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HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW

CUSTOM APPEAL No. - 1 of 2026

Commissioner of Customs (Preventive) Lko.
…..Appellant(s)

Versus

Anand Navalchand Pugaliya
…..Respondent(s)

Counsel for Appellant(s)	:	Saurabh Yadava,
Counsel for Respondent(s)	:	Jameel Ahmad, Vineet Kumar Singh

Along with :

CUSTOM APPEAL No. - 2 of 2026:

1. Commissioner of Customs(Preventive) Lko.

Versus

Nagendra Hira Lal Tiwari

CUSTOM APPEAL No. - 3 of 2026:

2. Commissioner Of Customs (Preventive) Lko.

Versus

Purmanand Ramchandra Mishra

Court No. - 3

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.

SHEKHAR B. SARAF, J. : These three appeals, preferred by Commissioner of Customs (Preventive), Lucknow under Section 130 of the Customs Act, 1962 (hereinafter referred to as the 'Act') assail a common order dated April 23, 2025 passed by the Custom, Excise and Service Tax Appellate Tribunal, Allahabad (hereinafter referred to as the 'CESTAT') whereby the order passed by Commissioner (Appeal) was affirmed and order passed by Adjudicating authority holding absolute confiscation of gold bars alongwith packing materials used for concealment, silver bullion and cash was set aside.

2. Custom Appeal No.1 of 2026 concerns Shri Anand Navalchand Pugaliya (hereinafter referred to as 'respondent'), the proprietor of M/s Pugaliya Jewellers, who asserts lawful ownership of the seized gold bars. Custom Appeal No.2 of 2026 and Custom Appeal No.3 of 2026 pertains to Shri Narendra Hiralal Tiwari and Shri Purmanand Ramchandra Mishra respectively, from whose possession the gold bars were recovered. Since all three appeals arise from a common order raising same

questions of law regarding perverse findings and burden of proof under Section 123 of the Act, therefore, they have been heard together and are being decided by this common judgment.

ADMISSION OF SUBSTANTIAL QUESTIONS OF LAW

3. Upon perusal of the records and having heard the learned counsel for the appellant, the following substantial questions of law have been raised by the revenue department and have been admitted:-

I. Whether the CESTAT erred in law in misinterpreting Section 2(39) read with Section 111 of the Customs Act, 1962 with regard to the terms 'smuggling' and 'confiscation' of such goods?

II. Whether the finding of the Tribunal that the Burden of proof was discharged by the respondent is a perverse finding?

FACTS

4. The factual matrix of the present *lis* is delineated below:

a. On November 28, 2020, acting on specific intelligence, officers of the Directorate of Revenue Intelligence (DRI), Lucknow Zonal Unit, intercepted Shri Nagendra Hiralal Tiwari and Shri Purmanand Ramchandra Mishra at Prayagraj while they were travelling in a bus en route from Nagpur. During a personal search conducted on their persons, two metal bars bearing the marking 'Valcambi Suisse 1 KG Gold 995.0' were recovered from Shri Narendra Hiralal Tiwari and one metal bar bearing the marking 'Suisse 1 KG Gold 995.0' was recovered from Purmanand Ramchandra Mishra. The aforesaid three yellow coloured metal bars weighing 2,997 grams valued at Rs. 1,43,85,600/-, were wrapped in tape and concealed inside the shoes of the intercepted persons.

b. When both the intercepted persons were questioned on November 28, 2020, they admitted that they were carrying the foreign origin smuggled gold for its delivery at Prayagraj on the direction of respondent. They further stated that they did not possess any valid documents with respect to purchase or import of the foreign origin gold. Hence, on the reasonable belief that the gold was brought into India by way of smuggling, and therefore, liable to confiscation under Section 111 read with Section 123 of the Act, the goods were seized by the DRI under

Section 110 of the Act.

c. On the basis of the statements of both the intercepted persons, a follow-up inquiry was conducted on November 28, 2020 at the residential and business premises of Shri Anand Navalchand Pugaliya wherein, during the search, a Silver Bullion weighing 2,36,635 grams was recovered from his house while 7,005.64 grams of Silver Bullion was recovered from his shop, aggregating to a total of 2,43,640.64 grams. Simultaneously, cash amounting to Rs. 19,99,000/- was recovered from the house and Rs. 9,72,270/- from his shop, aggregating to a total of Rs. 29,71,270/-. Upon failure to produce any documents in relation to the recovered Silver Bullion and cash, both were seized under Section 110 of the Act on the reasonable belief that the Silver Bullion had been smuggled into India without payment of customs duty and the cash represented the sale proceeds of smuggled gold/silver.

d. The aforesaid metal bars were sent to the Chemical Examiner CRCL, New Delhi wherein the metal bars were confirmed to be gold with purity ranging from 99.35% to 99.67%.

e. During the course of the investigation, in response to summons, Shri Anand Navalchand Pugaliya vide letter dated January 14, 2021 submitted certain documents with regard to GST returns, purchase invoices of gold and silver, a gift deed in relation to silver, a delivery note, labour charges paid to a refiner, balance sheet, sale and purchase ledger, stock statements and bank statements.

f. Upon receipt of a document pertaining to labour charges paid to a refiner namely Shri Vijay Anandrao Devkar, the DRI officers summoned him, and in response to the said summons, he submitted a notarized affidavit dated February 8, 2021, wherein it was stated that Shri Anand Navalchand Pugaliya had given him 38 pieces of gold weighing approximately 3 kg for melting and converting into 3 bars of 1 kg each, for which he received Rs. 1,500/- in cash. Moreover, in his statement recorded on September 22, 2021, Shri Vijay Anandrao Devkar corroborated his earlier statement regarding melting and conversion of the gold and further stated that he did not possess any dye bearing a marking akin to marking engraved on the seized gold bars. He further confirmed, upon being shown photographs of the seized gold bars bearing the marking "Valcambi Suisse 1 KG Gold 995.0", that he had not given any such marked gold bar to any person during the preceding two years.

g. Statements of Shri Anand Navalchand Pugaliya were recorded under Section 108 of the Act on April 22, 2021, April 23, 2021, June 2, 2021, June 4, 2021 and October 18, 2021. In his statement dated April 22, 2021, he stated that the recovered gold was purchased from two different sellers, namely Safari Bullion and Jewellers Jasraj Shantilal Baid. However, in his subsequent statements dated June 2, 2021 and June 4, 2021, he modified his earlier statement and claimed that the gold was purchased from Safari Bullion only. He also failed to provide details of the artisan at Prayagraj, namely Shri Raju Bhai, to whom the recovered goods were allegedly destined for delivery.

h. During the investigation, it was found that Shri Anand Navalchand Pugaliya had on an earlier occasion manipulated his books of accounts to validate bogus cash proceeds from the sale of gold bullion in order to establish the ownership of the impugned cash and as a result an order dated December 31, 2020 under Section 24(4)(b)(i) of the Prohibition of Benami Property Transaction Act, 1988 (hereinafter referred to as ‘PBPT

Act') was passed provisionally attaching the impugned cash of Rs. 67.50 lakhs as 'Benami Property' under Section 2(9)(D) of the PBPT Act.

i. Based on the aforesaid facts and other material available on record, a show cause notice dated November 26, 2021 was issued for contravening Section 7, 11 and 123 of the Act to the respondent proposing confiscation of the seized gold bars, silver bullion, cash, and for imposition of penalty. In response to the show cause notice, defence replies were filed on behalf of the respondent.

j. After considering the show cause notice, relied upon documents and affording opportunity of personal hearing, the adjudicating authority vide order dated November 14, 2022 had ordered absolute confiscation of the seized foreign origin smuggled gold weighing 2997 grams valued at Rs.1,41,16,791/- and silver bullion weighing 2,43,640.64 grams valued at Rs.1,37,96,297/-. The said confiscations were ordered in terms of Section 111(a)(b)(h) & (m) of the Act. Apart from the aforesaid confiscation, learned adjudicating authority also ordered confiscation of cash amounting to Rs.29,71,970/- under Section 121 of the Act besides imposing penalty of varying amounts on the respondent and the two intercepted persons under Section 112(b) of the Act.

k. However, a *volte-facie* was observed at the appellate stage, when the Commissioner (Appeal) *vide* order dated June 5, 2023, has allowed the appeal filed by the respondent alongwith the two intercepted persons and set aside the order of confiscation passed by adjudicating authority.

l. This decision of Commissioner (Appeal) was affirmed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) *vide* order dated April 23, 2025 with the observation that Commissioner (Appeal) has duly analyzed the evidence tendered and produced before the lower authorities in support of their contentions.

m. Being aggrieved by the order of the CESTAT dated April 23, 2025, the revenue has preferred the present appeal before this Court under Section 130 of the Act raising substantial questions of law arising from the impugned final order.

ANALYSIS

5. Upon perusal of the order passed by the

Tribunal, the core controversy in the present appeal is with regard to whether the Tribunal, being the last fact finding authority, has acted in a proper manner in appreciating the evidence that was provided by the respondent with regard to the seizure of gold, silver and cash. The Tribunal held that the Burden of proof that was cast upon the respondent under Section 123 of the Act had been discharged and that it was incumbent upon the revenue to contradict the veracity of evidence furnished by the respondent.

6. The first aspect to be considered in the case in hand is with regard to on whom the burden of proof lies. We would like to examine Section 123 of the Act, which reads as follows:-

> "**123. Burden of proof in certain cases**.—
>
> (1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be—
>
> (a) in a case where such seizure is made from the possession of any person,—
>
> (i) on the person from whose possession the goods were seized; and
>
> (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

> (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.
>
> (2) This section shall apply to gold, [and manufactures thereof], watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify."

7. Thus, it is clear that Section 123 casts the burden of proof on the person from whom the goods are seized or the owner of the goods, for proving that the goods are not smuggled goods. Accordingly, it is up to such person to show that the goods are not of foreign origin and hence not smuggled or that the goods are of foreign origin but not smuggled goods, having been lawfully acquired.

8. One must be mindful of the fact that Section 123 initially vests the burden of proof on the revenue before shifting it towards the assessee. Three conditions must be fulfilled by the revenue for discharging their onus before applicability of Section 123 of the Act, that is, firstly seizure of goods to which this section applies, secondly, seizure must be under the Customs Act and thirdly, seizure on the reasonable belief that they are smuggled goods. When these three conditions are fulfilled, the presumption of smuggled goods arises, and the burden shifts to the assessee to show that they are

not smuggled goods.

9. Applying the aforesaid conditions for seizure of three gold bars, we find that first and second conditions are fulfilled. The third condition of 'reasonable belief' is based on foreign marking on gold as well the clandestine manner of transportation and statements of the intercepted persons. Therefore, the initial burden that was vested on the revenue was discharged.

10. Having noted the above legal position, we are required to examine as to what was the statement of the respondent, the intercepted persons and the refiner about foreign marking gold. As could be seen from the discussion and findings of the investigation in the show cause notice as well as in the adjudicating order, a plethora of inconsistency was brought to light.

11. The statements dated November 28, 2020 of Narendra Hiralal Tiwari and Purmanand Ramchandra Mishra under Section 108 of the Act were recorded whereby they admitted carrying foreign origin smuggled gold. The relevant paragraph from the findings in show cause notice is quoted hereinbelow:-

> "4.1. The accused persons, Shri Narendra Hiralal

> Tiwari and Shri Purmanand Ramchandra Mishra (Noticee no. 1 and 2) were intercepted by the officers of DRI while carrying 2997 grams of smuggled foreign origin gold value at rupees 1,31,16,791/-. Both the said accused persons, Shri Nagendra Hiralal Tiwari & Shri Purmanand Ramchandra Mishra, in their respective statements dated 28.11.2020, admitted of carrying the said foreign origin smuggled gold, which they had received from Shri Anand Navalchand Pugaliya for its delivery at Prayagraj. They were carrying the recovered gold on the directions of Shri Anand Navalchand Pugaliya. They are working for M/s Pugaliya Jewellers and getting monthly salary. Both of them denied having any valid document with respect to purchase/import of the said smuggled foreign origin gold, as recovered from their possession. They stated that they were fully aware that smuggling of gold is a punishable offence under law, but they committed the said offence in lure of money. Further, they accepted their act of carrying smuggled gold on earlier occasion too and were apprehended by the officer of the Koikata Customs and a SCN was issued in this regard. On the basis of statements of both the said persons, a follow up enquiry was conducted on 28.11.2020 at the house/ business premises of Shri Anand Pugaliya, M/s Navalchand Sardarmal Pugaliya Jewellers, Nagpur."

12. Furthermore, the refiner in his statement claims to have received 38 pieces of gold for converting the same into three gold bars without any marking for respondent. The relevant paragraph from the findings in show cause notice is quoted hereinbelow:-

> "4.6. Shri Vijay Anadrao Devkar in his statement dated 22.09.2022 specifically mentioned that he had received 38 pieces of gold and converted the same into 3 bars of 1 kg each and without any marka. He further tendered that he did not have any marka (dye) of 1 kg and had only one mould of 1 kg. On being shown the photographs of seized gold bars, Shri Vijay Anandrao Devkar confirmed

that he had not given the gold shown in photograph (marked one kg) to any person in last two years. He further stated that Shri Anand Pugaliya did not give him any order of "marka gold"

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4.15 Further, Shri Vijay Anandrao Devkar of M/s Devkar Refinery submitted in his statements that all his reply letters were prepared by Shri Anand Pugaliya and he simply signed them upon being insisted by Shri Pugaliya, it is worthwhile to mention that as per the said letters of Shri Vijay Anandrao Devkar, 38 gold pieces were sent by Shri Anand Pugaliya for conversion. In other words, Shri Anand Pugaliya through Shri Vijay submitted that 38 gold pieces were converted into gold bars, whereas, in his statements, Shri Anand Pugaliya kept reiterating that only 35 gold pieces were sent for conversion to the refinery. The submissions of Shri Anand Pugaliya are therefore contradictory in nature and facts and hence raise bonafide suspicion. The gold, as recovered and seized by the DRI officers contained the marks and identification as "PAMP SUISSE" & "VALCAMBI SUISSE" which happens to be of Switzerland origin and as per the investigation conducted, the statements of Vijay Ananadrao Devkar, the refiner from whom the said Gold Bars said to have been procured after casting the 38 cut pieces, as stated by Anand Pugaliya in his defence is nothing but an afterthought and has no bearings."

13. On the contrary, respondent in his statement dated February 28, 2021 stated that he had handed over 35 pieces of gold to the refiner for melting and converting into three bars. The relevant paragraph from the findings in show cause notice is quoted hereinbelow:-

"3.20 Whereas summon dated 23.02.2021 (RUD-33) was issued to Anand Navalchand Pugaliya to appear before the investigating team on 03.03.2021. In response of the same, a letter dated

> 28.02.2021 (RUID-34) was received from him submitting that-
>
> "......He further submitted the receipt dated 25.11.2020 of labour charges for conversion of 35 small pieces of gold into 3 gold bars in order to send 2997 grams jewellery to Allahabad (Prayagraj) from Nagpur, with his 2 employees i.e. Shri Nagendra Tiwari & Purnanand Ramchandra Mishra, for the purpose of manufacturing of jewellery of a particular design, as required by customers......"

14. Moreover, respondent who asserts lawful ownership of the seized gold in his statement dated April 22, 2021 stated that he had purchased the gold from Safari bullions and Jewellers Jasraj Shantilal Baid whereas in a statement dated June 2, 2021 and June 4, 2021 he stated to have purchased the gold from Safari bullions only. The relevant paragraph from the findings in show cause notice is quoted hereinbelow:-

> "4.9. Shri Anand Pugaliya in his statement dated 22.04.2021, to a specific query stated that the gold seized by the officers of DRI, Lucknow was purchased from two different sellers namely Safari Bullion & Jewellers Jasraj Shantilal Baid, but in his statement dated 02.06.2021 & 04.06.2021 he stated that the said gold was purchased from Safari Bullion only."

15. During investigation, the adjudicating officer had observed certain inconsistencies. The observation in the show cause notice were as follows:

> "4.10 Shri Anand Pugaliya merely submitted some purchase invoices of gold to create confusion and

till date he has not provided/or is able to provide the particular invoice and corresponding entry in stock register which is related to the said 35 cut gold pieces.

4.11 The documents/stock register submitted by Shri Anand Pugaliya, nowhere mentions the outward entry of 38 or 35 pieces of gold pieces which were handed over to the refiner Shri Vijay Anandrao Devkar and no inward entry of the converted 03 gold bars which were returned by him, which raises suspicion on the origin of said gold.

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4.16 The same document regarding receipt of gold pieces and its conversion into 3 bars by Shri Vijay Devkar was submitted by Shri Anand Pugaliya and Shri Vijay Devkar, and by providing the same document, both the persons are claiming different numbers of gold pieces sent for conversion, i.e. 35 and 38 respectively, which strongly raises suspicion."

16. Based on the aforesaid statements and relied upon documents, the adjudicating authority had passed an extensive order in relation to seized gold bars whereby he had held that the seized gold is smuggled gold of foreign origin and liable for confiscation under Section 111 of the Customs Act. The relevant paragraphs of the order passed by adjudicating authority have been delineated below:-

"5.1.1 As per records I find that on 28.11.2020, the officers of Directorate of Revenue Intelligence IDRI Lucknow Zonal Unit, Lucknow intercepted Shri Nagendra Hiralal Tiwari and Shri Pumanand Ramchandra Mishra while they were carrying 2997 grams of smuggled foreign origin gold valued at Rs.

1,31,16,791/. Both the said accused persons were travelling in a bus with registration number as UP70-GT-1095, destined from Nagpur to Prayagraj. Shri Nagendra Hiralal Tiwari & Shri Pumanand Ramchandra Mishra in their respective statements dated 28.11.2020 categorically admitted of carrying the said foreign origin smuggled gold, which they had received from Shri Anand Navalchand Pugaliya for its delivery at Prayagraj. They were carrying the gold, as recovered from their possession, on the directions of Shri Anand Navalchand Pugaliya of M/s Pugaliya Jewellers, Nagpur. They are working for M/s Pugaliya Jewellers and getting monthly salary. Both of them denied having any valid document with respect to purchase/import of the said smuggled foreign origin gold, as recovered from their possession. They stated that they were fully aware that smuggling of gold is a punishable offence under law, but they committed the said offence in lure of money. Further, they accepted their act of carrying smuggled gold on earlier occasion too and were apprehended by the officer of the Kolkata Customs and a SCN was issued in this regard. On the basis of statements of both the said persons, a follow up enquiry was conducted at the house/office premises of Shri Anand Pugaliya, M/s Navalchand Sardarmal Pugaliya Jewellers, Nagpur. Shri Purnanand Ramchandra Mishra used to reside with his family in the house of Shri Anand Pugaliya which was confirmed by Shri Anand Pugaliya in his statement tendered under Section 108 of the Customs Act, 1962. The purity, weighment and value of recovered gold has been ascertained by the government, approved Valuer Shri Pankaj Agarwal of "Pankaj's Jewel Art Creation" Mutthiganj, Katghar Road, Prayagraj having Reg no. CAT VIII/03/ALD/02, 353. Three samples of the recovered gold were also drawn for testing in CRCL lab on which the ChemicalExaminer, Gr-II, CRCL, New Delhi confirmed vide letter dated 15.12.2020 that the seized goods as gold having gold content 99.67%, 99.56% and 99.35%

5.1.2 In this issue. I have considered the statement dated 28.11.2020 of Shri Nagendra Hiralal Tiwari St Shri Hiralal Tiwari (Noticee No. 1) recorded under section 108 of Customs Act' 1962 and I find following parts of his statement are relevant to decide this issue-

(a) He affirmed the narrations & proceedings as recorded in Panchnama dated 28.11.2020 and the seizure of goods as detailed in said Panchnama.

(b) He tendered that on 27.11.2020 Shri Anand Pugaliya gave him two gold bars weighing 1998 grams wrapped with brown colour cello tape which were smuggled into India through Chhatrapati Shivaji Maharaj International Airport, Mumbai and directed him to deliver the same to some person in Prayagraj but did not provide any other detail of that person.

(c) On being asked how he came to know that the goods wrapped in brown coloured tape was foreign origin gold he replied that he had been involved in smuggling of foreign origin gold on earlier occasion also and the gold, as recovered was given to him by Anand Pugaliya only.

(d) Purnanand Ramchandra Mishra is also involved in smuggling On direction of Anand Pugaliya,.

(e) Such foreign origin gold secretly reaches Mumbai airport from abroad. Thereafter, foreign seal or identification of such gold is altered by melting it or scratching of the foreign marka and then it is sent to other places of the country.

(f) They were involved in carrying of smuggled foreign origin gold and therefore they do not have any documents related to it, and neither any related papers or documents were provided to him by his owner.

(g) Purnanand Ramchandra Mishra and he are cousins and both are working at Anand Pugaliya's shop. They are simultaneously involved in smuggling of foreign origin gold.

(h) On being asked about smuggling of foreign origin gold on earlier occasions by him, the other persons involved & the places where it was done, he answered that he did this act of smuggling of foreign gold on several occasions along with

Purnanand Ramchandra Mishra on the direction of his owner Anand Pugaliya but he do not want to say anything about any other persons involved in smuggling or the places. However, he accepted about smuggling of foreign origin gold done by him at Kolkata.

(i) Anand Pugaliya informed him and his companion that this gold is of foreign origin and its marking has been scratched/erased so as to hide its identity of being foreign origin. Anand Pugaliya also informed both of them that legal documents of the same cannot be prepared.

5.1.3 In order to discuss this issue. I considered the statement dated 28.11.2020 of Sri Purnanand Ramchandra Mishra following parts of his statement are relevant to decide this issue-

(a) He affirmed the narrations & proceedings as recorded in Panchnama dated 28.11.2020 and the seizure of goods as detailed in said Panchnama.

(b) On being asked about the gold recovered under Panchnama dated 28.11.2020, he informed that on 27.11.2020, Shri Anand Pugaliya gave him a gold bar weighing 999 grams wrapped with brown coloured cello tape, and was smuggled into India through Chattrapati Shivaji Maharaj International Airport, Mumbai.

(c) Shri Anand Pugaliya directed him to deliver it to some person in Prayagraj but had not provided any detail of that person. Shri Anand Pugaliya told him that after reaching Prayagraj, that person will contact Purnanand Ramchandra Mishra through phone.

(d) He was also informed by Anand Pugaliya that another person working with him in his shop, namely Shri Nagendra Tiwari was also in possession of 2 bars of smuggled gold, which were also brought similarly into India, will accompany him from Nagpur to Prayagraj in the same bus.

(e) On being asked whether le knew that the gold wrapped with brown coloured tape, which was given to him by Anand Pugaliya, is of foreign origin, he replied that Shri Anand Pugaliya had informed him at the time of offering him the job that he has to deliver foreign origin gold to different places. He had done smuggling of gold for his boss Anand Pugaliya on earlier occasions as well. He further informed that Shri Anand Pugaliya never gave him any documents related to the gold.

(f) On being asked about any paper or bill related to the gold recovered from him, he replied that the gold recovered from him is of foreign origin which was brought into India by smuggling so he did not had any paper, bill etc. related to the same. Shri Anand Pugaliya had also not provided any documents related to the same.

(g) On being asked his relation with Nagendra Tiwari, he replied that they are cousins and both are working at Pugaliya Jewellers' shop and do smuggling of foreign origin gold on the direction of their boss Anand Pugaliya.

(h) On being asked whether he knew that carrying of smuggled gold is illegal and punishable under the provisions of Customs Act, he replied that he is aware that this is a punishable offence but had done the same in the greed of money on the directions of Anand Pugaliya.

5.1.4 On its basis above statements, I find that the seized gold is of foreign origin and it was recovered without the support of any licit documents hence found illegal.

5.1.5 On the other side, Shri Anand Pugaliya in his statement dated 22.04.2021 stated that the gold seized by the officers of DRI, Lucknow was purchased from two different sellers namely Safari Bullion & Jewellers Jasraj Shantilal Baid, but in his statement dated 02.06.2021 & 04.06.2021 he stated that the said gold was purchased from Safari Bullion only. Hence the source of receipt of seized gold has been doubtful.

5.1.6 I also find that Shri Anand Pugaliya submitted some purchase invoices of gold to create confusion and he has not provided the particular invoice and corresponding entry in stock register which is related to the said 35 cut gold pieces.

5.1.7 I find that in the stock register submitted by Anand Navaichand Pugaliya, the name of Em/artisan of Prayagraj where the foreign origin gold seized by DRI was being sent for carrying out job work, is not mentioned. No job work receipt/challan was provided by all the three noticees, which was issued in the name of Raju Bhai, the artisan situated in Prayagraj, as per the GST rules.

<u>5.1.8 I find that submission of Anand Navalchand Pugaliya related to 3 recovered bars of foreign origin gold (weighing total 2997 grams) is fabricated in the said gold was received from Shri Vijay Anandrao Devkar of M/s Devkar Refinery after conversion of 35 pieces of gold pieces. However, Shri Vijay Anandrao Devkar specifically submitted that he received 38 pieces of gold and he converted the same into 3 bars weighing 1 kg each and without any marka. The refiner Shri Vijay had not received any instruction regarding conversion of gold pieces into bars having any specific marka. Further, the refiner did not even had the capability to engrave marka of 1 kg as he did not had any dye of the same as per his statement dated 22.09.21 under section 108 of the Customs Act' 1962.</u>

<u>5.1.9 I find that receipt of gold pieces and its conversion into 3 pars by Shri Vijay Devkar was submitted by Shri Anand Pugaliya and Shri Vijay Devkar, and by providing the same document, both the persons are claiming different numbers of gold pieces sent for conversion, i.e. 35 and 38 respectively, which strongly raises suspicion.</u>

<u>5.1.10 There is no dispute that in the instant case foreign origin gold, were seized from the possession of Noticees No. 1 and No. 2 and in their voluntary statements rendered under Section 108 of the Customs Act, both of them had confessed of transporting this smuggled Gold and also could not produce any licit document to contradict the allegation. Thus, I am firmly of the opinion that this case is squarely covered under the ambit of Section 123 of the Customs Act 1962</u>…………….

5.1.11. In this matter, I find the that defence reply of Sri Anand Pugaliya is received in this office on 04.01.2022, wherein he reiterated that he had submitted certain documents during investigation which were related to purchase of 3 bars of one kg gold from M/s Safari Bullions, Mumbai. I find that Sri Anand Pugaliya had submitted following documents along with his letter dated 14.01.2021 addressed to SIO, DRI, Lucknow;-

i. Copy of GST Registration Certificate of M/s. Anandkumar Navalchand Pugaliya

ii. Copy of documents pertaining to GST of M/s. Anandkumar Navalchand Pugaliya from April 2020 to October 2020.

iii. Copy of 11 Tax Invoices pertaining to purchase of gold from June 2020 to November 2020.

iv. Copy of 5 Tax Invoices pertaining to purchase of Silver in the month of November 2020.

v. Copy of Gift Deed executed by Shri. Navalchand Pugaliya in favour of Miss Mansi Anand Pugaliya whereby gifting her 30.172 Kilograms of Silver.

vi Copy of delivery Challan and labour charge paid for conversation of small pieces of gold into 3 bars.

vii. Copy of Trading Account, Balance Sheet, Profit & Loss Account, Account Statement, Cash Book of M/s. Anandkumar Navalchand Pugaliya.

viii. Copy of details of Sale & Purchase Ledger of M/s. Sardarmal N. Pugaliya HUF Firm from 01/04/2020 to 28/11/2020.

ix. Copy of Sale & Purchase Ledger of M/s. Anandkumar Navalchand Pugaliya of Silver and Gold from 01/04/2020 to 28/11/2020 alongwith Stock Ledger.

x. Copy of Stock Statement of M/s. Anandkumar Navalchand Pugaliya & M/s. Sardarmal N. Pugaliya HUF Firm.

xi. Copy of Bank Statement of M/s. Anandkumar

> Navalchand Pugaliya
>
> 5.1.12 I have carefully examined every document and found that none of the document could establish the valid purchase of the gold recovered on 28.11.2020 from Shri Nagendra Hiralal Tiwari and Shri Poornanand Ram Chandra Mishra. Hence, I find that the given documents have no relevance in this issue.
>
> 5.1.13 In view of foregoing discussions, I find that the seized gold weighing 2997 grams valued at Rs. 1,31.16.791/- which was recovered from Shri Nagendra Hiralal Tiwari and Shri Poornanand Ram Chandra Mishra on 28.11.2020 is smuggled gold of foreign origin and liable for confiscation under Section 111 (a), (b), (h) & (m) of the Customs Act, 1962."
>
> **(Emphasis added)**

17. A volte-face from the findings of adjudicating authority was observed at the appellate stage before the Commissioner (Appeal) whereby the Commissioner (Appeal), setting aside the confiscation of three gold bars, had observed that mere foreign markings on the gold does not establish the smuggled nature of the gold. Moreover, the respondent who claimed his legal ownership over the gold bars had also submitted the GST paid purchase invoice duly certified by chartered accountant whose entry has also been reflected in the stock ledger. The relevant paragraphs of the order passed by Commissioner (Appeal) in relation to three gold bars are delineated below:

"On the first issue, I find that the appellant no. 3 has claimed his legal ownership of the goods and contended that he had submitted the relevant documents viz. purchase invoices, stock register, balance sheet, sale & purchase ledger etc. in relation to the seized gold to the department during the course of investigation but the adjudicating authority denied the same due to the reason that he has not provided the particular invoice and corresponding entry in stock register. The appellant no. 3 has produced before me the GST paid purchase invoices in relation to the recovered three gold bars duly certified by the Chartered Accountant. The details of the same are as under:

S. No.	Name of the GST Supplier Safari	GST Number of the invoice supplier	Invoice Number	Invoice Date	Quantity
1.	Safari Bullions, Zaveri Bazar, Mumbai	27AAMPJ11 Q1ZE	1414	05.08.2020	2000 grams
2.			4603	20.10.2010	1000 grams
3.			7299	18.11.2020	1000 grams
4.			7850	23.11.2020	1000 grams

The entry of above purchases have also been duly reflected in the stock ledger produced before me by the appellant no. 3 for the period under dispute duly certified by the Chartered accountant, which substantiates the contention of under genuine and valid GST paid purchase invoices and the entries of the same were duly accounted for in the stock ledger. In view of that I find that the burden of proof in the instant case with reference to the provisions of Section 123 of the Customs Act, 1962 has been duly discharged by the appellant no. 3 at the first available opportunity and the department has not controverted over the genuineness of the documents produced by the appellant no. 3. I find that when all the documentary evidences in relation to the seized gold are present, mere foreign marking of the gold does not establish the smuggled nature of the goods. Now the onus lies with the department to prove the smuggled nature of the goods which they could not establish except that the gold biscuits has foreign marking on them. In such circumstances, by no stretch of imagination the seized goods can be termed as 'smuggled'. In view of that I hold that absolute confiscation of 2997 gms. of Gold is not sustainable and is vacated herewith."

18. The aforesaid order of Commissioner (Appeal) went into appeal before the CESTAT, whereby the order passed by Commissioner (Appeal) was affirmed by simpliciter replication of the latter's order and observing that the burden of proof cast upon the respondent was duly discharged by production of GST paid invoices certified by chartered accountant and it was expected that the revenue contradict the veracity of said invoices. The relevant paragraph of the order passed by CESTAT in relation to three gold bars are delineated below:-

"12. For the first issue discerned by the learned Commissioner (Appeals) about the liability to confiscation of the 03 gold bars for which necessary documents viz. invoices duly accounted for in the books of account were tendered before the Adjudicating Authority, we note that no reasons whatsoever have been pointed out to ignore/refute the same. There are no comments on the veracity of these documents. The learned Commissioner (Appeals) has duly recorded that the said three invoices produced were GST paid invoices and also certified by the Chartered Accountant. The details of the same are as under:-

S. No.	**Name of the GST Supplier Safari**	**GST Number of the invoice supplier**	**Invoice Number**	**Invoice Date**	**Quantity**
1.	Safari Bullions, Zaveri Bazar, Mumbai	27AAMPJ11Q1ZE	1414	05.08.2020	2000 grams
2.			4603	20.10.2010	1000 grams
3.			7299	18.11.2020	1000 grams
4.			7850	23.11.2020	1000 grams

13. We are of the view that there was no fault in the action of the Respondent in submitting a Certificate from the Chartered Accountant to that effect and their anxiety to establish their case can be understood. It may have been done by way of ex abundanti cautela. The fact that the said purchase invoice have been recorded in the books of accounts and were produced before the authorities at the first available instance goes in as an important proof of legitimate procurement of gold in question. Moreover, the said gold bars were purchased under proper invoices having discharged their tax liability. Strangely there has been no finding recorded on this aspect by the Adjudicating Authority and the Revenue has simply chosen to find fault with findings of the Commissioner (Appeals) based on unrelated facts like past history of co-accused etc. It is settled law that suspicion howsoever grave cannot take the place of proof. We are of the view that the Respondents have sufficiently discharged the onus cast upon them in law and Revenue has not been able to disprove/contradict the direct evidence furnished by the Respondent. When necessary documents and evidence for procurement of gold were tendered to corroborate its licit acquisition all that is required for the Revenue is to negate the said evidence, as a result of valid direct proof contradicting the same.

> In fact we are of the view that Revenue has failed completely in rebutting the evidence tendered by the gold dealer and the Respondent Shri Anand Navalchand Pugaliya."

19. Learned counsel appearing on behalf of appellant submitted that the invoices produced by the respondent were domestic GST invoices and GSTR-2A returns representing intra-state paper transactions but that cannot validate genuine purchase as that would have been discharged only by the production of Bill of entry or duty payment at port of entry. It was further contended that the statements of refiner and respondent were inconsistent as respondent claimed that the three bars were procured via melting and converting 35 pieces of gold into three bars from a local refiner whereas refiner stated that he received 38 pieces of gold and converted it into three bars but he had not embossed any marking on the bars as he did not have dyes for the same. He further relies on the Supreme Court judgement in **Collector of Customs, Madras vs. D. Bhoormull**[1] to contend that revenue is not required to prove smuggling with mathematical certainty as circumstantial probability supported by foreign markings is sufficient to cast onus under section 123 on the assessee. He has further relied

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1 **(1974) 2 SCC 544**

on **Hero Vinoth (Minor) vs. Seshammal**[2], **Vijay Kumar Talwar vs. Commissioner of Income Tax**[3], **K. Ravindranathan Nair vs. Commissioner of Income Tax**[4] and **Triveni Rubber and Plastics vs. Collector of Central Excise**[5] to contend that the finding of CESTAT is perverse, if it ignores the primary physical evidence.

20. Learned counsel appearing on behalf of the respondent/noticee submits that under Section 123 of the Act, initial burden is on the person from whose possession goods are seized, however, once plausible documentary evidence is produced, burden shifts to the revenue. In the present case, since, the respondent had submitted all the documentary evidence via submission of books of accounts, copy of GSTR2A of the relevant period along with CA Certificate, therefore, he has substantiated that the goods were duly recorded. Moreover, the revenue has not discredited such documentary evidence anywhere in the Show cause notice or in the adjudication order. By submission of such documents, the burden of proof as required under Section 123 of the Customs Act has been discharged by the respondent and the same had been observed by Commissioner as well as CESTAT

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2 **(2006) 5 SCC 545**
3 **(2011) 1 SCC 673**
4 **(2001) 1 SCC 135**
5 **1994 Supp (3) SCC 665**

in their respective orders.

21. Learned counsel appearing on behalf of respondent relies on **Triveni Rubber & Plastics vs. Collector** (supra), **Sumitomo Heavy Industries Ltd. vs. O.N.G.C.**[6], **S.R. Tewari vs. U.O.I.**[7], **Vijay Kumar Talwar vs. CIT**[8] and **Hero Vinoth vs. Seshammal**[9] to contend that reappreciation of evidence that has already been considered by the Tribunal cannot be done by the High Court as the Tribunal is the last fact finding body.

22. On a perusal of the respective orders passed by the adjudicating authority and the Commissioner (Appeals) and after sifting through the documents that were produced before the adjudicating officer, it is clear that the adjudicating authority had correctly observed that the burden of proof under Section 123 of the Customs Act was not discharged by the respondent.

23. The facts that the gold was being carried in a surreptitious and clandestine manner without any invoices, the statement given by the carriers, the contradictory statement given by Mr. Anand Pugaliya (owner of the goods), the statement given by the refiner

6 **(2010) 11 SCC 296**
7 **(2013) 6 SCC 602**
8 **(2011) 1 SCC 673**
9 **(2006) 5 SCC 545**

Sri Vijay Anand Rao Devkar which is clearly at variance with that of Mr. Pugaliya, the lack of specific invoices corresponding to the three gold bars and the fact that foreign markings were found on the three gold bars that have not been explained by the owner of the gold and the approved purity of gold ranging between 99.35% to 99.37% (purity only found in foreign gold) patently establishes the presumption of smuggling of goods so as to make it liable to confiscation under Section 111 of the Act.

24. The respondent in his statement dated April 22, 2021 has stated that three gold bars were purchased from two different sellers namely Safari Bullion and Jewellers Jasraj Shantilal Baid but in his statement dated June 2, 2021 and June 4, 2021 he stated that the said gold bars were purchased from Safari Bullion only. The respondent in his previous statement dated February 28, 2021 stated that the seized gold bars were procured after conversion of 35 small pieces of gold into three bars by a refiner, Shri Devkar. However, the refiner in his statement dated February 8, 2021 has stated that respondent had given him 38 pieces of gold weighing approximately 3 kgs for converting them into 3 bars of 1

kg each.

25. The story that has been tried to be established by the respondent by producing GST invoice that he had purchased gold with foreign marking from Safari Bullions and simultaneously stating that the three gold bars were produced by melting and converting 35 pieces of gold into three bars is completely shattered by the unretracted statement given by the refiner who clearly stated that he had converted 38 pieces of gold into three bars without any foreign marking as he did not have dyes for the same. Moreover, on being shown the photographs of the seized gold bars, the refiner vindicated that he had not given the gold shown in the photograph to any person in the last two years. The dichotomy between the statements of respondent taken on different occasions and with the statement of the refiner clearly establishes that the gold that was seized was not the gold that had been received after refining by the refiner. There is a clear mismatch in facts that has not been answered by the respondent. Secondly, the adjudicating authority has categorically stated that the documents that were submitted by the owner of the goods did not correspond with the gold that had been seized. Even with respect to

the invoices that were produced and relied upon by the Commissioner (Appeals) to indicate that there has been shift of burden of proof by the owner to the revenue is without any basis in law as the invoices that have been relied upon by the Commissioner (Appeal) did not specify that the gold that had been purchased had foreign markings. We find that two stands have been taken by the owner which are in complete contradistinction to each other. Firstly, he submits that gold bars were purchased from a dealer namely Safari bullions, and secondly, he submits that three gold bars were produced by the refiner after melting and converting 35 pieces into three gold bars of 1 kg each. It is to be specifically noted that no explanation has been provided with regard to the 'foreign marking' on the three gold bars.

26. It is flabbergasting to note the perfunctory manner in which the Commissioner (Appeal) as well as the CESTAT have dealt with the entire matter. A perusal of the relevant portion of the order of the Commissioner (Appeal) indicates that he has simpliciter shifted the burden of proof from the assessee to the revenue on the basis of invoices that were produced by the owner. It is to be noted that the adjudicating officer after due

diligence has categorically stated that these invoices that were provided by the owner have no nexus with the gold bars that were seized. The Commissioner (Appeal) has jettisoned the other evidences in relation to the statement of the carrier of gold, the statement of the refiner, the contradictory statements made by the owner, the genuineness of the invoices, the lack of specific entry with regard to the gold that was seized in the books of accounts of the owner and has simpliciter held that the revenue did not controvert the genuineness of the documents produced by the owner.

27. In our view, the entire exercise that has been carried out by the Commissioner (Appeal) as well as by the CESTAT is superfluous and without due application of mind wherein relevant and cogent materials have been overlooked and disregarded by both the Commissioner and the CESTAT.

28. The Hon'ble Supreme Court in Commissioner of **Customs vs. Vijay Dasharath Patel**[10] has held that High Court should intervene in the order passed by Tribunal where material and relevant facts have been ignored, legal principles have not been applied correctly

10 **[2007] 2007 taxmann.com 1333 (SC)**

in appreciating evidence and decision has been arrived at by taking into consideration irrelevant factors. The relevant paragraphs of the judgement are quoted hereinbelow:-

> "22. We are not oblivious of the fact that the High Court's jurisdiction in this behalf is limited. What would be substantial question of law, however, would vary from case to case.
>
> 23. Moreover, although, a finding of fact can be interfered with when it is perverse, but, it is also trite that where the courts below have ignored the weight of preponderating circumstances and allowed the judgment to be influenced by inconsequential matters, the High Court would be justified in considering the matter and in coming to its own independent conclusion. (See Madan Lal vs. Mst. Gopi & Anr. [AIR 1980 SC 1754].)
>
> 24. The High Court shall also be entitled to opine that a substantial question of law arises for its consideration when material and relevant facts have been ignored and legal principles have not been applied in appreciating the evidence. Arriving at a decision, upon taking into consideration irrelevant factors, would also give rise to a substantial question of law. It may, however, be different that only on the same set of facts the higher court takes a different view. (See Collector of Customs, Bombay vs. Swastic Woollens (P) Ltd. & Ors. [(1988) Supp. SCC 796]; and Metroark Ltd. vs. Commissioner of Central Excise, Calcutta [(2004) 12 SCC 505*].)
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> 25. Even in a case where evidence is misread, the High Court would have power to interfere. (See West Bengal Electricity Regulatory Commission vs. CESC Ltd. [(2002) 8 SCC 715]; and also Commissioner of Customs, Mumbai vs. Bureau Veritas & Ors. [(2005) 3 SCC 265**].)

29. The Hon'ble Apex Court in the case of **Arulvelu**

vs. State[11] has defined 'perversity' and held that a finding is perverse if it is not only against the weight of evidence but is altogether against the evidence itself. The term perversity was defined by tracing various earlier precedents, which is extracted hereinbelow:

> "24. The expression "perverse" has been dealt with in a number of cases. In Gaya Din v. Hanuman Prasad ((2001) 1 SCC 501] this Court observed that the expression "perverse" means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity. 25. In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. [AIR 1966 Cal 31] the Court observed that "perverse finding" means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665: AIR 1994 SC 1341] the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings. 26. In M.S. Narayanagouda v. Girijamma [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough [(1878) 1 LR Ir 331] the Court observed that a "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey [106 NW 814] the Court defined "perverse" as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc. 27. The expression "perverse" has been defined by various dictionaries in the following manner: 1. Oxford Advanced Learner's Dictionary of Current English, 6th Edn. "Perverse. Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable." 2.

11 **(2009) 10 SCC 206**

> Longman Dictionary of Contemporary English, International Edn. Perverse. Deliberately departing from what is normal and reasonable. 3. The New Oxford Dictionary of English, 1998 Edn. Perverse. Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law. 4. The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.) Perverse. Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant. 5. Stroud's Judicial Dictionary of Words & Phrases, 4th Edn. "Perverse. A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence."

(Emphasis added)

30. Furthermore, the Hon'ble Supreme Court in the case of **S.R. Tewari vs. Union of India**[12] has laid down the attributes of perversity in the following manner:-

> "30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. <u>The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse.</u> But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635: 1985 SCC (L&S) 131: AIR 1984 SC 1805], Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10: 1999 SCC (L&S) 429: AIR 1999 SC 677], Gamini Bala Koteswara Rao v. State of A.P. [(2009) 10 SCC 636: (2010) 1 SCC

12 **(2013) 6 SCC 602**

(Cri) 372: AIR 2010 SC 589] and Babu v. State of Kerala [(2010) 9 SCC 189: (2010) 3 SCC (Cri) 1179].)"

(Emphasis added)

31. One may also look into the Division Bench judgment of the Calcutta High Court in **Commissioner of Customs Preventive Kolkata vs. Shri Anil Kumar Soni**[13] wherein the High Court set aside the order passed by the Tribunal as the Tribunal had disregarded the evidentiary value of the Section 108 statement and effectively reversed the statutory burden of proof on the revenue without the same having being discharged by the assessee. The relevant paragraphs of the judgment are quoted herein below:

> "12.1. In adjudicating the merits of these consolidated appeals, we find a fundamental subversion of the "Reverse Burden of Proof" at the Tribunal level. Following a threadbare analysis of the record, we conclude that the impugned order suffers from fatal legal and factual infirmities. The learned Tribunal proceeded on the erroneous assumption that the Revenue must establish the entire "smuggling chain" with mathematical precision. Such an approach negates the legislative intent behind Section 123 of the Act, which shifts the onus of proof onto the claimant to rebut the presumption of illicit origin once "Reasonable Belief" is established. 12.2. We hold that the The learned Tribunal's order is hit by the vice of perversity. By disregarding the scientific impossibility of the defence and the evidentiary sanctity of the Section 108 statements, the Tribunal effectively reversed

13 **2026 SCC OnLine Cal 3106**

the statutory burden of proof without the Respondents having discharged their legal obligations. The protection of the "Venial Breach" doctrine under Hindustan Steel Ltd. (supra) cannot be extended to a foundational failure of proof involving two kilograms of industrial-grade bullion. A legitimate commercial transaction of such magnitude is not transported secreted in a waist belt, nor does it lack the requisite industrial nomenclature of refinery documentation. 12.3. Having traversed the factual matrix and the statutory landscape, this Court is of the firm opinion that the impugned order is not merely an alternative view of facts, but a fundamental miscarriage of justice rooted in a misapplication of the law. 12.4. We reiterate the following conclusive legal principles as the basis of our determination: (a) We hold that "Reasonable Belief" is a behavioural and material construct, not a geographical one. The "Town Seizure" doctrine cannot serve as a legal sanctuary for the illicit transport of high-purity bullion. Once the modus operandi— clandestine concealment—is established, the jurisdictional trigger of Section 123 is complete. (b) We reaffirm that a statement recorded in a "deemed judicial proceeding" carries a presumption of truth. A noncontemporaneous retraction, appearing after a staggering 850 day interval, must be discarded as a "calculated afterthought" unless corroborated by independent medical or judicial evidence of duress. (c) We hold that in matters of bullion, Scientific Purity is the ultimate provenance. A "paper trail" of GST returns for scrap ornaments cannot bridge the identity mismatch between jewellery alloys and 99.6% pure international-standard bullion. The transition from scrap to 24-carat bullion requires industrial electrolytic refinement, not rudimentary local melting. The failure to produce "Melting Memos" or "Refinery Slips" is fatal to the discharge of the reverse burden of proof.

13.1 Accordingly, the Substantial Questions of Law are answered in the affirmative, in favour of the Revenue. The impugned order of the The learned Tribunal dated 22-11-2024, is found to be legally unsustainable and perverse…."

32. In fact the question of controversy arising here is settled by the Supreme Court in **Vijay Dasharath Patel** (Supra)**, Arulvelu** (Supra) **and S.R. Tewari** (Supra) and the High Court in **Shri Anil Kumar Soni** wherein it has been held that a finding of fact recorded by the Tribunal does not give rise to a substantial question of law merely because the High Court may disagree with it. A substantial question of law arises when vital material evidence has been overlooked by the Tribunal, or when the Tribunal has made a patent error in appreciation of the evidence, or when the finding reached by the Tribunal is perverse in the sense that it could not reasonably have been arrived at on the material before it. Furthermore, if the Tribunal misdirected itself by overlooking salient features of the case and reached an erroneous conclusion, that constitutes a substantial question of law and warrants interference by High Court so as to prevent miscarriage of justice.

33. In the present case, it is clear that the Commissioner (Appeals) as well as CESTAT have dealt with the entire manner in a cavalier fashion and has forsaken their responsibility with regard to the examination of all the evidence that had been produced

and had been relied upon by the adjudicating officer.

34. The discussion in the foregoing parts clearly brings to fore that the discharge of the onus under Section 123 of the Act does not mean the mere production of any document or set of documents relating generally to the business activities of the owner of the smuggled goods. It means the production of specific, relevant, credible, and genuine documents that directly and traceably establish the lawful acquisition of the gold that are the subject matter of seizure. The mere production of documents which are irrelevant adds nothing to the discharge of the burden and does not shift the evidentiary obligation towards the revenue.

35. We are, accordingly at consensus ad idem with the observation and conclusion of the adjudicating authority that the procurement of the seized gold bars is highly suspicious and that the evidence produced by the respondent is wholly insufficient to discharge the onus cast upon them under Section 123 of the Customs Act. The adjudicating authority correctly noted that the invoices produced bore no specific nexus to the seized gold bars, and correctly held that the respondent had failed to discharge the burden of proving lawful

acquisition of the specific seized articles.

36. The Commissioner (Appeals) and the Tribunal fell into a manifest error of law as they did not consider the clandestine manner under which the gold was recovered, the foreign marking of gold, the inconsistencies in the statement of the carriers, the owner and the refiner. Furthermore, failure to observe the purity of gold as well as the foreign marking is clearly an act of perversity. The Tribunal characterization of these discrepancies as mere 'extraneous' is perverse. The observation of the Tribunal with regard to accepting the GST invoices without regard to whether the same had a nexus to the specific seized gold bars as sufficient to discharge the burden under Section 123 is a patent error of law. This approach is a fundamental misunderstanding of the nature and scope of the burden of proof under Section 123 of the Act. It conflates the mere production of documents with the discharge of burden. Accordingly, we hold the confiscation of gold to be justified. The substantive questions of law I and II with regard to the confiscated gold are answered in the affirmative.

37. With regard to the confiscated silver, we observe that the provisions of Section 123 of the Act are

applicable only when it is established that the silver in question is smuggled into India. In relation to the silver, it may be noted that the silver was seized from the residential as well as business premises of Mr. Pugaliya. Neither the silver was seized when it was being transported in a surreptitious manner nor the carriers, who were intercepted, had tendered any statements with regard to smuggling of silver. Furthermore, there was no foreign mark on the silver that was seized. The reason given by the adjudicating authority for seizure of the silver bullion is that the seized silver was more than what was shown available in the stock ledger. We are of the view that unless the customs authorities are able to clearly bring a nexus between the silver and its smuggling, the burden of proof under Section 123 of the Act would not shift on the respondent. We are of the view that the views taken by the Commissioner (Appeal) and the CESTAT with regard to the silver is based on adequate material available on record including the stock ledger, and GST paid puurchase invoices that were duly certified by the chartered account.

38. The Constitution Bench of the Hon'ble Supreme Court in **Gian Chand vs. State of Punjab**[14] as well as in

14 **1961 SCC OnLine SC 388**

Collector of Customs vs. Nathella Sampathu Chetty[15], while dealing with Section 178-A of the Sea Customs Act, 1878 akin to Section 123 of the Customs Act,1962, has settled the law that reasonable belief is a *sine quo non* in relation to the power of seizure that the statute confers on the officer. Reasonable belief must be backed by sufficient evidence of smuggling and mere suspicion is not sufficient to justify seizure, and the prosecution must provide substantive evidence of foreign origin. If there are no foreign markings or documentation, the Customs authorities cannot simply assume that the silver in question were smuggled goods.

39. In this regard, it is relevant to cite the judgment of Delhi High Court in **Shanti Lal Mehta vs. Union of India**[16] wherein it was held that reasonable belief must be based on some material, not mere suspicion. The relevant paragraphs of the judgment are quoted hereinbelow:

> "**69.** Reasonable belief as required by section 110 refers to the point of time when the goods in question are seized and not to a stage subsequent to the act of seizure. (*M.G. Abrol* v. *Amichand*, AIR 1961 Bom 227 (19). The condition precedent that there was such a reasonable belief anterior to the seizure must exist before the presumption under

15 **1962 SCC OnLine SC 30**
16 **1982 SCC OnLine Del 303**

> section 123 can be invoked............
>
> ***
>
> **76.** The belief must be such as any reasonable man in the circumstances of the case would entertain about the existence or non-existence of a thing. Simply because the goods were not accounted for at that time does not necessarily mean that the goods were smuggled goods. Unaccounted goods may be stolen goods. Reasonable belief could be entertained either on the basis of some external inindicia or on the basis of some internal information that the goods had been illegally imported into India from Nepal or some other foreign country either without payment of duty or in contravention of any restriction or prohibition imposed by statute. There was nothing to suggest the foreign origin of the goods. There was nothing to suggest the illegal importation of the goods into the country."

40. In the facts and circumstances of the case, we observe that the initial burden of proof under Section 123 of the Customs Act was not satisfied, and therefore, the burden of proof did not shift to the respondent. The Customs authorities must first establish the foreign origin before invoking the presumption of smuggling. So, we are of the view that in this case, the responsibility was on the Revenue to show that the silver in question was smuggled into the country without payment of appropriate duties of Customs thereon, which the department failed to discharge in this case. Thus, we hold that the burden of proof under Section 123 of the Customs Act does not shift to the respondent so far as it

relates to silver.

41. In relation to the confiscation of cash, it may be noted that the cash was seized along with the silver from the residential and business premises of Mr. Pugaliya. In the instant case, the cash seized was in Indian currency, which falls outside the ambit of Section 123 of the Customs Act, being a non-notified item. Nevertheless, the same was held liable to confiscation on the presumption that it constituted the sale proceeds of smuggled gold and silver having regard to the antecedents of owner viz pendency of proceedings under the Benami Property Transactions Act, 1988. The Revenue seized the cash merely on the basis of suspicion, without there being any cogent evidence to establish that it represented the sale proceeds of smuggled gold and silver. Neither was the cash recovered in a clandestine or secretive manner, nor was there any evidence to suggest that the cash constituted the sale proceeds of smuggled goods. In the absence of any such reasonable basis, the presumption that the cash represented the sale proceeds of smuggled goods was not tenable and shifting the burden of proof onto the respondent under Section 123 of the Act was not

justified. In this regard, we are in agreement with the orders passed by the Commissioner (Appeals) and the CESTAT.

42. In light of the above findings, the substantial questions of law I and II are answered in the affirmative with regard to the three gold bars and accordingly, we direct the restoration of the order passed by the adjudicating authority so far as it relates to the confiscation of the gold bars. In relation to silver and cash, the order passed by the Commissioner (Appeal) and the CESTAT are correct, and therefore, the substantial questions of law I and II are answered in the negative with regard to the silver and cash. Ergo, the order dated November 14, 2022 passed by the adjudicating authority in so far as it relates to the three gold bars is to be reinstated.

43. In relation to the penalties that have been imposed on the owner of the goods, Mr. Anand Navalchand Pugaliya and the two carriers being Nagendra Hiralal Tiwari and Purmanand Ramchandra Mishra, it is to be noted that the Commissioner (Appeals) had quashed the entire penalties imposed upon the aforesaid three persons. In order to bring quietus to the *lis*, the penalties

imposed by the adjudicating officer are reduced to 50% on the respondent in the three appeals before us, since we have upheld the confiscation of gold only. Accordingly, Custom Appeal No.2 and Custom Appeal No.3 are disposed of in aforesaid terms.

44. With the above directions, the custom appeals are **partly allowed** and, accordingly, **disposed of**.

(Shekhar B. Saraf,J.)

I agree

(Abdhesh Kumar Chaudhary,J.)

September 2, 2026
cks/-