CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
SINGLE MEMBER BENCH - COURT NO. – I

Customs Appeal No. 30558 of 2025
(Arising out of **Order-in-Appeal** No.HYD-CUS-000-APP1-061-24-25 dated 26.02.2025 passed by Commissioner of Customs & Central Tax (Appeals-I), Hyderabad)

Shri Senthil Kumar Anbalagan .. **APPELLANT**
S/o Shri Anbalagan,
#9, Bhavani Amman Koli Street,
Venkateshwara Nagar,
Ambattur, Chennai,
Tamil Nadu – 600 053.

VERSUS

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

APPEARANCE:
Shri R. Narasimha Murthy, Consultant for the Appellant.
Shri B. Subhas Chandra Bose, Authorized Representative for the Respondent.

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

FINAL ORDER No. A/30168/2026

Date of Hearing: 09.01.2026
Date of Decision: 18.03.2026

The present appeal has been filed against the Order-in-Appeal No. HYD-CUS-000-APP1-061-24-25 dated 26.02.2025 passed by the Commissioner of Customs and Central Tax (Appeals-I), Hyderabad, whereby, the appellate authority upheld the absolute confiscation of 844 grams of gold valued at Rs. 34,68,840/- and penalty of Rs. 3,50,000/- imposed upon the appellant under Section 111 and 112 of the Customs Act, 1962.

2. The fact in brief is that the appellant is holder of Indian Passport No. 23948664, who had arrived from Singapore to Hyderabad by Fly Scoot Flight no TR-574 on 15.02.2020, was intercepted by the officials of Central Industrial Security Force (CISF) at the exit of the arrivals at RGI Airport after he had passed through the green channel, as he was moving suspiciously. The CISF officials found that the appellant was carrying four packets covered with polythene paper concealed on his body. The CISF officials vide letter dated 15.02.2020, informed the AIU officials that two packets each weighing 200 grams were recovered from his socks and another 2 packets each weighing 350 grams were recovered from his undergarments, that the appellant himself admitted that the four packets were gold in paste form. The appellant along with his two checked-in bags and one hand bag and the 4 packets said to contain gold in paste form weighing approximately 1100 grams and which were recovered from his body by the CISF officials was handed over to the Customs. The officers questioned the passenger as to whether he has any contraband items with him to which the passenger has replied that he had arrived from Singapore by Flight No. TR-574 on 15.02.2020 at 01:10 hrs and that he tried to smuggle out gold in paste form and that he concealed the gold in paste form in his socks and also in his undergarments. Then the officers in the presence of passenger and in the presence of independent witnesses (Panchas) scanned the said two checked-in baggages with Tags numbering 0668575138 and 0668575142 and one hand bag and found no contraband in it. Further, the officers in the presence of panchas screened the passenger through Hand Held Metal Detector (HHMD) in the AIU room, and no contraband was found on the body of the passenger. The officers approached a goldsmith who, in the presence of appellant and panchas,

melted the paste in the four packets and extracted two lumps in the shape of bars. The assayer certified that the extracted Jumps which are in the shape of bars are gold bars of 24 ct with 999 purity with total net weight of 844.000 grams and valued at Rs.34,68,840/-. A statement of the appellant was recorded under Section 108 of the Customs Act, 1962, wherein the appellant has voluntarily admitted that he has resorted to this activity smuggling of Gold in India so as to sell the same at profit. Thereafter, the Customs officers seized the impugned gold bars from the appellant on the reasonable belief that the same were liable for confiscation.

3. A Show Cause Notice has been issued on 22.09.2020 proposing confiscation of the said gold under Section 111 of the Customs Act and imposition of penalty under Section 112 of the Customs Act, 1962. Initially, ex-party OIO dated 22.02.2021 was passed confiscated the gold absolutely imposed penalty of Rs. 7,00,000/-.

4. On appeal, the Commissioner (Appeals), remanded the matter to the Adjudicating Authority for fresh adjudication after following principles of natural justice.

5. In the denovo proceeding, the Adjudicating Authority again order absolute confiscation of 844 grams of gold and imposed penalty of 7,00,000/-.

6. In the appeal, the Commissioner (Appeals), reduce the penalty to 3,50,000/- while upholding confiscation by impugned order. Hence, the present appeal before this Tribunal.

7. Learned Counsel for the appellant submits that the entire proceedings are vitiated on following grounds. Firstly, the appellant was intercepted by

CISF officials outside the customs area, which is beyond the jurisdiction of customs officers in terms of Section 101 of the Customs Act, 1962. Therefore, the search and subsequent seizure itself is illegal. Secondly, the appellant had sought cross-examination on the panch witnesses, which was denied by the Adjudicating Authority. It is contended that such denial violates the mandatory provisions under Section 138B of the Customs Act, 1962. Learned Counsel for the appellant has reliance placed in this regard on the decision of the Hon'ble Supreme Court in Andaman Timber Industries Vs commissioner of Central Excise [2015 (3254) E.L.T. 641 (SC)], wherein, it has been held that denial of cross-examination amounts to violation of principles of natural justice.

8. It is further submitted that what was allegedly recovered was gold paste and not primary gold and the same was subsequently processed chemically to obtain gold bars. Thus, the goods seized were not identified or established as smuggled gold.

9. Learned Counsel for the appellant also submits that the interception to place outside the Customs area, and therefore, the requirement of declaration under Section 77 of the Customs Act does not arise.

10. Learned Counsel for the appellant further submits that Section 123 of the Customs Act, 1962, which shifts the burden of proof in respect of notified goods cannot be invoked unless, the Department first establishes reasonable beliefs regarding smuggling. Reliance has been placed on the judgments of Bombay High Court in Union of India Vs Imtiaz Iqbal Pothiawala [2019 (365) E.L.T. 167 (Bombay)].

11. Whereas, The Learned Authorized Representative for the Department reiterates the findings of the Adjudicating Authority and also submits that it

is a clear case of gold smuggling. As evident from the facts, the appellant purchased gold in paste form in Singapore an attempted to smuggle the same into India by concealing it in his socks and undergarments. Upon disembarkation, the appellant cleared immigration and thereafter entered the Customs area. Before entering the Customs area, every international passenger is mandatorily required to make a declaration of the contents of his baggage to the proper officer in terms of Section 77 of the Customs Act, 1962, which stipulates that the owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer. Despite being a frequent traveler to India, having travelled nearly thirty times during the preceding two years, as admitted in his statement. The appellant deliberately chased not to file the prescribed declaration, with the intent to evade applicable customs duties. The entire area from disembarkation until interception by CISF is a restricted and security controlled zone, inaccessible to the general public. The appellant's deliberate concealment of gold in his socks and undergarments and non-declaration within such a secured area clearly establishes conscious and intentional smuggling and means rea of the appellant.

12. Learned Authorized Representative (AR) further submits that the appellant was neither searched by the CISF officers nor was any seizure affected by them. The appellant was merely intercepted by CISF personnel at the arrival exit within the airport premises as he was found moving in a suspicious manner. As the appellant's conduct aroused suspicion, he was questioned and checked in accordance with security protocols, during which four packets wrapped in polythene, were noticed concealed on his body. Upon enquiry, the appellant himself admitted that the packets contained gold in paste form. Thereafter, the CISF officials handed over the appellant

to the Customs official for further action, the seizure of subject goods was done by Customs officers in Customs Area and not by CISF official as stated by the appellant. Learned AR has reliance placed on the following judgments regarding jurisdiction:

i) Mannu Yadav Vs Commissioner of Customs (Airport), Kolkata [2008 (230) ELT 274 (Tri-Kol)]

ii) Dinker Khindria Vs Commissioner of Customs, New Delhi [2009 (237) ELT 41 (Tn-Del)]

13. The statement given by the appellant has not been retracted till now. The statement made before Customs officers under Section 108 of the Customs Act, 1964 are admissible evidence. In this regard, Learned AR reliance placed on the following judgments:

i) Shri Romesh Chandra Mehta Vs State of West Bengal [1999 (110) ELT 324 (S.C.)]

ii) Sucha Singh Vs Assistant Collector of Customs, Amristar [2010 (262) ELT 225 (P&H)]

iii) M/s Yogey diamond Vs Commissioner of Customs (Priv), Mumbai [2004 (176) ELT 717]

14. Learned AR also submits that no any request for cross-examination was made by the appellant before the Adjudicating Authority. This plea was raised for the first time only in the grounds of appeal before the Commissioner (Appeals), who has examined this contention in details. Right of cross-examination is not necessary in every case, its depends upon its facts and circumstances.

15. Learned AR reliance has placed on following judgments in this regard:

i) Mukhtar Umar Gojaria Vs Commissioner of Customs Airport, Mumbai [2009 (233) ELT 474 (Tri-Mum)]

ii) Madan Gopal Vs Collector of Central Excise, Nagpur [1986 (26) ELT 833 (Tribunal)]

16. Learned AR submits that appellant has contested only on the technical grounds, without addressing the merits of the case. The appellant has failed to produce any documentary evidence to establish that the seized gold was procured locally and is not of foreign origin.

17. We have carefully considered the revival submissions and examined the records.

18. The contention of the appellant that the seizure took place outside the Customs area does not assist his case. Once the passenger arrives from the foreign country and carries goods liable for declaration, the liability under the Customs Act arises regardless of the precise point of interception. The Concealment of gold in paste form is a common modus operandi adapted to evade detection and such conduct clearly establishes intention to smuggle.

19. Further, the appellant had passed through the green channel, which signifies that the passenger is not carrying any dutiable or prohibited goods. The Honb'le Supreme Court held that passing during the green channel amounts to a declaration that the passenger is not carrying dutiable goods. Hon'ble Supreme Court in the case of Commissioner of Customs Vs Atul Automations pvt Ltd., [2019 (365) E.L.T. 465 (SC)], wherein, it was held that concealment and non-declaration has justified confiscation and penalty. Thus, the omission on the part of the appellant to make the declaration as required under Section 77 of the Customs Act, clearly indicates the existence of a criminal intent on his part.

20. The Learned Counsel for the appellant submitted that applicant was intercepted outside the Customs area and Customs officer have not jurisdiction to intercept. In this contention the following provisions are important to mention Sections 100 and 101 of the Customs Act, which provides as thus:

> 100. Power to search suspected persons entering or leaving India, etc.
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> (1) If the proper officer has reason to believe that any person to whom this section applies has secreted about his person, any goods liable to confiscation or any documents relating thereto, he may search that person.
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> (2) This section applies to the following persons, namely:
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> (a) any person who has landed from or is about to board or is on board any vessel within the Indian customs waters.
>
> (b) any person who has landed from or is about to board, or is on board a foreign-going aircraft.
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> (c) any person who has got out of, or is about to get into, or is in, a vehicle, which has arrived from, or is to proceed to any place outside India.
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> (d) any person not included in clause (a), (b) or (c) who has entered or is about to leave India.
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> (e) any person in a customs area.
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> 101. Power to search suspected persons in certain other cases
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> (1) Without prejudice to the provisions of Section 100, if an officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs, has reason to believe that any person has secreted about his person any goods of the description specified in sub-section (2) which are liable to confiscation, or documents relating thereto, he may search that person.
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> (2) The goods referred to in sub-section (1) are the following:
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> (a) gold
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> (b) diamonds
>
> (c) manufactures of gold or diamonds
>
> (d) watches
>
> (e) any other class of goods which the Central Government may, by notification in the Official Gazette, specify.

21. In the case of Mannu Yadav, supra, appellant was caught at the exit gate of airport and could not adduce any evidence/ document at spot or thereafter to prove legal import of seized goods, applicant's active involvement in smuggling of seized goods not ruled out by any evidence. Therefore, confiscation and penalty upheld.

22. In view of the above legal provisions, the officers of the Customs Department have right to search and seized. Argument of Learned Counsel is not tenable in this regard.

23. The argument regarding denial of cross-examination is also not persuasive in the facts of the present case. The recovery of gold was established through panchanama proceedings and physical recovery, which constitute primary evidence. The Hon'ble supreme Court in Kanungo & company Vs Collector of Customs [1973 (2) SC 438] has held that adjudication proceedings in the Customs Act are not strictly governed by the rules of evidence applicable to criminal trials, and therefore reliance upon documentary and circumstantial evidence is permissible. The Co-ordinate Bench Mumbai in the case of Mukhtar Umar Gojana, supra, held that no hard and fast rule that in each case cross-examination is must, even case depends upon its own peculiar facts. Hon'ble Supreme Court in the case of Shri Romesh Chandra Mehta, supra, where in it was held that statements made before the Customs officers under Section 108 of the Customs Act, 1962 are admissible evidence.

24. In this regard, the appellant has relied upon the principle laid down by the Hon'ble Supreme Court in the case of Andaman Timber, supra, wherein, it was held that there was no other material with the Department on the basis of which it could justify its, action, except statement of witnesses, not

allowing to cross-examination is amounting to violation of natural justice. The relevant para of the judgment as follow:

"6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guesswork as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

7. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price-list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/ witnesses at the price which is mentioned in the price-list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

8. In view of the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause Notice."

25. The aforesaid principle is not applicable in this case, as the case is not based merely on the statement of the appellant but also on the recovery

made from his possession, and the appellant has failed to produced any documentary evidence in support of his defense. Further, the case decided by the Hon'ble Supreme Court relates to assessment, whereas, the present matter pertains to the recovery of illicit gold.

26. The decision of Tribunal New Delhi, in the case of Sri Manish Singhal, Proprietor M.s Singhal Traders, supra, based on same footing. Thus, the decision of Tribunal New Delhi is also not applicable in factual matrix.

27. Hon'ble Delhi High Court in the case of Shri Himanshu Gupta Vs The Commissioner of Central Excise CEAC No. 48/2018 decided on 15.01.2026, held that cross-examination can be granted in certain proceedings, if it is deemed appropriate, the right to cross-examine cannot be an unfettered right. The relevant para's of the judgment as follow:

> "41. The Apex Court in the matter of Kanungo & Co. Vs Collector of Customs, Calcutta & Others [1983 (13) E.L.T 1486 (S.C)] had made following observations:
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> > "12. We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show-cause notice issued on August 21, 1961, all the material on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in maters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force in the third contention of the appellant."
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> 42. In Surjeet Singh Chhabra Vs Union of India [1997 (89) E.L.T. 646 (SC)], the Apex Court observed as under:
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> > "3. It is true that the petitioner had confessed that he purchased the gold and had brought it. He admitted that he purchased the gold and converted it as a kara. In this situation, bringing the gold without permission of the authority is in contravention of the

> Customs Duty Act and also FERA. When the petitioner seeks for cross-examination of the witnesses who have said that the recovery was made from the petitioner, necessarily an opportunity requires to be given for the cross-examination of the witnesses as regards the place at which recovery was made. Since the dispute concerns the confiscation of the jewellery, whether at conveyor belt or at the green channel, perhaps the witnesses were required to be called. But in view of confession made by him, it binds him and, therefore, in the facts and circumstances of this case the failure to give him the opportunity to cross-examine the witnesses is not violative of principle of natural justice. It is contended that the petitioner had retracted within six days from the confession. Therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence. We find no force in this contention. The Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner. So there is no need to call panch witnesses for examination and cross-examination by the petitioner."

43. In Patel Engineering Ltd., Vs Union of India [2014 (307) E.L.T. 862 (Bom.)], the High Court of Bombay observed as under:

> "21. Thus, the consistent view is that may be and only in case of want of Notice to the affected party in all other cases it is not enough to allege breach of principles of natural justice but also demonstrate that prejudice is caused by such breach. This is for the simple reason that any departure or every breach does not necessarily result in miscarriage of justice or gross failure of justice. Further, the principles of natural justice are not a strait-jacket formula. Which principles of natural justice or which facet of the same is applicable, depends upon the nature of the lis, the statute under which an adjudication is undertaken and several other factors. This has been now firmly established in the decision of Bar Council of India Vs High Court of Kerala reported in (2004) 6 SCC 311 : AIR 2004 SC 2227. In that case, in the SCC report, this is what is held:-
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> 49.In N.K. Prasada Vs Government of India {(2004) 6 SCC 299] this Court observed: (SCC p. 308, paras 24-25)
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> "24. The principles of natural justice, it is well settled, cannot be put into a straitjacket formula. Its application will depend upon the facts and circumstances of each case. It is also well settled that if a party after having proper notice chose not to appear, he at a later stage cannot be permitted to say that he had not been given a fair opportunity of hearing. The question had been considered by a Bench of this Court in Sohan Lal Gupta Vs Asha Devi Gupta [(2003) 7 SCC 492] of which two of us (V.N. Khare, C.J. and Sinha, J.) are parties where in upon noticing a large number of decisions it was held: (SCC p. 506, para 29)

'29. The principles of natural justice, it is trite, cannot be put in a straitjacket formula. In a given case the party should not only be required to show that he did not have a proper notice resulting in violation of principles of natural justice but also to show that he was seriously prejudiced thereby.' 25. The principles of natural justice, it is well settled, must not be stretched too far."

(See also Mardia Chemicals Ltd., Vs Union of India [(2004) 4 SCC 311 : (2004) 4 Scale 338] and Canara Bank Vs Debasis Das [(2003) 4 SCC 557 : 2003 SCC (L&S) 507].)

50. In Union of India Vs Tulsiram Patel [(19985) 3 SCC 398 : 1985 SCC (L&S) 672] whereupon reliance has been placed by Mr Reddy, this Court held : (SCCp. 477, para 97)

"97. Though the two rules of natural justice, namely, nemo judex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not case in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules and also by the constitution of the Tribunal which has to decide a particular mater and the rules by which such Tribunal is governed."

22. xxxxxxxxxxxx

23. Therefore, we are of the opinion that it will not be correct to hold that irrespective of the facts and circumstances and in all inquiries, the right of cross examination can be asserted. Further, as held above which rule or principle of natural justice must be applied and followed depends upon several factors and as enumerated above. Even if there is denial of the request to cross examine the witnesses in an inquiry, without anything more, by such denial alone, it will not be enough to conclude that principles of natural justice have been violated. Therefore, the judgments relied upon by Shri Kantawala must be seen in the factual backdrop and peculiar circumstances of the assessee's case before this Court."

44. In the matter of M/s Vallabh Textiles Vs Additional Commissione Central Tax GST, Delhi East & Ors [W.P. (C) 4576/2025 decided on 9th April, 2025], this Court observed as under:-

"15. While cross-examination can be granted in certain proceedings, if it is deemed appropriate, the right to cross-examine cannot be an unfettered right. This has been so held recently by this Court in Sushil Aggarwal Vs Principal Commissioner of Customs (2025:DHC:608-DB). The relevant portion of decision reads as under:

> "15. Accordingly, this Court is of the opinion that in order to ensure that there is compliance of Section 138(B) of the Act, though the same cannot be claimed as an unfettered right in all cases, in the facts of the present case, both Mr. Sushil Aggarwal and Mr. Aidasani are afforded an opportunity to cross-examine Mr. Bhalla.""

28. In the present case, the entire proceedings against the appellant are based on un-retracted statement of the witnesses, corroborative evidence in the form of recovery material. Therefore, no any prejudice caused to the appellant.

29. The plea that the recovered substance were initially gold in paste form also does not help the appellant. The material was processed and confirms to contain gold weighing 844 grams, which clearly establishes the nature of the goods.

30. Further, gold is a notified under Section 123 of the Customs Act, and once possession is established, the burden shifts upon person from whom, it is recovered to prove its licit origin.

31. In the present case, the appellant has failed to produce any evidence to establish the lawful acquisition or import of the said gold.

32. Hon'ble Kerala High Court in the case of Om Prakash Khatri, supra, which is affirmed by Hon'ble Supreme Court, wherein, it was held that unmarked gold recovered from the possession of person and their statement as to the source of gold is sufficient to have a reasonable belief that gold is smuggled. No any satisfactory explanation given to prove the legitimacy of the gold carried b intercepted person, burden of proof under Section 123 of the Customs Act, being only a reasonable belief, effectively discharged by the Department. Mere fact that interception and seizure not affected in an international border or near an airport or seaport, it is an irrelevant, onus to

prove that the gold was not smuggled, squarely rested on, who claims otherwise. The relevant para of the judgment as thus:

> "18. We have considered the decisions relied on by both sides and are of the opinion that in case of seizure of gold, even without markings, the burden is upon the person, who has custody of the gold, under Section 123 of the Act, to prove that the gold was legally acquired. The statement recorded under Section 108 of the Act could be safely relied upon in the proceedings against respondents. In K.I. Pavunny Vs Assistant Collector, (1997) 3 SCC 721 = [1997 (90) E.L.T. 241 S.C.] the Hon'ble Supreme Court has held that a person summoned under Section 108 of the Act is "not the person accused of an offence" for the purpose of Section 24 of the Evidence Act. The primary question for consideration in that case was whether the retracted confession statement of the appellant is inadmissible in evidence under Section 24 of the Evidence Act. It is observed that even though the Customs officers have been invested with many of the powers, which an officer-in-charge of a police station exercises, while investigating a congnizable offence, they do not, thereby become police officers within the meaning of Section 25 of the Evidence Act and so the confessional statement by the admissible in evidence against them and it was ultimately held by the Hon'ble Supreme Court that the prosecution has proved the case based on the confession of the appellant given in Ext.P4 under Section 108 of the Evidence Act.
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> 19. The unmarked gold recovered from the possession of two persons and their statements as to the source of the gold was sufficient to have a reasonable belief that the gold is smuggled. The two persons who were carrying the gold had nothing in their possession to prove the legitimacy of the gold they carried. The fact that the gold bars and pieces did not have any marking on them is suspicious and it points to a concerted effort to erase the marking on them. The burden under Section 124 which is only of a reasonable belief; is effectively discharged by the Department who initiated action on the basis of the seizure and the record statements of the detained persons. The mere fact that the interception and seizure was not affected in an international border or near an airport or seaport is irrelevant, since the statements of the intercepted persons clearly indicate that they were asked to avoid such means of transport and stick to the normal modes of public transport. There can also be no presumption drawn that the carriers of smuggled gold after the gold reaches the country would only resort to commutation by air or sea. The persons from whom the gold was seized disowned the same and said that they were mere carriers of Om Prakash Khatri, who accepted that the gold seized belonged to his Company. Then the onus to prove that the gold was not smuggled, so as to upset the reasonable belief entertained by the Department shifted and squarely rested on his shoulders. The gold bars and pieces were subjected to chemical examination which revealed that they were of 99,8% purity. The Tribunal ignored this aspect and referred to the purity of the ornaments; which was not an issue before it."

33. It is evident from the foregoing discussion that the Customs officers were duly vested with the jurisdiction to conduct search and seizure under the provisions of Customs Act. In the present case, the officers had reasonable belief, as contemplated under law, that the gold recovered was of smuggled nature.

34. In terms of Section 123 of the Customs Act, 1962, the burden of proof squarely lies upon the person from whose possession such notified goods are seized. The appellant has failed to discharge this statutory burden by producing any cogent, credible or documentary evidence to establish the licit origin of the seized gold. Accordingly, the presumption of smuggling remains un-rebutted.

35. Further, the contention of the appellant regarding denial of opportunity for cross-examination is devoid of merit. It is observed that no prejudice has been caused to the appellant, as the case is primarily based on seizure and independent material evidence rather than on third-party statements. In such circumstances, denial of cross-examination does not vitiate the proceedings.

36. In view of the above discussions, we find no any infirmity in the impugned order. Therefore, appeal is liable to be dismissed.

37. Therefore, appeal dismissed.

(Pronounced in open court on 18.03.2026)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha