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

Division Bench – Court No. – I

Customs Appeal No. 30357 of 2025
(Arising out of Order-in-Appeal No.VJD-CUSTM-000-APP-193 to 196-2024-25 dt.14.03.2025 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 Aravapalli Srinivasa Rao
S/o Sri Aravapalli Nageswara Rao, 6-1-162,
Shop No.6, Main Road, Narasaraopet, AP – 522 601 ……**Respondent**

Appearance
Shri K. Prasanth Kumar, 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/30508/2026

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.14.03.2025, passed by the Commissioner of Customs & Central Tax (Appeals), Guntur, whereby the Commissioner (Appeals) set aside the Order-in-Original dt.24.05.2024 relating to confiscation of 2081 gm of gold under section 111(d) and 111(o), vehicle under section 115(2), packing material under section 119 and imposed penalty of Rs.15,00,000/- upon the respondent under section 112(a) and 112(b) of the Customs Act, 1962.

2. The brief facts are that the respondent, Shri Aravapalli Srinivasa Rao, was managing business of M/s Varalakshmi Jewellers, Narasaraopet, a GST registered concern owned by his late wife. According to the respondent, he travelled to Bangalore and purchased 2062 gm of re-melted gold bullion of 24 carat purity on credit from M/s Aryan Gold under Tax Invoice No. 194 dt.20.03.2023. The respondent, thereafter, proceeded to Coimbatore for

conversion of the bullion into ornaments. As job work terms could not be finalized, he commenced his return journey to Narasaraopet in Hyundai Verna car bearing Registration No. AP26BR5060, driven by Shri K. Bala Murali Krishna.

3. The Customs Officers intercepted the vehicle during the night intervening 20/21.03.2023 and recovered two pieces of re-melted gold weighing 1285 gm and 796 gm, aggregating to 2081 gm. The department alleged that the vehicle was intercepted at Tanguturu toll plaza at about 05:30 hrs on 21.03.2023 and that the gold was of smuggled foreign-origin.

4. The statements of the respondent and the driver were recorded under section 108 of the Customs Act. The respondent retracted his statement on 28.03.2023, while the driver retracted his statement on 13.04.2023. The respondent also produced invoice No. 194 dt.20.03.2023 in support of the domestic purchase.

5. The Additional Commissioner, vide Order-in-Original dt.24.05.2024, ordered absolute confiscation of gold, vehicle and packing material and imposed a penalty of Rs.15,00,000/- upon the respondent. Penalties were also imposed upon the alleged supplier, driver and owner of the vehicle.

6. On appeal, the Commissioner (Appeals), vide the impugned order, set aside the OIO and granted consequential relief. Aggrieved by the relief granted to the respondent, the department has filed this appeal before us.

7. Learned AR has submitted that gold is a notified commodity under section 123 of the Customs Act. Once it was seized on a reasonable belief that it was smuggled, the burden of proving lawful importation or acquisition shifted to the respondent. It is contended that the purity of the gold, the manner of concealment and transportation, absence of invoices with the persons carrying gold and the initial admissions made in the statements recorded under section 108 constituted sufficient material to entertain a reasonable belief that the gold was smuggled. Relying upon the decision of Hon’ble Supreme Court in the case of Naresh J. Sukhawani Vs UOI [1996 (83) ELT 258 (SC)], the department has submitted that a statement recorded under section 108 is substantive evidence and can be relied upon in adjudication proceedings. Retraction, by itself, does not erase an earlier voluntary admission.

8. It has been further argued that the Commissioner (Appeals) treated procedural discrepancies as fatal without appreciating that the proceedings under the Customs Act are governed by the standard of preponderance of probabilities. The department has relied upon the judgment of Hon'ble Supreme Court in the case of CC, Madras Vs D. Bhoormull [1983 (13) ELT 1546 (SC)] to contend that the department is not required to prove smuggling with mathematical precision. The department has pointed out that the seized quantity was 2081 gm, whereas the invoice covered only 2062 gm. It has also been submitted that the supplier described the gold as plain gold without the markings found upon the seized pieces.

9. Learned Counsel for the respondent has reiterated the findings given by the Commissioner (Appeals) and has, inter alia, submitted that the seizure was town seizure of re-melted gold without any identifiable foreign refinery mark, overseas mint mark or foreign serial number. Purity, by itself, cannot establish foreign-origin or illegal importation.

10. It has been contended that the condition precedent for applying section 123 is valid seizure based upon objectively existing reasonable belief that the goods are smuggled. A mechanical recital in the Panchanama is insufficient to shift the statutory burden.

11. The FASTag records allegedly demonstrate that the vehicle crossed Pallikonda toll plaza at 21:17 hrs on 20.03.2023 and reached Gadanki toll plaza at 00:51 hrs on 21.03.2023. It is, therefore, submitted that the vehicle has been intercepted near the AP-TN border and earlier than the time and place recorded in the Panchanama. It has been further submitted that the statements relied upon by the department were promptly retracted and were not corroborated by any evidence of illegal importation, border crossing, foreign supplier, hawala payment or smuggling network. Cross-examination of the suppliers and material witnesses was also denied.

12. The respondent maintained that they discharged even the burden contemplated under section 123 by producing contemporaneous tax invoices, confirmation from the supplier, GST particulars and evidence of payment through banking channels.

13. We have heard and considered the submissions of both parties and perused the records.

14. The following issues arise for determination and adjudication:

a) Whether the seizure was founded on a reasonable belief that the gold was smuggled;
b) Whether the burden under section 123 was properly invoked and if so, discharged;
c) Whether the retracted statements could sustain confiscation without independent corroboration;
d) Whether denial of cross-examination affected the evidentiary value of the statements relied upon; and
e) Whether the Commissioner (Appeals) was justified in setting aside the confiscation and penalties.

15. Gold is undoubtedly included among the goods notified for the purpose of section 123 of the Customs Act. However, the reverse burden under section 123 is not attracted merely because the seized material is gold. The statutory burden shifts only where the gold is seized under the act in the reasonable belief that it is smuggled. 'Reasonable belief' cannot be equated with mere suspicion. It must be founded upon some objective material existing at the time of seizure and having a rational action with the conclusion that the particular goods were smuggled. Section 123 does not authorize the department to first seize any quantity of domestically circulating gold and thereafter, call upon its possessor to disprove smuggling. At the same time, sufficiency of the material is not to be tested, as if the officers were finally adjudicating the confiscation at the stage of seizure. The belief may be based on surrounding circumstances. Nevertheless, it must be honest, bonafide and supported by relevant material.

16. In the present case, the seized gold consisted of re-melted or regular pieces. No recognized foreign refinery inscriptions, foreign serial number or overseas mint marking has been shown. Generic inscription such as 'BEST CHOICE NB 9990', even if found on the pieces, indicate the stated fineness and do not identify their country or channel of origin. Purity of gold is equally consistent with lawful domestic refining, re-melting or recycling. Purity, therefore, may be one circumstance, but cannot, without more, establish that the gold crossed the customs frontier unlawfully.

17. The statement recorded under section 108 is admissible and may constitute relevant evidence. The ratio of Naresh J. Sukhawani Vs UOI (supra) cannot, however, be understood as laying down that every statement recorded under section 108 must be accepted as conclusive, irrespective of its subsequent retraction, surrounding circumstances and absence of corroboration. In the case of Vinod Solanki Vs UOI [2009 (233) ELT 157 (SC)], the Hon'ble Supreme Court held that while confession is retracted, the adjudicating authority must examine its voluntariness and seek assurance from independent circumstances. The burden of proving that a statement was obtained by coercion cannot be treated as impossible to discharge, particularly where the surrounding record itself raises doubt concerning the investigation. Similarly, the decision in the case of CC, Madras Vs D. Bhoormull (supra), relaxes the degree of proof in matters involving clandestine activity; it does not permit confiscation on conjecture. The principle of preponderance of probabilities still requires existence of proved facts from which an inference of smuggling reasonably follows. In this case, the statements were retracted within a reasonable proximate period. More importantly, the department has not brought on record any independent evidence regarding the point or mode of illegal importation, foreign seller, smuggling carrier, border movement, financial trail or source of foreign-origin gold. There is also no recovery of the alleged cash said to have been carried for purchasing the gold. The allegations regarding very substantial cash payments remain unsupported by the seizure of cash, bags, withdrawal records or any other contemporaneous evidence.

18. We, therefore, agree with the Commissioner (Appeals) that the retracted statements, standing substantially alone, were insufficient to establish smuggling.

19. The Commissioner (Appeals) examined the FASTag entries and other contemporaneous material and recorded a categorical finding that the interception occurred near AP-TN border and not at Tanguturu toll plaza in the manner stated in the Panchanama. The department has described this as a minor discrepancy. We are unable to accept that contention. A minor variation in time or distance may not invalidate a search. However, an unexplained differences concerning the place, date and circumstances of the very interception cannot be brushed aside as a clerical irregularity,

particularly when Panchanama is the principle contemporaneous record of the seizure. FASTag entries are electronical records generated independently in the ordinary course of toll operations. Department has not produced any material demonstrating that these records were fabricated or unreliable nor has it satisfactorily explained the unusual travel interval shown by the toll records. A Panchanama is intended to provide contemporaneous assurance regarding the place, manner and articles recovered during a search. Where objective electronic records materially contradict its foundational narrative, it becomes unsafe to accept the document without examination of the Panch witnesses and the officers concerned. The principle laid down in the case of Yakub Abdul Razak Memon Vs State of Maharashtra [2013 (13) SCC 1] and Ramanand @ Nandlal Bharti Vs State of Uttar Pradesh [2022 SCC OnLine SC 1396] is that a seizure Panchanama must be duly and reliably proved. These decisions arise from criminal proceedings but the evidentiary caution underlying them is relevant where confiscation and substantial penalties are founded upon a disputed seizure document.

20. Commissioner (Appeals) was, therefore, justified in treating the unexplained time and location contradiction as a material circumstance affecting the reliability of the department's case.

21. The respondent produced tax invoice No. 194 dt.20.03.2023 issued by M/s Aryan Gold, Bangalore, covering 2062 gm of gold. The invoice predates the seizure. The supplier confirmed the transaction, though questions were raised concerning the appearance of the gold. The difference of 19 gm between the invoice quantity of 2062 gm and the seized quantity of 2081 gm requires explanation. However, that difference, by itself, does not prove that the entire quantity of 2081 gm was smuggled. The principal quantity stands supported by a contemporaneous invoice and a confirmed commercial transaction. The department has not established that the invoice was fabricated, that the supplier was not existent or that the invoice was subsequently inserted into the supplier's records.

22. Thus, even assuming that section 123 stood attracted, the respondent discharged the burden on the standard of preponderance of probabilities by producing contemporaneous tax invoices, supplier confirmation and banking evidence. The department failed to rebut this evidence through a proper

investigation of the supplier's stock, books of accounts, GST returns or procurement chain.

23. The adjudicating authority relied upon the statements recorded under section 108 while denying the respondent an effective opportunity to cross-examine the material witnesses. In the case of Andaman Timber Industries Vs CCE, Kolkata [2015 (324) ELT 641 (SC)], the Hon'ble Supreme Court held that where statements of witnesses are made the basis of adverse order, denial of cross-examination amounts to a serious violation of natural justice. The relevant paras are reproduced below:

> *"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 two 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.*
>
> *7. ...*
>
> *8. In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the show cause notice."*

24. The principle is not confined to statement of dealers. Its application depends upon whether the statements of the person concerned are relied upon to establish a disputed material fact. While the department relied on the statement of a supplier to challenge the identity of goods or on Panch witnesses to prove a disputed Panchanama, cross-examination cannot be rejected merely by describing the request as a delaying tactic.

25. Section 138B of the Customs Act also prescribes the conditions subject to which a statement made before a gazetted customs officer may be

treated as relevant for proving the truth of its contents. Unless the statutory exceptional circumstances exist, a person's statement is relied upon must ordinarily be examined in the adjudication proceedings and made available for cross-examination.

26. In the present case, the disputed statement material to the conclusions concerning foreign-origin, ownership and identity of the gold and the denial of cross-examination materially prejudiced the respondent and diminished the evidentiary value of those statements.

27. The decision in the case of Naresh J. Sukhawani Vs UOI (supra), turns upon its own evidentiary circumstances, where the statement contained detailed inculpatory particulars and was supported by other materials. It does not lay down that an uncorroborated retracted statement must invariably result in confiscation. Likewise, CC, Madras Vs D. Bhoormull (supra), recognizes that smuggling may be established through circumstantial evidence and preponderance of probabilities here, however, the respondent produced positive documentary evidence of domestic procurement, while the department produced no reliable trail of illegal importation. The principle in the case of CC, Madras Vs D. Bhoormull (supra) cannot be invoked to fill fundamental gaps in the investigation. Decisions concerning concealment of foreign-marked standard gold bars are distinguishable. The present goods were re-melted pieces without established foreign refinery or mint markings. Neither their shape nor purity conclusively connected them with illegal importation.

28. We also find support from the jurisdictional decision in the case of Shri Kishore Kumar Gilda Vs CC, Vijayawada [2026 (5) TMI 590 – CESTAT Hyderabad], wherein it was held that mere markings of purity, in the absence of proper recording of reasonable belief and independent evidence of smuggling, cannot sustain confiscation. The decision also recognizes that retracted statements require dependable corroboration. The material facts in the present appeal stand on an even stronger footing, since gold is re-melted and domestic procurement documents have been produced.

29. For confiscation under section 111(d) and 111(o), department was required to establish that the seized goods were imported or dealt with contrary to a provision or condition imposed under the Customs Act or

another applicable law. No specific act or illegal importation or violation of a condition attached to lawful importation has been established. In the absence of sustainable confiscation of the gold, the confiscation of the vehicle and packing material cannot survive. Likewise, penalties under section 112(a) or 112(b) require knowledge or reason to believe that the goods were liable to confiscation. Such knowledge cannot be presumed while foundational allegation of smuggling itself has not been established.

30. We, accordingly, find that the Commissioner (Appeals) properly appreciated the material evidence and correctly set aside the confiscation and penalties. Department has not demonstrated any perversity, omission of material evidence or incorrect application of law warranting appellate interference in respect of impugned order.

31. In view of the foregoing discussion, appeal filed by the department is liable to be dismissed and therefore, dismissed.

(Pronounced in the Open Court on 10.09.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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