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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75671 of 2026

(Arising out of Order-in-Appeal No. 302-303/PAT/CUS/APPEALS/2025-26 dated 08.01.2026 passed by the Commissioner (Appeals), Customs, Central G.S.T. & Central Excise, Patna, 2nd Floor, C.R. Building (Annexe), Beer Chand Patel Path, Patna)

Neeraj Agarwal **: Appellant**
(Since deceased, Through Suyansh Agarwal, Son)
Proprietor of M/s. Raj Shree Jewellers,
Basnahi Bazar, Mirzapur,
Uttar Pradesh – 231 001

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
Patna Commissionerate,
5th Floor, C.R. Building, Beer Chand Patel Path, Patna,
Bihar – 800 001

APPEARANCE:

Shri Vineet Kumar Singh, Advocate, for the Appellant

Shri Subrata Debnath, Authorized Representative, for the Respondent

CORAM:

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

FINAL ORDER NO. 76303 / 2026

DATE OF HEARING: 17.08.2026

DATE OF DECISION: 29.09.2026

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order whereby the order of absolute confiscation of gold in question has been upheld.

2. The facts of the case are that, on 16.01.2022, officers of the Directorate of Revenue Intelligence (DRI), Patna Regional Unit, with the assistance of the Railway Protection Force (RPF), intercepted Shri Manoj Kumar Pathak, a co-noticee, at Gaya

Railway Station while he was returning to Mirzapur by Train No. 22912, Shipra Express. Upon examination, two gold bars, one large and one small, were recovered from his possession. The said gold bars were examined by a Government-approved valuer and were found to be of 24 Karat purity, collectively weighing 1,499.600 grams (999.600 grams and 500 grams respectively).

3. In his statement recorded under Section 108 of the Customs Act, 1962, Shri Manoj Kumar Pathak has inter alia allegedly referred to Shri Neeraj Agrawal (appellant herein) as his employer and further stated that, pursuant to the directions of the appellant, he had commenced his journey from Mirzapur towards Howrah on 14.01.2022. He appears to have stated that, instead of proceeding up to Howrah, he de-boarded at Vardhaman Station on the morning of 15.01.2022 and thereafter reached Liluah, from where he proceeded to Chowrasta, Salkia, Kolkata and met one Shri Sonu Tiwari. Shri Manoj Kumar Pathak is stated to have further informed that Shri Sonu Tiwari handed over to him the two gold bars, one large and one small. He also appears to have inter alia stated that the said gold bars had been brought from Bangladesh by way of smuggling, as allegedly informed to him by Shri Sonu Tiwari.

3.1. Thereafter, the said gold was seized on 16.01.2022 under Section 110 of the Customs Act, 1962.

3.2. In the course of investigation, the premises of M/s K.K. Gold, Coimbatore were also searched. The proprietor of the said concern is stated to have informed the investigating officers that he had not

purchased gold from M/s Raj Shree Jewellers, Mirzapur, and had only sold jewellery to the said firm.

4. Subsequently, it was informed by Shri Manoj Kumar Pathak vide letter dated 13.02.2022 that Delivery Challan bearing Serial No. 41 dated 15.01.2022, issued by M/s Raj Shree Jewellers, Basnahi Bazar, Mirzapur, in favour of M/s K.K. Gold, Coimbatore and an authority letter issued on the letterhead of M/s. Raj Shree Jewellers, had been given to him. It is the appellant's submission that the aforesaid documents had been handed over by him to Shri Manoj Kumar Pathak on 15.01.2022 in connection with the gold in question.

5. Pursuant thereto, proceedings were initiated by issuance of a Show Cause Notice dated 30.06.2022, proposing, inter alia, confiscation of the seized gold under the relevant provisions of Section 111 of the Customs Act, 1962 and imposition of penalties upon the noticees under Sections 112(a), 112(b) and 114AA of the said Act.

6. Upon adjudication, vide Order-in-Original No. 33-Cus/ADC/DRI Patna/2024-25 dated 19.11.2024, the seized gold was ordered to be absolutely confiscated under Sections 111(b), 111(d) and 111(p) of the Customs Act, 1962, along with the wrapping materials/items alleged to have been used for concealment of the said gold. Penalties were also imposed upon the noticees under Sections 112(b) and 114AA of the Act, including penalties of Rs.50,000/- under Section 112(b) and Rs.2,00,000/- under Section 114AA upon the appellant.

7.1. Aggrieved by the said adjudication order, the appellant preferred an appeal before the Ld. Commissioner (Appeals), Customs, C.G.S.T. and C.Ex., Patna, who, vide the impugned order, rejected the said appeal, while setting aside the penalties imposed upon the appellant under Sections 112(b) and 114AA of the Act, taking note of the demise of the appellant.

7.2. Against the said order, the appellant is before us.

8. The Ld. Counsel appearing on behalf of the appellant has assailed in the impugned proceedings inter alia on the following submissions: -

(i) The appellant had purchased the gold in question from M/s SHAH SURESH AHD BROTHERS through Invoice No 73 dated 05.10.2021 and such invoice is reflecting on GSTR2A of the appellant's GSTIN. The appellant No 1was going to Coimbatore to handover the Gold to M/s K.K Gold for manufacturing of designer. jewelry with delivery challans when the DRI officers had apprehended the appellant.

(ii) The statutory reverse burden under Section 123 becomes operative only upon a seizure founded on a reasonable belief that the particular gold is smuggled; the mere fact that the article is gold does not dispense with that prerequisite. Revenue must point to material existing at the time of seizure that would lead an honest and reasonable person to that conclusion. Here the gold was seized from town, the gold was unmarked, the purity report did not identify origin, and no border movement, foreign supplier, import trail or other particularised

evidence was found. Suspicion based on the nature or value of the commodity cannot replace the statutory threshold.

(iii) The appellant submits that there were no inscriptions mentioned on the seized gold bars and the purity of gold is also not equal 99.9%. From the SCN, it is crystal clear that CRCL report, the purity of gold was only 99.7%, hence undisputedly the seized gold bars were of Indian origin. It is a well-known fact that purity of the foreign origin gold is of 99.9%.

(iv) The only evidence that the department has against the appellant is the statements of other co-accused tendered at the time of their arrest wherein the co-accused had admitted that the goods under seizure was foreign origin otherwise there is no evidence available with the department to allege that the seized gold was of foreign origin smuggled gold. However, the appellant immediately produced the evidence by way of GST Invoice, & it was not negated by the department that the Invoice submitted by the appellant were forged documents. The department had not made any discreet enquiry from the G.S.T department to check genuineness of such invoices.

(v) That it is a well-settled proposition of law that confessional statements need independent corroboration and in the instant case, the voluntary character of the statements themselves being in doubt, the same cannot be the basis of holding the guilt against the appellants because purity of the gold is below 99.9%. Thus the circumstantial evidence is not

compatible with the guilt of the accused. In this regard the appellant places reliance on *Commissioner of Customs (Preventive) v. Dhapa Lokeswara Rao [2009 (248) E.L.T. 141 (Cal.)].* The circumstantial evidence proves that the statement recorded under section 108 of the Customs Act 1962 was not voluntary.

(vi) To substantiate that the seized gold was part of stock in trade, the appellants had submitted a copy of the Delivery Challan, stock statement etc. Thus the appellant has discharged the burden of proof under Section 123 of the Customs Act. Now the onus shifts on the department to establish that the gold seized from the appellant was smuggled into India.

(vii) That the Department made a detailed inquire from the owner of the gold bullion but nothing incrementing came from the inquiry. none of the documents which were produced by the Appellant No 1 have been discredited by the department. From day one department proceeded on unwarranted assumptions, presumptions, surmises and conjectures and the entire proceedings lacks legal sustainability. In this regard the appellant relies on following orders

a. *Sitaram Sao v. State of Jharkhand [2007 (12) SCC 630]*

b. *Mridul Agarwal v. Commissioner of Customs, Lucknow [2018 (362) E.L.T. 847 (Tri. - All.)]*

c. *Shantilal Mehta v. UOI and Others [1983 (14) E.L.T. 1715 (Del.)]*

d. *CC (P) v. Prabhash Kumar Jalan [CESTAT, Kolkata Bench Final Order No. 75500/2021, dated 27-8-2021].*

e. *Shri Sarvendra Kumar Mishra v. Commissioner of Customs [Final Order Nos. 70198-70199/2021, dated 6-9-2021]*

f. *Nand Kishore Modi v. Commissioner of Customs (Preventive), West Bengal [2015 (325) E.L.T. 781].*

g. *Rajesh Pawar v. UOI [2014 (309) E.L.T. 600 (Cal.)]*

h. *Commissioner of Customs (Prev.) Kolkata v. Ashok Kumar Agarwal [2017 (348) E.L.T. 555 (Tri. Kolkata)]*

(viii) Department has failed to discharge the obligation cast upon it. It is the case of the Department that the gold is smuggled. To prove the same be smuggled, the Department has not extended the investigation to reach the root of the matter. The Department has completely failed to go into the root of the matter as to how the goods were smuggled in nature nor it has based any evidence to this effect whereas the appellant from the very first day contending that the gold was part of stock in trade of M/s Rajshree jewelers and the appellant was sending the said gold to Coimbatore to manufacturer jewelry from such gold. In such circumstances, by no stretch of the imagination, the seized gold can be termed as smuggled. The appellant has submitted a sufficient document in support of the licit acquisition of seized gold and discharged the burden under Section 123 of Customs Act, 1962. Therefore, the impugned order needs to be set aside.

(ix) That the entire case has been made by the department based on the confessional

statements of appellant which was recorded under duress by the Custom officers. Such a statements were retracted by the appellants on the very first opportunity. Therefore, such a confessional statement does not have any evidentiary values in the eyes of law when the documentary evidence is contradictory to the such statement which proves that the statement was recorded under duress. It is established law that the confessional statement does not have any evidentiary value unless there is cogent evidence. In this regard the appellant is placing reliance on the Following Hon'ble High court Orders in the matter of

a. *Saakeen Alloys Pvt Ltd [2014(308) ELT655.]*

b. *Union of India v. Kisan Ratan Singh [2023 (ELT) 714]*

(x) It is a settled law that burden to show that confession was voluntary and not obtained as an outcome of threat is on the opp. party which has not been discharged in the present case. In this regard, the appellant is placing reliance on Apex Court judgment in the case of *Vinod Solanki vs. Union of India [2009 (233) ELT 157].*

(xi) That it is settled position of law that unless there was any corroborative evidence the statement under section 108 of the Customs Act cannot be read against the maker of the statement. The possession of the gold, even if it was foreign origin, would not be under purview of the Customs Act unless it was established by reliable evidence that gold was smuggled and brought by the applicant or by his agent. In the

case of *Sevvantilal Karsondas Modi Vs State of Maharashtra & Another [1979 SCC (2) 58]* the Apex Court held that "confession made before Customs officer as a result coercion cannot be basis of conviction under section 135(1) (a) (b) of the Customs Act. That at any rate, it was incumbent upon the opp. party to corroborate the confession from independent sources, which has admittedly not been done in the present case". Reliance in this regard is placed on Apex Court judgment in the case of *Mohtesham Mohd. Ismail vs. Spl. Director [2007 (220) ELT 3 SC].*

(xii) Reference is made to Section 138B which dels with relevancy of statements under certain circumstances and lays down that (1) statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, - (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or (b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice. That the provisions of sub-section (1)

shall, so far as may be, apply (2) in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court."

(xiii) The High Court of Punjab and Haryana, in *Jindal Drugs Pvt. Ltd. v. U.O.I. [2016 (340) E.L.T. 67 (P & H)]* that, unless and until one of the circumstances contemplated by clause (a) of Section 138B(1)(a) applies, the adjudicating authority is bound to follow, strictly, the procedure outlined in clause (b), before treating a statement, recorded under Section 108 of the Act, as relevant. In the instant matter in hand Revenue has not been able to substantiate the charge of smuggling save and accept the statement under Section 108 recorded of Makkhanlal. Such statement also loses its evidentiary value as Revenue has failed to examine Mr. Makkhanlal in the course of adjudication proceedings, as held Supreme Court in the case of *Andaman Timber Industries [2015 (324) E.L.T. 641 (S.C.) = 2017 (50) S.T.R. 93 (S.C.)].*

(xiv) The adjudicating authority has confirmed the demand solely on the basis of oral evidence in the form statement recorded under the duress of the Custom officers and ignored the documentary evidence regarding licit procurement of gold bars through GST paid Invoice of the seized gold whereas it is settled principle of law that the documentary evidence would prevail over the oral evidence but here oral evidence prevail over the documentary evidence. The claim of the appellant is backed

by the production of the Bill and Statement of seller and thus the onus has been discharged. There is also no confession by the appellant that the goods were smuggled. In this regard the appellant places reliance on *Union of India v. Imtiaz Iqbal Pothiwala [2019 (365) E.L.T. 167 (Bom.)].*

(xv) There is no material available on record to show that the invoices placed by the appellant were false or fabricated. In the entire investigation as well as adjudication, department has not alleged that such invoices were fabricated. The department has either to accept the documents or to negate it but the department has not done either of the two, which is not permissible. Apparently, the invoice contain GST and PAN of appellant. The Department has never doubted the genuineness of documents produced by the appellant, hence documentary evidence prevails over the oral statement. In this regard the appellant is placing reliance on *Commissioner of C. Ex., Cus. & S.T., Patna Vs Gopal Prasad [2020 (371) E.L.T. 243 (Pat.)].*

(xvi) A Penalty cannot be imposed based on hearsay evidence, or the incriminating statement of other co accused. Reliance is also placed on the ruling of the Apex Court in the case of *Vinod Solanki v. Union of India [2009 (233) E.L.T. 157 (S.C.)]* wherein it has held that on the sole statement of co-accused, another co-accused cannot be convicted or fastened with penalty etc. There has to be corroborative evidence in addition to the statement of a co-accused.

8.1. In view of the aforesaid submissions, the Ld. Counsel for the appellant prays for setting aside the impugned order upholding the absolute confiscation of the gold in question and to direct the ld. adjudicating authority to pay the market value of seized gold in case the gold has been disposed of by the Customs.

9. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order.

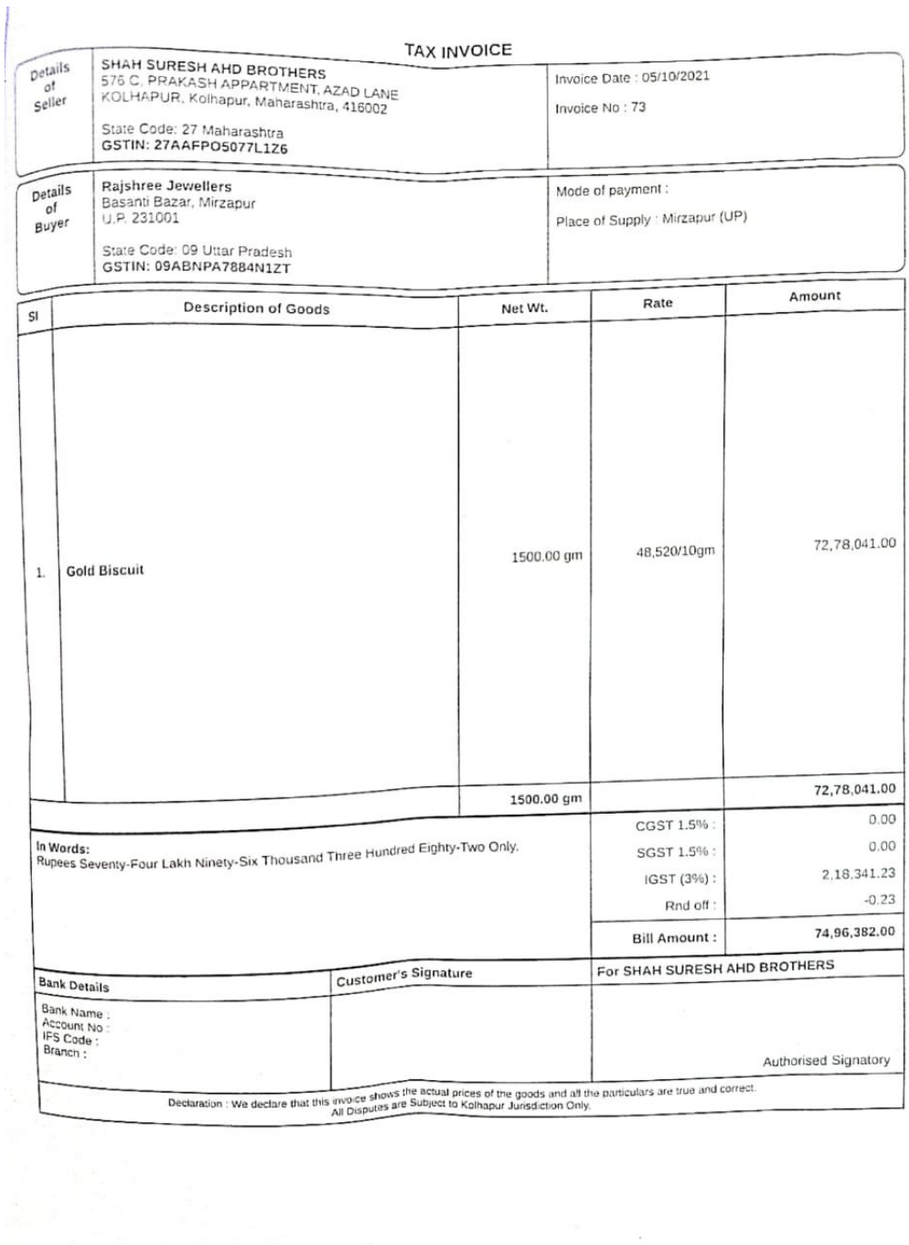
10. Heard the parties and considered their submissions.

