CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 30169 of 2026

(Arising out of Order-in-Appeal No.HYD-CUS-000-APP1-129 to 131-25-26 dt.28.11.2025 passed by Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

Mohammed Abdul Razzak .. **APPELLANT**
11-5-334/C/2, Flat No. G1, G2, Noor Jahan Residency,
Red Hills, Khairatabad, Hyderabad – 500 004

VERSUS

Principal Commissioner of Customs Hyderabad - Customs .. **RESPONDENT**
GST Bhavan, LB Stadium Road, Basheerbagh,
Hyderabad, Telangana – 500 004

APPEARANCE:-

Shri Y. Sreenivasa Reddy, Advocate for the Appellant.
Shri K. Prasanth Kumar, AR for the Respondent.

CORAM: HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER NO. A/30522/2026

Date of Hearing: 23.10.2026
Date of Decision: 29.10.2026

The present Appeal has been filed by Shri Mohammed Abdul Razzak, Proprietor of M/s Iqbal Jewellers, Hyderabad, against the Order-in-Appeal dt.28.11.2025, whereby the Commissioner (Appeals) upheld the denovo adjudication order confirming the absolute confiscation of 377.08 gm of gold valued at Rs.19,12,550/- and imposition of penalty of Rs.3,83,000/- under section 112(a) and 112(b) of the Customs Act, 1962.

2. The brief facts of the case are that, acting upon the intelligence, the Customs officers intercepted domestic air cargo consignments at the Air Cargo Complex, Rajiv Gandhi International Airport, Shamshabad, Hyderabad, on 03.10.2020. Upon examination, gold belonging to different jewellers was recovered. Out of the total seizure, 377.08 gm of gold valued at Rs.19,12,550/- was claimed by the present appellant, proprietor of M/s Iqbal Jewellers.

3. The Department alleged that the seized gold was of foreign origin and had been brought into India through illicit channels without payment of applicable Customs Duty. Consequently, a Show Cause Notice was issued proposing confiscation of the gold under section 111(d), 111(i) and 111(j) of the Customs Act, 1962, besides imposition of penalty under section 112(a) and 112(b) thereof.

4. The Appellant contested the allegations and submitted that he was carrying on the business of gold jewellery and ornaments under the name and style of M/s Iqbal Jewellers, Hyderabad. It was his specific explanation that he purchased old and used jewellery from local customers and, according to their requirements, got such jewellery melted and converted into pure gold for manufacturing new ornaments. The appellant submitted that the old jewellery was melted through M/s Sachin Gold Testing Laboratory, Hyderabad. In support of this contention, reliance was placed on certificate dt.02.12.2024 issued by Sri Sachin, Proprietor of the said laboratory, confirming that the appellant had been availing the melting services of the laboratory for several years, including the period relevant to the seizure.

5. According to the appellant, approximately 447.73 gm of gold ornaments had been melted, yielding gold bars weighing 150.510 gm and another bar weighing 226.570 gm, besides a further piece weighing approximately 70.650 gm. It was submitted that the gold was intended to be handed over to M/s Parshva Jewellers, Mumbai towards a transaction involving new jewellery. Owing to restrictions prevailing during the COVID-19 pandemic, the gold was forwarded through domestic courier services rather than being delivered personally.

6. The appellant further contended that the seized gold did not carry any foreign markings and the Government Approved Assayer, in his report dt.03.10.2020, had specifically stated that it could not be determined whether the gold was of foreign or Indian origin. According to the appellant, there was no evidence establishing that the gold was smuggled into India.

7. The Original Adjudicating Authority rejected the explanations furnished by the appellant and ordered absolute confiscation of the seized gold, besides imposing a penalty of Rs.3,83,000/-. The Commissioner (Appeals) upheld the said order.

8. Aggrieved by the earlier appellate order, the appellant approached this Tribunal. This Tribunal, vide Final Order No.A/30382/2024 dt.16.10.2024, remanded the matter for fresh adjudication after considering the submissions and documentary evidence and giving reasonable opportunity of hearing. The Tribunal did not express any opinion on the merits of the controversy.

9. Pursuant to the aforesaid directions, the original adjudicating authority conducted denovo proceedings. However, the authority again ordered absolute confiscation of the gold and imposed the aforesaid penalty. The Commissioner (Appeals), by the impugned order dt.28.11.2025, upheld the denovo adjudication order, resulting in the present appeal.

10. Learned Counsel for the appellant has submitted that the impugned order is contrary to the facts on record and the settled principles governing the applicability of section 123 of the Customs Act, 1962. It has been contended that the gold was recovered from a domestic courier consignment and was not found to bear any foreign markings. The Government Approved Assayer had also specifically stated that the origin of gold could not be determined. Therefore, according to the learned Counsel, there was no sufficient material to entertain a reasonable belief that the gold was smuggled.

11. Learned Counsel has further submitted that the appellant had furnished a plausible explanation regarding the acquisition of old jewellery from local customers, its conversion into pure gold and its proposed delivery to M/s Parshva Jewellers, Mumbai. The certificate issued by M/s Sachin Gold Testing Laboratory was relied upon to substantiate the appellant’s regular business practice of melting old jewellery.

12. It has been further submitted that merely because purchase vouchers and other commercial documents were not accompanying the courier consignment at the time of interception, it cannot automatically be concluded that the seized gold was of foreign origin or that it had been smuggled into India.

13. Learned Counsel has contended that the adjudicating authority had rejected the explanations furnished by the appellant principally on suspicion,

without identifying any specific evidence establishing illegal importation or connecting the appellant with any act of smuggling.

14. It has been accordingly prayed that the impugned order, insofar as it relates to the appellant, be set aside and the appeal be allowed with consequential relief.

15. Learned AR appearing for the Revenue has reiterated the findings recorded in the impugned order. It has been submitted that the gold was intercepted pursuant to a specific intelligence and was found in domestic courier consignments without proper accompanying documents.

16. Learned AR has submitted that the gold is a specific commodity under section 123 of the Customs Act, 1962, and once the goods are seized under a reasonable belief of smuggling, the burden of proving lawful acquisition rests upon the person claiming the ownership.

17. It has been further submitted that the certificate issued by M/s Sachin Gold Testing Laboratory was obtained long after the seizure and that the appellant failed to produce contemporaneous purchase records, melting challans, stock particulars and transportation documents establishing the reliable connection between the seized gold and the alleged purchase of old jewellery.

18. Learned AR has accordingly submitted that the authorities below have correctly held that the appellant failed to discharge the burden caused upon him under section 123 and that the confiscation and penalty are legally sustainable.

19. Heard both sides and perused the records.

20. The principal issue requiring determination is whether the seized 377.08 gm of gold can legally be treated as smuggled gold and whether the absolute confiscation and the consequential penalty imposed upon the appellant are sustainable under the Customs Act, 1962.

21. At the outset, it is necessary to examine the scope of section 123 of the Customs Act, 1962. The said provision casts the burden of proving that the specified goods, including gold, are not smuggled goods upon the person concerned when such goods are seized under the Act on a reasonable belief that they are smuggled. Thus, for invoking section 123, the existence of

reasonable belief at the time of seizure is a condition precedent. However, reasonable belief does not require the department to establish the entire chain of smuggling or prove foreign origin conclusively at the stage of seizure. It must nevertheless be founded on relevant material and circumstances having a rational connection with the conclusion that the goods are smuggled.

22. The Hon'ble Supreme Court in the case of Collector of Customs, Madras Vs D. Bhoormull [1993 (13) ELT 1546 (SC)], explained that, having regard to the clandestine nature of smuggling, the department cannot be expected to prove its case with mathematical precision. The evidence and attendant circumstances must be considered as a whole, and legitimate inferences may be drawn therefrom. Likewise, in the case of Collector of Customs, Madras Vs Nathella Sampathu Chetty [AIR 1962 Supreme Court 316], the Hon'ble Supreme Court recognized the statutory scheme governing the burden of proof and explained the significance of a reasonable belief entertained by the seizing officer. The statutory presumption, however, can be invoked only upon satisfaction of its foundational requirement. In the present case, the department relied upon specific intelligence, the transportation of gold through domestic courier services and the absence of accompanying documents at the time of seizure. These circumstances are certainly relevant for examining whether a reasonable belief existed. Nevertheless, the legal significance of these circumstances must be considered along with the nature of the seized gold, the explanation furnished by the appellant and the evidence available on record. It is not disputed that the seized gold did not bear foreign markings. More importantly, the Government Approved Assayer, in his report dt.03.10.2020, specifically recorded that it could not be determined whether the gold was of foreign or Indian origin. This Bench is conscious that the absence of foreign markings or the inability of the Assayer to determine geographical origin does not, by itself, establish that the gold was lawfully acquired. At the same time, these circumstances cannot be ignored particularly when the appellant has claimed that the gold was obtained through melting of old jewellery purchased in the domestic market. This Bench further finds that the appellant had disclosed the nature of his business, the practice of purchasing old jewellery from customers, the melting process undertaken through M/s Sachin Gold Testing Laboratory, and the identity of the

proposed recipient, viz., M/s Parshva Jewellers, Mumbai. The appellant had also furnished a certificate of the melting laboratory explaining the business relationship.

23. The adjudicating authority rejected the certificate principally on the ground that it was obtained after the seizure. Although the timing of issuance is a relevant consideration in assessing its evidentiary value, it does not automatically render the certificate false. Its credibility must be tested against the other circumstances and available evidence. This Bench finds that the authorities below have proceeded substantially on the premise that failure to produce purchase invoices, melting records and other documents at the time of seizure, followed by subsequent production of a certificate, necessarily establishes that the gold was smuggled. In my considered view, such inference cannot be drawn mechanically without examining whether the evidence, as a whole, is sufficient to sustain the statutory presumption.

24. At this stage, this Bench would like to refer to the judgment of Hon'ble Kerala High Court in the case of CC, Cochin Vs Om Prakash Khatri [2019 (366) ELT 402 (Kerala)], wherein, it was held that even gold without foreign markings may attract section 123 when the surrounding circumstances establish a reasonable belief of smuggling. In that case, however, the Court considered the statements of the persons carrying the gold, discrepancies in the stock registers and other material, which substantially discredited the claim of lawful acquisition. The Hon'ble Calcutta High Court in its recent judgment dt.31.03.2026 in the case of CC (Preventive), Kolkata Vs Anil Kumar Soni [2026 (397) ELT 92 (Cal)], reiterated that reasonable belief under section 123 may be founded upon clandestine concealment, the manner of transportation and other surrounding circumstances. The Court emphasized that the absence of foreign markings or recovery from an inland location does not vitiate section 123. In that case, the evidence included concealment of high purity bullion in a specifically stitched waist belt, the statement under section 108 and significant discrepancies in the explanation regarding the source and processing of the gold.

25. This Bench respectfully follows the principles laid down in the aforesaid judgments. Nevertheless, their application depends upon the particular factual circumstances. The present case concerns gold transported through

an identifiable domestic courier channel, with an explanation relating to the appellant's jewellery business and the melting of old ornaments. The findings placed before me do not disclose any specific admission by the present appellant that the gold had been smuggled or that he had knowingly dealt with smuggled gold.

26. This Bench also takes note of the decision of the Principal Bench in the case of Praveen Kumar Jalan Vs CC (Preventive), New Delhi [(2025) 26 Centax 75 (Tri-Del)], wherein the Tribunal considered the foundational requirement of reasonable belief under section 123. The Tribunal emphasized the importance of definite material and the surrounding circumstances giving rise to such belief. The said decision also demonstrates that once reasonable belief is properly established, the person concerned must discharge the statutory burden through credible evidence. Reverting to the facts of the present case, this Bench find that the adjudicating authority had relied upon the appellant's inability to produce contemporaneous documentary evidence establishing procurement of old jewellery, its melting and subsequent transportation. These are material deficiencies in the explanation furnished by the appellant and cannot be disregarded. However, the authority was also required to assess the appellant's explanation concerning his established jewellery business, the particulars of the alleged melting transaction and the supporting certificate before arriving at a final conclusion regarding the nature of seized gold.

27. This Bench further observes that the appellant claimed that the gold was intended for M/s Parshva Jewellers, Mumbai and that the domestic courier arrangement was adopted during the COVID-19 restrictions. The adjudicating authority has doubted this explanation because of the absence of proper transport documents. Nevertheless, the record placed before this Bench does not establish that any independent verification was undertaken from the identified recipient or the melting laboratory before rejecting the explanation as fabricated.

28. This Bench is conscious that the burden under section 123 cannot be discharged merely by offering an explanation, which is theoretically possible. The explanation must be reasonably supported by credible evidence. Equally, the statutory presumption cannot be applied without first satisfying

the requirement of reasonable belief on the basis of the circumstances attending the seizure.

29. In the present case, while the absence of accompanying documents and the mode of transportation may justify suspicion and investigation, this Bench is not persuaded on the findings disclosed in the orders before me that the authorities have satisfactorily explained why these circumstances, considered with appellant's explanation and the Assayer's report, necessarily justify the conclusion that the seized gold was smuggled. The fact that the gold was not accompanied by purchase invoices cannot, by itself, be equated with proof of its illegal importation.

