CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

Division Bench – Court No. – I

Customs Appeal No. 30189 of 2024

(Arising out of Order-in-Appeal No.VIZ-CUSTM-000-APP-282-284-23-24 dt.25.11.2023 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

Shri Manchukonda Chitti Raju Gopi
S/o M. Radha Krishnayya, Manager of M/s RK Gold, Town Kotha Road, Visakhapatnam, AP ......**Appellant**

VERSUS

Commissioner of Customs
Visakhapatnam - Customs
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 ......**Respondent**

WITH

Customs Appeal No. 30190 of 2024

(Arising out of Order-in-Appeal No.VIZ-CUSTM-000-APP-282-284-23-24 dt.25.11.2023 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

Shri Narru Guru Santha Siva Kamal
S/o N. Durga Rao, D.No.21-6-27/3, Uppati Vaari Street, Government Press, Vijayawada, AP ......**Appellant**

VERSUS

Commissioner of Customs
Visakhapatnam - Customs
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 ......**Respondent**

AND

Customs Appeal No. 30191 of 2024

(Arising out of Order-in-Appeal No.VIZ-CUSTM-000-APP-282-284-23-24 dt.25.11.2023 passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

Shri Manchukonda Ramji Vinodh
S/o M. Radha Krishnayya, Manager of M/s RK Gold, Town Kotha Road, Visakhapatnam, AP ......**Appellant**

VERSUS

Commissioner of Customs
Visakhapatnam - Customs
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 ......**Respondent**

Appearance

Shri P.S. Sastry, Consultant for the Appellant.
Shri K. Prasanth Kumar, AR for the Respondent.

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

FINAL ORDER No. A/30448-30450/2026

Date of Hearing: 28.07.2026
Date of Decision: 13.08.2026

[Order per: ANGAD PRASAD]

The Appeals have been filed by Shri Manchukonda Chitti Raju Gopi, Shri Narru Guru Santha Siva Kamal & Shri Manchukonda Ramji Vinodh (hereinafter referred to as the appellants) against order of the Commissioner (Appeals) dt.25.11.2023.

2. These appeals arise out of common dispute concerning the seizure and absolute confiscation of four gold biscuits weighing 400 gm each, having an aggregate weight of 1600 gm and valued at Rs.21,20,000/-, together with Indian currency amounting to Rs.62,71,000/-, recovered from the business premises of M/s RK Gold, Town Kotha Road, Visakhapatnam on 05.03.2022.

3. The officers proceeded on the premise that the seized gold was of foreign origin and had been smuggled into India and that the Indian currency represented sale proceeds of smuggled gold. Penalties were also imposed upon the persons concerned. The original authority ordered absolute confiscation of the gold and currency and imposed penalties upon the noticees. The appeals filed before the Commissioner (Appeals) were rejected. Aggrieved by the said orders, the appellants had approached this Tribunal.

4. As the appeals arise out of same investigation, seizure and adjudication and involve common questions of law and fact, they are being disposed of by this common order.

5. The facts, in brief, are that on 04.03.2022, officers of the Directorate of Revenue Intelligence (DRI), Kolkata, intercepted Shri Narru Guru Santha Siva Kamal (in short ‘Kamal’) and recovered 20 gold biscuits weighing

approximately 116 gm each. A statement of Shri Kamal was recorded by the DRI officers at Kolkata. In his initial statement, he allegedly stated that the gold recovered from him belongs to Shri Manchukonda Ramji Vinodh (in short 'Vinodh') of M/s RK Gold, Visakhapatnam, who had financed its purchase and that he was merely carrying the gold for delivery to Shri Vinodh. On the basis of information received by the DRI, the officers of DRI, Visakhapatnam, searched the premises of M/s RK Gold on 05.03.2022. During the search, 4 gold biscuits weighing 400 gm each and Indian currency of Rs.62,71,000/- were recovered.

6. Shri Vinodh was present during the search. The statements were recorded from him on 05.03.2022 and 06.03.2022. According to the department, he admitted that the gold biscuits were of foreign origin and represented the balance stock of gold earlier obtained from Shri Kamal and that the cash constituted sale proceeds of smuggled gold. The statement of Shri Manchukonda Chitti Raju Gopi (in short 'Gopi'), proprietor of the concern, was also recorded. He stated that although he was the proprietor on record, the day to day business was being handled by his brother, Shri Vinodh, and that he himself had no role in the seized gold or currency. A subsequent statement of Shri Kamal was also recorded, wherein, he allegedly stated that he had supplied or carried smuggled gold for Shri Vinodh on earlier occasions.

7. SCNs were thereafter issued separately by the competent authorities at Kolkata and Visakhapatnam.

8. In the proceedings arising from the seizure of 20 gold biscuits at Kolkata, Shri Kamal and Shri Vinodh were noticees. In reply to SCN, Shri Kamal retracted his earlier version that the seized gold belonging to Shri Vinodh and claimed ownership of the gold himself. Shri Vinodh consistently denied any concern with the gold seized at Kolkata. The Additional Commissioner of Customs, Kolkata ordered absolute confiscation of the gold and imposed penalty of Rs.1,00,000/- on Shri Kamal. No penalty or other adverse action was taken against Shri Vinodh.

9. The appeal filed by Shri Kamal before Commissioner (Appeals) was rejected. However, Kolkata Tribunal, subsequently, allowed his appeal

unconditionally and set aside the orders passed by the lower authorities and directed release of the gold with consequential relief.

10. The appellants submitted that the Visakhapatnam proceedings were initiated only as a follow-up to the Kolkata seizure and substantially rested upon the initial statement of Shri Kamal. Therefore, according to them, the final outcome of the Kolkata proceedings materially affects the evidentiary foundation of the present case.

11. The appellants contended that the department had not established that the 4 gold biscuits seized from the premises of M/s RK Gold were smuggled goods. It was submitted that foreign inscriptions or markings, by themselves, could not conclusively establish foreign origin or illegal importation.

12. Shri Vinodh claimed that the four gold biscuits formed part of 8 gold biscuits purchased from M/s Narlion LLP, Yanam, under Tax Invoice No.02 dt.04.03.2022. The invoice value was stated to be Rs.39,61,168/- apart from GST @ 3% amounting to Rs.1,18,835/-. It was further submitted that the consideration payable to M/s Narliaon LLP had been remitted through RTGS to its bank account. The appellants have also produced copies of the relevant GSTR-3B return reflecting availment of input tax credit corresponding to the said tax invoice. It was explained that the invoice could not be produced during the search because it had been received by the accountant, who was not available at that time. The appellant claimed that they had attempted to produce evidence of lawful purchase before investigating officers prior to issuance of SCN, but were advised to furnish it before the adjudicating authority. The documents were accordingly submitted in reply to the SCN. It was further pleaded that, even after the documents had been produced, neither investigating authority nor the adjudicating authority made any meaningful enquiry from M/s Narlion LLP, its bank account or the GST authorities to verify their genuineness. With regard to seized currency, it was contended that the amount represented accumulated unaccounted cash arising from several small sales over the preceding month and not proceeds from the sale of smuggled gold. It was stated that the appellant subsequently disclosed the income and paid

income tax upon it. Documentary evidence relating to such payment was also stated to have been furnished.

13. The appellants contended that section 123 of the Customs Act, 1962, applied to notified goods such as gold but did not apply to Indian currency. Therefore, the burden of proving that the currency represented sale proceeds of the smuggled gold remained upon the department under section 121 of the Customs Act.

14. According to the appellant, the department was required to establish the identity and quantity of the smuggled gold allegedly sold, the date and manner of sale, the purchaser and the link between such sale and the currency seized. It was argued that no such evidence had been produced.

15. Shri Vinodh has reiterated that the Visakhapatnam case was a consequential or follow-up action based on the seizure made at Kolkata and the initial statement of Shri Kamal. It was submitted that the Kolkata Tribunal ultimately ordered unconditional release of the gold seized there and set aside the penalty. This, according to the appellant, established that the initial statement of Shri Kamal was not reliable.

16. It was argued that when the very source statement, on which the Visakhapatnam search was initiated, had failed to withstand judicial scrutiny, it could not constitute the sole or substantial basis for confiscating the gold and cash recovered at Visakhapatnam.

17. The appellant further submitted that panchanama did not record any independent and reasoned satisfaction that the gold found in the premises was liable to confiscation. It merely stated that the officers possess information that the smuggled gold of foreign origin was concealed in the premises. According to them, the information was itself based on the statement of Shri Kamal, which did not specifically state that gold had been supplied to Shri Vinodh in February, 2022 or that any balance stock was lying in his premises on 05.03.2022.

18. The appellants question the voluntariness of the statement recorded from Shri Vinodh pointing out that multiple statements were recorded from him within a short period after the search and seizure. It was submitted that the statements were contrary to the documentary evidence of purchase and

payment subsequently produced and could not be treated as conclusive evidence without independent corroboration. The appellants prayed that the confiscation of the 4 gold biscuits and Indian currency be set aside and that the penalties be annulled.

19. Learned AR has supported the impugned order and submitted that gold is a notified commodity under section 123 of the Customs Act. It has been argued that the seized gold bore foreign markings and was recovered from the business premises and the circumstance could rise to a reasonable belief that it was smuggled. Once such reasonable belief exists, the burden shifted to the person from whose possession the goods were seized to establish its licit importation or acquisition.

20. He has also submitted that the invoice relied upon by the appellants was not produced during the search and appeared only at later stage. According to the Revenue, the delayed production of the document rendered it doubtful.

21. Learned AR has further submitted that Shri Vinodh admitted in his statement that the gold was smuggled gold received through Shri Kamal and that the cash represented the sale proceeds of such gold. According to the Revenue, the later production of an invoice and GST return could not override the contemporaneous admissions.

22. It has also been submitted that the decision rendered in the Kolkata case concerned with separate seizure and did not automatically given the legality of the gold and currency seized at Visakhapatnam. The Revenue, therefore, prayed that the appeals be dismissed.

23. We have heard both parties and perused the records along with submissions.

24. The following issues arise for consideration:

a) Whether the seizure of the 4 gold biscuits was founded upon a reasonable belief as contemplated under section 110 of the Customs Act;
b) Whether the burden under section 123 stood discharged by the appellant;

c) Whether the statement of Shri Kamal and Shri Vinodh constituted reliable evidence of smuggled goods;
d) What effect, if any, the final decision in the Kolkata proceedings had upon the present case;
e) Whether the Indian currency of Rs.62,71,000/- could be confiscated under section 121 as sale proceeds of smuggled goods; and
f) Whether the penalties imposed upon the appellants were sustainable.

25. Section 110 authorizes the proper officer to seize goods where he has reason to believe that the goods are liable to confiscation under the Customs Act. The expression 'reason to believe' does not require the officer to establish the offence conclusively before the effect seizure. At the stage of seizure, the belief may be founded upon credible intelligence and surrounding circumstances. In the present case, the Visakhapatnam officers received information from DRI, Kolkata that Shri Kamal, from whom 20 gold biscuits had been seized, had implicated Shri Vinodh and stated that he had carried gold on his behalf. Foreign marked gold was thereafter recovered from the business premises associated with Shri Vinodh. In these circumstances, it cannot be said that the officers had no material whatsoever for forming a prima facie belief at the stage of seizure. The legality of the initial seizure, however, does not determine the final liability of confiscation. A seizure based upon reasonable belief must ultimately be followed by an adjudication based upon reliable evidence and the statutory burden of proof. We, therefore, do not accept the broad contention that the seizure was void ab initio merely because the panchanama did not contain an elaborated exposition of the officer's reasoning. More important question is whether the department established the liability of the goods and currency to confiscation.

26. Gold is a notified commodity for the purpose of section 123 of the Customs Act. Where gold seized in reasonable belief that it is smuggled, the burden of proving that it is not smuggled lies upon the person from whose possession it was seized or the person claiming ownership. Section 123 does not require the department to prove every link in the smuggling chain in the same manner as a criminal prosecution. At the same time, the burden caused upon the claimant can be discharged by producing credible evidence of lawful acquisition. The appellant produced a tax invoice issued by M/s

Narlion LLP, Yanam, dt.04.03.2022, under which 8 gold biscuits were allegedly purchased. They also relied upon an RTGS payment and the corresponding GST return reflecting input tax credit. These documents were relevant and went directly to the question of lawful procurement. The fact that the documents were not produced at the exact moment of search was a circumstance requiring scrutiny, but it was not, by itself, a legally sufficient reason to reject them. Such proceedings are often conducted without prior notice. If the person concerned provides a plausible explanation for temporary non-production and subsequently produced identifiable commercial and banking records, the authority is required to verify their genuineness.