11. We find that in this case, the person carrying the gold, namely, Shri Manoj Kumar Pathak, was intercepted at Gaya Railway Station on 16.01.2022 by officers of the DRI, Patna when he was returning to Mirzapur and from his possession, gold weighing 1499.600 grams was recovered.

11.1. It is seen from the records that Shri Manoj Kumar Pathak had intimated on 13.02.2022 that he was carrying the gold along with Delivery Challan bearing Sl. No. 41 dated 15.01.2022 issued by M/s. Raj Shree Jewellers, Mirzapur, Uttar Pradesh (Proprietor being the appellant herein) and that during the course of investigation he could not produce the said Deliver Challan which in fact had been misplaced.

12. It is a fact that the appellant claimed ownership of the said gold, producing evidence towards procurement of the same through licit means to the effect that they had purchased the said gold from M/s. Shah Suresh and brothers through Invoice No. 73 dated 05.10.2021. The said transaction is reflecting in the relevant G.S.T.R.-2A shown in the portal which

pertains to the corresponding GSTIN of the appellant. For better appreciation of the facts, the copy of the said invoice and the G.S.T.R.-2A are scanned and reproduced below: -



TAX INVOICE

Details of Seller		
	SHAH SURESH AHD BROTHERS 576 C, PRAKASH APPARTMENT, AZAD LANE KOLHAPUR, Kolhapur, Maharashtra, 416002 State Code: 27 Maharashtra **GSTIN: 27AAFPO5077L1Z6**	Invoice Date : 05/10/2021 Invoice No : 73
Details of Buyer	**Rajshree Jewellers** Basanti Bazar, Mirzapur U.P. 231001 State Code: 09 Uttar Pradesh **GSTIN: 09ABNPA7884N1ZT**	Mode of payment : Place of Supply : Mirzapur (UP)

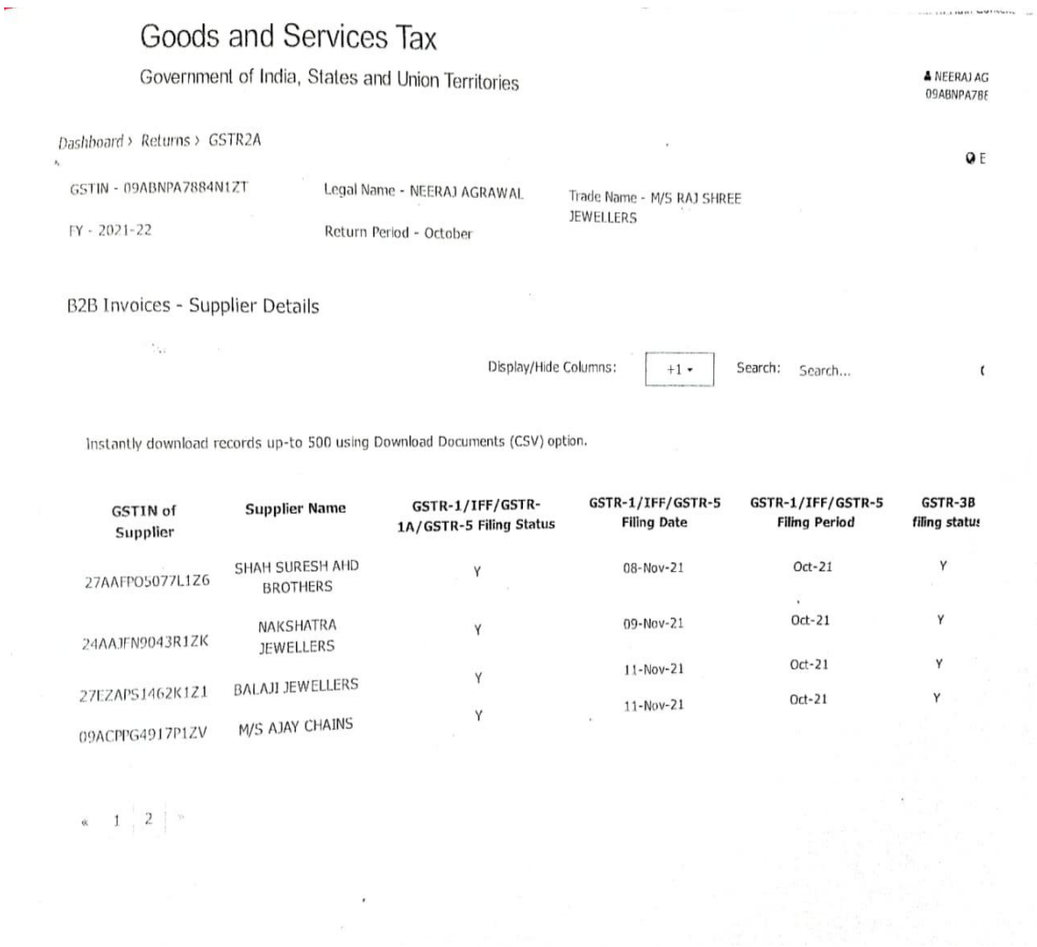
Sl	Description of Goods	Net Wt.	Rate	Amount
1.	**Gold Biscuit**	1500.00 gm	48,520/10gm	72,78,041.00
		1500.00 gm		**72,78,041.00**

In Words:
Rupees Seventy-Four Lakh Ninety-Six Thousand Three Hundred Eighty-Two Only.

CGST 1.5% :	0.00
SGST 1.5% :	0.00
IGST (3%) :	2,18,341.23
Rnd off :	-0.23
Bill Amount :	**74,96,382.00**

Bank Details	Customer's Signature	For SHAH SURESH AHD BROTHERS
Bank Name : Account No : IFS Code : Branch :		Authorised Signatory

Declaration : We declare that this invoice shows the actual prices of the goods and all the particulars are true and correct.
All Disputes are Subject to Kolhapur Jurisdiction Only.



Goods and Services Tax

Government of India, States and Union Territories

NEERAJ AG
09ABNPA78E

Dashboard › Returns › GSTR2A

GSTIN - 09ABNPA7884N1ZT | Legal Name - NEERAJ AGRAWAL | Trade Name - M/S RAJ SHREE JEWELLERS

FY - 2021-22 | Return Period - October

B2B Invoices - Supplier Details

Display/Hide Columns: +1 Search: Search...

Instantly download records up-to 500 using Download Documents (CSV) option.

GSTIN of Supplier	Supplier Name	GSTR-1/IFF/GSTR-1A/GSTR-5 Filing Status	GSTR-1/IFF/GSTR-5 Filing Date	GSTR-1/IFF/GSTR-5 Filing Period	GSTR-3B filing status
27AAFPO5077L1Z6	SHAH SURESH AHD BROTHERS	Y	08-Nov-21	Oct-21	Y
24AAJFN9043R1ZK	NAKSHATRA JEWELLERS	Y	09-Nov-21	Oct-21	Y
27EZAPS1462K1Z1	BALAJI JEWELLERS	Y	11-Nov-21	Oct-21	Y
09ACPPG4917P1ZV	M/S AJAY CHAINS	Y	11-Nov-21	Oct-21	Y

« 1 2 »

12.1. We find that the above documents are sufficiently showing the licit means of procurement of the said gold.

12.2. Furthermore, we find that it is a case of town seizure and the purity of the gold was also admittedly below 99.9% (i.e., 99.7% in this case)

13. In these circumstances, there cannot be reasons to believe that the said gold was of foreign origin for seizing the said gold. It is seen that the obligation under Section 123 of the Customs Act, 1962 has also been discharged. Therefore, the onus shifts on to the Revenue to prove that the gold in question is smuggled in nature, which the Revenue have failed to do.

14. In view of this, we hold that the gold in question is not liable for confiscation. Consequently, the order of absolute confiscation of the gold in question is set aside. In the facts and circumstances of the case, no penalty is imposable on the appellant and therefore, the Ld. Commissioner (Appeals) has rightly dropped the penalty imposed on the appellant.

15. In these terms, we set aside the impugned orders qua against the appellant and direct the authorities below to release the gold to the appellant herein within a period of thirty days from the date of receipt of this Order.

16. In these terms, the appeal is disposed of.

(Order pronounced in the open court on **29.09.2026**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd