2010-JC dated 17.08.2011 as amended by Circular F.No.390/MISC/30/2023-JC dated 02.11.2023, the Department cannot file appeal before this Tribunal where the amount

involved is below the prescribed Monetary Limit of Rs.50,00,000/-. It is argued that since the Departmental appeal concerns confiscation and redemption fine and the amount relatable to the dispute falls below or around the threshold, the appeal itself is not maintainable and liable to be dismissed on the threshold. Respondent has relied on the decision of R.K. Swami [2025 (9) TMI 1550].

7. Per contra, Learned Authorized Representative for the Revenue submits that the objection is misconceived both on facts and in law. It is argued that the present appeal is not a routine revenue appeal involving demand of duty, interest or penalty. Rather, the Department seeks restoration of the order of the Original Adjudicating Authority whereby, absolute confiscation of smuggled gold and foreign currency was ordered.

8. The Revenue submits that vide Order-in-Original No. 7/2024-25, the Original Authority had absolutely confiscated the total gold weighing 940.46 grams, valued at Rs. 55,33,947/- and foreign currency equivalent to Rs 16,63,041/-. Thus, the total value involved goods to Rs. 71,96,988/-. Learned AR has relied on the following judgments:

(i) CC (P) Vs Daleep Kumar Verma and Ors [2024 (12) TMI 300 Meghalaya HC]

(ii) CC Vs Disha Tulsiani and Ors [2024 (3) TMI 1058 Allahabad HC]

9. Heard both the sides on preliminary objections as well as on merits and perused the records with their submissions.

Adjudication on preliminary objection raised by respondent:

10. In the preliminary objection, the short issue for determination is whether the present Departmental appeal is barred by the Monetary Limits

Circular, or whether such circular is not applicable in cases involving challenge to setting a side of absolute confiscation of smuggled goods/currency.

11. The Board Circular dated 17.08.2011 provides that the determinative element for applying Monetary Limits would originally be duty/tax under dispute. It further clarifies that where the subject matter of dispute concerns penalty or interest, the amount of such penalty or interest may be considered for determining maintainability. Therefore, a plain reading of circular shows that it primarily governs appeals involving duty, tax, interest or penalty. The circular is essentially litigation management policy to reduce avoidable appeals in low revenue matters.

12. However, the present case stands on a different footing. The Department is not challenging demand of duty or quantification of penalty, or computation of interest. The Department is challenging the appellate order in so far as it interferes with absolute confiscation of smuggled gold and foreign currency. In cases of confiscation, particularly absolute confiscation, the dispute is not merely monetary. Such proceedings involve enforcement of Customs restrictions, anti-smuggling measures and national economic interests. Under the Customs Act, confiscation is not merely a revenue mechanism. Confiscation is one of the statutory tools to combat smuggling and in force restrictions/prohibitions. Section 11 of the Customs Act empowers the Central Government to prohibit import or export of goods for several purposes, including maintenance of security of India, prevention of smuggling, conservation of foreign exchange, and prevention of injury to the economy of the country. Thus, Customs law is not enacted solely for collection of revenue. It also protects economic security, monetary stability,

and national interest. Therefore, where smuggled gold and foreign currency is ordered to be absolutely confiscated, the issue transcends beyond mere revenue implications.

13. We find force in the revenue's submissions for permitting release of restricted/smuggled goods by applying monetary threshold mechanically as that may defeat the very object of Customs enforcement.

14. Learned Authorized Representative of the Department has relied upon Daleep Kumar Verma and ors. supra, wherein, the Hon'ble High Court observed that the intent of the Monetary Limit circular is plain and it is designed for disputes involving realization of duty and allied levies. The Court further observed that cases involving absolute confiscation of smuggled goods stand on a different footing. The High Court held in substance that where success of Revenue would result in restoration of absolute confiscation without right of redemption, the appeal cannot be dismissed merely on monetary threshold. This ratio squarely supports the revenue's stand. The relevant paras of the judgment as follows:

> "9. First of all, the intent and purpose of the Circular is very plain. Where realization of duty and other levies are involved, the Government would only challenge any adverse order, if on success in the proceedings, it would be able to realize an amount equal to or above the threshold limit indicated in the notification. Any realization below the threshold limit did not seem to have been considered significant by the Government. This notification clearly would not cover cases of smuggling where orders for confiscation and imposition of fine, penalty etc. are provided, without any right given to the delinquent to redeem the goods upon payment of duty, penalty etc. This is a case where no such right has been given.
>
> 10. Therefore, if the revenue succeeds before us the order-in-original is likely to be restored resulting in absolute confiscation of the goods along with other penalties. If the respondents succeed, it would result in affirmation of the order of the Tribunal. So if one possible result is absolute confiscation of the goods without any right of redemption on payment of duty, penalty etc. there is not question of the appeal being dismissed on the ground that the duty payable would be less than Rs.1 crore."

15. Learned AR has also relied upon Disha Tulsiani and Ors, supra. In that case, the Hon'ble High Court considered the applicability of Monetary Limit in confiscation matters and observed that for examining maintainability, the value of confiscated goods must be taken into consideration. Hon'ble High Court has held as follows:

> "6. On the earlier date, when the appeal was taken up, the learned counsel for the respondents/assessees raised an objection as to maintainability of the present appeals by relying on the Circular/Letter No. 390/Misc/30/2023, (dt.02.11.2023). For ready reference........
>
> 7. Thus it is litigation policy of the Union of India to not prefer or press revenue appeals wherein the revenue implication may not exceed monetary limit of Rs. 1 crore.
>
> 8. While the confiscated gold was valued at more than Rs. 1 crore at the same time that was apportioned amongst three assessees namely Ms. Disha Tulsiani, Sri Nirmal Tulsiani and Sri Ashok Kumar Talhani.
>
> 9. Thus individual dispute in each of the appeals is for below the monetary limit of 1 crore."

16. Applying the above principle, even assuming the argument that the circular applies, the value involved in the present case is Rs. 71,96,988/-, which exceeds the threshold of Rs. 50,00,000/- prescribed for appeal before the Tribunal. Thus, even on that basis, the present appeal cannot be held to be barred.

17. The respondent has relied upon the decision of Hon'ble Manipur High Court in R.K. Swamy, supra. We find that the said judgment does not assist the respondent. In that case, the value of confiscated goods together with penalty was below the applicable threshold. Therefore, High Court dismissed the appeal on facts. The ratio of R.K. Swamy does not lay down absolute proposition that every confiscation appeal is barred by monetary circular.

Rather, the Court considered the value involved in that specific case. Therefore, the respondent's reliance on the said judgment is misplaced.

18. Upon cumulative consideration, we hold as under:

i) The present appeal does not primarily involve duty, tax, interest or penalty.

ii) The principal issue concerns restoration of absolute confiscation of smuggled gold and foreign currency.

iii) Monetary Limit Circular cannot be applied mechanically to defeat Customs enforcement in confiscation matters.

iv) Even otherwise, the total value involved is Rs. 71,96,988/-, which is above the prescribed threshold of Rs. 50,00,000/-.

19. In view of the above findings, we are of the considered opinion that the preliminary objection raised by the respondent is devoid of merit. Therefore, we hold that the Department appeal is maintainable and is not barred by the Monetary Limits Circular.

20. Therefore, preliminary objection raised by the respondent regarding maintainability of the appeal on the ground of Monetary Limit is rejected.

Adjudication on the merits of the appeal:

21. Learned AR submits that Foreign Currency found from Shri Nageswara Rao for purchase of Foreign Gold Bullian and Foreign Currency found at shop of RK Jain, obtained by sale of Foreign Gold Bullion / Jewellery which was not able to produce any valid legal documents. The GST e-invoices are an afterthought and the said purchase of gold bullion on 17.10.2023 for which invoices were raised on 18.10.2023, and done to camouflage the foreign

gold bullion found as even the quantity and number of pieces of gold are not matching, even after accepting untenable contentions of respondent and Shri Amarchand Sha.

