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

Division Bench – Court No. – I

Customs Appeal No. 30360 of 2025

(Arising out of Order-in-Appeal No.VJD-CUSTM-000-APP-197 to 202-2024-25 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 Kasturi Srinivasa Rao
S/o Sri K. Venkateswarlu, 3-29-104/3A, Flat No.503,
SVR Daffodils, Krishna Nagar, Guntur, AP – 522 006 **.....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/30509/2026

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.31.05.2024 relating to confiscation of 1998.780 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.8,00,000/- upon the respondent under section 112(a) and 112(b) of the Customs Act, 1962.

2. The brief facts are that the respondent, Shri Kasturi Srinivasa Rao, is the proprietor of M/s Sri Karthikeya Traders, Guntur, a GST registered concern engaged in trading in gold bullion. According to the respondent, he

purchased 2 kgs of re-melted gold bullion on credit from M/s SRR Traders, Sowcarpet, Chennai under two tax invoices of Rs.60,00,000/- each. The respondent entrusted approximately 500 gm each to four persons viz., Shri C. Venkatesh, Shri M. Naveen Kumar, Shri Sk. Mastanvali and Shri B. Venkata Durga Prasad for transportation to Guntur. The four carriers were intercepted by the customs officers at Sullurpeta and Bollapalli toll plazas and 1998.780 gm of re-melted gold was recovered under two Panchanamas.

3. The statements of the carriers were recorded under section 108 of the Customs Act, wherein, they allegedly admitted that the gold was of smuggled foreign-origin. The statements were retracted through written representations dt.07.04.2023 and 08.04.2023 alleging that signatures had been obtained under coercion on pre-typed documents. The respondent claimed ownership of the seized gold and produced the two tax invoices issued by M/s SRR Traders. It is also stated that payment was subsequently made through RTGS in the ordinary course of the credit transaction. The supplier confirmed sale during the investigation.

4. By OIO dt.31.05.2025, the adjudicating authority ordered absolute confiscation of 1998.780 gm of gold under section 111(d) and 111(o) of the Customs Act and imposed penalty of Rs.8,00,000/- upon the respondent, besides imposing penalties upon the carriers and other co-noticees.

5. The Commissioner (Appeals), vide the impugned order, set aside the OIO intoto and granted consequential relief. The department has challenged the relief granted to the respondent and filed this appeal before us.

6. 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.

7. 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 contended that four persons were engaged to carry the gold in separate packets without invoices and that such unusual transportation coupled with their initial admissions, established the illicit character of the goods.

8. 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.

9. 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.

10. 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.

11. 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.

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

13. 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.

14. 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.

15. 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 '999/H 999 R', 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.

16. 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.

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

18. The seized quantity was 1998.780 gm, whereas the two invoices covered an aggregate quantity of 2000 gm. This is a close quantity correspondence. M/s SRR Traders confirmed the credit sale and payment through banking channel was shown to have made thereafter. Non-payment on the exact date of purchase cannot invalidate otherwise established credit transaction. Credit purchases are a recognized feature of commerce. What is material is whether the transaction was recorded in the books, confirmed by the supplier and ultimately discharged through an identifiable banking channel.

19. The absence of physical invoices with the carriers may justify enquiry or temporary detention. It does not prove that the goods were smuggled when the invoices and ownership documents are produced shortly thereafter and are supported by the supplier's records. The splitting of two kilograms gold bars into four packets and entrusting the packets to four carriers may appear unusual. Suspicious conduct may provide a starting point for investigation, but it cannot substitute evidence of foreign-origin or illegal importation. Domestic tax or regulatory irregularity, if any, is conceptually different from confiscability under section 111 of the Customs Act.

20. 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.

21. The adjudicating authority relied upon the statements of the carriers, suppliers and other persons 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."

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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)

Veda