27. The proper course for the investigating or adjudicating authority was to make enquiry from M/s Narlion LLP, examine its books and tax returns, verify the invoice from GST portal and confirm receipt of the RTGS payment in its bank account. The materials placed before us do not indicate that such verification was meaningfully undertaken. An adjudicating authority cannot reject relevant documentary evidence merely because it was produced in reply to the SCN, particularly when the SCN itself requires the noticee to produce all evidence in defence. If the invoice, banking transaction and GST declaration were genuine, they would constitute strong evidence of accounted domestic procurement. If they were false or fabricated, the department was required to establish that fact through enquiry. The department cannot simultaneously decline to verify the documents and then draw adverse inference solely from the timing of their production.

28. The principle evidence relied upon by the department consists of the statements of Shri Kamal and Shri Vinodh. Shri Kamal initially stated that the gold at Kolkata belongs to Shri Vinodh. He subsequently withdrew that version and claimed ownership of the gold himself. The adjudicating authority in the Kolkata proceedings did not impose any penalty upon Shri Vinodh. More importantly, the Kolkata Bench of this Tribunal ultimately set aside the confiscation and penalty and directed unconditional release of the gold seized from Shri Kamal.

29. The final order in the Kolkata case does not, as a matter of strict res judicata, automatically decide the status of the separate gold seized at

Visakhapatnam. Nevertheless, it has considerable evidentiary value because Visakhapatnam officers admittedly initiated investigation on the strength of initial statements recorded from Shri Kamal in the Kolkata case. When the proceedings founded upon that seizure ultimately ended in unconditional release of the gold, the initial statement could not thereafter be treated as unimpeachable or conclusive evidence in the connected Visakhapatnam proceedings.

30. The department was required to independently establish that the four gold biscuits recovered at Visakhapatnam represented balance stock of gold from an earlier smuggled consignment allegedly supplied by Shri Kamal. No document regarding any specific supply, payment, date of delivery or quantity corresponding to the 4 seized gold biscuits has been identified.

31. The earlier statements attributed to Shri Kamal were broad and general. The statements indicate that he spoke for having carried gold on several occasions, but did not specifically identify a consignment supplied in February, 2022, whose balance remained in the premises on 05.03.2022. The statements recorded from Shri Vinodh were also disputed. They were recorded during an intensive search and interrogation and were later contradicted by documentary evidence of lawful purchase. The statement recorded under Customs Act is relevant evidence. However, where it is retracted, disputed or contradicted by documentary material, it is unsafe to sustain confiscation solely upon that statement without independent corroboration.

32. In the present case, the lower authorities treated the initial statements as truth while failing to undertake a proper verification of the invoice, RTGS payment and GST records. Such approach prevents the proper process of adjudication. Documentary evidence cannot be discarded merely because it conflicts with a statement; the conflict must be resolved through objective verification.

33. The four gold biscuits admittedly bore foreign markings. Such markings are of relevant circumstance and may attribute to the formation of reasonable belief. However, foreign markings alone do not invariably establish that the gold was smuggled. Foreign origin gold may enter domestic commercial circulation through lawful import, authorized channels

and subsequent domestic sale. The question is not merely whether the gold was originally manufactured outside India, but whether the particular gold was imported or dealt with in contravention of the Customs Act. Purity and markings may support departmental suspicion, but they cannot substitute examination of evidence of lawful acquisition produced by claimant. The appellant's contention regarding the precise purity normally associated with foreign made gold could not be conclusively determined. Even assuming that the biscuits were of foreign manufacture, lawful domestic procurement was still possible and had to be examined.

34. The initial burden under section 123 lies upon the appellants. By producing the specific supplier invoice, details of RTGS payment and corresponding GST returns, the appellants produced evidence which, if genuine, was capable of establishing lawful acquisition. At that stage, the evidentiary burden is shifted to the department to test and rebut those documents. The lower authorities did not record any finding based upon verification from the supplier that no such sale had occurred nor is there a finding from the concerned bank that the payment was fictitious or unrelated. There is also no finding that the invoice number was fabricated; that M/s Narlion LLP denied its issuance or that the GST credit was based upon a non-existing transaction. In the absence of such enquiry, the documentary defence could not lawfully be rejected merely because it was produced after the search.

35. We, therefore, find that the appellants discharged the burden caused upon them to the extent reasonably possible by producing a verifiable chain of domestic procurement. The department failed to rebut that chain through independent investigation.

36. The confiscation of Indian currency must be examined separately. Section 123 does not cause any burden upon the possessor of Indian currency. The department must establish the requirements of section 121 of the Customs Act. For confiscation under section 121, it must be shown that smuggled goods were sold by a person having knowledge or reason to believe that the goods were smuggled and that the sale proceeds are identifiable. A mere shortage in books of accounts, possession of substantial cash or an admission or unaccounted business income does not

automatically make the cash sale proceeds of the smuggled goods. The department was required to establish a proximate link between seized currency and the sale of identifiable smuggled gold. The record does not identify the quantity or smuggled gold allegedly sold, the date or dates of sale, the purchasers, the price realized or the manner in which the seized amount represented such sale proceeds. The conclusion regarding the currency was substantial from the disputed statement of Shri Vinodh. The appellants, on the other hand, stated that the amount represented accumulated unaccounted cash from various business sales and that tax was subsequently paid upon such income. Payment of Income Tax does not, by itself, prove the lawful source of cash for customs purposes. It nevertheless reinforces the need for the department to establish statutory ingredients of section 121 independently. No such independent evidence has been placed on record.

37. The currency could not therefore be confiscated merely because it was found along with foreign marked gold or because it was not fully reflected in the books of accounts. The confiscation of Rs.62,71,000/- under section 121 is consequentially unsustainable.

38. The Commissioner (Appeals) was required to consider the effect of the final order passed by the Kolkata Tribunal, particularly because the Visakhapatnam proceedings originated from the intelligence and the statement generated in the Kolkata case. The final decision did not automatically exonerate the appellants in the present proceedings, but it substantially weakened the evidentiary value of the initial statement of Shri Kamal. The lower appellate authority failed to examine whether sufficient independent evidence survived after excluding or substantially discounting the said statement.

39. We find that, apart from foreign markings, the disputed statements and the unverified assumption connecting the gold with Shri Kamal, there is no reliable material rebutting the documentary evidence of the purchase.

40. Penalty under the Customs Act cannot survive where the department fails to establish that the goods were liable to confiscation or that the appellants knowingly dealt with smuggled goods.

41. In the present case, the documentary evidence or lawful procurement was not disproved and the connection with the alleged smuggled activity was founded principally upon statements whose reliability became doubtful. The confiscation of the currency under section 121 is also not sustainable. Consequently, the penalties imposed upon the appellants are liable to be set aside.

42. The officers possessed sufficient material to conduct the search and effect an initial seizure. However, reasonable belief at the stage of seizure could not substitute proof required at the stage of final adjudication. The appellants produced a specific invoice, evidence of bank payment and GST records in support of lawful procurement of gold. The department did not undertake an effective enquiry from the supplier, the bank or GST authorities to disprove those documents. The initial statement of Shri Kamal, which triggered the Visakhapatnam proceedings, was subsequently withdrawn and the connected Kolkata proceedings ultimately resulted in unconditional release of gold. The said statement could therefore not be, without a strong independent corroboration, sustain confiscation of the separate gold recovered at Visakhapatnam. Foreign markings were relevant but were not conclusive to smuggling, particularly where documentary evidence of domestic acquisition has been produced. The department also failed to establish essential link required under section 121 between Indian currency and sale of identified smuggled gold.

43. We, therefore, hold that the confiscation of four gold biscuits and the Indian currency, as well as the penalties imposed upon the appellants, cannot be sustained. Accordingly, the impugned order is set aside and the appeals filed by the appellants are allowed with consequential relief, in accordance with law.

(Pronounced in the Open Court on 13.08.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Veda