22. The Learned AR submits that the Customs Officers had valid reason to believe for seizure of Foreign Origin Gold Bullion and its consequential seizure and respondent has failed to discharge the burden cast on him under Section 123 of the Customs Act.

23. Denial of cross-examination does not vitiate proceedings. Redemption should not have been allowed by Learned Commissioner. The burden of proof was not discharged by respondent as provided under Section 123 of the Customs Act.

24. It is also submitted that only respondent Shri RK Jain has contested the Departmental appeal but none of the other parties have contested the appeal before CESTAT, thereby, other parties have nothing to state against the said Show Cause Notice. On adjudication, Learned Commissioner (Appeals), failed to give any coherent or logical reasoning for modifying the order of Adjudicating Authority.

25. Learned Authorized Representative, in view of the above submissions, has requested to set aside the impugned order and he stood the order of Adjudicating Authority. Learned AR has relied on the following cases:

(i) Commissioner of Customs, Kerala Vs Om Prakash Khatri [2019 (3) TMI 457 – Kerala HC]

(ii) Indru Ramchand Bharvani Vs Union of India [1988 (7) TMI 78 – SC]

(iii) Labhchand Dhanpat Singh Jain Vs State of Maharashtra [1974 (12) TMI 40 – SC]

(iv) State of Maharashtra Vs Natwarlal Damodardas Soni [1979 (12) TMI 78 – SC]

(v) Shah Guman Mal Vs State of Andhra Pradesh [1980 (2) TMI 96 – SC]

(vi) Assistant Collector of Customs Vs Mohanlal Shankerlal Kansara [1987 (3) TMI 130 – SC]

(vii) Commissioner of Customs (Air) Vs P. Sinnasamy [2016 (9) TMI 879 – Madras HC]

(viii) Pukhraj Vs D.R. Kohli, Collector of Central Excise, Madhya Pradesh, Vidarbha and Another [1962 (3) TMI 2 – SC]

26. Learned Counsel for the respondent submitted that the revenue has mainly challenge the findings of the Commissioner (Appeals) on the ground that the seized gold and foreign currency ought to have been absolutely confiscated under the provisions of the Customs Act, 1962. The said contention is misplaced and contrary to the evidence available on record.

27. It is submitted that out of the total seized gold, 415.93 grams was specifically recorded in the seizure as melted gold bar with nil markings and nil serial number. The inventory drawn at the time of seizure itself clearly regards that no foreign markings of any nature was found on this quantity. In the absence any foreign markings, brand identification, serial number, import document, route of smuggling, or corroborative evidence linking the said gold to any act of illicit import, the mere fact of possession cannot lead to the presumption that the gold is of smuggled or foreign origin. Though Section 123 of the Customs Act shifts the burden of proof in notified goods like gold, the initial burden is upon the Department to establish a reasonable belief regarding smuggled nature and the same cannot be discharged merely on suspension. In the present case, no material was brought on the record to establish that the gold weighing 415.93 grams originated from foreign source. The Learned Commissioner (Appeals), after detail examination, rightly observed that there were no foreign marking on this quantity,

investigation failed to establish foreign origin and the assayer's report merely certificates purity and not origin. The purity of gold by itself cannot establish foreign origin, as gold of 999 purity is also available in domestic markets though legal channels. Therefore, the findings of the Commissioner (Appeals), granting unconditional release of 415.93 grams is justified and consistent with settled law.

28. Learned Counsel for the respondent submits that in respect of remaining 524.53 grams, it is not disputed that certain pieces bore markings such as "VALCAMBI SUSSE", "RAND" refinery, along with serial number on some biscuits. Learned Commissioner (Appeals), carefully analyzed this quantity and correctly distinguished between foreign markings indicating probable foreign origin, and proof of actual smuggling into India in violation of law. Even, assuming foreign origin, confiscation under Customs law requires evidence of illicit import or contravention of import conditions. The Department failed to establish, who imported the gold, from where it was imported, through which port is entered India and when such import occurred.

29. The respondent produced invoices, GST payments details and banking records to explain licit acquisition. Though the documents may not exactly tally with serial numbers, they clearly support bonafide purchase through business channels. Learned Commissioner (Appeals), took a balanced view that absolute confiscation was unwarranted and redemption on payment of fine would meet the ends of justice. It is settled that absolute confiscation is an extreme consequence and should be reserved for serious cases involving clear evidence of prohibited or smuggled goods. Gold, per se, is not prohibited goods, at best it may become liable to confiscation if imported in

violation of conditions. Therefore, the order permitting redemption on fine cannot be faulted.

30. Learned Counsel for the respondent submits that the Adjudicating Authority adopted contradictory reasoning by treating the currency on one hand as sales proceeds of smuggled gold under Section 121, and on the other hand as illegally imported goods under Section 111 of the Customs Act, such mutually in-consistent findings themselves show absence of proper evidentiary found-ation. For confiscation under Section 121, the Department must prove that the currency represents sale proceeds of smuggled goods. No such evidence exists in the present case. It is also submitted that possession of foreign currency without adequate documents constitutes contravention under FEMA, and every contravention does not warrant absolute confiscation. Under FEMA, confiscation is generally reserved for grave and serious violations. In ordinary contraventions, Monitory penalty is considered sufficient. Therefore, release of foreign currency on payment of redemption fine was appropriate. Learned Adjudicating Authority has failed to provide right to cross-examination & violates principle of natural justice.

31. It is also further submitted that fixation of redemption fine and penalty falls within the discretionary jurisdiction of the Adjudicating / Appellate Authority and interference is warranted only when such discretion is arbitrary or perverse. In the present case, exercised judicial discretion after considering facts and circumstances, therefore, no any perversity or legal infirmity has been shown in exercised of such discretion. Learned Counsel for the respondent has relied on the following judgments:

i) Andaman Timber Industries Vs Commissioner of Central Excise, Kolkata – II [2015 (324) E.L.T. 641 (S.C.)]

ii) Shri Kishore Kumar Gilda Vs Commissioner of Customs, Vijayawada, Final Order No. A/30272/2026 dated 08.05.2026 in Appeal No. C/30009/2015, Hyderabad.

32. The following issues arise for adjudication;

(a) Whether gold without markings 415.93 grams is liable for confiscation?

(b) Whether gold with markings (524.53 grams) justifies absolute confiscation?

(c) Whether denial of cross-examination violates principle of natural justice?

(d) Whether confiscation of foreign currency is sustainable?

(e) Whether penalty is justified?

33. It is a admitted fact that the gold of 415.93 grams have no any foreign markings exists, no any serial number or refinery identification exists. The entire case of the Department rests on purity of gold and alleged statements only. Assayer Shri Krishna Murari, certified the purity as 89.54 & 99.83 of the respective gold.

34. It is settled law that purity alone cannot establish foreign origin. In the case of CC Vs RK Enterprises [2016 (340) ELT 67 (P&H High Court)] Hon'ble High Court held that mere high purity of gold cannot by itself establish foreign origin or smuggled nature of the goods; the Department must adduce independent corroborative evidence. Hon'ble Supreme Court in the case of Mohammad Umar [2015 (319) ELT 593 (SC)] held that purity alone is not conclusive proof that gold is of foreign origin or smuggled. It is also important that in the present case no such purity as reported by Assayer. Hon'ble Supreme Court also held that confiscation and penalty under

Customs Law must be supported by clears, cogent and legally admissible evidence, mere suspicion or uncorroborated allegations are not sufficient.

35. Section 123 of the Customs Act applies when goods are notified and reasonable belief of smuggling exists. The Hon'ble Supreme Court in the case of Collector VS D. Bhoormull [1983 (13) ELT 1546 (SC)] held that Department must first establish a foundational fact giving rise to reasonable belief. Further, in Vinod Solanki Vs UOI [2009 (233) ELT 157 (SC)] it was held that suspicion cannot replace legal proof. Thus, burden shifts only when initial burden is discharged by the Department. Hon'ble Kerala High Court decision which was upheld by Supreme Court. Department had relied on Om Prakash Khatri, supra, which is not applicable in the present case since facts are distinct. No any attempt to erase the marking in the present case. Likewise, other citations cited by revenue are not applicable in the factual matrix.

36. Further, in absence of markings, Section 123 of the Customs Act is not automatically attracted. Thus, the Commissioner (Appeals) has rightly observed that no prima facie evidence exists to classify the gold as smuggled and assessor's report only shows purity, not origin. Therefore, the decision that 415.93 grams gold is not liable for confiscation is legally correct and requires no any interference.

37. Gold of 524.53 grams with marking "VALCAMBI SUSSE", "RAND" and also serial numbers, prima facie foreign origin is established, and Section 123 of the Customs Act applies. However, the respondent has produced GST invoices, banking transaction and purchase details. Though discrepancies were noted, it cannot be said that the explanation is wholly false or there is conclusive proof of smuggling. The entire case of the Department is

premised on the fact that the gold biscuits bear foreign markings. It is now well settled that foreign markings by themselves do not establish that the goods are smuggled. Gold is a commodity which circulates widely in the domestic market and may bear foreign inscriptions even when legally acquired. In Ratan Kumar Saha Vs CC, Patna [2021 (375) E.L.T. 435 (Tri-Kolkata)] it was held that mere foreign markings cannot lead to the conclusion that the gold is smuggled in the absence of any corroborative evidence. Similarly, in Gian Chand Vs State of Punjab [1961 (11) TMI 1 – SC] the Hon'ble Supreme Court held that suspicion, however, strong cannot take the place of proof.

38. In the present case, recovery has been made from respondent's jewellery shop i.e. M/s Jain Jewel Park and no any link has been established with any act of smuggling. Therefore, we hold that the allegation of smuggled gold is not supported by any tangible evidence.

39. Certainly, burden of proof of under Section 123 of the Customs Act, 1962 on the respondent, but this burden is not beyond reasonable doubt as in criminal trial but burden is like in civil nature, means only preponderance of probability is applied in this cases. The Adjudicating Authority has ordered the absolute confiscation of gold. It is a settled position that gold in not a prohibited item but a restricted item, and therefore, even where confiscation is justified, the option of redemption under Section 125 of the Customs Act must be given ordinarily. In Shaik Jamal Basha Vs Government of India [1997 (91) E.L.T. 277 (A.P.)] it was held that absolute confiscation of gold is not justified in routine cases. Further, in Smt. Jhansi Rani Vs The Principal Commissioner of Customs, the Joint Commissioner of Customs (Adjudication – Air), [2025 (2) TMI 30 – Madras High Court] the Hon'ble Madras High

Court reiterated that redemption should be allowed unless exceptional circumstances exist. Allahabad High Court in the case of Commissioner of Customs, Aliganj Lucknow Vs Rajesh Jhamatmal Bhat, [2022 (382) E.L.T. 345 (All)] confiscated gold not being prohibited goods, should be offered for redemption. Therefore, absolute confiscation is not justified. The Hon'ble Supreme Court in Hargovind Das K. Joshi [1992 (61) ELT 172 (SC)] held that even where confiscation is upheld, redemption is dependent on facts.

40. Therefore, Commissioner (Appeals) rightly exercised discretion under Section 125 of the Customs Act for allowing releasing the goods on payment of redemption fine.