30. This Bench further finds that the adjudicating authority has placed substantial reliance upon the general proposition that gold may be melted to erase foreign markings. This proposition is legally relevant but it is not evidence that the particular gold seized from the appellant had in fact been melted for concealing its foreign origin. Such a conclusion must be supported by the circumstances and material relating to the transaction under examination.

31. The adjudicating authority ordered absolute confiscation of the seized gold under section 111(d), 111(i) and 111(j) of the Customs act, 1962. The Commissioner (Appeals) upheld the said findings without separately examining in sufficient detail the factual ingredients of individual clauses.

32. Section 111(d) applies to goods imported or attempted to be imported contrary to a prohibition imposed under the Customs Act or any other law. Section 111(i) and 111(j), however, relate to specified circumstances involving concealment of dutiable or prohibited goods in packages of imported goods and removal or attempted removal from customs area contrary to permission or conditions prescribed by law.

33. In the present case, the seizure was effected from a domestic air cargo consignment. The authorities below have not identified any particular act of unauthorized removal from a Customs area or concealment in imported packages satisfying the specific requirements of section 111(i) and 111(j) of the Customs Act, 1962. These provisions cannot be invoked merely because the goods were recovered at an airport cargo complex. Insofar as section 111(d) is concerned, this Bench recognized that illegally imported

gold may be liable to confiscation even when recovered inland and that direct interception at an international border is not essential. However, the finding of illegal importation must flow from the evidence and the statutory presumption lawfully raised under section 123 of the Customs Act, 1962. The general existence of restrictions on import of gold does not, by itself, establish that the particular gold in question had been illegally imported.

34. In my considered view, the adjudicating authority has failed to draw necessary distinction between circumstances giving rise to suspicion, circumstances sufficient to find a reasonable belief of smuggling and proof required from the claimant after the burden lawfully shifts. The impugned findings have not adequately addressed this distinction.

35. This Bench further finds that the adjudicating authority ordered absolute confiscation primarily on the reasoning that permitting redemption of smuggled gold would encourage smuggling activities. While the seriousness of smuggling cannot be minimised, the discretion contemplated under section 125 of the Customs Act, 1962, has to be exercised in accordance with the facts of each case and the applicable statutory provisions. General considerations relating to the economic consequences of smuggling cannot be dispensed with necessity of establishing liability of confiscation.

36. Insofar as the penalty of Rs.3,83,000/- imposed under section 112(a) and 112(b) of the Customs Act, 1962, is concerned, the authorities below have proceeded on the assumption that the appellant had knowingly acquired and possessed smuggled gold. This Bench finds that the impugned findings do not adequately identify the particular act or omission of the appellant rendering the goods liable to confiscation or the material establishing the requisite knowledge or reason to believe for the purpose of section 112(b) of the Customs Act, 1962.

37. Mere engagement in the business of gold jewellery and transportation of gold without accompanying documents, though circumstances warranting investigation, do not automatically establish the ingredients of penal liability under section 112 of the Customs Act. Such liability must be determined with reference to the statutory requirements and the evidence attributable to the person concerned. The matter had earlier been remanded by this Tribunal for passing a reasoned order after due consideration of the

appellant's submissions. Although the adjudicating authority has passed a detailed order in denovo proceedings, the length of an order does not, by itself, establish the correctness of its conclusions. The findings must withstand a scrutiny on the touchstone of the evidence and applicable law.

38. On consideration of the totality of the circumstances, particularly the domestic nature of the consignment, the absence of foreign markings, the inconclusive assayer report, the appellant's explanation regarding the melting of the old jewellery and the deficiencies in the reasoning adopted for rejecting the explanation, this Bench is of the considered view that the conclusion of smuggling recorded against appellant has not been satisfactorily sustained on the material discussed in the impugned orders. Consequently, the absolute confiscation of the seized gold and the imposition of penalty upon the appellant cannot be sustained.

39. In view of the foregoing discussions and findings, this Bench sets aside the impugned Order-in-Appeal. Consequently, the corresponding denovo adjudication order directing absolute confiscation of 377.08 gm of gold valued at Rs.19,12,550/- and imposing a penalty of Rs.3,83,000/- under section 112(a) and 112(b) of the Customs Act, 1962, is also set aside.

40. Accordingly, the appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in Open Court on 29.10.2026)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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