IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA
Court No.1

Customs Appeal No.75808 of 2026

(Arising out of Order-in-Appeal No.233/GHY(A)/COM/CUS/SH/2026 dated 29.05.2026 passed by Commissioner of Customs (Appeals), Guwahati)

Bal Kishan Soni
(Subaro Ka Bass, Near Aastha Dental Hospital Merta,Nagaur,Rajasthan-341410)

Appellant

VERSUS

Commissioner of Customs (Preventive), Guwahati
(3rd Floor, GST Bhawan, Kedar Road, Machkhowa,Guwahati-781001)

Respondent

WITH

Customs Appeal No.75809 of 2026

(Arising out of Order-in-Appeal No.233/GHY(A)/COM/CUS/SH/2026 dated 29.05.2026 passed by Commissioner of Customs (Appeals), Guwahati)

Prakash Chand Soni
(R/o Bhistiyon Ka Bas, Ghodo Ka Chowk,Jodhpur, Rajasthan-342001)

Appellant

VERSUS

Commissioner of Customs (Preventive), Guwahati
(3rd Floor, GST Bhawan, Kedar Road, Machkhowa,Guwahati-781001)

Respondent

AND

Customs Appeal No.75810 of 2026

(Arising out of Order-in-Appeal No.233/GHY(A)/COM/CUS/SH/2026 dated 29.05.2026 passed by Commissioner of Customs (Appeals), Guwahati)

Kanheya Lal
(R/o Dhadi Walo Ka Mohalla, Merta, Nagaur, Rajasthan-341510)

Appellant

VERSUS

Commissioner of Customs (Preventive), Guwahati
(3rd Floor, GST Bhawan, Kedar Road, Machkhowa,Guwahati-781001)

Respondent

Appearance:
Shri Amit Kumar, Advocate for the appellant
Shri Amaresh Biswas, Authorized Representatives for the Respondent

Customs Appeal Nos.75808-75810/2026

CORAM :
HON'BLE SHRI ASHOK JINDAL JUDICIAL MEMBER

DATE OF HEARING : 17 SEPTEMBER 2026

DATE OF PRONOUNCEMENT : **30 SEPTEMBER 2026**

FINAL ORDER NO.76295-76297/2026

Per Ashok Jindal :

All the three appeals are arising out of the same impugned order, accordingly, all are disposed of by a common order.

2. The facts of the case are that on 26.05.2024 Officers of GRPS (Govt. Railway Police Service), Guwahati intercepted Shri Kanheya Lal while he was going to travel by 12423 Down Rajdhani Express in Coach No B9 stationed at Platform No 01 of Guwahati Railway Station at around 06:53 am on the basis of an information that a person will travel the said train with smuggled gold.

2.1 On search of the person of Shri Kanheya Lal, it was found that four numbers of gold biscuits are kept in a poach made of cloth under his waist. On enquiry, Shri Kanheya Lal could not produce any document related to the said gold biscuits. The recovered gold was seized by GRPF Guwahati and apprehended Shri Kanheya Lal.

2.2 On 26.05.2024 Shri Kanheya Lal was produced before the Hon'ble Court of Judicial Magistrate First Class, Kamrup(M), Assam. Thereafter, on 26.05.2024 at around 6:30 pm the gold biscuits along with apprehended person Shri Kanheya Lal was handed over to the officers of Anti-Smuggling Unit of Customs division, Guwahati.

2.3 On 26.05.2024, the Customs Officers certified the seized goods with the government approved valuer, Shri Suresh Kumar Soni of KK

Jewellers, He recorded his observations that marking "W" was found on Sl. No. 01 Gold biscuits whereas, Sl. No 02 to 04 Gold biscuits have no marking and all the gold biscuits were having purity 99.50% collectively valued at Rs.48,98,808/- (Rupees Forty-Eight Lakhs Ninety-Eight Thousand Eight Hundred Eight Only). Subsequently, a seizure list under the provisions of section 110 of Customs Act 1962 is prepared on 26.05.2024.

2.4 Subsequently, the samples were sent to New Guwahati Hallmark Centre, Guwahati and as per their test report all gold biscuits are of 23.89k(99.57%), 23.84k(99.35%) 23.84k(99.35%) and 23.85k(99.40%). None of the sample were sent to Customs Revenue Control Laboratory (CRCL) for testing.

2.5 Kanheya Lal on 26.05.2024 stated that the four gold biscuits were given to him by shri Prakash Chand Soni for Carrying the same from Dimapur to New Delhi. The contact no of Shri Prakash Chand Soni was given to him by Shri Bal Kishan Soni of Rajasthan. Shri Bal Kishan is a friend of Shri Kanheya Lal. He also stated that he was instructed to hand over the said gold to Shri Bal Kishan Soni.

2.6 During subsequent investigation, the statement was recorded from Shri Bal Kishan Sonion 21.08.2024 wherein, he claimed the ownership of seized gold biscuits. Shri Bal Kishan Soni presented 09 nos of tax invoices bearing nos. from AS2624OCT0000054 to AS2324OCT0000062 dated 06.10.2023 & 07.10.2023 issued by Asirvad Microfinance Limited (GSTIN 18AAGCA5275J1ZD). BeltolaTiniali, Jyoti Complex, 1st Floor, Near Nakshatra. Hotel, Bashishtha Road, Kamrup, Guwahati - 781028, issued to Balkishan,

Merta, Nagaur, Rajasthan - 341510. From the said tax invoices, it has been observed that Gold Ornaments having combined gross weight of 821.12 grams & net weight 809.96 grams have been sold by M/s Asirvad Microfinance Limited to Balkishan. He also stated that he gave the said ornaments to his relatives Shri Prakash Chand Soni to melt and convert the same to gold biscuits and subsequently to give to Kanheya Lal to deliver back to him (Shri Bal Kishan Soni).

2.7 He also stated that on his instruction Shri Prakash Soni handed over the seized gold biscuits to shri Kanheya Lal so that the same can be delivered by him. He further submitted that by way of melting process, the weight of 681.580grams of ornament reduced to some extent, thereafter 17.560 grams of gold were kept in custody of Shri Prakash Chand Soni and rest 664.02grams (that is seized four gold biscuits) were delivered to Shri Kanheya Lal.

2.8 However, without disputing the authenticity of the said 9 tax invoices, the SCN was issued on 20.11.2024. In reply, the appellant defended their case with the documentary evidence. However, after due process the adjudicating authority absolutely confiscated seized gold biscuits weighing 664.02 grams u/s 111(b) and 111(d) of the Customs Act 1962 and imposed penalty Rs.50,000 on shri Kanheya Lal, Rs.2,00,000/- on Shri Bal Kishan Soni, Rs.1,50,000/- on Shri Prakash Chand Soni, u/s 112(a) and (b) of the Customs Act 1962.

2.9 Being aggrieved with said order, the appellants filed appeals before the Commissioner of Customs (Appeals)and Commissioner of Customs (Appeals) vide impugned order rejected the appeals filed by the appellants.

Being aggrieved with the said order, the appellants are before me.

3. The ld.Counsel for the appellants submits that the appellants have produced the necessary documents including Purchase invoice for the seized gold. He further submits that mere failure to produce the bills immediately during train interception does not alter their genuineness. It is his further contention that appellants discharged the statutory burden under Section 123 of the Customs Act, 1962. He has further contended that the legal burden shifted entirely to the Revenue department to prove that the gold bars were smuggled. He further submits that a detailed inquiry by authorities with the specified seller, revealed absolutely nothing incriminating. He further contends that the seized gold lacks any physical inscriptions, stamps, or marks indicating foreign production. Further, he submits that no testing was done in Customs Revenue Control Laboratory (CRCL). Initial report shows 24K purity, subsequent report shows 23.8K purity. He further points out that the foreign-marked gold typically features a higher purity level of 99.9%, negating the initial "reason to believe", it was smuggled. Again, he submits that under Section 110, "reasonable belief" must exist at the exact moment of seizure, not established retrospectively. In support of his contention, he relies on the following decisions :

(i) Om Sai Trading reported in [2020 (372) E.L.T. 542 (Pat.)] (Upheld in Supreme Court [2022 (382) E L T 9 (SC)] ;

(ii) Madhukar Sonaba Bhagat reported in [2019(368) E.L.T. 990 (Tri.- Kolkata ;

(iii) V.K. Jain & Sons vs. Commr. Of Customs –[2003(160) E.LT. 910 (T)] ;

(iv) Sri Samir Kumar Roy & Others v. CC (Prev.) West Bengal –[2001 (135) E.L.T. 1036 (T)] ;

(v) M/s. Geetanshu Aggarwala M/s. Dharmender Kumar Jha, M/s. Tirlok Singh Versus Commissioner of Customs (Preventive), Kolkata [2025 (2) TMI 1291 - CESTAT KOLKATA] ;

(vi) Vikram Kumar Kabra Versus Principal Commissioner of Customs Hyderabad – Customs [2025 (5) TMI 587 - CESTAT HYDERABAD] ;

(vii) 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] ;

He, therefore, submits that the above cited case laws are squarely applicable in the present cases.

3.1 Finally, he prays that the seized gold is to be released without any penal action on the appellants under the provisions of Section 112 of the Customs Act, 1962 by setting aside the impugned order.

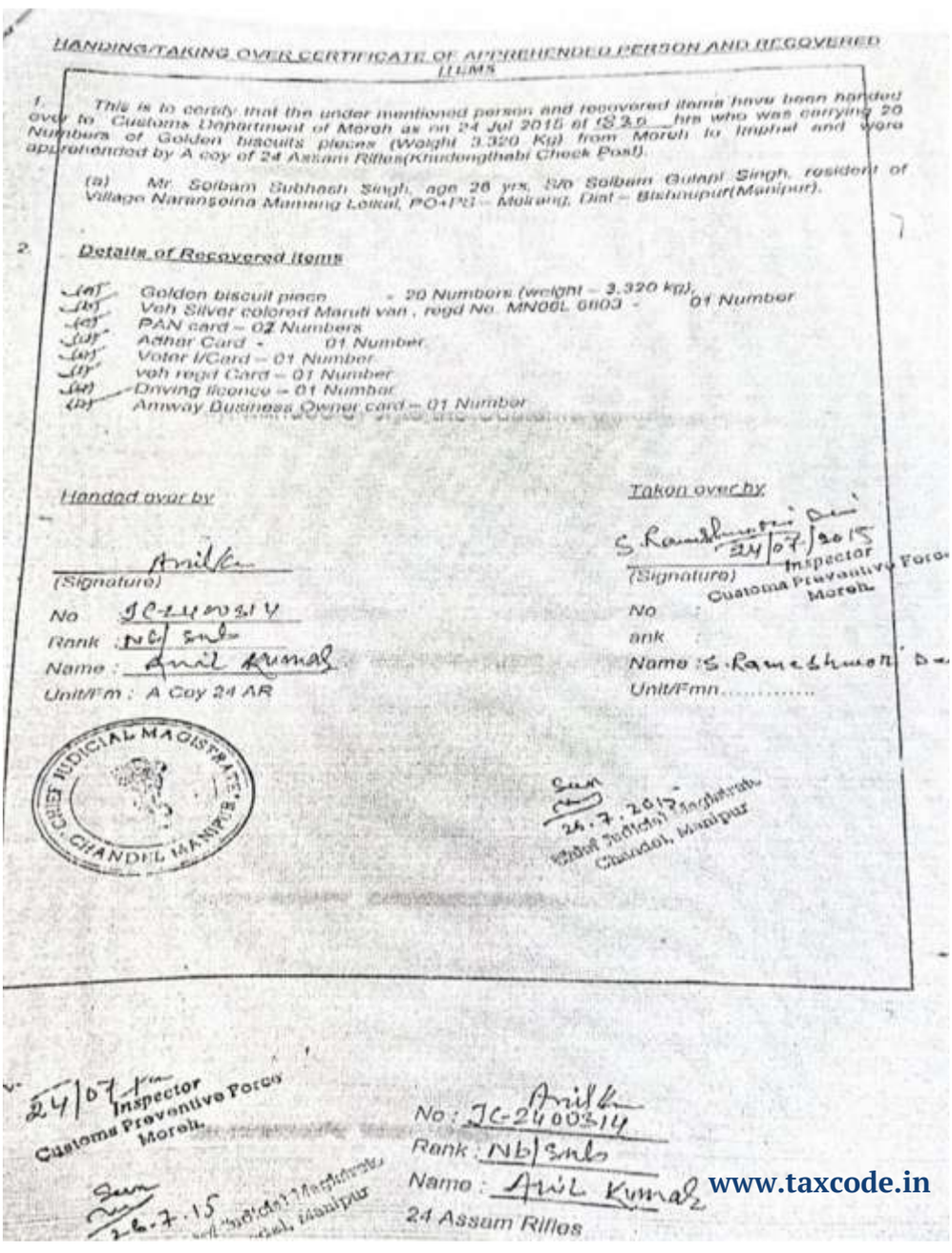
4. The ld.A.R. for the Revenue has reiterated the findings of the impugned order.

5. Heard both the parties and considered the submissions.

6. I find that in this case, the gold has been seized by the Government Railway Police Service on 26.05.2024. In that circumstances, it is to be seen whether the seizure of the gold was based on a "reasonable belief" as required under Section 110(1) of the Customs Act, 1962 or not ?

7. I find that the similar issue has been dealt by this Tribunal in the case of Shri R.Rajesh Naykar & Others in Customs Appeal Nos.C/75055,75056/2020 vide Final Order Nos.77299-77300/2025 dated 20.08.2025, wherein this Tribunal has observed as under :

> *"12. We find that in the instant case, gold weighing 3325.49 grams was seized by the 24th Assam Rifles on 24.07.2015 at Imphal-Moreh Road from the possession of the driver Shri S. Subash Singh, appellant no. 2 and subsequently, the same had been handed over to the Customs Officers, Moreh, Manipur.*
>
> *12.1. From the report submitted by the Assam Rifles while handing over of the gold to Customs Officers at Moreh, we observe that the report does not indicate the presence of any foreign markings on the seized gold. For the sake of ready reference, the "Handing/Taking Over Certificate" evidencing handing over of the said goods to the Customs authorities is reproduced below: -*



HANDING/TAKING OVER CERTIFICATE OF APPREHENDED PERSON AND RECOVERED ITEMS

1. This is to certify that the under mentioned person and recovered items have been handed over to Customs Department of Moreh as on 24 Jul 2015 at 1235 hrs who was carrying 20 Numbers of Golden biscuits pieces (Weight 3.320 Kg) from Moreh to Imphal and were apprehended by A coy of 24 Assam Rifles(Khudengthabi Check Post).

(a) Mr. Soibam Subhash Singh, age 26 yrs, S/o Soibam Guiapl Singh, resident of Village Naranseina Mamang Leikai, PO+PS – Mekang, Dist – Bishnupur(Manipur).

2. Details of Recovered Items

(a) Golden biscuit piece - 20 Numbers (weight – 3.320 kg).
(b) Veh Silver colored Maruti van , regd No. MN09L 6803 - 01 Number
(c) PAN card – 02 Numbers
(d) Adhar Card - 01 Number.
(e) Voter I/Card – 01 Number
(f) veh regd Card – 01 Number
(g) Driving licence – 01 Number
(h) Amway Business Owner card – 01 Number

Handed over by

(Signature)
No JC-2400314
Rank : NB/ Smb
Name : Anil Kumar
Unit/Frm : A Coy 24 AR

Taken over by

S.Rameshwori Devi
24/07/2015
(Signature) Inspector
Customs Preventive Force
Moreh.
No
ank
Name : S.Rameshwori D...
Unit/Frmn.....

CHIEF JUDICIAL MAGISTRATE CHANDEL MANIPUR

24.7.2015 Sub Divisional Magistrate Chandel, Manipur

24/07 Inspector Customs Preventive Force Moreh.

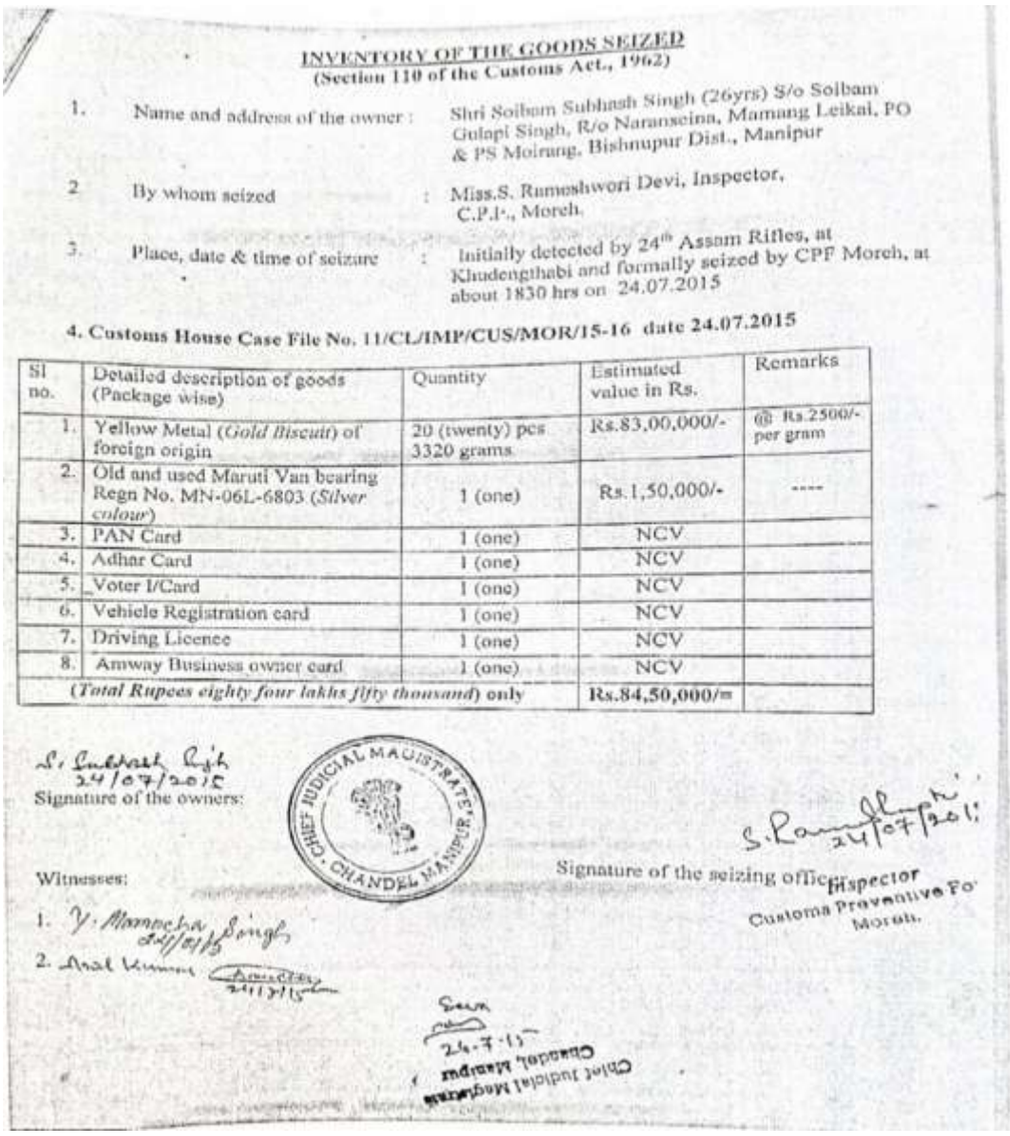
2-6-7-15 Sub Divisional Magistrate Chandel, Manipur

No : JC-2400314 Anil K
Rank : NB/Smb
Name : Anil Kumar
24 Assam Rifles

www.taxcode.in

12.2. From the above report, we find that the gold in question has been mentioned in the report as 'Golden biscuit piece-20 numbers'. The report has not indicated the presence of any foreign markings on the gold recovered by them.

12.3. We have also perused the Seizure inventory prepared by the Customs officers under Section 110 of the Customs Act, 1962. For ready reference a scanned copy of the seizure list id reproduced below:



INVENTORY OF THE GOODS SEIZED
(Section 110 of the Customs Act., 1962)

1. Name and address of the owner : Shri Soibam Subhash Singh (26yrs) S/o Soibam Gulapi Singh, R/o Naranseina, Mamang Leikai, PO & PS Moirang, Bishnupur Dist., Manipur
2. By whom seized : Miss.S. Rameshwori Devi, Inspector, C.P.I-., Moreh.
3. Place, date & time of seizure : Initially detected by 24th Assam Rifles, at Khudengthabi and formally seized by CPF Moreh, at about 1830 hrs on 24.07.2015

4. Customs House Case File No. 11/CL/IMP/CUS/MOR/15-16 date 24.07.2015

Sl no.	Detailed description of goods (Package wise)	Quantity	Estimated value in Rs.	Remarks
1.	Yellow Metal (*Gold Biscuit*) of foreign origin	20 (twenty) pcs 3320 grams	Rs.83,00,000/-	@ Rs.2500/- per gram
2.	Old and used Maruti Van bearing Regn No. MN-06L-6803 (*Silver colour*)	1 (one)	Rs.1,50,000/-	----
3.	PAN Card	1 (one)	NCV	
4.	Adhar Card	1 (one)	NCV	
5.	Voter I/Card	1 (one)	NCV	
6.	Vehicle Registration card	1 (one)	NCV	
7.	Driving Licence	1 (one)	NCV	
8.	Amway Business owner card	1 (one)	NCV	
	(*Total Rupees eighty four lakhs fifty thousand*) only		Rs.84,50,000/=	

Signature of the owners:

CHIEF JUDICIAL MAGISTRATE, CHANDEL MANIPUR

Signature of the seizing officer

Inspector
Customs Preventive Force
Moreh.

Witnesses:
1.
2.

Chief Judicial Magistrate
Chandel, Manipur

12.4. A perusal of the seizure Inventory also reveals that there were no foreign markings available on the gold. 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."*

12.5. In the present case, we observe that the gold was seized by the personnel of Assam Rifles and later handed over to Customs, meaning that the Customs officer did not act on his independent belief but merely accepted the seizure done by another agency. The Hon'ble Supreme Court in Union of India v. Mohammed Nawaz Khan, (2021) 10 SCC 100, held that the authority effecting the seizure must demonstrate a subjective satisfaction based on objective material, failing which the seizure is invalid.

12.6. We observe that even after accepting the gold from personnel of the Assam Rifles, the Customs officers did not derive any subjective satisfaction that the gold was of foreign origin and smuggled. The seizure inventory fails to disclose any material evidence justifying a 'reasonable belief' for seizure of the gold. In this regard, we observe that the mere finding of gold does not render it liable for seizure unless there is cogent and positive evidence proving its foreign origin as the first condition, as precursor to seizure. The Hon'ble Supreme Court, in Gian Chand v. State of Punjab (1962 AIR 496), has categorically held that mere suspicion is not sufficient to justify seizure, and the prosecution must provide substantive evidence of foreign origin.

12.7. Further, we observe that in Union of India v. Mahesh Raj (1990 SCC (3) 115), the Hon'ble Supreme Court ruled that the burden under Section 123 arises only if there is prima facie evidence indicating foreign origin, which is entirely absent in this case.

12.8. Also, in D. Bhoormull (1974 AIR 859), the Hon'ble Supreme Court emphasized that suspicion alone is not a substitute for evidence. In Umrao Lal v. Commissioner of Customs (2016 (331) E.L.T. 216 (Tri.-Del.), it was held that in the absence of markings or material evidence proving foreign origin, confiscation is not sustainable.

12.9. In the instant case, we observe that Assam Rifles recovered gold from the procession of appellant no. 2 solely on suspicion that it was smuggled and later handed it over to Customs. However, instead of conducting an independent verification or forming their own reasonable belief based on credible evidence, the Customs officers proceeded with the seizure under the Customs Act without exercising due diligence. They failed to assess whether a reasonable belief of smuggling genuinely existed, as required by law, and merely acted on the presumption created by Assam Rifles. This lack of independent application of mind renders the seizure arbitrary and legally unsustainable.

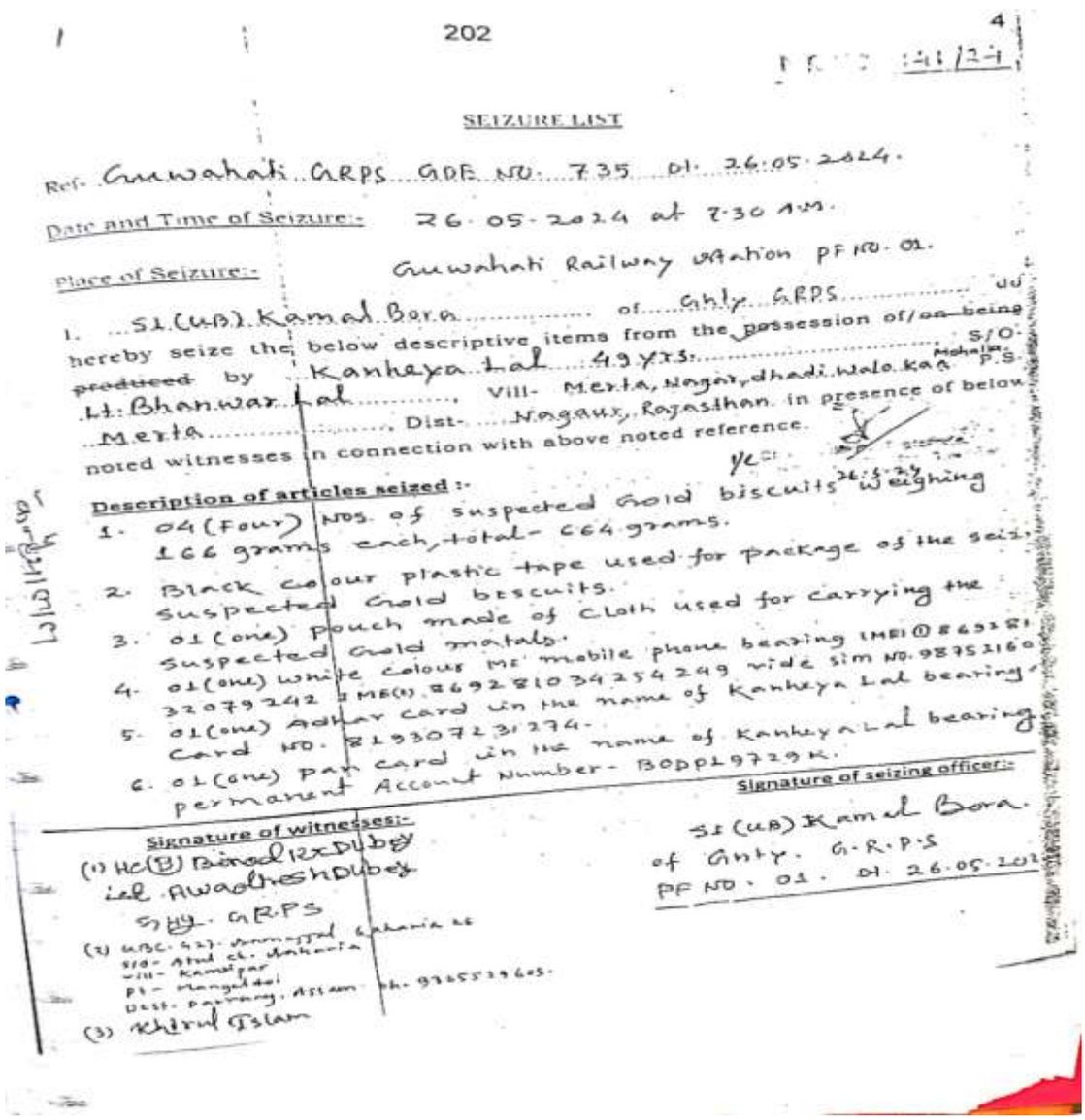
12.10. In this regard, we find that a similar view has been expressed by the Tribunal, Kolkata in Customs Commissioner of Cus (Prev.), Patna v. Lalit Krishna Agarwal [Final Order No. 77506 of 2023 dated 08.11.2023 in Customs Appeal No. 75499 of 2022 – CESTAT, Kolkata], wherein it was observed as under:-

> *"6. In fact, during the course of investigation, it is a fact on record that boondi silver and silver jewellary were recovered from the shop of the respondent. So, the question arises that in the absence of any seizure of Port or Airport or not having any foreign markings on the goods seized from the respondent, how the officers came to the conclusion that the goods are third country origin goods. Therefore, first, onus on the Revenue is to make a reasonable belief that the goods are of third country. Admittedly, no such evidence has been produced by the Revenue to allege that to make a reasonable belief, the goods*

are of third country origin. In the absence of that, the goods in question cannot be confiscated."

12.11. In view of the above discussions, we hold that there was no 'reasonable belief' in this case for seizure of the gold in question in terms of Section 110(1) of the Customs Act, 1962. Thus, the issue no. (i) framed at paragraph 11 of this Order is answered in the negative.

8. Admittedly, in this case, I find that the seizure list made by the GRPS, does not indicate any presence of any foreign marking on the seized gold. For better appreciation of facts, the seizure memo is extracted herein below :



1 202 4

SEIZURE LIST

Ref. Guwahati GRPS GDE NO. 735 Dt. 26.05.2024.

Date and Time of Seizure:- 26.05.2024 at 7.30 P.M.

Place of Seizure:- Guwahati Railway Station PF NO. 01.

I, SI(UB) Kamal Bora of Gnty. GRPS do hereby seize the below descriptive items from the possession of/on being produced by Lt. Bhanwar Lal 49 yrs. S/O Mehalm P.S. Merta, Vill- Merta, Nagar, dhadi wala kaa, Dist- Nagaur, Rajasthan. in presence of below noted witnesses in connection with above noted reference.

Description of articles seized :-

1. 04 (Four) Nos. of suspected Gold biscuits 26.5.24 Weighing 166 grams each, total- 664 grams.
2. Black colour plastic tape used for package of the seized suspected Gold biscuits.
3. 01 (one) pouch made of cloth used for carrying the suspected Gold metals.
4. 01 (one) white colour Mi mobile phone bearing IMEI 1 869281 320792 42 IMEI 2 869281034254299 vide sim No. 9875216 0
5. 01 (one) Adhar card in the name of Kanheya Lal bearing Card No. 821930723274.
6. 01 (one) pan card in the name of Kanheya Lal bearing permanent Account Number- BODP19729K.

Signature of witnesses:-
(1) HC(B) Binod Rx Dubey
Lal Awadhesh Dubey
GRPS
(2) UBC. 427. Jammujal Kalamia
S/O- Atul ch. Kalamia
Vill- Kamalpur
PS- Mangaldai
Dist. Darrang, Assam Ph. 9365539605.
(3) Khirul Islam

Signature of seizing officer:-
SI (UB) Kamal Bora.
of Gnty. G.R.P.S
PF NO. 01. Dt. 26.05.2024

9. I also take note of the fact that the Seizure Inventory was prepared by the Customs Officer under the provisions of Section 110 of the Customs Act, 1962. The same is also extracted herein below :

Annexure-3

8

FORM-I PART-I

206

VRE JIT. 13/2024-25 Dt. 24/05/2024

Original (For Owner)
Duplicate (For Custodian)
Triplicate (For case file)

INVENTORY

(Seized under the provisions of Section 110 of the Customs Act, 1962.)

1. **Name & Address of the Owners of the goods:** Shri Kanheya Lal, Age-48 years, S/o Bhanwar Lal, Dhadi Walo Ka Mohalla, Merta, Nagaur, Rajasthan- 341510. Correspondence address- Kishan Tailors, Dayanand Marg, Opposite Rajkiya Valika Uchaya Madhyamik Vidyalaya, Meera Mandir, Merta City, Nagaur, Rajasthan-341510.

2. **By whom seized:** Shri Alok Ranjan, Superintendent (In-situ), Anti-Smuggling, Customs Division, Guwahati.

3. **Date, Time & place of seizure:** The officials of GRPS, Guwahati had recovered 04(four) nos. of yellow metal biscuits believed to be gold from the possession of Shri Kanheya Lal from Train No. 12423 (New Delhi Rajdhani Express), at PF No. -01 of Guwahati Railway station on 26.05.2024 and handed over to the Guwahati Customs Officers on 26.05.2024 at around 06:30 P.M and which was formally seized at the O/o the Deputy Commissioner, Guwahati Customs, Nilomani Phukan Path, Christian Basti, Guwahati-781005 on 26.05.2024 at around 07:30 P.M.

4. **Customs Case No:** 10/CL/IMP/AS/GAU/2024-25 dated 26.05.2024.

5. **Reasons for Seizure:** Circumstantial evidences as well as failure of the possessor of the goods to proof that the goods were not smuggled has formed a reason to believe that the goods were illegally imported through a route not specified under the provisions of Section 7(i)(C)and in violation of the Provisions of Sections 11 (and the Notification issued thereunder) of the Customs Act'1962 read with the provisions of the Foreign trades (development and Regulations) Act'1992 including the Orders and Rules made thereunder, as amended as made applicable to the Customs Act'1962 under Section 3(3) ibid and Provisions of FEMA, 1999.

6. **Description of the goods:** As detailed below: -

Sl.No	Detailed description of goods.	Quantity	Market Value (In INR)	Remarks.
1	04(Four) nos. of yellow metal biscuits believed to be gold	664.02 grams	Rs. 48,98,808/-	Details enclosed as per Annexure-A
2	Black Tape used for packing/wrapping 04(Four) nos. of yellow metal biscuits believed to be gold	NCV	-	-
3	01(one) pouch made of cloth used for carrying the 04(Four) nos. of yellow metal biscuits believed to be gold	NCV	-	-
	Total	**664.02 grams**	**Rs. 48,98,808/-**	
	(Value- Rupees Forty-eight Lakhs Nine-eight Thousand Eight Hundred Eight only)			

*Value of the gold taken at Rs. 73,775/- per 10 g as certified by the registered jeweller.

24/05/2024
26-5-24
(Signature of the owner/possessor of the goods)

Alok Ranjan 26/05/2024
(Alok Ranjan)
Seizing Officer

Seizing Officer
Anti Smuggling Unit
Guwahati Customs Division

Signature of the witnesses.

1. Tapomi Dutta 26-05-24
2. Rajen Bharali. 26/5/24

In presence of (GRPS officials):

1. HC/1381 Punam Ghosh 26/05/24

10. On perusal of the said seizure inventory, there is no foreign marking on the gold and only one item at Sl.No.1, there is a marking as "W", which does not indicate that the gold in question is of foreign origin.

11. Therefore, I hold that the gold was seized by the personnel of GRPS and later handed over to Customs, which resulting that the Customs officer did not act on his independent belief but merely accepted the seizure done by another agency. Admittedly, the Hon'ble Supreme Court in Union of India v. Mohammed Nawaz Khan (supra) held that the authority effecting the seizure must demonstrate a subjective satisfaction based on objective material, failing which the seizure is invalid.

12. Therefore, I observe that even after accepting the gold from personnel of the GRPS, the Customs officers did not derive any subjective satisfaction that the gold was of foreign origin and smuggled. The seizure inventory fails to disclose any material evidence justifying a 'reasonable belief' for seizure of the gold. In this regard, I observe that the mere finding of gold does not render it liable for seizure unless there is cogent and positive evidence proving its foreign origin as the first condition, as precursor to seizure as held by the Hon'ble Supreme Court, in Gian Chand v. State of Punjab (supra), wherein the Hon'ble Apex Court has categorically held that mere suspicion is not sufficient to justify seizure, and the prosecution must provide substantive evidence of foreign origin.

13. Therefore, I observe that the GRPS recovered gold from the procession of Appellant No.(3) solely on suspicion that it was smuggled and later handed it over to Customs. However, instead of conducting an independent verification or forming their own reasonable belief based on credible evidence, the Customs officers proceeded with the seizure under the Customs Act without exercising due diligence. They failed to assess whether a reasonable belief of smuggling genuinely existed, as required by law, and merely acted on the presumption created by GRPS. This lack of independent application of mind renders the seizure arbitrary and legally unsustainable.

14. In view of this, I hold that there was no "reasonable belief" in this case for seizure of gold in question in terms of Section 110(1) of the Customs Act, 1962.

15. Therefore, the gold cannot be held liable for confiscation.

16. I further take note of the fact that the Appellant No.(1), Shri Bal Kishan Soni has produced the purchase invoices for procurement of the said gold jewellery , which was converted and melted into gold. The said facts have been accepted by Shri Bal Kishan Soni in his statement recorded on 21.08.2024 wherein he stated that the said gold seized belongs to his Firm, i.e. M/s Aditya Jewellers. He further added that he bought ornamental gold in October, 2023 from a Micro Finance Company by auction and by way of melting the ornamental gold made gold pieces, which was seized by the Department. He also submitted purchase auction invoices of gold and copy of bank account statement, ITR for the Financial Year 2022-23 and 2023-24.

As the documents produced by the Appellant, Shri Bal Kishan Soni, have not been discarded by the Revenue , in that circumstances, the said documents are admissible as an evidence. As the Appellant has discharged the burden cast on them under Section 123 of the Customs Act, 1962 and now onus is on the Revenue to prove that the gold in question is smuggled one, which the Revenue has failed to do so.

17. In that circumstances, I hold that the gold in question is not liable for confiscation.

18. In view of the above discussions, I hold that as the gold in question is not liable for confiscation, therefore, the same is to be released to the appellant and no penalties are imposable on the appellants.

19. Accordingly, the impugned order is set aside and the appeals are allowed with consequential relief, if any.

(Pronounced in the open Court **30.09.2026**)

(Ashok Jindal)
Member (Judicial)

mm