41. Learned AR stated that foreign currency equivalent to INR 13,09,696.25 recovered from Nageshwar Rao & foreign currency equivalent to INR 3,53,345/- from the possession of respondent's shop which was sale proceeds of smuggled gold, which is liable to be confiscated. Learned Commissioner (Appeals), wrongly ordered to release on payment of redemption fine. Whereas, Learned Counsel argued that finding of Learned Adjudicating Authority in this regard are contrary. No any corroborative evidence that seize currency is related to sale proceeds of any smuggled goods. Learned Commissioner (Appeals), observed in this regard as thus:

> 6.18 – Consideration of Seized Foreign Currency
>
> Now, I shall deliberate on the seized foreign currency. The circumstances do not conclusively establish that the confiscation was the outcome of an unlawful transaction. A possible inference that may arise is that the alleged proceeds were in possession of the accused without proper documentation or justification. The provisions of FEMA (Foreign Exchange Management Act) suggest that seizures should be based on well –substantiated evidence. In the present case, the mere possession of foreign currency does not automatically imply illegal acquisition or circulation, as there is no direct evidence of illicit financial dealings. The transaction in question does not meet the criteria for financial misconduct, nor does it establish the illicit origin of the funds. Thus, in the absence of substantive proof, it is

unreasonable to conclude that the seized currency was acquired unlawfully. Given this, imposing a penalty based on assumptions rather than concrete evidence would be inappropriate. The decision should be based solely on facts, not on presumptions or speculative reasoning.

42. Earlier decision of this Bench in the case of Shri Kishore Kumar Gilds, supra, it was held that the burden is entirely upon the Department to prove that there was a sale and the sale was smuggled gold and the money represents such sale proceeds. Tribunal Kolkata in the case of Bijoy Kumar, Agrawala and others Vs Commissioner of Customs (Preventive) [2024 (5) TMI 529 – CESTAT – Kolkata], where in, it was held that in the absence of clear nexus between cash and smuggled goods, confiscation of currency is not sustainable. The relevant paras are as thus:

"13.1.We observe that this view has been taken by the Tribunal in the case of Ramachandra v. Collector of Customs [1992 (60) E.L.T. 277 (Tribunal)], wherein it has been held that the Indian currency cannot be held as sale proceeds of smuggled gold and the same is not liable for confiscation. The relevant part of the decision is reproduced below: -

"4. At the outset it is pertinent to note that no gold was seized either from the appellant or Shri Satram Das or Shri Bhaghu Sindhi. Therefore, it is not understood as to how the currency seized from the appellant can be said to represent the sale proceeds of smuggled gold. The appellant was produced before the Chief Judicial Magistrate, Economic Affairs, Jaipur on 12-1-1987. On 10-1-1987 itself a telegram was sent to the Assistant Collector of Customs, Udaipur by the son of the appellant wherein he had stated that his father was forcibly taken to the Customs Office. Another telegram was sent on 11-1-1987 to the same effect, as the appellant was not released by them. After release on 15-1-1987 the appellant got himself examined by a Government Doctor who furnished a certificate certifying the presence of injuries like bruises on the right upper lip, left wrist and swellings and dislocation of tooth. The Doctor has certified that one of the injuries is of a grievous nature. On 20-1- 1987 the appellant wrote to the Assistant Collector retracting his statement of 10-1-1987. None of this has been discussed in the impugned order which merely brushes aside the defence of the appellant for the reason that he did not complain of forcible detention and extorted statement at the earliest opportunity viz. when he was produced before the Magistrate by the Customs Officers. In addition the opportunity to cross-examine Shri Satram Das and Shri Bhaghu Sindhi and the panch witnesses has been denied to the appellant.

5. It is also seen that the charges under the Gold (Control) Act has been dropped against all the persons to whom show cause notice has been issued and the charges under the Customs Act has been dropped against the other two. It would appear that the penalty of Rs. 50,000/- on the appellant has been imposed for breach of Section 121 of the Customs Act. Before violation of Section 121 is established the following ingredients must be satisfied:

(i) there must be a sale. .

(ii) the sale must be of smuggled goods.

(iii) the sale must be by a person having knowledge or reason to believe that the goods were of smuggled origin.

(iv) the seller and purchaser and the quantity of gold must be established by the Customs authorities.

6. In this case, however, none of the requisites of Section 121 have been fulfilled - no sale has been established, identity of the buyer and seller has not been established. As a consequence, the currency cannot be considered to represent the sale proceeds of the contraband goods and, therefore, no violation of Section 121 has been made out. Since the charge under Section 121 of the Customs Act has not been proved against the appellant the currency notes cannot be retained by the Department and have to be returned to the appellant. Imposition of penalty is also not legal and proper in the absence of proof of violation of any provisions of the Customs Act."

13.2. The same view has been held in the case of Sudesh Kumar Mittoo v. Collector of Cus. & C.Ex., Jaipur [2001 (136) E.L.T. 100 (Tri. - Del.)] wherein it was held as under: -

"8. ...

As regards the confiscation of Rs. 25,000/- Indian currency, it is not possible to say that this currency was as a result of transaction of smuggled gold biscuits. Gold biscuits have been sold by the jewellers to Shri Sudesh Kumar. The cash pertained to him and this cash was not out of smuggled gold. Therefore, confiscation of Indian currency is set aside. It is also seen that the Collector has not given detailed reasoning for confiscation of Indian currency in terms of reply given by Shri Sudesh Kumar. Therefore, confiscation of Indian currency is set aside.

..."

13.3. In view of the above, we hold that the confiscation of Indian currency of Rs.46,00,000/- under Section 121 of Customs Act, 1962 is not sustainable. Accordingly, we set aside the confiscation of the Indian currency in the impugned order.”

Similarly, CESTAT Ahmedabad in the case of Hanumansingh Lakhavat, it was held that currency cannot be confiscated merely on suspicion. In the present case, there is absolutely no evidence to establish any nexus between the seized cash and alleged smuggled gold. Therefore, confiscation of currency is also not sustainable.

43. Thus, the ratio of the above judgments squarely applies in the factual matrix.

44. The Department relied upon statements of Co-accused, adjudicating panch witnesses and officers. However, cross-examination was denied by the authority. The Hon'ble Supreme Court in Andaman Timber Industries [2015 (324) ELT 641 (SC)] held that denial of cross-examination when statements are relied upon a serious flow and violates principles of natural justice. Relevant para of the judgment as follows:

> "6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid tow witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them."

45. Further, in Basudev Garg [2013 (294) ELT (353) Del] held that when the Department relies upon the statement of a person to establish allegations against the notice, the notice must ordinarily be afforded an opportunity to cross-examine that person. Denial of such opportunity amount to violation of the principles of natural justice. Statement recorded

under Section 108 of the Customs Act cannot automatically be treated as substantive evidence. Before relying upon such statements in adjudication, the Adjudicating Authority must comply with the requirements of Section 138B of the Customs Act, 1962. Therefore, proceedings suffer from violation of principle of natural justice.

46. Penalty under Section 112 of the Customs Act requires knowledge, intent and / or active involvement. In absence of conclusive proof, penalty must be proportionate. The Supreme Court in Hindustan Ltd., [1978 (2) ELT (J159) (SC)] held that penalty is not automatic. Redemption of penalty is therefore justified.

47. In view of the above discussion, we hold that the Commissioner (Appeals), has properly appreciated all evidence on record and applied settled legal principles and passed a reasoned and balanced order. The Department has failed to demonstrate any perversity, legal infirmity and / or any misapplication of law. Therefore, appeal is liable to be dismissed.

48. Appeal filed by the Department is dismissed.

(Pronounced in the open court on 21.07.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha