CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench – Court No. – I

Customs Appeal No. 30314 of 2024
with Application No. C/CROSS/30022/2026

(Arising out of Order-in-Appeal No.VJD-CUSTM-000-APP-076-2023-24 dt.05.03.2024 passed by Commissioner of Customs & Central Tax (Appeals), Guntur)

Commissioner of Customs (Preventive), Vijayawada ……**Appellant**
Industrial Estate, Autonagar,
Vijayawada, Andhra Pradesh – 520 007

VERSUS

Shri Varun Donthamsetty
S/o Sri Donthamsetty Prabhakar, 16/4/286,
Kasturidevi Nagar, Nellore, AP – 524 001 ……**Respondent**

Appearance

Shri A. Rangadham, AR for the Appellant.
Shri M.V.S. Prasad & Shri B.G. Madhava Reddy, Advocate for the Respondent.

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

FINAL ORDER No. A/30507/2026

Date of Hearing: 07.09.2026
Date of Decision: 10.09.2026

[Order per: ANGAD PRASAD]

This appeal has been filed by the Revenue against the Order-in-Appeal dt.05.03.2024, passed by the Commissioner of Customs & Central Tax (Appeals), Guntur, whereby the Commissioner (Appeals) set aside the Order-in-Original dt.05.07.2023 relating to confiscation of Rs.1,68,95,000/- under section 121 and imposed penalty of Rs.10,00,000/- upon the respondent under section 112(a) and 112(b) of the Customs Act, 1962.

2. The Respondent has filed memorandum of cross objection. He supports the categorical findings recorded by the Commissioner (Appeals)

against confiscation of the Indian currency and imposition of penalties but challenge the directions remanding the matter for denovo adjudication.

3. The brief facts are that during the search conducted on 17/18.10.2022 at the residential and business premises of Shri Varun Donthamsetty at Nellore, Indian currency of Rs.84,95,000/- was recovered from the residence and Rs.84,00,000/- from the office, aggregating to Rs.1,68,95,000/-. No gold, bullion, foreign packaging or document evidencing illicit importation was recovered.

4. In his initial statement dt.18.10.2022, the respondent stated to have explained that the amount of Rs.84,00,000/- recovered from the office is related to transactions in foreign-origin gold biscuits and old gold ornaments. He sought time to furnish bifurcation and stated that bullion was purchased from Chennai. The respondent subsequently explained that M/s Modern Bullion traded in bullion of 999 & 995 purity; that cash was accepted in legitimate retail transactions below Rs.2,00,000/- and as customer booking advances, particularly before Dhanteras; that transactions above Rs.2,00,000/- were routed through banking channels and that cash receipts were issued.

5. The respondent furnished sales registers, GST returns for October, 2022, bill books and KYC particulars of customers, who had paid advances. The department summoned three customers, viz., Shri Jogi Ramesh Babu, Shri V. Naveen Kumar and Shri P. Venkata Ananda Kishore. These persons said in their respective statements that they had paid cash to the respondent towards bullion purchases or booking advances.

6. By OIO dt.05.07.2023, the Additional Commissioner ordered absolute confiscation of Rs.1,68,95,000/- under section 121 and imposed a penalty of Rs.10,00,000/- upon the respondent under section 112(a) and 112(b) of the Customs Act, 1962. The adjudicating authority also drew adverse inference from another proceeding concerning seizure of gold from certain carriers at Bollapalli toll plaza. Being aggrieved, the respondent filed appeal before the Commissioner (Appeals).

7. The Commissioner (Appeals) recorded, inter alia, the following findings:

a) Section 123 applies to gold but not to Indian currency;
b) The burden of establishing that the seized currency represented sales proceeds of smuggled gold rested upon the department;
c) The essential ingredients of section 121 had not been established;
d) There was no evidence to an identified sale of smuggled gold by a person having knowledge or reason to believe that the gold was smuggled;
e) The statements and other evidence furnished in support of the alternative sources of the currency had not been properly evaluated; and
f) In the absence of proof of smuggling, knowledge and receipt of currency from buyers of smuggled goods, confiscation would lack authority of law.

8. Despite recording these findings, the Commissioner (Appeals) directed denovo adjudication, thereby, giving rise to the present appeal and cross objection.

9. Learned AR has submitted that after the amendment of section 128A, the Commissioner (Appeals) has no power to remand the matter to the adjudicating authority. The impugned order, to the extent they remand the case, is therefore unsustainable.

10. The respondent has submitted that the Revenue's appeal is confined to the power of remand and do not challenge the substantive findings recorded in their favour. It is contended that once the Commissioner (Appeals) has categorically held that the statutory ingredients of section 121 were not established, there was no occasion to remand the matter.

11. It has been further submitted that no gold was recovered in either case. The department failed to identify any smuggled consignment, carrier, point or date of illegal importation, seller, purchaser, quantity of gold, sale transactions or particular amount constituting consideration for such sale.

12. The respondent's subsequent explanations were also corroborated by the statement recorded by the department itself. Reliance has been placed on the following case laws.

a) KV Kunhimohammed Vs CC (Prev.), Kochi [2025 (3) TMI 857 – CESTAT Bangalore]
b) Tulsi Das Agarwal Vs CC, Kanpur [2003 (158) ELT 725 (Tri-Del)]
c) Ramchandra Vs CC [1992 (60) ELT 277 (Tri-Del)]
d) Hem Raj Soni Vs CCE, Jaipur [2014 (308) ELT 600 (Tri-Del)]
e) Ratan Kumar Saha Vs CC [2021 (375) ELT 435 (Tri-Kolkata)]
f) Ghissihibhai Pravinkumar Vs CC, Mumbai [2001 (137) ELT 1311 (Tri-Mum)]

13. We have considered the submissions and examined the records.

14. The following questions arise for determination and adjudication.

a) Whether section 123 of the Customs Act, 1962, applies to the seized Indian currency;
b) Whether the requirements of section 121 of the Customs Act, 1962, have been established;
c) Whether the penalties under section 112(a) and 112(b) of the Customs Act, 1962, are sustainable; and
d) Whether the matters require remand.

15. Section 123 of the Customs Act, 1962 creates a statutory exception to the ordinary rule governing burden of proof. It applies only to the goods specified in sub-section (2) or separately notified by the Central Government. Though gold and manufactures thereof are governed, Indian currency is not a notified category of good for this purpose.

16. The property seized in this case is Indian currency and not gold. Consequently, the burden could not have been shifted upon the respondent to establish that the currency was not the sale proceeds of smuggled gold. The initial burden to establish the conditions prescribed by section 121 remained open to Revenue. In the case of Tulsi Das Agarwal Vs CC, Kanpur (supra), the Tribunal, New Delhi held that section 123 does not apply to Indian currency and that the failure of a claimant to satisfactorily establish lawful acquisition of cash, does not, by itself, make the currency liable to confiscation under section 121. The Commissioner (Appeals) therefore correctly held that the burden rested upon the department.

17. Section 121 of the Customs Act, 1962, provides for confiscation of sale proceeds of smuggled goods where the goods are sold by a person having knowledge or reason to believe that they are smuggled. The provision, therefore, requires proof of the following cumulative ingredients:

a) Existence of goods having a legally established smuggled character;
b) Sale of those goods;
c) Knowledge or reason to believe on the part of the seller that the goods were smuggled; and
d) A direct and identifiable nexus between such sale and the currency sought to be confiscated.

18. Mere possession of a substantial amount of cash may give rise to suspicion or justify enquiry. It does not, by itself, establish that the currency represents sale proceeds of smuggled goods. The Customs Act does not authorize confiscation under section 121 merely because the source of cash is considered doubtful or because its possessor has allegedly given inconsistent explanations. In the present case, no gold was recovered from the respondent. The department has failed to identify the following:

a) any particular consignment of smuggled gold;
b) the manner, place or date of illegal importation;
c) the person who smuggled or supplied such gold;
d) the quantity allegedly sold;
e) the buyer of the alleged smuggled gold;
f) the date and consideration of any such sale; or
g) any particular part of the seized currency relatable to that transaction.

19. In the case of Ramchandra Vs CC (supra), the Tribunal emphasized the necessity of proving sale of smuggled goods, the requisite knowledge and identity of the seller, purchaser and quantity involved. In the absence of these foundational facts, currency cannot be treated as sale proceeds under section 121. In the case of Hem Raj Soni Vs CCE, Jaipur (supra), it was reiterated that the burden to prove that Indian currency represents sale proceeds of smuggled goods rests upon the Revenue and that the alternative source evidence cannot be rejected without proper examination. In the case of Ratan Kumar Saha Vs CC (supra), the confiscation of Indian and Nepali currency was held unsustainable in the absence of evidence

linking it with sale of smuggled gold. Similarly, in the case of KV Kunhimohammed Vs CC (Prev.), Kochi (supra), the Tribunal held that the Revenue must establish both the smuggled character of the gold and the evidentiary link between its sale and the recovered currency. Applying these principles, the basic statutory requirements of section 121 remain unproved in this case.

20. We are unable to accept the proposition that the initial statements, read in isolation, establish the entire case of the department. In this case, the business records, GST returns, bill books and customer details were furnished. Three customers were examined by the department, who confirmed that they had made payment towards bullion purchases or booking advances. Their statements could not be rejected merely because they appeared pursuant to the summons on the same day. In such circumstances, without contrary evidence, their statements cannot be rendered false or preplanned. The statements recorded under section 108 are relevant evidence, but their true effect must be assessed with the entire record. Unambiguous or qualified statement cannot be enlarged into an admission of facts, which it does not expressly contain.

21. Section 112(a) applies where a person does or omits to do an act in relation to goods, which render such goods liable to confiscation under section 111, or abets the doing or omission of such an act. Section 112(b) applies where a person knowingly deals with goods which are liable to confiscation under section 111. Thus, liability under section 112 requires identification of particular goods liable to confiscation under section 111 and the act, omission or knowingly dealing of the notice in relation to those goods. No any specific smuggled gold has been identified in the present proceedings. Further, no act or omission by the respondent in relation to identified goods liable to confiscation under section 111 has been established. Confiscation of currency proposed under section 121 cannot substitute proof of foundational requirements of section 112.

22. Reliance placed upon another proceedings concerning seizure of gold from carriers at Bollapalli toll plaza cannot determine liability in this proceedings. Every SCN must stand upon its own allegations and evidence. Conduct attributed to a person in an unconnected proceeding cannot substitute proof of the statutory ingredients in the present case. Once the

allegations that the currency constitute sale proceeds of smuggled gold fails, the factual foundation for penalties under section 112(a) and section 112(b) also disappears. The penalties imposed upon the respondent are consequently unsustainable.

23. The department's principal grievance is that the Commissioner (Appeals) lacks power under section 128A to remand the matter after amendment of that provision. The department has not raised any specific and substantive ground challenging the findings that section 123 was not applicable; that the burden rested upon the department and that the requirements of section 121 has not been proved. Even otherwise, we have independently examined the entire material and found that the confiscation and penalties cannot be sustained on merits. Therefore, the absence of remand power with the Commissioner (Appeals) does not justify restoration of the Order-in-Original. The Commissioner (Appeals), after holding that confiscation lacked authority or law and that the statutory requirements were not established, could not logically remand the very same issues for another adjudication. The merits findings and the operative remand directions are irreconcilable. Remand is appropriate where a curable procedural difficulty requires reconsideration. It cannot be employed to enable the investigating agency to identify, after completion of adjudication, a new smuggled consignment, a new sale, a new buyer or seller or a new evidentiary nexus, which was absent from the original SCNs.

24. An adjudicating authority, upon remand, remains confined to the allegations contained in the SCN. It cannot travel beyond the notice and reconstruct a fundamentally deficient case. Repetition of adjudication on the same record would therefore serve no useful purpose. This Tribunal possesses sufficient appellate jurisdiction to bring finality to the dispute. Accordingly, while the Revenue is correct on the limited proposition that the remand directions cannot be sustained, no relief can be granted to it for revival of confiscation or penalties. The appropriate course is to delete remand direction and affirm the findings on merit.

25. In view of the foregoing, we order as follows:

a) The Revenue's appeal is dismissed;
b) Cross objection filed by the respondent is allowed;

c) Directions for denovo adjudication by impugned order is set aside;

d) The absolute confiscation of Indian currency is set aside; and

e) Penalties imposed under section 112(a) and 112(b) are set aside.

26. The seized currency shall be released forthwith to the person lawfully entitled thereto, together with consequential relief, if any, in accordance with law, unless its release is restrained or required in proceedings under any other applicable enactment.

(Pronounced in the Open Court on 10.09.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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