IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75528 of 2026

(Arising out of Order-in-Appeal No. 127/GHY(A)/COM/CUS/SH/2026 dated 13.03.2026 passed by the Commissioner (Appeals), C.G.S.T., Central Excise and Customs, 3rd Floor, G.S.T. Bhawan, Kedar Road, Machkhowa, Guwahati – 781 001)

Narpat Soni **: Appellant**
M/s. Ambe Maa Jewellers,
Sarawas, Inside Tilak Dwar,
Jalore, Rajasthan – 343 001

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
North Eastern Region, 110, M.G. Road,
Shillong, Meghalaya – 793 001

AND

Customs Appeal No. 75529 of 2026

(Arising out of Order-in-Appeal No. 127/GHY(A)/COM/CUS/SH/2026 dated 13.03.2026 passed by the Commissioner (Appeals), C.G.S.T., Central Excise and Customs, 3rd Floor, G.S.T. Bhawan, Kedar Road, Machkhowa, Guwahati – 781 001)

Inder Singh **: Appellant**
Purohito Ka Vas,
M. Post Noon, Via Bagra,
Jalore, Rajasthan – 343 025

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
North Eastern Region, 110, M.G. Road,
Shillong, Meghalaya – 793 001

APPEARANCE:

Shri Vishal Agarwal, Advocate,
Shri Arindam Banerjee, Advocate,
For the Appellant(s)

Shri Ashwini Kr. Choudhary, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76380-76381 / 2026

DATE OF HEARING: 06.08.2026

DATE OF DECISION: 08.10.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeals have been preferred by Shri Narpat Soni (hereinafter also referred to as the "appellant No. 1") and Shri Inder Singh (hereinafter also referred to as the "appellant No. 2") assailing Order-in-Appeal No. 127/GHY(A)/COM/CUS/SH/2026 dated 13.03.2026, passed by the Ld. Commissioner (Appeals), C.G.S.T., Central Excise and Customs, whereby the appeals preferred by the appellants against the adjudication order were rejected thereby inter alia affirming the order of absolute confiscation of 26 pieces of gold collectively weighing 2401.310 grams and valued at Rs1,53,80,391/- along with the order of imposition of separate penalties upon both the appellants.

2. The facts in brief are that, acting upon specific intelligence that a person would be carrying a substantial quantity of gold of foreign/smuggled origin and attempting to travel by train passing through Guwahati, officers of the Anti-Smuggling Unit, Customs Division, Guwahati boarded Train No. 01666 – Rani Kamlapati Special Train, which was standing at Platform No. 1 of Guwahati Railway Station, at about 07:45 a.m. on 12.02.2024. The officers intercepted Shri Inder Singh, aged about 38 years, son of Shri Hameer Singh, resident of Purohito Ka Vas, M. Post Noon, Via Bagra, District Jalore, Rajasthan, who is the present appellant No. 2. Upon search of his person, including the pair of black-coloured cotton trousers worn by him, 26 pieces of hard yellow-coloured metal, wrapped/covered with brown-coloured adhesive tape, were recovered. The said metal pieces were suspected to be gold.

2.1. As per the Revenue, Shri Inder Singh was unable to produce, at the time of interception, any document evidencing the licit purchase, procurement or possession of the recovered gold. A Panchanama dated 12.02.2024 was accordingly drawn and an Inventory-cum-Seizure List dated 12.02.2024 was prepared in respect of: (i) 26 pieces of yellow-coloured metal, believed to be gold, having a total weight of 2401.310 grams; (ii) one OnePlus Nord mobile phone, Model RMX 1911; and (iii) the black-coloured cotton trousers used for concealing the recovered goods. The gold pieces were seized under Section 110(1) of the Customs Act, 1962, vide Case No. 14/CL/IMP/AS/GAU/2023-24 dated 12.02.2024, with an estimated seizure value of Rs.1,53,80,391/-.

3. Thereafter, at about 11:00 a.m. on 12.02.2024, after reaching the Customs office situated at Nilamoni Phukan Path, Christian Basti, Guwahati, the Customs officers sought the assistance of Shri Suresh Kumar Soni of M/s. K.K. Jewellers, Soni Bhawan, Behind Bajrangi Market, S.R.C.B. Road, Fancy Bazar, Guwahati – 781 001, for examination of the recovered yellow metal and certify its nature and purity. The said person certified the recovered material as 26 pieces of gold of 24-carat purity having a value of Rs.1,53,80,391/- as on the date of seizure.

4. The statement of Shri Inder Singh was recorded under Section 108 of the Customs Act, 1962 on 12.02.2024 wherein it was inter alia stated that he did not possess documents evidencing licit procurement of the gold and further, inter alia, that the gold had been procured from Shri Narpat Soni of Jalore, Rajasthan (appellant no. 2 herein) whose mobile number was stated by him to be 8107462851; that Shri Narpat Soni had handed over the gold to him.

Shri Inder Singh further stated that he had been engaged in concealing and carrying such gold from about October, 2023, and had undertaken approximately 11 to 12 such trips, averaging about two to three trips every month, until the date of his statement. Further, in the said statement, it was inter alia stated that during each such journey he would travel from his residence at Jalore to Ahmedabad, and thereafter take a flight from Ahmedabad to Kolkata, from where he would proceed towards Agartala. It was stated that the expenses for the flight journey were financed by Shri Narpat Soni; that at Agartala, he used to stay in hotels in the Battala area, such as Hotel Neer, and, after a short interval of about one or two hours, Shri Narpat Soni would allegedly contact an unidentified person who would deliver the gold to Shri Inder Singh below the hotel, pursuant to the directions of Shri Narpat Soni; that, after receiving the gold from the unidentified person, he would conceal the gold pieces inside his trousers and undertake the return journey by train from Agartala to Prayagraj, thereafter from Prayagraj to Kanpur, and from Kanpur to Jalore by bus, where the gold was allegedly to be delivered to Shri Narpat Soni. According to him, the expenses relating to the train journeys were also borne by Shri Narpat Soni and he was paid Rs.15,000/- per trip; it was stated that he had undertaken such activity on account of financial constraints. Moreover, Shri Inder Singh, in his aforesaid statement, also named one person referred to as “Maratha” of Jalore, whom he stated had introduced Shri Narpat Soni to the alleged business of procuring gold from outside and bringing the same to Jalore. He also stated that he did not possess documents relating to the gold and, significantly, stated that he was not in a position to say whether the

gold pieces recovered from him were actually smuggled or not.

4.1. On the basis of the aforesaid statement and the circumstances surrounding the recovery, the Department proceeded on the premise that Shri Inder Singh (appellant no. 2) was carrying smuggled gold at the behest of Shri Narpat Soni (appellant no. 1), who was alleged to be running a racket of procuring, transporting and dealing in smuggled gold pieces, with the ultimate view to defraud the government exchequer of applicable duties of customs.

5. On the basis of the said allegations, Shri Inder Singh was arrested on 12.02.2024 under Section 104 of the Customs Act, 1962, on the allegation that the manner of concealment, the absence of documents and the alleged procurement of the gold from the vicinity of Battala, Agartala, situated approximately one kilometre from the international border between India and Bangladesh, indicated its smuggled nature. He was thereafter produced along with the seized gold before the Hon'ble Chief Judicial Magistrate on 13.02.2024, who, vide order dated 13.02.2024, remanded him to judicial custody up to 27.02.2024.

5.1. Subsequently, a letter dated 06.03.2024 was sent by the Revenue to the Senior Quality Control Officer, Assam Hallmarking Centre requesting to examine the purity percentage of the seized 26 (twenty six) numbers of gold pieces. The Senior Quality Control Officer, Assam Hallmarking Centre, Bamunimaidan, Guwahati, vide Report communicated under Letter No. GQC/AHC.1/2017-18/Vol-III/2339/110 dated 11.03.2024, certified that the seized yellow-coloured flat metal pieces of different sizes were made of gold having an average fineness

of 24.0 carat. The Revenue treated the said report as further confirmation of the nature and purity of the seized material.

6. In the meantime, on the basis of the information furnished by Shri Inder Singh in his statement dated 12.02.2024, investigation was extended to Shri Narpat Soni, S/o. Shri Mangi Lal Soni, resident of Jalore, Rajasthan, who is the present appellant No. 1 and Proprietor of M/s. Ambe Maa Jewellers, Sarawas, Inside Tilak Dwar, Jalore, Rajasthan.

6.1. Follow-up searches were conducted by the Customs Commissionerate, Jodhpur, at the business premises of M/s. Ambe Maa Jewellers at atSarawas, Inside Tilak Dwar, Jalore, Rajasthan and at the residential premises of Shri Narpat Soni at Sarawas, Inside Tilak Dwar, Jalore, Rajasthan as well as at another residential premises stated to be at R-4, Fateh Hills, Sire Mandir Road, Jalore, Rajasthan. The searches, however, did not result in the recovery of any objectionable or incriminating material.

7. The statement of Shri Narpat Soni / appellant no. 2 was thereafter recorded under Section 108 of the Customs Act on 13.05.2024, wherein he inter alia stated that his maternal home and the residence of Shri Inder Singh were situated in the same village and were adjacent to each other and that he had therefore known Shri Inder Singh since childhood; he, however, denied having any business relationship with Shri Inder Singh. Shri Narpat Soni admitted that he had paid Rs.15,000/- to Shri Inder Singh for travelling to Agartala, stating that he had been informed that the price of gold was comparatively higher at Agartala than at Jalore and that the gold had been sent for being sold there; he denied having financed Shri Inder

Singh's air fare or hotel expenses and denied that he had himself provided the gold pieces to Shri Inder Singh. He further denied having procured the gold from any foreign country and denied knowing the unidentified person who, according to Shri Inder Singh, had delivered the gold at Agartala at his instance. He also denied knowing the person referred to as "Maratha" who had been in the statement of Shri Inder Singh as the person who had purportedly introduced Shri Narpat Soni into the business of smuggled gold.

7.1. With regard to the documents relating to the gold, Shri Narpat Soni, in his statement, inter alia stated that the relevant documents were available with his Chartered Accountant and sought time of three to four days to produce the same.

8. The two mobile phones of Shri Narpat Soni were also subjected to forensic examination by the Jodhpur Customs authorities through M/s. Keyber Experts Pvt. Ltd., Nagpur. Vide its certification dated 16.05.2024, the forensic agency reported that the electronic evidence available in the mobile phones was authentic and untampered, upon examination of the relevant Hash Values. The Revenue, however, did not find from the forensic examination any chat, photograph or other specific incriminating material directly evidencing the alleged transaction or delivery of the seized gold.

9. In the course of further investigation, the Department also examined the Customer Database Register of Hotel Neer, Agartala, basing on the statement of Shri Inder Singh that he had repeatedly stayed at the said hotel and had received the gold from an unidentified person below the hotel. The

owner/founder of Hotel Neer, namely, Shri Swapan Kumar Pal, was examined during the course of investigation and furnished copies/images of the relevant pages of the Customer Database Register covering the period from 12.02.2023 to 11.02.2024.

9.1. In his statement recorded before the Officers of Agartala Customs Division, Shri Swapan Kumar Paul, Owner/Founder of Hotel Neer inter alia informed the Department that Shri Inder Singh had visited Hotel Neer only once during the preceding one year, on 16.10.2023, and had stayed there for only one day. He further stated that no visitor had met Shri Inder Singh at the hotel during the said stay; the hotel owner also informed the officers that CCTV footage was not available, as the hotel retained such footage only for about one month owing to limited digital storage capacity. He further stated that, since no visitor was recorded in the relevant hotel records, there was no material to indicate that any unidentified person had met Shri Inder Singh inside the hotel.

10. The Department also obtained Customer Application Form (CAF) and Call Detail Record (CDR) data in respect of the mobile numbers stated to belong to the appellants. In respect of the mobile number 8107462851, stated by Shri Inder Singh, in his statement dated 12.02.2024, to belong to Shri Narpat Soni, the Revenue noticed substantial telephonic communication between the present appellants. It is the case of the Revenue that there were 479 calls between the said number and mobile number 7019961239, which was declared by Shri Inder Singh in his statement dated 12.02.2024 to be his mobile number. The Department further noted that on 12.02.2024 itself, being the date of seizure, there were three calls between the said numbers. The CDR

analysis also disclosed five calls between the number attributed to Shri Narpat Soni and another mobile number 998654882, which was stated by Shri Inder Singh to be another number used by Shri Inder Singh. The Revenue relied upon the frequency of such communications as corroborative of its allegation that the appellants were acting in concert.

11. Thus, the Department proceeded on the basis that Shri Narpat Soni was the person controlling the alleged movement of the gold, that Shri Inder Singh was acting as a carrier on his behalf, and that the latter had, both on the present occasion and on earlier occasions, collected smuggled gold from an unidentified person at Agartala pursuant to the instructions of Shri Narpat Soni. The alleged modus operandi was sought to be established principally from the statement dated 12.02.2024 of Shri Inder Singh, the CAF/CDR data showing communication between the appellants, the absence of documents accompanying the seized gold and the alleged circumstances of its concealment and transportation.

12. Upon completion of the investigation, the Department issued Show Cause Notice bearing F. No. GEN/INV/SMLG/GOLD/60/2024-A/S-Cus-Div-GHY-SHG-Commrte-Shillong/I/2192096/2024 dated 08.08.2024, proposing, inter alia: -

> (i) confiscation of 26 pieces of gold of alleged foreign origin, weighing 2401.31 grams and valued at Rs.1,53,80,391/- under Sections 111(b) and 111(d) of the Customs Act, 1962;
>
> (ii) confiscation of the one pair of black-coloured cotton trousers, having no commercial value,

used for concealment of the gold, under Section 119 of the Act; and

(iii) imposition of penalty upon Shri Inder Singh and Shri Narpat Soni under Section 112(a) and/or Section 112(b) of the Act.

