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

Division Bench – Court No. – I

Customs Appeal No. 30363 of 2025
(Arising out of Order-in-Appeal No.VJD-CUSTM-000-APP-203 to 205-2024-25 dt.18.03.2025 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 Kapilavayi Naga Sambasiva Rao **.....Respondent**
S/o Sri Sivaguru Prasada Rao, Proprietor of
M/s Dattatreya Associates, New Main Bazar,
Durga Mandal, Palnadu Dist., AP – 522 612

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/30510/2026

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.18.03.2025, passed by the Commissioner of Customs & Central Tax (Appeals), Guntur, whereby the Commissioner (Appeals) set aside the Order-in-Original dt.31.03.2024 relating to confiscation of 1703.790 gm of gold under section 111(d) and 111(o), packing material under section 119 and imposed penalty of Rs.20,00,000/- upon the respondent under section 112(a) and 112(b) of the Customs Act, 1962.

2. The brief facts are that the dispute relates to 1703.790 gm of re-melted gold claimed by Shri Kapilavayi Naga Sambasiva Rao, Proprietor of M/s Dattatreya Associates. According to the respondent, the gold had been purchased from M/s Chaitanya Retails Pvt Ltd, Visakhapatnam, under tax invoice No. CRPL-0323-04 dt.17.03.2023. It was being carried to Chennai

for conversion into ornaments and was seized while being brought back when the intended designs were found unavailable.

3. The Original Authority absolutely confiscated the gold under section 111(d) and 111(o) of the Customs Act and imposed penalties upon the owner, carrier and other connected persons under section 112(a) and 112(b) of the Customs Act. On appeal, the Commissioner (Appeals), after examining the FASTag records, purchase invoice, banking transactions, retractions and other material, set aside the OIO intoto, with consequential relief. Hence, the present appeal filed by the department.

4. Learned AR for the Revenue has submitted that gold is a notified commodity under section 123 of the Customs Act and, once the possession of such gold was established, the burden rested upon the respondent to prove its lawful acquisition. The purchase documents were not produced at the time of interception; the gold was carried without proper transport documents or e-way bills; the initial statements recorded under section 108 disclosed illicit purchase of gold at Chennai; and subsequent retractions and invoice were afterthoughts. Reliance has been placed upon the evidentiary character of statements under section 108 and the decision in the case of Naresh J. Sukhawani Vs UOI [1996 (83) ELT 258 (SC)].

5. The respondent has supported the impugned order. It has been submitted that the goods were regular pieces of re-melted gold without any foreign refinery marking, serial number or other indication of foreign-origin. The seizure was town seizure made on a national highway, far away from any customs frontier. The intercepted persons promptly retracted their statements and the owner claimed the gold and produced tax invoice. The supplier confirmed the credit sale and the payments were subsequently made through normal banking channels.

6. It has been further submitted that contemporaneous FASTag records conclusively contradicted the places and timings mentioned in the Panchanama. The Panchanama and the initial statements were prepared on a stereo-typed, pre-typed formats and the request to cross-examine the Panch witnesses and other material witnesses were rejected. Therefore, according to the respondent, neither the initial burden of proving smuggled character was discharged by the department nor could the retracted

statements, without independent corroboration, sustain confiscation and penalties.

7. Heard both sides and perused the records.

8. The principal question is whether department has established that the seized gold was of foreign-origin and had been smuggled into India, so as to justify confiscation under section 111(d) and 111(o) and the consequential penalty.

9. Section 123 undoubtedly places the burden of proving that notified goods are not smuggled upon the person from whose possession they are seized or upon the claimant. Nevertheless, the statutory presumption does not arise merely because the goods are gold. The seizure itself must be founded upon a reasonable belief that the particular goods are smuggled goods. Such belief must have an intelligible indication with objective material and cannot rest upon conjecture, the mere purity of the gold, absence of documents at the precise moment of interception or the fact that the goods were being transported in a private vehicle.

10. In the present case, the goods were seized within the country. They consisted of irregular and re-melted pieces. No recognized foreign refinery inscription, overseas mint marking or serial number capable of identifying them as imported gold is shown to have existed. There is also no evidence concerning the alleged country of origin, point or mode of illicit importation, customs frontier through which the gold entered India, foreign supplier, smuggler, or person responsible for its alleged importation. Purity of gold, by itself, does not establish foreign-origin or smuggled character.

11. The evidentiary foundation of the departmental case is further weakened by material discrepancies in the seizure proceeding. FASTag data relied upon by the respondent records actual movement of the vehicle and is contemporaneous electronic evidence. The recorded crossings of the toll plaza are materially inconsistent with the time and place of interception and the alleged completion of proceedings mentioned in the Panchanama. The vehicle is shown to have crossed Tanguturu Toll Plaza at a time subsequent to the alleged interception there, whereas, the Panchanama mentioned its interception there at about 19:45 hrs on the preceding day and the completion of proceedings at Vijayawada by 00:30 hrs.

12. Revenue has not produced a satisfactory explanation reconciling these objective records with the Panchanama. The place and time of interception are not peripheral details; they form part of the very genesis of the seizure. Once such foundational particulars are contradicted by the contemporaneous electronic records, the Panchanama cannot be accepted at their face value without cogent corroboration. The mere contention that both places fall within the territorial jurisdiction of the officers does not answer the serious discrepancy concerning where and when the vehicle was actually intercepted.

13. Departmental case principally rests upon statements recorded under section 108 of the Customs Act. Such statements are admissible and may, in an appropriate case, constitute relevant evidence. However, admissibility and reliability are distinct considerations. The statements in the present case were retracted in writing within a reasonably proximate period. The allegations were made that signatures had been obtained on stereotyped English formats under coercion and without supplying copies. More importantly, the alleged narrative of purchase of smuggled gold from an unidentified person in Chennai has not been supported by recovery of the purchase money, identification of the supposed supplier, any communication with such supplier, or evidence tracing the seized gold to an illicit import. In the case of Vinod Solanki Vs UOI [2009 (233) ELT 157 (SC)], the Hon'ble Supreme Court emphasized that a retracted confession must be tested in the light of attending circumstances and corroborative evidences. The principle in Naresh J. Sukhawani Vs UOI (supra), does not dispense with scrutiny of the voluntariness and reliability of a statement, nor does it make every retracted statement conclusive irrespective of surrounding evidence. In the facts before us, the statements do not receive sufficient independent corroboration to sustain absolute confiscation and substantial penalty.

14. The respondent claimed ownership shortly after the seizure and produced tax invoice predating them. Invoice No. CRPL-0323-04 dt.17.03.2023 covered 1703.790 gm of gold purchased from M/s Chaitanya Retails Pvt Ltd. The supplier confirmed the transactions and payments were shown through formal banking channels.

15. The fact that the purchase was on credit or that part of the consideration was paid subsequently, does not, by itself, render the

transactions fictitious. The seizure of goods shortly after their purchase reasonably explains subsequent payment. Likewise, discrepancies regarding generation of e-way bill or non-production of invoice at the very moment of interception may invite examination under the applicability of GST law, but they cannot, without further evidence, prove illicit importation or justify confiscation under the Customs Act.

16. Even assuming that section 123 became applicable, the respondent produced affirmative evidence of domestic acquisition in the form of contemporaneous tax invoice, confirmation by the supplier and banking transaction. Revenue did not establish that the invoice was forged, that the supplier was fictitious, that the payments were circular transactions, or that the quantity and description of the gold was incapable of correlation with the seized goods. The Commissioner (Appeals), therefore, correctly held that the respondent had satisfactorily discharged the burden cast upon him.

17. We also find substance in the respondent's grievance regarding denial of cross-examination. The adjudicating authority relied upon the statements and the Panchanama despite specific challenges to their voluntariness, preparation and accuracy. In such circumstance, cross-examination of the persons whose statements were used and of the Panch witnesses assumed significance. If a statement is intended to be treated as substantive evidence against a noticee, the safeguard embodied in section 138B of the Customs Act cannot ordinarily be bypassed. The Hon'ble Supreme Court in the case of Andaman Timber Industries Vs CCE, Kolkata [2015 (324) ELT 641 (SC)] held that denial of cross-examination of witnesses whose statements are relied upon amounts to 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."

18. In the present matter, denial of the requested cross-examination, coupled with unexplained contradictions in the Panchanama and the absence of independent evidence of the foreign-origin, materially prejudice the respondent.

19. We further find that section 111(d) could apply only when goods are imported or attempted to be imported contrary to a prohibition imposed by law. The foundational fact of illicit importation has not been established here. Section 111(o) concerns non-observance of a condition subject to which exemption from duty or prohibition was granted in respect of imported goods. The SCN and the adjudication order do not identify the importer, the import documents, the particular exemption or the condition allegedly breached. Invocation of section 111(o) is, therefore, also unsustainable.

20. Since the goods are not proved liable to confiscation, penalties under section 112(a) and 112(b), being consequential, cannot survive. In any event, imposition of penalties requires evidence of the individual's act or omission and the requisite knowledge or reason to believe that the goods were liable to confiscation. Mere carriage of the gold at the owner's direction, in the absence of proof of its smuggled character or conscious involvement in smuggling, is insufficient.

21. The Commissioner (Appeals) examined the discrepancies in the seizure records, the retracted statements, the contemporaneous invoice, the supplier's confirmation, banking evidence and the absence of proof of foreign-origin. Revenue has not produced any new or compelling material demonstrating that these factual findings are perverse or contrary to the

record. An Appellate interference cannot be founded merely upon reiteration of the allegations made in the SCN.

22. In view of the foregoing, we find no infirmity in the impugned order passed by the Commissioner (Appeals).

23. Consequently, the appeal filed by the department is dismissed.

(Pronounced in the Open Court on 10.09.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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