12.1. Both the appellants filed detailed replies to the Show Cause Notice, denying and disputing the allegations. It was specifically contended by the noticees/appellants that the seized gold pieces bore no foreign markings, inscriptions or other identifying features capable of establishing foreign origin or smuggled character. It was further contended that there was no reasonable basis to conclude that the goods had been smuggled into India, or that the gold had been melted from smuggled bullion. The appellants also disputed the applicability of the statutory presumption under Section 123 of the Customs Act, 1962, contending that the recovery was a town seizure at a railway station, and not a seizure at a notified customs port, airport or land customs station.

12.2. The appellants further contended in their respective replies that no incriminating document or material had been recovered during the investigation to establish the alleged smuggling activity. It was submitted by Shri Inder Singh, in his reply, that Shri Narpat Soni was in possession of documents relating to the gold and that the relevant purchase invoice had been handed over along with the gold pieces but had subsequently been misplaced. It was also pointed out therein that the searches conducted at the business and residential premises of Shri Narpat Soni yielded no incriminating material and that the forensic examination of the mobile phones did not disclose any

incriminating chat, photograph, message or other material evidencing the alleged smuggling transaction; similarly, that the verification conducted at Hotel Neer did not corroborate the alleged repeated visits or the presence of an unidentified person who was said to have delivered the gold to Shri Inder Singh.

12.3. In support of his defence, it was specifically contended by Shri Narpat Soni vide his reply inter alia that the seized quantity of 2401.310 grams of gold had been sourced from the stock available in his jewellery business. The source of the gold was explained, inter alia, as comprising 129.957 grams of opening stock; 1150 grams received by Shri Narpat Soni under a Will from his grandfather; 348.990 grams purchased from M/s. Ganesh Jewellers and M/s. Sudarshan Jewellers; and 900.880 grams of gold obtained by melting old jewellery. The said appellant relied upon his financial records, including the Profit & Loss Account, Balance Sheets reflecting the value of closing stock for the financial years 2022-23 and 2023-24, and the stock register relating to gold, in support of the explanation regarding the source and availability of the seized gold.

12.4. The appellants specifically disputed the evidentiary value of the statement dated 12.02.2024 of Shri Inder Singh, contending that the same had not been voluntarily given and had been recorded under threat and duress and that the said statement was subsequently retracted/disputed.

12.5. The appellants also placed considerable emphasis upon the purity of the seized gold, contending that the gold in question could not, merely on the basis of its purity, be characterised as imported

foreign-origin gold. It was submitted that imported foreign gold ordinarily associated with the alleged manner of smuggling was stated to have a purity in the range of 998.0 to 998.8, whereas fine gold is of 999.9 purity, and that the seized gold having been certified only as 24-carat gold did not, by itself, establish foreign origin. The absence of any foreign inscription or marking was also relied upon in this context.

12.6. The appellants accordingly submitted that, in the absence of evidence establishing the actual foreign origin of the gold, its illicit importation into India, the person who had allegedly smuggled it into the country, or the manner in which it had crossed the international border, the allegation of smuggling could not be sustained merely on the basis of concealment and non-production of documents. Various judicial pronouncements were also relied upon in support of the aforesaid contentions.

12.7. Further, Shri Narpat Soni, during the adjudication proceedings, sought cross-examination of Shri Inder Singh, which was conducted by Shri Narpat Soni and his authorised representative, Shri Amit Bikram Dey, whereupon it was inter alia contended that the statement could not safely be relied upon as the foundation of the proceedings. It was further submitted that there was no independent evidence establishing the existence of any alleged gold-smuggling racket operated by Shri Narpat Soni. It was also pointed out by the Shri Narpat Soni / appellant no. 1 that, although it is the case of the Revenue that Shri Inder Singh had allegedly stated that Shri Narpat Soni had financed his air travel and had supplied him with boarding passes, no such boarding pass or other documentary evidence was

recovered during investigation. The appellant further relied upon the absence of any material emerging from the forensic examination of the mobile phones and from the investigation conducted at Hotel Neer as circumstances militating against the Revenue's version.

12.8. During the adjudication proceedings, the appellants also sought cross-examination of the relevant Government Railway Police (GRP) personnel who were stated to have been present at the time of interception of Shri Inder Singh. Cross-examination of Shri Abhishek Bodo, Inspector, GRP, Guwahati Railway Station, was thereafter allowed to be conducted. Various objections were raised by the appellants such as cross-examination of incorrect person being granted and the cross examination of the actual person involved not being carried out, the alleged variation in facts stated during such cross-examination and the evidentiary value of the cross-examination record. Shri Narpat Soni contended that the circumstances surrounding the interception and seizure themselves did not establish the alleged smuggling activity and consequently, that the statement said to have been recorded from Shri Inder Singh on 12.02.2024 was not voluntary, but a concocted version.

13. The matter was thereafter adjudicated on the basis of the Show Cause Notice, replies filed by both the appellants, documents available on record, personal hearing and the material emerging from the cross-examination proceedings. The Ld. Joint Commissioner of Customs (Preventive), N.E.R., Shillong, vide the adjudication order, ordered absolute confiscation of the 26 (twenty six) pieces of gold alleged to be of foreign origin, collectively weighing

2401.31 grams and valued at Rs.1,53,80,391/-under Sections 111(b) and 111(d) of the Customs Act, 1962, absolute confiscation of the 01 (one) pair of black-coloured cotton trousers used for concealment of the gold under Section 119 of the Act and further imposed penalties of Rs.1,50,000/- upon Shri Inder Singh and Rs.15,00,000/- upon Shri Narpat Soni, under Sections 112(a) and 112(b) of the Customs Act, 1962, while holding, inter alia, that the circumstances of recovery, the statement of Shri Inder Singh, the alleged modus operandi disclosed therein and the CDR/CAF records sufficiently established the involvement of both the appellants in dealing with and transporting the alleged smuggled gold.

14. The aforesaid adjudication order was challenged before the Ld. Commissioner (Appeals), C.G.S.T., Central Excise and Customs, who, vide the Order-in-Appeal No. 127/GHY(A)/COM/CUS/SH/2026 dated 13.03.2026 (hereinafter referred to as the "impugned order"), rejected the appeals and upheld the absolute confiscation of the 26 gold pieces under Sections 111(b) and 111(d), confiscation of the black-coloured trousers under Section 119 and the penalties imposed upon the respective appellants under Section 112(a) and 112(b) of the Customs Act, 1962.

15. Aggrieved by the affirmation of the order of absolute confiscation of the seized gold and the consequential penalties upon the appellants, Shri Narpat Soni and Shri Inder Singh have preferred the present appeals before this Tribunal.

16. The Ld. Counsel appearing on behalf of the appellants, while assailing the impugned order on facts as well as in law, advanced elaborate submissions, which are, inter alia, summarised hereunder:

(i) It is submitted that, being a town seizure, the burden lay squarely upon the Department to establish, by cogent and affirmative evidence, that the seized gold was of foreign origin and had been smuggled into India. It was contended that no such material has been brought on record and that the alleged "reasonable belief" of smuggled nature was founded essentially upon the manner of concealment and the absence of documents at the time of interception. The appellant No. 1, Shri Narpat Soni, had, however, furnished a specific and verifiable explanation regarding the source of the gold in his reply to the Show Cause Notice, particularly in paragraphs C and M thereof. It was submitted that the quantity comprised 1,150 grams of pure gold received under the Will of his grandfather, duly notarised; 300 grams of gold bar purchased from M/s. Shri Ganesh Jewellers, Bhinmal under GST Invoice No. 1784 dated 05.02.2024; 48.990 grams of gold bar purchased from M/s. Sudharshan Jewellers, Bhinmal under GST Invoice No. 2378 dated 05.02.2024; and 900.880 grams obtained upon melting old gold jewellery, duly reflected in the stock journal entry dated 04.02.2024. The balance quantity of 129.957 grams of gold bar represented the opening stock as on 01.04.2023, which was reflected as the closing balance in the Balance Sheet and Profit & Loss

Account for the financial year 2022-23. It was therefore urged that a definite source of procurement had been disclosed and supported by contemporaneous records, and that the same could not have been brushed aside merely because the documents were not produced at the very moment of interception.

(ii) That the impugned Order-in-Appeal is non-speaking and cryptic, inasmuch as the detailed submissions, explanations and documentary evidence furnished by the appellants have not been dealt with in their proper perspective. It was contended that the Commissioner (Appeals) has substantially affirmed the findings of the adjudicating authority without undertaking an independent appraisal of the material placed on record or addressing the specific grounds urged in appeal.

(iii) It was emphatically submitted that not a single independent or corroborative piece of evidence has been produced by the Department to establish that the seized gold was smuggled into India. The allegation of smuggling, according to the Ld. Counsel, cannot be sustained merely because the appellant could not immediately produce documents evidencing procurement at the railway station. In the absence of evidence establishing foreign origin as well as illicit importation, the very foundation for seizure and subsequent confiscation was contended to be untenable.

(iv) The Ld. Counsel further submitted that none of the 26 pieces of gold bore any foreign marking, inscription, seal, serial number or other

identifying feature suggestive of foreign origin. The Department had, therefore, failed to establish the foreign character of the goods through any physical or documentary evidence.

(v) It was also submitted that the purity and physical characteristics of the seized pieces do not establish their foreign origin. Though the pieces were certified to be gold of approximately 24 carat purity, the purity and weight of the individual pieces were not uniform. According to the Ld. Counsel, the purity of the seized gold was not shown to correspond to the characteristics ordinarily attributed to imported foreign gold, and the Department had not established that the seized gold was of the alleged foreign fineness or specification.

(vi) Considerable emphasis was placed upon the statement of Shri Inder Singh dated 12.02.2024, which, according to the Ld. Counsel, constitutes the principal and virtually the sole foundation of the Department's case. It was submitted that substantial portions of the said statement have either been demonstrated to be incorrect or have remained wholly unverified, thereby seriously undermining its evidentiary worth. In particular, the assertions that Shri Inder Singh had visited Agartala on 11–12 occasions and stayed at Hotel Neer; that he travelled by flight from Ahmedabad to Kolkata and thereafter to Agartala, with tickets and boarding passes allegedly sent by Shri Narpat Soni over the phone; that he met an unidentified person below the hotel to collect gold; and that Shri Narpat Soni contacted such unidentified person at Agartala and directed him

to hand over the gold to Shri Inder Singh, were all specifically questioned. The Ld. Counsel submitted that the subsequent investigation did not furnish the corroboration necessary to lend credibility to these assertions.

(vii) The Ld. Counsel further submitted that the statement of Shri Inder Singh does not possess the requisite evidentiary value, having been retracted on more than one occasion, including in the bail proceedings and by subsequent written communication, and having further been resiled from during cross-examination. The issue of the alleged delay in retraction was also addressed by the Ld. Counsel. It was argued that Shri Inder Singh was not examined by the adjudicating authority in the manner contemplated under Section 138B of the Customs Act, 1962, and that, in the absence of the statutory conditions being satisfied, the statement could not be treated as substantive evidence against the co-appellant.

(viii) The allegation that Shri Narpat Soni had arranged for the handing over of the gold to Shri Inder Singh at Agartala, or that the gold had thereafter been melted or otherwise dealt with pursuant to such arrangement, was submitted to be wholly unsubstantiated. The Ld. Counsel contended that these allegations rest merely upon the narration contained in the disputed statement of Shri Inder Singh and are unsupported by any independent material.

(ix) It was pointed out that the Department had not identified or traced the alleged person who purportedly handed over the gold to Shri Inder

Singh at Agartala. No statement of such person was recorded, nor was any other evidence produced to establish his identity, connection with the appellants, or involvement in the alleged transaction. The absence of the very person said to have delivered the gold was urged as a material lacuna in the Department's case.

(x) Attention has also been drawn to the enquiries conducted at Agartala, submitting that the follow-up investigation did not reveal any incriminating material or wrongdoing on the part of the appellants. In particular, the enquiries concerning Hotel Neer did not corroborate the alleged repeated visits or the presence of an unidentified person delivering gold to Shri Inder Singh in the manner narrated in his statement.

(xi) On the finding that Shri Inder Singh was unable to produce documentary evidence at the time of interception, it was submitted that absence of documents at the point of interception cannot, by itself, constitute proof of smuggling. The Ld. Counsel submitted that the appellant's inability to produce procurement documents instantaneously, particularly when the goods were intercepted while being carried, could not legitimately be elevated into positive evidence of illicit importation.

(xii) The Ld. Counsel further addressed the issue of the subsequent furnishing of documents evidencing the source of the seized gold. It was submitted that the fact that the documents relating to the source and availability of the gold

were furnished during the course of adjudication does not render them unreliable or disentitled to consideration. The relevant financial records, stock records, purchase invoices and the notarised Will were stated to furnish a coherent explanation of the availability of the gold with Shri Narpat Soni.

(xiii) The circumstances surrounding the interception itself were also questioned. It was submitted that the Customs officers were not present at the initial apprehension of Shri Inder Singh, and that there was an absence of independent Panch witnesses at the time of the physical interception. The Ld. Counsel further challenged the testimony of Shri Abhishek Bodo, Inspector, GRP, Guwahati Railway Station, submitting that material inconsistencies and alterations in his version emerged during cross-examination. It was contended that the testimony, having thus become unreliable, could not constitute a safe basis for sustaining the seizure or the consequential findings. The Ld. Counsel also referred to the manner in which the adjudicating authority itself dealt with the said deposition.

(xiv) It was argued that the statutory requirement of formation of a "reasonable belief" under Section 110 of the Customs Act, 1962 had not been satisfied. According to the Ld. Counsel, such belief must be founded upon objective and tangible circumstances having a rational nexus with the goods being liable to confiscation, and cannot be founded merely upon concealment, absence of documents or generalised intelligence concerning gold smuggling.

(xv) The Ld. Counsel submitted that the seized gold was not liable to confiscation under Section 111(b) and Section 111(d) of the Customs Act, 1962, since the Department had failed to establish either that the goods were imported contrary to any prohibition/restriction applicable thereto or that the goods were in fact smuggled into India. The statutory ingredients necessary to attract the said provisions were, therefore, stated to be conspicuously absent.

(xvi) It was further submitted that gold is not a prohibited commodity under the Customs Act or under the Foreign Trade Policy/Foreign Trade (Development and Regulation) Act in the manner alleged by the Department. Consequently, even assuming, without admitting, that the goods were liable to confiscation, the absolute confiscation of the gold was stated to be legally unwarranted. The Ld. Counsel accordingly prayed that the goods ought, at the very least, to have been permitted redemption under Section 125 of the Customs Act, 1962, rather than being subjected to absolute confiscation.

(xvii) It has been reiterated by the appellants that the entire case of the Department rests substantially upon a solitary statement, namely, the statement of Shri Inder Singh dated 12.02.2024, which had subsequently been retracted in the bail proceedings, by written communication and during cross-examination. In the absence of independent corroboration, such a disputed statement, particularly when material portions thereof were allegedly contradicted by subsequent investigation, could

not form the sole basis for the drastic consequences of absolute confiscation and imposition of penalties.

(xviii) The allegation that the manner of concealment itself demonstrates an intention to smuggle was assailed as a fallacious inference. The Ld. Counsel submitted that concealment may, at best, constitute a circumstance requiring investigation; it cannot, without more, establish foreign origin or illicit importation. The Department was required to establish the statutory ingredients of the alleged offence through positive evidence rather than by converting the manner of carriage into conclusive proof of smuggling.

(xix) The Ld. Counsel placed reliance upon a decision of the Tribunal rendered on similar facts, wherein seizure of gold bars in a town-seizure situation was held to be unsustainable in the absence of sufficient evidence establishing smuggled character. It was submitted that the ratio of the said decision was directly attracted to the facts of the present case.

(xx) It was submitted that the general trend or prevalence of gold smuggling in the region cannot substitute for proof in the particular case. It is contended by the appellants that general intelligence, statistical trends or the known incidence of gold smuggling may explain why an investigation was initiated, but cannot, in the absence of case-specific evidence, establish that the particular 26 pieces seized from Shri Inder Singh were smuggled goods.

(xxi) The Ld. Counsel once again emphasised that the present matter is a town seizure, the interception having taken place at Guwahati Railway Station and not at a notified customs station, port, airport or land customs station. It was therefore submitted that the Department could not dispense with the requirement of establishing the essential facts constituting smuggling merely by relying upon the presumptive provisions of the Act.

(xxii) It was further submitted that several of the specific grounds and contentions advanced before the adjudicating authority and thereafter before the Commissioner (Appeals) have not been dealt with in the impugned Order-in-Appeal. The appellate order, according to the Ld. Counsel, fails to disclose a proper consideration of the documentary evidence, the explanation regarding the source of the gold, the infirmities in the statement of Shri Inder Singh, the outcome of the follow-up investigation and the other grounds raised by the appellants.

(xxiii) Finally, the appellants argued that in the absence of reliable evidence establishing the appellants' conscious involvement in the alleged smuggling or their knowledge that the goods were liable to confiscation, no penalty under Section 112(a) and/or Section 112(b) of the Customs Act, 1962 could be legally sustained. The penalties imposed upon Shri Inder Singh and Shri Narpat Soni were therefore prayed to be set aside along with the order of absolute confiscation.

(xxiv) In support of the aforesaid submissions, reliance has been placed upon a catena of judicial pronouncements, which are as under: -

- *Commissioner of Customs (Preventive), Kolkata Versus Rakesh Kumar Soni [2026 (1) TMI 1170 CESTAT KOLKATA]*
- *Commissioner of Customs (Preventive), Kolkata Versus Abhishek Mundhra, Ashish Mundhra, M/s. Mundhra Jewellers Private Limited, M/s. Mundhra Bullion Private Limited, Vijay Kumar alias Pintu [2026 (5) TMI 1685 -CESTAT KOLKATA]*
- *Shri Vinay Agrawal, Shri Suraj Prakash Saraf, Shri Vijay Verma Versus Commissioner of Customs (Prev.), Shillong [2026 (6) TMI 1432-CESTAT KOLKATA*
- *Dinesh Prasad, Raj Kumar Soni Versus Commissioner of Customs (Preventive), Kolkata [2026 (7) TMI 182 -CESTAT KOLKATA]*
- *Shri O. Dorendra Singh Versus Commissioner of Customs (Prev.), Shillong Meghalaya [2026 (7) TMI 470 -CESTAT KOLKATA]*
- *Om Prakash Shah, Director of M/s Quilon Trade Commerce Pvt. Ltd. Versus Commissioner of Customs (Preventive), Kolkata and Prakash Kumar Shah, Santosh Kumar Shah, Prahlad Kumar Das Versus Commissioner of Customs (Preventive), Kolkata [2025 (5) TMI 1623 CESTAT KOLKATA]*
- *Shri R.K. Swami Singh Versus Commissioner of Customs (Preventive), Shillong [2024 (5) TMI 19 CESTAT KOLKATA]*
- *Commissioner of Customs (Preventive), Kolkata Versus Shri Bajrang Ingole and Commissioner of Customs (Preventive), Kolkata Versus Shri*

Sachin Gupta (Director of M/s. Akriti Gupta Jewellers Pvt. Ltd. [2023 (11) TMI 423 - CESTAT KOLKATA]

- *Commissioner of Customs (Preventive), Lucknow Versus M/s Sai Max Jewelers, (Jewellers) M/s Sai Max Traders and Shri Shiv Raj Singh. [2024 (5) TMI 834 - CESTAT ALLAHABAD]*
- *M/s. Tata Chemicals Ltd. Versus Commissioner of Customs (Preventive) Jamnagar [2015 (5) TMI 557 Supreme Court]*
- *M/s. Nikom Copper and Conductors Pvt. Ltd. Versus Union of India and Others [2020 (12) TMI 138 - BOMBAY HIGH COURT]*
- *Shantilal Mehta Versus Union of India and Others [1982 (11) TMI 56 - HIGH COURT OF DELHI]*
- *Vikash Kumar Versus Commissioner of Customs (Airport & A.C.C.), Kolkata [2026 (5) TMI 1686 CESTAT KOLKATA]*
- *Sandeep Kumar Dikshit Versus Principal Commissioner of Customs (Port), Kolkata [2025 (7) TMI 1086 CESTAT KOLKATA]*
- *Commissioner of Customs Versus M/s. Atul Automations Pvt. Ltd., and Parag Domestic Appliances [2019 (365) E.L.T 465 (SC)]*
- *Mohd. Halim Mohd. Shamim Khan [2018 (359) E.L.T. 265 (Tri. - All.)]*

16.1. In view of the submissions hereinabove, the Ld. Counsel for the appellants prayed for setting aside the impugned proceedings initiated against the appellants herein as being unjustified and arbitrary on facts and in law and thus, for allowing the present appeals, granting consequential reliefs therewith.

17. On the other hand, the Ld. Authorized Representative appearing for the Revenue, reiterating the findings recorded by the authorities below, submitted that the statement of Shri Inder Singh dated 12.02.2024 clearly brought out the modus operandi adopted by the appellants, whereby Shri Narpat Soni, in connivance with Shri Inder Singh had attempted to smuggle the 26 pieces of gold of foreign origin into India through unauthorised routes with a view to evade the applicable customs duty. It was contended that Shri Inder Singh had failed to produce any document evidencing licit procurement of the gold at the time of interception and that the documents subsequently relied upon by Shri Narpat Soni were merely an afterthought intended to lend a semblance of legitimacy to the seized goods. The investigation, according to the Ld. Departmental Representative, further shows the involvement of Shri Narpat Soni in a larger racket concerning the procurement and movement of foreign-origin gold, which stood substantially corroborated by the other investigative material on record. It was therefore the Revenue's contention that the 26 gold pieces were rightly held liable to absolute confiscation under Section 111(b) and (d) of the Customs Act, 1962, and that, having regard to the conscious and deliberate acts of the appellants in facilitating the illicit movement of the goods, the penalties imposed upon them under Section 112(a) and 112(b) were equally justified. The Ld. Authorized Representative of the Revenue accordingly prayed that the impugned order be sustained and the appeals be rejected.

18. Heard both sides and perused the documentary evidence placed before us.

19. Having carefully considered the submissions made by the parties and perused the records of the proceedings, the evidentiary material relied upon by the adjudicating authority and the findings recorded in the impugned Order-in-Appeal, it is gathered that the appeals arise from the seizure of 26 pieces of gold weighing 2401.310 grams, recovered from the possession of Shri Inder Singh / appellant no. 2 at Guwahati Railway Station on 12.02.2024, which were subsequently certified to be gold of approximately 24 carat purity and valued at Rs.1,53,80,391/-, as on the date of such seizure.

19.1. It is the case of the Revenue that the gold pieces in question were attributable to circumstances of illicit procurement and smuggling, principally on the basis of the circumstances attending its recovery, the absence of documents at the time of interception, the statement of Shri Inder Singh recorded on the date of seizure and the subsequent investigative material concerning Shri Narpat Soni / appellant no. 1. The said gold was accordingly ordered to be absolutely confiscated, with penalties being imposed upon both the appellants under Section 112 of the Customs Act, 1962, which order has since been affirmed vide the impugned order.

19.2. Upon a cumulative consideration of the pleadings and the material available on record, we find that the following principal issues fall for our consideration in these appeals: -

(I) Whether the appellants have discharged the burden cast upon them under Section 123 of the Customs Act, 1962 regarding the licit acquisition of the 26 gold pieces weighing 2401.310 grams by satisfactorily accounting for the licit acquisition and possession thereof and, consequently, whether the Revenue was justified in holding the gold in question to be liable to absolute confiscation under Section 111(b) and (d) of the Customs Act, 1962, or not; and

(II) Whether the statement of Shri Inder Singh, appellant No. 2, recorded on 12.02.2024, upon which the Revenue has placed substantial reliance, constitutes sufficient and legally sustainable evidence, to establish the involvement of the appellants in the alleged offence, or not.

19.3. We now proceed to consider the issues seriatim.

Issue (I): Determination of whether the appellant satisfied the burden of proof regarding licit acquisition of gold under Section 123 of the Customs Act, 1962, and the justification for absolute confiscation under Section 111(b) and (d) of the Act:

20. Before going into the applicability of Section 123 of the Customs Act, 1962, it would be pertinent to take up the question as to whether the circumstances attending the seizure were sufficient, in law and on facts, to furnish the requisite "reasonable belief" that the 26 pieces of gold were smuggled goods so as to sustain the seizure under Section 110 which consequentially culminated in the confiscation

proposed under Section 111(b) and (d) of the Customs Act, 1962.

20.1. At the very threshold, it is apposite to notice that seizure under Section 110 is not an unfettered or unstructured power vested in the Customs authorities. The statutory condition precedent is the formation of a reasonable belief that the goods in question are liable to confiscation under the Act. Likewise, confiscation under Section 111(b) or (d) necessarily postulates the establishment of the foundational fact that the goods are of foreign origin and have been imported into India in contravention of the statutory or other prescribed restrictions. The relevant portion of Section 110 of the Act is extracted hereinbelow:

> *"110. Seizure of goods, documents and things.*
>
> *(1)If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:*
>
> *Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer."*

20.2. A conjoint reading of the relevant provisions makes the legal position reasonably clear. For invoking the machinery of Sections 110 and 111(b)/(d), two foundational circumstances must co-exist: firstly, that the goods were imported, i.e. brought into India from a place outside India; and secondly, that such import was in contravention of the provisions of the Customs Act or any other law for the time being in force, thereby rendering the goods liable to confiscation. The mere fact that the goods seized

happen to be an article specified in Section 123 does not, by itself, dispense with the requirement of forming the requisite reasonable belief prior to seizure.

20.3. Indeed, Section 123, while operating as a statutory rule as to the burden of proof in respect of specified goods, including gold, cannot be construed as clothing the Customs authorities with an automatic power to presume that every piece of gold found within the territorial limits of India is smuggled merely because it happens to fall within the ambit of Section 123. The statutory presumption is attracted in the manner contemplated by the provision only where the goods have been seized under the Act on the requisite reasonable belief of their being smuggled goods. Section 123, therefore, cannot be employed to retrospectively manufacture the very reasonable belief which constitutes the jurisdictional foundation for the seizure under Section 110.

20.4. In the present case, the appellants have consistently contended, both before the adjudicating authority and the appellate authority, that there is not a single piece of cogent evidence establishing the foreign origin of the 26 gold pieces or their importation into India through an unauthorised route. This contention, in our considered view, warrants close scrutiny, particularly since the goods were intercepted within the country and not at an international border, customs station, airport or other notified place of import.

Absence of Foreign Markings or Inscriptions

21. One of the circumstances which assumes significance in this context is that none of the 26 gold pieces bore any foreign marking, inscription, engraving, identification mark or other indicia suggestive of their foreign origin. This is an admitted factual position. There is, consequently, no physical characteristic on the seized gold itself which, in the absence of further corroboration, would enable the goods to be identified as having originated outside India.

21.1. The absence of such markings cannot, of course, be treated as an immutable or conclusive test of foreign origin in every conceivable case. However, where the Department seeks to establish that domestically recovered gold is in fact smuggled foreign-origin gold, the absence of foreign markings becomes a material circumstance which necessarily requires the Revenue to furnish some other cogent evidence tracing the goods to a foreign source. Such evidence could conceivably comprise evidence of illegal importation, identification of the source or supplier, proof of the actual border crossing, evidence of melting or conversion of identifiable foreign gold, or other contemporaneous material linking the particular goods seized to an overseas source.

21.2. In the present case, no such specific evidence has been brought on record. There is no identified foreign consignor, no identified person who allegedly smuggled the gold into India, no evidence of the actual route by which the seized gold entered the country, and no material establishing that the particular 26 pieces had undergone melting or

manipulation in India so as to obliterate their foreign markings.

21.3. We have also taken note of the reliance placed by the Revenue upon the general prevalence or "trend" of gold smuggling through the porous stretches of the Indo-Bangladesh and Indo-Myanmar borders, as also upon the alleged modus operandi of melting foreign-origin gold to remove identifying marks. While such general investigative intelligence may undoubtedly constitute a legitimate input for Customs authorities in appropriate cases, a general phenomenon cannot, without more, be elevated into proof of the foreign origin of the particular goods seized in the present proceedings. A pattern observed in other cases cannot substitute for evidence connecting the present goods with such pattern.

21.4. The finding of the Commissioner (Appeals), as reflected in paragraph 18 of the impugned Order-in-Appeal, proceeds substantially on the premise that the specific intelligence, the manner of concealment, absence of documentary evidence, the general trend of gold smuggling, the alleged modus operandi of melting gold and the geographical proximity of the Indo-Bangladesh and Indo-Myanmar borders collectively furnished reasonable belief. However, these circumstances, to the extent they are relied upon without a specific evidentiary nexus to the gold actually seized, remain essentially inferential. The Department has not placed on record any tangible material demonstrating that these particular pieces originated from across an international border or were melted in India after having been smuggled into the country.

21.5. The question before us is not whether gold smuggling is a known phenomenon, nor whether smugglers may, in some cases, obliterate foreign markings by melting or recasting gold. The narrower and decisive question is whether the material available in this particular case, at the time of seizure and thereafter, was sufficient to furnish the requisite reasonable belief that the 26 pieces weighing 2401.310 grams were smuggled goods. In our considered view, the distinction is material.

Purity and Weight of the Seized Gold

22. The second circumstance assumes significance from the test report of the Assam Hallmarking Centre, Bamunimaidan, Guwahati, communicated vide Report No. GQC/AHC.1/2017-18/Vol-III/2339/110 dated 11.03.2024. While the report certified the seized yellow-coloured metal to be gold having an average fineness of 24 carat, the individual pieces did not possess an identical standard of purity or weight. As borne out by the report, the fineness of the 26 pieces varied between 998.0 and 998.8, with an average purity of approximately 998.4.

22.1. This aspect assumes relevance because the appellants have specifically contended that standard foreign-origin bullion is ordinarily represented as "Fine Gold 999.9", i.e. 99.99% purity, and that the seized pieces, having varying fineness between 998.0 and 998.8, do not correspond to such standardised foreign bullion. In support, the appellants have also placed reliance upon test reports concerning foreign-origin gold bars indicating purity of 99.99%. The appellants

have further pointed out that the weight of the individual pieces was not uniform.

22.2. We are conscious that purity by itself cannot constitute an infallible determinant of origin. Gold of marginally varying fineness may arise from several legitimate sources and processes, and foreign origin cannot be negatived merely because the purity falls marginally below 999.9. Nevertheless, when the Revenue seeks to establish foreign origin in a case where there are no foreign markings, no identified source abroad, no evidence of the actual importation and no evidence of melting of the seized gold, the nature, purity and physical characteristics of the goods become relevant circumstances in assessing whether the initial reasonable belief was objectively founded.

22.3. The Tribunal has, in a catena of decisions, also attached significance to the standard weight and purity of gold while examining the allegation of foreign origin. This view has been expressed by the Tribunal in the case of *Nand Kishore Sumani v. Commissioner of Customs, Siliguri [2016 (333) E.L.T. 448 (Tri.-Kolkata)],* wherein, inter alia, placing reliance upon the physical characteristics of the gold, it has been held as follows: -

> *"The weight of foreign origin gold bars is standard which is not the case in the gold bars seized. It is the argument of the Revenue that report of chemical examine will prevail over the oral statements made. However, it is observed that a chemical examiner can only give the percentage of gold in the gold bars but cannot say whether the seized goods are of foreign origin.* ***Only the purity of the gold has been certified to be 99.92% to 99.96%. There is no rebuttal to the claim of the appellant that in case of gold of foreign origin the % purity of gold is never below 99.99%.*** *Even the findings and calculations made by the Adjudicating authority at Paras 38 & 39 of the Order-in-Original dated 6-2-2014* ***will not help the case of the Revenue as***

to how seized goods will become of foreign origin when there are no foreign markings on them and there is no oral evidence also conveying the same of foreign origin."

[Emphasis supplied]

22.4. Thus, though the test report in the present case does not, by itself, establish domestic origin,it equally does not furnish any affirmative indication of foreign origin. Its significance lies in the fact that, when considered alongside the absence of foreign inscriptions or markings and the absence of any identified foreign source or import trail, the physical characteristics of the seized gold do not supply the missing evidentiary link upon which the Revenue's case rests.

Town Seizure and the Foundational Requirement

23. It is also material that the seizure in the present case was effected at Guwahati Railway Station, i.e. within the country, and not at a customs port, airport or land customs station through which the goods were shown to have entered India. The fact that the seizure is a "town seizure" does not, by itself, render the seizure impermissible. Nor does Section 123 become wholly inapplicable merely because the gold is recovered from within the country. Nevertheless, the geographical circumstance assumes significance when the Revenue seeks to establish that the particular goods recovered from a person within India had earlier been illicitly imported from a foreign country.

23.1. In such circumstances, the absence of an identifiable foreign source or import trail assumes greater evidentiary significance. The mere recovery of

gold from a person in India, even when concealed upon his person, cannot by itself establish the antecedent fact of illegal importation. There must first be material which reasonably connects the goods with such illegal importation before the statutory machinery of seizure and confiscation can be sustained.

23.2. We are also mindful of the Revenue's reliance upon the manner of concealment. The 26 pieces were admittedly concealed inside the trousers worn by Shri Inder Singh. Such concealment may certainly constitute a circumstance which legitimately invites closer scrutiny by the Customs authorities. However concealment, in our view, is a circumstance of suspicion and investigation; it cannot, without corroboration, become a substitute for proof of foreign origin and illegal importation. The same is true of the absence of documents at the precise moment of interception. The absence of documents may undoubtedly furnish a reason for further inquiry, but it cannot, standing alone, establish that the gold was smuggled from abroad.

24. The discussion at this stage is being confined to the foundational question of reasonable belief, without entering into the subsequent evidentiary material produced by the appellants concerning the source and licit acquisition of the gold, or the other investigative circumstances such as examination of the mobile phones, the enquiry conducted with Hotel Neer and the failure to identify or trace the alleged person who purportedly delivered the gold. Those aspects fall for consideration separately.

25. For the present case, on a holistic appreciation of the circumstances attending the seizure, we find that the Revenue's case suffers from a conspicuous absence of a specific evidentiary nexus between the seized gold and any foreign source. The absence of foreign markings or inscriptions, the varying purity and weight of the individual pieces, the factum of a town seizure, and the absence of any tangible evidence of illegal importation cannot be overcome merely by invoking generalised considerations such as the prevalence of gold smuggling, the geographical vulnerability of the international borders or the alleged modus operandi of smugglers. Accordingly, prima facie, we do not find sufficient corroborative material on record to demonstrate that, at the time of seizure, there existed an objectively sustainable and case-specific reasonable belief that the 26 gold pieces weighing 2401.310 grams were smuggled goods of foreign origin. The statutory threshold cannot be satisfied by a concatenation of suspicions, however strong they may appear individually, where the essential link between the goods seized and their alleged foreign importation remains unestablished. The subsequent question that thus arises is as to whether the appellants have, notwithstanding the aforesaid circumstances, satisfactorily discharged the burden contemplated under Section 123 through the documentary and other evidence produced by them.

26. We therefore now turn to examine as to whether the appellants have, in the facts and circumstances obtaining in the present case, discharged the burden cast upon them by Section 123 of the Customs Act, 1962 by accounting for the licit acquisition and possession of the seized gold. The principal plank of the Revenue's objection in this regard is that, at the

time of interception, Shri Inder Singh / appellant no. 2 was unable to produce any document evidencing the licit procurement of the gold. The Revenue has thereafter sought to discredit the documents produced subsequently by Shri Narpat Soni, substantially on the ground that they were furnished belatedly and were, according to the Commissioner (Appeals), apparently fabricated or brought into existence as an afterthought. Section 123 of the Customs Act, 1962 reads as given below: -

> *"123. Burden of proof in certain cases.*
>
> *- [(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-(a)in a case where such seizure is made from the possession of any person,-(i)on the person from whose possession the goods were seized; and(ii)if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;(b)in any other case, on the person, if any, who claims to be the owner of the goods so seized.]*
>
> *(2)This section shall apply to gold, [and manufactures thereof,] [Substituted by Act 40 of 1989, Section 2, for " diamonds, manufacturer of gold or diamonds" .] watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify."*

26.1. We find, however, that the circumstances attending the alleged non-production of documents at the very inception require to be appreciated with some care. The specific case advanced by the appellants is that Shri Inder Singh had travelled from Agartala to

Prayagraj by Train No. 01666 and that, at about 07:45 a.m. on 12.02.2024, he was resting on the upper berth when the gold pieces were noticed concealed in an additional layer formed inside the waistline of his trousers. It has been submitted that he was initially taken to the GRP personnel and that the Customs officers arrived thereafter. The appellants have further stated that Shri Inder Singh had been carrying a copy of a purchase invoice relating to the gold, but that the same was misplaced during his stay at Agartala or during the return journey. Consequently, while he had informed the Customs officers that a purchase document had been carried by him, the same could not be produced at the time of interception.

26.2. This explanation finds some support from the subsequent record. Shri Inder Singh was arrested and produced before the learned Magistrate on 13.02.2024, and thereafter moved Bail Application No. 190/2024 on 29.02.2024. The appellants have specifically drawn our attention to the said bail application, wherein Shri Inder Singh is stated to have inter alia mentioned the following facts:

a. He was intercepted by GRP personnel in the train.

b. He had come to Agartala for selling the gold but as he could not find any buyer offering a better price he was proceeding back with the gold by train.

c. He was carrying xerox copy of tax invoice of the gold but unfortunately, he had misplaced the copy and therefore at the time of interception he could not show the valid

document. Copy of the tax invoice dated 05.02.2024 showing purchase of 300 grams of gold by M/s. Ambe Maa Jewellers and the Shop and Establishment license was also attached with the bail application.

d. There was no foreign marking on the seized gold.

e. He was strenuously interrogated by the officers.

26.3. The Revenue has strongly relied upon the absence of documentary evidence at the precise moment of interception; however, during the course of hearing before us, no specific or cogent rebuttal has been advanced to the appellants' explanation that the relevant purchase invoice had been carried by Shri Inder Singh but had subsequently been misplaced. Nor has the Department demonstrated that the document referred to in the bail application was fabricated, subsequently created or otherwise incapable of verification. It would therefore be unsafe to treat the mere absence of the document from the person of Shri Inder Singh at the time of interception as conclusive proof that no such document existed.

26.4. The material furnished by Shri Narpat Soni, who claims ownership of the seized gold, assumes significance in this context. The appellants have furnished a specific account of the source of the gold and have produced supporting documents in respect of the several components of the quantity claimed to have been available in the stock of M/s. Ambe Maa Jewellers. The particulars furnished may, for better appreciation of the facts, be noticed as follows:

Sl. No.	Nature of transaction / document	Date	Supporting proof	Quantity
1.	Opening stock of gold bar	01.04.2023	Closing balance reflected in Balance Sheet and Profit & Loss Account for FY 2022-23	129.957 gms
2.	Gold bar received under Will of grandfather of Shri Narpat Soni	02.10.2013	Duly notarised Will	1,150.000 gms
3.	Purchase from M/s. Shri Ganesh Jewellers, Bhinmal	05.02.2024	GST Invoice No. 1784	300.000 gms
4.	Purchase from M/s. Sudarshan Jewellers, Bhinmal	05.02.2024	GST Invoice No. 2378	48.990 gms
5.	Gold obtained by melting old jewellery	04.02.2024	Stock Journal entry	900.880 gms

26.5. A perusal of the stock register for Gold Bar shows following facts relevant to present case:

a. A quantity of 2401.310 grams of Gold Bar, in 26 pieces of varying weights were issued to Shri Inder Singh on 06.02.2024 out of the stock of Gold Bar available with the appellant no. 1 (Narpat Soni).

b. There was opening balance of 129.957 grams of Gold Bar as on 01.04.2023 and the same was reflected as closing balance in the Balance Sheet and Profit & Loss Account for FY 2022-23.

c. The appellant no. 1 had received Gold Bar of 1150 grams from his grandfather Shri Kana Ram S/o Poonama Ji, Jalore bequeathed to him by Will which was duly notarized. As per the said Will Shri Kana Ram Ji had bequeathed 1150 grams' pure gold, 280 grams gold jewellery and 2200 grams pure silver to Shri Narpat Soni, his grandson. The said quantity was entered in Stock Register on 11.09.2023. it is also submitted that when the Appellant came to know about possibility of selling gold at higher price, he brought the bequeathed gold into the books of accounts in September 2023 and he had sent Shri Inder Singh to make inquiries in October 2023.

d. Purchases of Gold Bar was made from M/s Shri Ganesh Jewellers, Bhinmal, and M/s Sudarshan Jewellers, Bhinmal, for which GST invoices were issued by these suppliers for total quantity of 348.990 grams.

e. A quantity of 900.880 grams of pure gold was received on melting of old jewellery of 997.650 grams. The old jewellery comprised of 280 grams of jewellery received from his grandfather out of Will and balance quantity was out of old jewellery. The reason for melting of old jewellery was that these were of old design not sellable in the market and the mandatory requirement of hallmarking of each jewellery which was not done for the old jewellery. The Gold Ornament stock register also depicts the issue of old jewellery of 997.650 grams on 04.02.2024. The difference in the jewellery quantity melted and Gold Bar quantity obtained is on account of purity as the Gold Bar is of 99.9

purity whereas the purity of jewellery is generally 92%.

26.6. The aforesaid material furnishes a tangible and, at least prima facie, traceable explanation regarding the availability of gold stock with Shri Narpat Soni. We are conscious that the mere production of a document, particularly one produced subsequent to seizure, cannot ipso facto render the document sacrosanct or immunise it from scrutiny. The documents must necessarily be tested against the surrounding circumstances, their internal consistency and the other material available on record. Equally, however, a document cannot be consigned to the category of fabrication merely because it was produced subsequent to the seizure, without the Revenue first undertaking the necessary verification and demonstrating why the document is false, fabricated or otherwise incapable of being relied upon.

26.7. In this connection, the appellants have specifically pointed out that the GST Invoice No. 1784 dated 05.02.2024 issued by M/s. Shri Ganesh Jewellers, Bhinmal for 300 grams of gold had been produced along with the bail application dated 29.02.2024 and was thus within the knowledge of the Customs authorities at a relatively early stage of the proceedings. They have further produced the corresponding Form GSTR-2A reflecting the transaction in the GST records in respect of the invoice issued by M/s. Shri Ganesh Jewellers. Likewise, the invoice of M/s. Sudarshan Jewellers for 48.990 grams, bearing Invoice No. 2378 dated 05.02.2024, has been relied upon along with the corresponding GSTR-2A generated from the GSTN portal. These are not documents existing solely within the private custody of the appellant; rather, the underlying GST records

furnished an obvious avenue for independent verification by the Revenue.

26.8. We find it significant that, despite the Department having sufficient particulars of the alleged suppliers, invoice numbers and dates, there is no material placed before us demonstrating that any meaningful enquiry was undertaken with M/s. Shri Ganesh Jewellers or M/s. Sudarshan Jewellers to discredit the corresponding invoices or to establish that the transactions reflected therein were fictitious. The same observation would apply, mutatis mutandis, to the other components of the explanation advanced by Shri Narpat Soni. If the Revenue was of the considered view that the documents produced in support of the source of the gold were fabricated, nothing prevented it from examining the suppliers, verifying the GST trail, scrutinising the books and statutory returns of the claimant, or otherwise tracing the source of the gold so as to demonstrate that the documentary explanation was a mere contrivance.

27. The contention of the appellants regarding the delayed production of the documents also merits consideration. Shri Narpat Soni, in his statement dated 13.05.2024, had stated that the documents relating to the gold were available with his Chartered Accountant/tax consultant and sought three to four days' time to produce them. It has subsequently been explained that the appellant approached Shri Surya Prakash Soni, the tax consultant maintaining the accounts through Tally software, for the relevant stock register and purchase records. According to the explanation furnished, the consultant was then engaged in GST return filing and other income-tax related work and was able to provide the stock register only on 19.05.2024, being a Sunday. Shri

Narpat Soni is stated to have approached the Customs office on 20.05.2024, but by then he learnt that the investigation report had already been forwarded to the Guwahati office. A certificate from the said tax consultant has also been relied upon in support of the explanation.

27.1. The mere circumstance that the stock register or the Will was not produced immediately after the statement dated 13.05.2024, therefore, cannot be considered in isolation. A person carrying gold upon his person at the time of interception could reasonably be expected to carry, at most, a purchase invoice or similar immediate documentary evidence; it would be unrealistic to expect him to carry his complete stock register, Balance Sheet, historical Will or other books of account relating to the jewellery business. The fact that the invoice for 300 grams was subsequently produced in the bail proceedings also assumes relevance in assessing the bona fides of the explanation advanced by the appellants.

27.2. We are also unable to regard the notarised Will dated 02.10.2013, under which 1,150 grams of gold is claimed to have devolved upon Shri Narpat Soni, as a document which could lightly be dismissed as a creation made after the seizure merely for purposes of this proceeding. The nature of the document and its notarisation materially distinguish it from a document ostensibly generated after the seizure. Similarly, the appellants have submitted that the said gold reflected in their business records was entered therein on 11.09.2023, when, according to them, they had contemplated sending Shri Inder Singh to Agartala to explore a possible market opportunity, and that approximately 40 purchase/sale transactions in gold jewellery had been undertaken during the

period from September 2023 to February 2024. These assertions may require scrutiny for their ultimate evidentiary weight; nevertheless, they cannot be brushed aside per se as inherently fabricated without the Revenue undertaking the necessary verification.

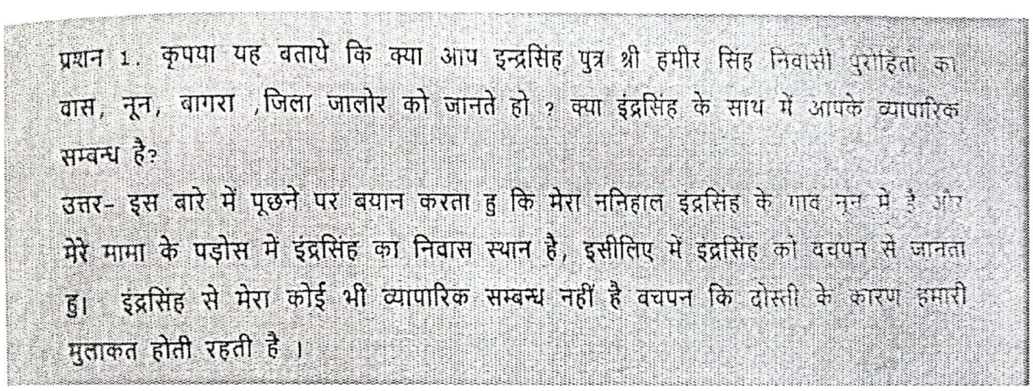
27.2. The Commissioner (Appeals), in paragraph 21.3 of the impugned Order-in-Appeal, has recorded that the documentary evidence relied upon by the appellants in support of licit procurement of the seized gold appeared to be an afterthought. The relevant observation of the Commissioner (Appeals) reads as under: -

> *"The Ledger clearly mentioned gold bar weighing 2,401.310 gram was given to the Appellant No. 1, which is the exact quantity of gold seized by the Customs Officers in Guwahati. When the business was being conducted so cleanly, it is not understood why the Appellant No. 2 denied having any business relation with the Appellant No. 1 when the officers of Jodhpur Customs conducted follow-up action at the residential and business premises of the Appellant No. 1. Had the seized gold been the same gold reflected in the Ledger, he should have claimed ownership of the seized gold then and there itself and produced a copy of the Ledger in support of his claim. However, he denied having any business relation with the Appellant No. 1. Later on, he twisted the statement saying that as per his understanding, 'business relationship' means dealing regarding purchase and sale of the goods traded by him. This is nothing but an afterthought."*

27.3. We find, however, that the conclusion that the documents appear to be 'nothing but an afterthought' cannot be a substitute for an evidentiary finding. The distinction is not merely semantic. Once the appellant has furnished identifiable documents carrying

particulars capable of external verification, the Revenue must, if it seeks to reject them as fictitious, bring some material on record which would justify such rejection. A mere suspicion as to the timing of production or an inference drawn from the circumstances of seizure cannot, without independent verification, conclusively establish fabrication.

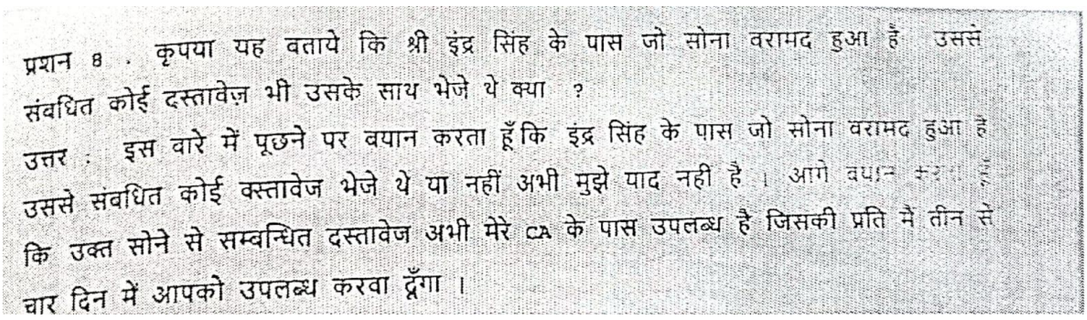
27.4. In this regard, the observations of the Commissioner (Appeals) concerning Shri Narpat Soni's statement dated 13.05.2024 also require to be considered. One of the reasons assigned for rejecting the documentary explanation was that Shri Narpat Soni had initially denied having any "business relationship" with Shri Inder Singh, whereas he subsequently admitted that he had sent him to Agartala for the purpose of selling gold. The appellants have all along explained that, in the context of the question put to him, Shri Narpat Soni understood "business relationship" to mean a regular buyer-seller relationship concerning the goods dealt in by his business. His statement also disclosed that he and Shri Inder Singh knew each other from childhood, their houses being adjacent in the village, and that the request to carry the gold for sale was an isolated transaction rather than an ongoing commercial association. In this regard, the Q.1 and its reply in the statement of the said appellant dated 13.05.2024 is reproduced below: -



प्रश्न 1. कृपया यह बताये कि क्या आप इन्द्रसिंह पुत्र श्री हमीर सिंह निवासी पुरोहितो का वास, नून, बागरा ,जिला जालोर को जानते हो ? क्या इंद्रसिंह के साथ में आपके व्यापारिक सम्बन्ध है?

उत्तर- इस बारे में पूछने पर बयान करता हु कि मेरा ननिहाल इद्रसिंह के गाव नून मे है और मेरे मामा के पड़ोस मे इंद्रसिंह का निवास स्थान है, इसीलिए मे इद्रसिंह को बचपन से जानता हु। इंद्रसिंह से मेरा कोई भी व्यापारिक सम्बन्ध नहीं है बचपन कि दोस्ती के कारण हमारी मुलाकत होती रहती है ।

27.5. Similarly, the Commissioner (Appeals) has observed that Shri Narpat Soni ought to have claimed ownership of the seized gold before the Jodhpur Customs authorities and should have produced the relevant ledger or stock records in support thereof. We find that this observation must also be appreciated alongside his statement dated 13.05.2024, wherein he specifically stated that the seized gold belonged to him and that the supporting documents were with his Chartered Accountant, which he intended to produce within three to four days. In this regard, Q.8 and the reply thereto in the statement dated 13.05.2024 of the concerned appellant, is reproduced below: -



प्रश्न ८ . कृपया यह बताये कि श्री इंद्र सिंह के पास जो सोना बरामद हुआ है उससे संबधित कोई दस्तावेज़ भी उसके साथ भेजे थे क्या ?

उत्तर : इस बारे में पूछने पर बयान करता हूँ कि इंद्र सिंह के पास जो सोना बरामद हुआ है उससे संबधित कोई दस्तावेज भेजे थे या नहीं अभी मुझे याद नही है । आगे बयान करता हूँ कि उक्त सोने से सम्बन्धित दस्तावेज अभी मेरे CA के पास उपलब्ध है जिसकी प्रति मैं तीन से चार दिन में आपको उपलब्ध करवा दूँगा ।

27.6. Thus, at least on the face of the record, the explanation regarding the availability of documentary evidence was not an entirely new narrative springing into existence for the first time at the stage of adjudication. There was, from the relatively early stages of the proceedings, a reference to the existence of the relevant purchase invoice, followed by a more comprehensive disclosure of the source of stock supported by financial and business records.

27.7. We also take note of the submission that, during the cross-examination of Shri Inder Singh, the latter confirmed the aspect of the invoice having been handed over to him along with the gold. It was further contended that even the GRP personnel, when they

spoke with Shri Narpat Soni, were informed regarding the existence of such invoice. This circumstance, while not by itself establishing the complete chain of lawful title, is nevertheless relevant in assessing whether the appellants' documentary explanation can be summarily characterised as an afterthought.

27.8. The appellants have also relied upon the decision of this Tribunal in *Manidipa Debroy Chowdhary v. Commissioner of Customs, Shillong [2020 (374) E.L.T. 133 (Tri.-Kolkata)],* wherein documents relating to purchase produced during adjudication were taken into consideration notwithstanding the Department's objection as to their late production. In the above case, the Tribunal held the view that seizure cannot be rejected merely on the ground of the time of its production.

27.9. The issue about delayed furnishing of documents was also discussed by the Tribunal in the case of *Shri Balwant Raj Soni v. Commissioner of Customs (Preventive) [2023 (5) TMI 940 CESTAT KOLKATA]* wherein it was held that this fact itself cannot be the ground to disregard authenticity of the evidences. Relevant extract of the judgement is reproduced below:

> *"22.7 We observe that the Appellants claimed that the gold bars/pieces were purchase from M/s. Chandan Enterprises. Delhi. The investigation has not verified the documents submitted by them in support their claim of domestic purchase of the gold bars/pieces. They brushed aside the evidences submitted by the Appellants by citing some mismatch in the dates.* ***One of the reasons cited for ignoring the invoice was that the invoices were not carried along with them by the persons who carried the gold. Not having the invoices at the time of seizure cannot be a reason to ignore their claim. The documents produced could have been verified to find out***

the veracity of their claim. On the contrary, the investigation could not provide any evidence to establish the smuggled nature of the gold. In the absence of any such evidence, the burden of proving that the gold bars/pieces were not smuggled one cannot be thrust upon the Appellants."

[Emphasis supplied]

27.10. We must, however, enter an important caveat. We do not propose to hold that every document produced after seizure is, merely by being produced, to be accepted as genuine, nor that the documents relied upon in this case stand conclusively proved in every respect. Such a conclusion would be unwarranted on the present record. The provenance, authenticity and ultimate probative value of each document must necessarily be assessed in the light of the surrounding circumstances. What falls for determination at this stage is narrower: whether the material placed on record is sufficient, for the purposes of Section 123, to discharge the primary burden cast upon the person from whose possession the specified goods were seized.

27.11. On that limited question, we find that the answer must be in the affirmative. The appellants have not merely produced a bare assertion of lawful ownership; they have placed before the adjudicating authorities a chain of documents and records accounting for quantities of gold, comprising opening stock, inheritance under a notarised Will, identifiable GST-backed purchases from two jewellers and gold obtained through melting of old jewellery, together with stock records and financial statements. The aggregate quantity represented by these components also provides a reasonable basis for explaining the

availability of sufficient gold stock corresponding to the quantity which is stated to have been handed over to Shri Inder Singh for being sold.

27.12. The Revenue was, of course, at liberty to test this explanation. It could have examined the issuing jewellers, verified the corresponding GST returns and GSTR-2A entries, scrutinised the stock register and historical financial records, examined the tax consultant, investigated the source of the inherited gold, or otherwise established that the documentary trail was false or fabricated. No such substantive disproof has been brought before us. Instead, the documents have been rejected substantially on the ground of their subsequent production and on inferential considerations which do not, in themselves, demonstrate fabrication.

28. There is another circumstance which cannot be lost sight of. Even according to the Department's own case, the investigation was unable to identify the person who had allegedly delivered the gold to Shri Inder Singh at Agartala. Nor has the Department demonstrated, by independent evidence, any foreign source from which the gold allegedly came. Thus, when the source of the alleged smuggled gold itself remains unidentified, the existence of a contemporaneous documentary trail indicating availability of sufficient gold stock with the person claiming ownership assumes considerable significance. The documentary evidence cannot in such circumstances be relegated to the category of irrelevant material.

29. We are therefore of the considered view that the documents and circumstances relied upon by the appellants are sufficient, in the facts of the present case, to discharge the primary burden contemplated under Section 123 of the Customs Act, 1962. Accordingly, we find that the statutory burden resting upon the appellants at the threshold has been satisfactorily addressed through a coherent documentary explanation which the Revenue has failed to effectively dislodge.

29.1. In this context, it may be relevant to refer to the decision of this Tribunal in the case of *Commissioner of Customs (Preventive), Kolkata Versus Abhishek Mundhra, Ashish Mundhra, M/s. Mundhra Jewellers Private Limited, M/s. Mundhra Bullion Private Limited, Vijay Kumar alias Pintu [2026 (5) TMI 1685 -CESTAT KOLKATA],* wherein, under similar facts and circumstances, the Tribunal held that the statutory onus under Section 123 arises only when the foundation requirement of existence of reasonable belief that the goods are smuggled, is met. The relevant observations therein are reproduced below: -

> *"8.1. We observe that seizure in this case centers around the exercise of authority by the Custom Officials under section 110 (1) of the Customs Act, which reads as under: -*
>
> > *"Section 110 (1) : Seizure of goods, documents and things: If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods."*
>
> *8.2. In the present case, we observe that 271 gold bangles weighing 15,000 grams in total were seized from the office of the courier named 'M/s. Sequel Logistics Pvt. Ltd.'. We find that Mr. Vijay Kumar, an employee of Mundhra Jewellers Pvt. Ltd, who booked the goods with the courier for onward transport to Chennai was available at the Courier*

office at the time of examination of the goods by officers of DRI, Kolkata. It is also on record that Shri Vijay Kumar submitted two challans named as "Manufacturing Receipt Voucher (outstation delivery note)" bearing no. RV/026 and RV/027 both dated 31.07.2020 for despatch of 10028.550 grams and 5020.150 grams of Gold Round Strips to Chennai. The Challans have declared the goods as "Gold Jewellery". Subsequent assay report at CRCL revealed the gold to have purity of 99.5% -99.7%. The documentary evidences submitted by the Respondents indicate that prima facie, the goods were procured from domestic sources and returned back to Chennai after undertaking the job work at Kolkata. Unless the documents submitted by the Respondents are disproved as false or fabricated, there is no 'reason to believe' that the goods are of smuggled in nature. The Hon'ble Supreme Court in Union of India v. Mohammed Nawaz Khan, (2021) 10 SCC 100, has held that the authority effecting the seizure must demonstrate a subjective satisfaction based on objective material, failing which the seizure is invalid.

8.3. The allegation that the gold was smuggled from Bangladesh to Kolkata, subsequently melted in a melting house in Kolkata, and thereafter transported to Chennai, is based purely on assumptions and conjectures, without any supporting evidence. It is on record that later during the course of investigation, the Respondents had produced GST invoice for the procurement of the said gold from domestic sources on payment of VAT. Mere absence of purchase documents at the time of interception cannot render the gold smuggled, particularly when manufacturing vouchers were produced immediately thereafter. Since the seizure occurred within India, the burden to establish the foreign origin and smuggled nature of the gold rests entirely on the Department, and the Department has failed to discharge this burden. It is also on record that the seized gold did not bear any foreign markings, and the purity certificates reflected fineness of 99.5%, 99.6%, and 99.7%, which are below international standards. Further, the allegation of the Department that the seized gold were melted at Sinthi More, by a person named Jitesh Shah has not been supported by any evidence as the said person was not examined.

8.4. The Customs authorities must first establish the foreign origin before invoking the presumption of smuggling. We observe that the responsibility was on the Department to show that the gold in question was smuggled into the country without payment of appropriate duties of Customs, which the Department has failed to discharge in this case. Thus, we hold that there was no 'reasonable belief' that existed prior to seizure of the gold, as mandated under Section 110 of the Customs Act, 1962. In view of the above findings, we answer the question raised at paragraph 7(i) supra in the negative.

…

9.1. Section 123 of Customs Act, 1962, prescribes that the burden of proving that goods which have been seized under the Act are not smuggled in nature is on the person who claims the ownership of the goods. For the sake of ready reference, the said Section is extracted below: -

> *"SECTION 123. Burden of proof in certain cases. — (1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -*
>
> *(a) in a case where such seizure is made from the possession of any person, -*
>
> *(i) on the person from whose possession the goods were seized; and*
>
> *(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*
>
> *(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.*
>
> *(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify."*

> *9.2. In this regard, we observe that for shifting the onus on the person who claims the ownership of gold, it is required to be proved that the goods are smuggled in nature. Once the foreign character of the gold/ silver is proved, then only the onus that the said gold/silver were not smuggled shifts on the person who claims the ownership of the same. In this regard, it is relevant to cite the judgement of the Hon'ble Supreme Court in Ganesh Das v. Collector of Central Excise [1994 (70) ELT 441 (SC)] wherein it was held that before the burden shifts to the person from whom the goods were seized, it must first be established that the goods were of foreign origin and mere suspicion or presence of certain disputed markings is not sufficient. Further, the Hon'ble Supreme Court in Commissioner of Customs v. Abdul Gani [2012 (278) ELT 474 (SC)] has reiterated that reasonable belief must be backed by sufficient evidence of foreign origin. If there are no foreign markings or documentation, the Customs authorities cannot simply assume that the gold in question were smuggled in nature."*

29.2. The same issue has also been examined in the case of *Om Prakash Shah, Director of M/s Quilon Trade Commerce Pvt. Ltd. Versus Commissioner of Customs (Preventive), Kolkata and Prakash Kumar Shah, Santosh Kumar Shah, Prahlad Kumar Das Versus Commissioner of Customs (Preventive), Kolkata [2025 (5) TMI 1623 CESTAT KOLKATA],* wherein the Bench observed as under: -

> *"3. The ld. Counsel for the appellants submits that in this case, the gold has been seized at Kali Krishana Tagore Street, Kolkata and the gold in question was not bearing any foreign markings. Moreover, the purity of the gold was also 99.5%. In that circumstances, in any stretch of imagination, it cannot be said that the gold in question of foreign origin. Moreover, the Revenue has failed to produce any documents that the gold in question is of foreign origin. There is no reasonable belief under Section 110 of the Customs Act, 1962, to show that the gold is of foreign origin. He further submitted that the Appellant No.(4) has claimed to be owner of the gold seized in question and produced the relevant documents for procurement of the said gold by the Appellant No.(4), like, Income Tax Return, Balance*

Sheet, Profit and Loss Account, Commercial Tax Challan and payment of GST on the said gold in question along with invoices. In that circumstances, it is prayed that the impugned order is to be set aside.

4. The ld.A.R. for the Revenue has reiterated the findings of the impugned order.

5. Heard both sides and considered the submissions.

6. We find that it is a case of town-seizure and no foreign marking on the gold and purity of the gold is also below 99.9%. In that circumstances, it is the duty of the Revenue to show the reasonable belief why the gold in question is of foreign origin. The Appellants are not required to discharge their obligation under Section 123 of the Customs Act, 1962. Moreover, the Appellant No.(4) has claimed to be the owner of the gold in question and the said owner has shown the invoices for procurement of the said gold by producing his profit and loss account, balance sheet, income tax return and payment of GST on the said gold in question. In that circumstances, the gold in question is not liable for confiscation.

7. In view of this, we hold that the confiscation of gold in question is not sustainable. As we hold that the gold in question is not liable for confiscation and the same is to be released to the Appellant No.(4). Further, as the gold in question is not liable for confiscation, no penalties are imposable on the Appellants."

29.3. Further, in *Commissioner of Customs (Preventive), Kolkata Versus Rakesh Kumar Soni [2026 (1) TMI 1170 CESTAT KOLKATA],* while dealing with a case where the gold was neither seized from a Customs / border area nor from an area specified under Section 11H of the Customs Act, 1962, in the light of the purity of the gold and the documents provided for claiming ownership by way of GSTR-3B, C.A. Certificate certifying gold stock, purchase and sale ledger, etc., held that the gold could not be presumed to have been smuggled.

The Circumstances Surrounding the Initial Apprehension

30. Before concluding on this aspect, we also deem it necessary to notice the appellants' objection concerning the circumstances in which Shri Inder Singh was initially apprehended. It has been specifically contended that the Customs officers were not present at the time of the initial apprehension, that the interception was made by the GRP personnel, and that independent witnesses/panchas were called only subsequently. The appellants have further drawn attention to the bail application of Shri Inder Singh, wherein he is stated to have described his apprehension by the GRP personnel without mentioning the presence of Customs officers.

31. The appellants have also relied upon Shri Inder Singh's cross-examination, wherein he is stated to have categorically maintained that the Customs officers were not present when he was initially apprehended inside the train. Further, reference has been made to the cross-examination of Shri Abhishek Bodo, Inspector, GRP, Guwahati Railway Station, from which it was suggested that the Customs officers had reached the GRP office at approximately 05:50 a.m. If that version is accepted, the appellants contend, the Customs officers could reasonably have requested the panch witnesses to accompany them at the time of interception itself. It has also been pointed out that the GRP authorities did not furnish the CCTV footage of the relevant railway platform, which, according to the appellants, could potentially have assisted in determining the circumstances of the initial apprehension.

32. The above details surrounding the initial interception, coupled with the factual matrix discussed hereinabove, although not conclusive by themselves, do introduce an element of uncertainty into the manner in which the initial interception and subsequent seizure unfolded. That circumstance assumes relevance when the statutory requirement of formation of a reasonable belief under Section 110 is itself under examination. Where the Department seeks to sustain a grave allegation of smuggling upon a chain of circumstances beginning with the very inception of the interception, uncertainties concerning that foundational stage cannot simply be ignored.

33. The Revenue has also placed considerable reliance upon the alleged modus operandi of foreign-origin gold being brought through the north-eastern region and thereafter being melted or re-cast so as to obliterate foreign markings. The impugned order repeatedly adverts to the general trend of gold smuggling in the north-eastern States and proceeds on the premise that the absence of foreign markings could be explained by such alleged melting. We find, however, that no case-specific evidence has been brought on record to establish either that the seized gold was brought into India from a foreign country or that these particular pieces had undergone any process of melting or re-casting after such illicit importation. The mere existence of a known modus operandi in other cases cannot, without an evidentiary bridge connecting the present goods to such modus operandi, be treated as proof of its application in the instant case. In particular, there is no independent evidence whatsoever establishing that any foreign-origin gold was actually handed over to Shri Inder Singh at Agartala. A conclusion of such

consequence cannot rest upon conjecture or upon a presumption founded merely on the geographical location from which the appellant is alleged to have travelled.

CAF/CDR Records and Absence of the Alleged Supplier

34. We also find that the CAF and CDR records relied upon by the Revenue do not carry the evidentiary weight sought to be attributed to them. While the records indicate communication between the mobile numbers attributed to the appellants, communication between two persons, without more, establishes no more than the fact of communication. It does not, by itself, disclose the nature, purpose or subject matter of such communication, much less establish that it concerned an illicit gold transaction.

34.1. More significantly, the Revenue's own theory postulates the existence of an unidentified person at Agartala who allegedly acted as the intermediary and handed over the gold to Shri Inder Singh at the direction of Shri Narpat Soni. Yet, the investigation has not succeeded in identifying or tracing such person. No mobile number or call details of the alleged supplier/intermediary has been found/identified from the CAF/CDR analysis to show that the said unidentified person had made any calls to the present appellants during the said period, and no other independent material has been brought on record connecting such person with either of the appellants. This omission assumes particular significance because the alleged delivery of the gold at Agartala constitutes a vital link in the chain of the Revenue's narrative.

34.2. Thus, while the CDR may establish that the appellants were in telephonic contact, it does not establish that the communication pertained to the procurement, delivery or transportation of smuggled gold. The absence of any identified intermediary, coupled with the failure of the CDR analysis to uncover any such third person, leaves a material gap in the evidentiary chain which the Revenue has not satisfactorily bridged.

Forensic Examination of the Mobile Phones

35. We further take note of the forensic examination of the two mobile phones belonging to Shri Narpat Soni, undertaken by the Jodhpur Customs authorities through M/s. Keyber Experts Pvt. Ltd., Nagpur. Vide its certification dated 16.05.2024, the forensic agency reported, upon examination of the relevant hash values, that the electronic evidence available in the devices was authentic and untampered.

35.1. While the authenticity and integrity of the electronic material thus examined may not be in dispute, what assumes significance is that the forensic examination did not yield any chat, photograph, message or other specific electronic material evidencing the alleged transaction in gold or the purported delivery of the seized gold to Shri Inder Singh. Thus, the forensic exercise, rather than furnishing affirmative corroboration of the Revenue's allegation, leaves the principal allegation substantially dependent upon the disputed oral account attributed to Shri Inder Singh, which has been dealt with separately elsewhere in this Order. The absence of incriminating electronic material is, therefore, a

relevant circumstance while assessing whether the circumstantial chain relied upon by the Revenue is sufficiently complete to establish the alleged foreign origin and illicit movement of the seized gold.

36. In the totality of the circumstances, we find that there is not an iota of cogent evidence establishing that the seized gold had, in fact, been imported into India illicitly and was consequently "smuggled goods". The seizure was effected at a railway station within the country and not at an international border or customs point. The documentary evidence furnished by the appellants, when considered cumulatively with the surrounding circumstances, a sufficiently credible account for purposes of discharging the primary burden under Section 123. The burden, once so discharged, necessarily reverts to the Revenue to establish, by cogent material, that the documentary explanation is false or that the gold, notwithstanding the recorded stock and purchase trail, was in fact imported through an unauthorised route. That burden has not been satisfactorily discharged. There is no evidence identifying the route of import, no evidence identifying the person who allegedly brought the gold across the international border, no evidence tracing the gold to a foreign supplier, and no substantive material establishing that the seized pieces had been melted or otherwise manipulated after illicit importation.

37. This deficiency assumes decisive significance in relation to Section 111(d) as well. Even where the goods are alleged to have been imported contrary to a prohibition or restriction, the anterior fact that the goods were imported has first to be established. In the present case, beyond the generalised assertion regarding the prevalence of gold smuggling in the

region and the geographical proximity of the Indo-Bangladesh border, there is no evidence demonstrating that the 26 gold pieces in question had actually crossed the international border through any unauthorised route. An inference of illicit importation cannot be founded upon a mere concatenation of possibilities.

38. Likewise, for the purposes of Section 111(b), the statutory foundation that the goods were brought into India in the circumstances contemplated by the provision remains unestablished. The manner of concealment and the absence of immediate documentary evidence may have justified further investigation; they cannot, without more, supply the missing proof of foreign origin and illicit importation.

39. In view of the foregoing discussion and the decisions cited supra, and upon a cumulative appreciation of the documentary and circumstantial evidence on record, we hold that the appellants have satisfactorily discharged the primary burden cast upon them under Section 123 of the Customs Act, 1962 by furnishing proof/evidence of the licit acquisition and availability of the gold in question. The Revenue, on the other hand, has failed to dislodge the said explanation by establishing that the documents relied upon by the appellants were fabricated or that the seized gold had, in fact, been imported into India through an unauthorised route. Consequently, the foundational requirement for invoking Sections 111(b) and 111(d) of the Customs Act, 1962 remains unfulfilled. In the absence of cogent and affirmative evidence establishing the foreign origin and illicit importation of the seized gold, the mere manner of its concealment or the circumstances attending its recovery cannot, by themselves, sustain an order of

absolute confiscation. We, therefore, hold that the 26 gold pieces weighing 2401.310 grams are not liable to absolute confiscation under Sections 111(b) and 111(d) of the Customs Act, 1962, and the finding of the authorities below to the contrary is unsustainable in law.

Issue (II): Evidentiary value of the statement dated 12.02.2024 so as to establish the involvement of the appellants in the alleged offence

40. We now advert to the second issue, namely, whether the statement of Shri Inder Singh dated 12.02.2024, upon which the Revenue has heavily relied upon in support of its allegations, furnishes a legally sustainable and credible basis for establishing the alleged involvement of the appellants in the smuggling of the seized gold. Since the aforesaid statement constitutes a principal plank of the Revenue's case and has been substantially relied upon to establish the alleged nexus of the appellants with the smuggled nature of the seized gold, the same, in our considered view, warrants a close and meticulous examination in the backdrop of the contemporaneous documentary material, the subsequent investigation, the retraction thereof and the evidence elicited in cross-examination.

Alleged repeated visits to Agartala and stay at Hotel Neer

41. As already noted by us, Shri Inder Singh, in his statement dated 12.02.2024, stated that he had been visiting Agartala approximately 11 to 12 times since October 2023 and had, on most of such occasions, stayed at Hotel Neer. This assertion constituted an important component of the modus operandi subsequently attributed to the appellants.

41.1. However, the subsequent investigation does not corroborate this material assertion. The statement of Shri Swapan Kumar Pal, owner/founder of Hotel Neer, recorded during the investigation, together with the relevant hotel records for the period from 12.02.2023 to 11.02.2024, disclosed that Shri Inder Singh had stayed at the said hotel only once, on 16.10.2023, for one day. This factual position is plainly at variance with the assertion of 11–12 visits and repeated stays at the said hotel attributed to him in the statement dated 12.02.2024.

41.2. We attach considerable evidentiary significance to this discrepancy, since the hotel records constituted an independent source of verification readily available to the investigating authorities. The assertion concerning repeated visits was not merely collateral; it formed part of the narrative by which the Department sought to establish a continuing modus operandi for repeated transportation of smuggled gold. Once the independent investigation did not corroborate this important factual assertion, the credibility of the statement, at least in respect of the larger narrative embodied therein, is materially impaired.

41.3. Significantly, in his subsequent cross-examination, Shri Inder Singh also stated that he had travelled to Agartala only on one earlier occasion in or about October/November 2023 and on the present occasion, thereby substantially conforming to the factual position emerging from the hotel records. Thus, the subsequent version is not an isolated retraction unsupported by external material; on this particular aspect, it finds some corroboration in the Revenue's own investigation.

Alleged air travel and tickets/boarding passes supplied by Shri Narpat Soni

42. The statement dated 12.02.2024 further records that, during his earlier visits to Agartala, Shri Inder Singh would travel from Ahmedabad to Kolkata by air and thereafter from Kolkata to Agartala, and that the corresponding air tickets and boarding passes were allegedly sent to him by Shri Narpat Soni over the telephone.

42.1. This assertion was capable of objective verification, particularly since the Customs authorities had taken possession of and forensically examined the mobile devices of both appellants. Yet the investigation has not yielded any air ticket, boarding pass, travel communication or other electronic material corresponding to the alleged 11–12 journeys. No such documentary or digital trail has been brought on record to substantiate the travel history narrated by Shri Inder Singh.

42.3. The absence of such material assumes significance because the allegation is not one incapable of verification. The asserted travel itinerary,

the alleged transmission of tickets or boarding passes and the repeated journeys were all matters capable of independent corroboration. Where an assertion of such specificity is made and the subsequent investigation fails to uncover even a single corresponding document or electronic trace, the credibility of that assertion necessarily becomes doubtful.

42.4. During cross-examination, Shri Inder Singh resiled from the alleged history of repeated journeys and stated that he had travelled to Agartala only on the limited occasions disclosed by him. The Department has not brought forth independent evidence to reconcile this material contradiction. The allegation of repeated air travel, therefore, remains substantially uncorroborated.

Alleged meeting with an unidentified person and delivery of gold at Agartala

43. The third significant assertion in the statement concerns the alleged delivery of gold at Agartala by an unidentified person, said to have been contacted by Shri Narpat Soni and to have met Shri Inder Singh below Hotel Neer. This allegation forms a crucial link in the Revenue's narrative, since according to the statement, the gold carried by Shri Inder Singh was not handed over to him by Shri Narpat Soni directly but was collected from an intermediary at Agartala pursuant to Shri Narpat Soni's directions.

43.1. Here again, however, the investigation has failed to furnish the requisite corroboration. The statement of Shri Swapan Kumar Pal, owner of Hotel Neer, did not reveal the presence of any visitor who

had met Shri Inder Singh during his stay. The hotel records did not support the alleged repeated visits either. More importantly, despite scrutiny of the CAF and CDR records of the mobile numbers attributed to the appellants, the investigating authorities were unable to identify any mobile number attributable to the alleged intermediary at Agartala.

43.2. The identity of the alleged person who purportedly delivered the gold is not disclosed; no statement from such person has been recorded; no mobile number connected with him has been traced; and no independent evidence has been adduced to establish that he ever met Shri Inder Singh. The very person who, according to the Revenue's own narrative, constituted a material link in the alleged chain of illicit procurement has remained unidentified.

43.3. In such circumstances, the allegation of delivery of foreign-origin gold at Agartala rests substantially upon the statement of Shri Inder Singh itself. Once the said factual assertion is not corroborated by the hotel records or the CDR investigation, it cannot safely be treated as an established circumstance merely because it appears in a statement whose other material assertion have independently been found wanting.

Retraction of the statement and the question of voluntariness

44. We next consider the contention that the statement dated 12.02.2024 was not voluntary and was subsequently retracted. The Commissioner (Appeals) has rejected the retraction, principally on the ground that it was belated, that Shri Inder Singh

had himself stated in the original statement that no coercion had been exercised upon him, and that the subsequent retraction was an afterthought intended to escape liability.

44.1. We are unable to regard the question of retraction as capable of being resolved merely by reference to the interval of time between the original statement and the formal written retraction. The more fundamental question is whether the contents of the original statement themselves withstand objective scrutiny. A statement does not acquire an irrebuttable character merely because, at the time of recording, the maker stated that no coercion had been exercised upon him. Its truthfulness must necessarily be assessed in the light of subsequent developments and independently verifiable facts.

44.2. In the present case, material portions of the statement concerning the repeated visits to Agartala, repeated stays at Hotel Neer, the alleged air journeys and the alleged meeting with an unidentified intermediary have either been contradicted by independent material or have remained wholly unverified. Such circumstances materially strengthen the challenge to the voluntariness and reliability of the statement. It is not a case where the subsequent retraction stands in isolation against a statement otherwise fully corroborated by unimpeachable evidence.

44.3. The appellants have also pointed out that Shri Inder Singh retracted his statement on three occasions, namely: (a) in the bail proceedings; (b) by a written letter dated 31.10.2024; and (c) during his cross-examination. We have already noticed that the bail application itself contained material assertions

contrary to the narrative attributed to him in the statement dated 12.02.2024, including the circumstances in which he had come to possess the gold and the aspect concerning the invoice allegedly carried by him. The Department, despite having substantial time before issuance of the Show Cause Notice, did not record any further statement from him to reconcile or verify these materially divergent assertions.

44.4. It is also relevant that the copy of the purchase invoice produced along with the bail application was, according to the appellants, within the knowledge of the Customs authorities, yet the Department did not undertake any substantive verification of the said document. Thus, the subsequent version was not merely a belated oral repudiation; it was accompanied by a documentary trail which the Department had an opportunity to investigate.

44.5. The settled principle emerging from judicial pronouncements relied upon by the appellants is that a retracted statement cannot be treated as an unquestionable foundation of penal or confiscatory proceedings merely because it was recorded under Section 108. Its voluntariness, correctness and credibility have necessarily to be appreciated in the context of the other evidence available on record. Where the contents of the statement are materially contradicted or remain uncorroborated on important particulars, greater caution is warranted before acting upon the statement as substantive proof of the alleged offence.

Cross-examination of Shri Inder Singh

45. The evidentiary position of the information furnished by Shri Inder Singh is further clarified by the cross-examination of Shri Inder Singh, during which he materially departed from the version attributed to him in his original statement.

45.1. In the cross-examination, Shri Inder Singh stated that he had been subjected to severe pressure and coercion by the Customs officials and that he had been threatened with being implicated in a narcotics case by having 'ganja' planted in his baggage. He further stated that he did not fully understand the English contents of the typed statement, that he had signed the papers only subsequently but was asked to sign them bearing the earlier date, and that the initial apprehension inside the train was by GRP personnel and not Customs officers, with the Customs officers taking over the matter only about one to two hours thereafter.

45.2. More significantly, he stated during cross-examination that the 26 gold pieces did not belong to him but to Shri Narpat Soni, who had handed over the gold at Jalore for the purpose of sale at Agartala. He categorically denied having undertaken 11–12 prior trips to Agartala carrying concealed gold, denied having received gold from any unidentified person at Battala or Agartala, and stated that he had travelled to Agartala only once earlier and once on the present occasion. He further clarified that, on the present occasion, as the intended sale could not be concluded at Agartala, he had commenced the return journey to Jalore with the gold.

45.3. The Commissioner (Appeals) has characterised this deposition as an afterthought designed to escape penal consequences. We find, however, that such conclusion cannot be reached merely by preferring the earlier statement over the later deposition. The subsequent version must be tested against the independent evidence on record. As noticed above, the aspects relating to repeated hotel stays and repeated visits to Agartala were not corroborated and, indeed, were contradicted by the hotel records. Likewise, no air tickets or boarding passes corresponding to the alleged repeated journeys were discovered, and no intermediary at Agartala was traced through the CDR analysis.

45.4. Thus, at least in relation to these material particulars, the cross-examination version finds some objective support from the investigation itself. This circumstance significantly erodes the proposition that the subsequent deposition can be dismissed wholesale as a mere afterthought.

Absence of examination under Section 138B of the Customs Act

46. We finally advert to the statutory requirement governing the use of statements in adjudication proceedings. The appellants have specifically contended that, despite the subsequent retraction and the material controversy surrounding the voluntariness and correctness of the statement dated 12.02.2024, Shri Inder Singh was not examined by the adjudicating authority in the manner contemplated under Section 138B of the Customs Act,

1962, so as to enable the statutory safeguards governing reliance upon such statements to operate.

46.1. This objection, in our view, assumes added significance in the peculiar facts of the present case. The statement of Shri Inder Singh is not merely one piece of corroborative evidence amongst several independent strands; it forms the principal evidentiary foundation of the Revenue's allegation against both appellants. Once its voluntariness was expressly disputed, the statement was retracted, its maker resiled from several material assertions during cross-examination, and independent investigation failed to corroborate crucial portions thereof, the statutory safeguards governing its admissibility and evidentiary use assumed particular importance.

46.2. The question, therefore, is not whether a statement recorded under Section 108 can ever be relied upon in adjudication. It undoubtedly can, subject to the statutory scheme. The question is whether, in a case where the maker has subsequently retracted the statement and materially contradicted its contents, the statement can be treated as substantive evidence without the procedural requirements contemplated under Section 138B having been duly satisfied. In our considered view, the answer must be in the negative where, as here, the statement constitutes the principal foundation of the adverse findings and is not otherwise supported by independent and credible evidence.

47. The same issue came up for consideration before the Tribunal at Mumbai in the case of *M/s. Jeen Bhavani International v. Commissioner of Customs [(2023) 6 Centax 11 (Tri. – Bom.)]* wherein the Bench has dealt with issues of belated retractions and non-

compliance of the provisions of Section 138B of the Customs Act, 1962, held that transaction value cannot be rejected based on such statements. The relevant portion of the said order is reproduced below: -

> *"14. We find that revenue heavily relies on the statements of Shri Mahesh Chandra Sharma, though retracted later. The adjudicating authority has held that no documents are available in the case records to show that the statements, recorded between November, 2016 and June, 2019, were retracted by the appellant. Further, he also held that belated retraction has no evidentiary value and the evidences available on record in the form of statements cannot be ignored. On perusal of the appeal records, we find that by letter dated 5-9-2019, addressed to the adjudicating authority, the appellant had retracted all the statements, assigning the reason that the appellant had never stated regarding mis-declaration of value, quantity or description of goods and accordingly, deny the whole statements recorded under section 108 ibid. It has further been stated that the statements were obtained by threat, duress etc.*
>
> *14.1 We find that the statements were recorded by the department from Shri Mahesh Chandra Sharma on different dates in a span of 3 years. However, the copies of same were not furnished to the appellant immediately on completion of the summon proceedings. Upon receipt of the SCN together with the RUD's, the appellant came to know about the content in the statements, though made by him and thus, had sent the retraction letter within the reasonable time. Thus, it cannot be said that there is inordinate delay in filing the retraction letter. Further, the letter of retraction cannot be discarded on such ground, without examining the genuineness of the transactions and for that purpose, to verify the authenticity of available documents and those retrieved during the course of investigation, which admittedly has not been done by the department. In this context, the law is well settled that merely because an assessee has, under the stress of investigation, signed a statement admitting tax liability and having also made a few payments as per the statement, it cannot lead to self-assessment or self-ascertainment. In the case of Vinod Solanki [2009 (223) E.L.T. 157 (S.C.)], the Hon'ble*

Supreme Court has ruled that the initial burden to prove that the confession was voluntary is upon the department and that evidence brought by confession if retracted, must be corroborated by other independent and cogent evidence. Madras High Court in the case of Shri Nandi Dhall Mills India Private Limited 2022 (60) G.S.T.L. 227 (Mad.)] held that merely because an assessee has, under the stress of investigation, signed a statement admitting tax liability and has also made a few payments as per the statement, cannot lead to self-assessment or self-ascertainment. Though the judgement was pronounced in respect of GST, it goes to indicate that acceptance by the appellant during the course of recording the statement is not just enough and the same has to be confirmed by adducing independently corroborative evidence. The whole case cannot rest simply on the basis of a retracted statement though belatedly.

14.2 We find that the appellants have shown enough cause for delayed retraction. Learned Commissioner has simply brushed the same aside. He should have examined the appellant during the adjudication proceedings in terms of Section 138(B) of the Customs Act, 1962, to confirm the veracity. Learned adjudicating authority could have examined the officers too. Section 138B (1) ibid deals with the aspect of relevance of statements under certain circumstances. It has been provided that a statement made and signed by a person during any enquiry or proceeding shall be relevant, for the purpose of proving an offence, when the person, who made the statement, is examined as a witness in the case before the court. In this case, having acknowledged that the retraction has been made by the appellant in the course of the adjudication proceedings, more specifically, during the period between issuance of SCN and passing of the impugned order, it was incumbent upon the learned adjudicating authority to examine the person, who made the statement. However, the adjudicating authority chose to rely on the statement alone as evidence, which is beyond the scope and ambit of the statutory provisions. Thus, contents of the retracted statement cannot simply be brushed aside, to conclude that the appellant has indulged into the activity of undervaluation of goods."

Further the said decision was affirmed by Hon'ble Supreme Court vide judgement reported in *(2023) 6 Centax 14 (S.C.).*

47.1. In the case of *Commissioner of Customs, (Imports), Mumbai vs Ganpati Overseas [2023 (386) E.L.T. 802 (S.C.)],* the Hon'ble Supreme Court, in paragraph 28 of the said judgment, has held as follows: -

> *"28.. -Object underlying Section 108 is to elicit the truth from the person who is being examined regarding the incident of customs infringement. Since the objective is to ascertain the truth, the customs officer must ensure the truthfulness of the statement so recorded. If the statement recorded is not correct, then, the very utility of recording such a statement would get lost. It is in this context that the customs officer who is empowered under Section 108 to record statement etc. has the onerous responsibility to see to it that the statement is recorded in a fair and judicious manner providing for procedural safeguards to the concerned person to ensure that the statement so recorded, which is admissible in evidence, can meet the standard of basic judicial principles and natural justice. It is axiomatic that when a statement is admissible as a piece of evidence, the same has to conform to minimum judicial standards.* ***Certainly, a statement recorded under duress or coercion cannot be used against the person making the statement****. It is for the adjudicating authority to find out whether there was any duress or coercion in the recording of such a statement since the adjudicating authority exercises quasi-judicial powers."*
>
> [Emphasis supplied]

47.2. Reliance in this regard is also placed on decision in the case of *Ambika International v. Union of India [2018 (361) E.L.T. 90 (P & H)].* Relevant extract from paragraph 24 of the said judgment is reproduced below:

> *"24. The rationale behind the above precaution contained in clause (b) of Section 9D(1) is obvious. The statement, recorded during inquiry/investigation, by the gazetted Central Excise Officer, has every chance of having been recorded under coercion or compulsion. It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. It is obviously in order to neutralize this possibility that, before admitting such a statement in evidence, clause (b) of Section 9D(1) mandates that the evidence of the witness has to be recorded before the adjudication authority, as, in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned."*

48. Having regard to the facts and circumstances of the case, therefore, we find that the statement of Shri Inder Singh dated 12.02.2024 cannot safely be treated as a wholly reliable and unimpeachable piece of evidence, the material assertions contained therein concerning the alleged repeated visits to Agartala, repeated stays at Hotel Neer, air travel and transmission of boarding passes, and collection of gold from an unidentified intermediary having either been contradicted by independent material or having remained wholly uncorroborated. Further, the identity of the alleged intermediary has not been established, the CDR analysis has not revealed any corresponding contact attributable to such person, and the forensic examination of the mobile phones has not yielded any specific electronic evidence corroborating the alleged transaction. The subsequent retractions and the deposition made during cross-examination cannot, in the peculiar factual circumstances of the present case, be dismissed merely as an afterthought, particularly when material portions of the subsequent version find support in the Department's own investigation. The

failure to subject the retracted statement to the statutory safeguards contemplated under Section 138B of the Customs Act, 1962 further militates against treating it as the substantive foundation for the severe consequences of confiscation and penalty.

49. We are, therefore, of the considered view that the statement dated 12.02.2024, either by itself or read in conjunction with the other material relied upon by the Revenue, does not constitute sufficient and legally sustainable evidence to establish the alleged involvement of the appellants in the smuggling of the seized gold. consequently, the findings of the lower authorities and the impugned order, founded substantially upon the said statement, cannot be sustained.

50. Having held, for the reasons recorded hereinabove, that the principal allegations of illicit importation and smuggling of the seized gold are not established against the appellants, the consequential imposition of penalties under Section 112 of the Customs Act, 1962 also cannot be sustained. The adjudicating authority has imposed a penalty of Rs.1,50,000/- upon Shri Inder Singh and Rs.15,00,000/- upon Shri Narpat Soni under Sections 112(a) and 112(b) of the Act. It is well settled that penalty under Section 112 cannot be imposed merely by reason of the seizure of goods or upon the basis of an allegation unsupported by cogent evidence. The Revenue was required to establish, by legally sustainable material, the precise act or omission attributable to each appellant which brought his conduct within the ambit of either clause (a) or clause (b) of Section 112. In the present case, apart from the statement of Shri Inder Singh, which has already been found to be materially infirm, retracted and unworthy

of reliance, no independent or corroborative evidence has been brought on record demonstrating that either of the appellants had, with the requisite knowledge or intent, engaged in or facilitated any act rendering the goods liable to confiscation. No separate and legally sufficient evidentiary foundation for the imposition of penalty has otherwise been furnished by the Revenue.

50.1. We also take note of the specific contention raised on behalf of the appellants that the ingredients of Sections 112(a) and 112(b) operate in distinct fields and that the statutory scheme does not contemplate an indiscriminate or mechanical imposition of penalty under both clauses without establishing the particular ingredients attracted in the case of the concerned person. In the facts obtaining herein, however, it is not necessary to enter into the said issue, since the Revenue has failed to establish the foundational acts necessary to attract penal liability under either provision.

50.1. Once the finding of smuggling and consequent liability of the seized gold to confiscation is not sustainable, and there is no independent evidence establishing the appellants' conscious involvement in any act or omission contemplated under Section 112(a) or Section 112(b), the penalties imposed upon Shri Inder Singh to the extent of Rs.1,50,000/- and Shri Narpat Soni to the extent of Rs.15,00,000/- are rendered wholly unsustainable. The same are accordingly set aside and the penalties imposed under Sections 112(a) and 112(b) of the Customs Act, 1962 are hereby dropped.

51. Having regard to the foregoing discussion, the material available on record, the evidentiary deficiencies noticed hereinabove, and the findings recorded on the respective issues, we are of the considered view that the impugned order cannot be sustained either on facts or in law. The allegations of illicit importation and smuggling of the seized gold have not been established by cogent, credible and legally sustainable evidence, and the material relied upon by the Revenue falls short of the standard necessary to sustain confiscation and penal consequences under the Customs Act, 1962. We thus order as follows:

(i) The order of absolute confiscation of the 26 gold pieces weighing 2401.310 grams, seized vide Case No. 14/CL/IMP/AS/GAU/2023-24 dated 12.02.2024, under Sections 111(b) and 111(d) of the Customs Act, 1962, is set aside.

(ii) The penalty of Rs.1,50,000/- imposed upon Shri Inder Singh under Sections 112(a) and 112(b) of the Customs Act, 1962 is set aside.

(iii) The penalty of Rs.15,00,000/- imposed upon Shri Narpat Soni under Sections 112(a) and 112(b) of the Customs Act, 1962 is set aside.

52. Consequently, the impugned order stands set aside.

53. In the result, both the appeals are allowed with consequential relief, if any, in accordance with law.

(Order pronounced in the open court on **08.10.2026**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd