

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75757 of 2021

(Arising out of Order-in-Appeal No. 04/CUS(A)/GHY/2021 dated 28.07.2021 passed by the Commissioner (Appeals), C.G.S.T., Central Excise and Customs, 3rd Floor, G.S.T. Bhawan, Kedar Road, Machkhowa, Guwahati – 781 001)

Shri Monirul Mallick

: Appellant

Vill.: Mukundapur, Masat, P.S.: Chanditala, Hooghly,
West Bengal, PIN – 712 701

VERSUS

Commissioner of Customs (Preventive)

: Respondent

N.E.R., Shillong, 110, M.G. Road, Shillong,
Meghalaya, PIN – 793 001

APPEARANCE:

Shri Debaprasad Biswas, Advocate,
Shri Omar Faruk Gazi, Advocate,
Shri Sourav Sen, Advocate,
For the Appellant

Shri Sourabh Chakravorty, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NO. 76637 / 2025

DATE OF HEARING: 23.06.2025

DATE OF DECISION: 25.06.2025

ORDER:

The present appeal has been filed by Shri Monirul Mallick, Vill.: Mukundapur, Masat, P.S.: Chanditala, Hooghly, West Bengal, PIN – 712 701 against the Order-in-Appeal No. 04/CUS(A)/GHY/2021 dated 28.07.2021 wherein the Ld. Commissioner (Appeals), C.G.S.T., Central Excise and Customs, Guwahati has upheld the Order-in-Original dated 05.06.2020 passed by the Id. adjudicating authority.

2. The facts of the case are that on 02.03.2019, at around 12:30 p.m., one Sk. Amjad Ali, employee of Shri Monirul Mallick (the appellant herein) was intercepted at Platform No. 4 of Guwahati Railway Station by the personnel of Government Railway Police, Guwahati Railway Station while he was travelling from Guwahati to Howrah via Saraighat Express Train (12346 DN).

2.1. Upon search, Sk. Amjad Ali was found to be in possession of 06 (six) pieces of gold bars, collectively weighing 499.17 grams. The above detected gold bars were taken to M/s. J.M. Assaying Testing Refinery, H.B. Road, Masjid Gali, Fancy Bazar, Guwahati wherein it was found that the 06 (six) pieces of gold bars were of 99.5% average purity, of 23.9 karat. The said gold bars were subsequently handed over to the Anti-Smuggling Unit, Customs Division, Guwahati for taking further necessary action under the Customs Act, 1962.

2.2. Samples were thereafter drawn from the said gold bars and testing of the same was done through the Senior Quality Control Officer, Assam Hallmarking Centre, Government of Assam, who confirmed the purity of the said six pieces of gold bars as "996.6, 996.1, 997.1, 996.8, 996.7 and 996.6 of 23.9 karat".

3. Considering that the said Sk. Amjad Ali was not having any valid documents to prove licit purchase of the said gold bars, the same were seized under the belief that the same had been smuggled into India without payment of appropriate duties of Customs.

4. On completion of the investigation, a Show Cause Notice bearing File No. VIII(10)113/CUS/SH/2019/8130-31(A) dated 02.09.2019 was issued to the appellant, proposing, inter alia, confiscation of the gold bars seized under Section 111(b) and (d) of the Customs Act, 1962 and imposition of penalty on Sk. Amjad Ali and the appellant under Section 112 of the Act.

4.1. The said Notice was adjudicated by the Ld. Additional Commissioner of Customs (Preventive), North Eastern Region (NER), Shillong vide the Order-in-Original No. COM/CUS/ADDL.COMMR/39/2020 dated 05.06.2020 who ordered absolute confiscation of the said 06 (six) pieces of gold bars totally weighing 499.17 grams valued at Rs.16,87,694/- under Section 111(b) and (d) of the Customs Act, 1962. He also imposed a penalty of Rs.1,60,000/- on the appellant herein, along with Sk. Amjad Ali, under Section 112(b)(i) *ibid*.

5. The appellant, namely, Shri Monirul Mallick, challenged the said order before the Ld. Commissioner (Appeals), who vide the impugned order dated 28.07.2021 has upheld the order of confiscation of the gold in question along with the penalty imposed on the appellant.

6. Aggrieved by the order of confiscation of the said gold bars and imposition of penalty on him, the appellant has filed the present appeal.

7. The Ld. Counsel appearing on behalf of the appellant submits that the appellant is a goldsmith and he had purchased the gold from M/s Nirmala Trading Co, Kolkata, on two dates i.e., 13th February, 2019 and 27th February, 2019. He states that

thereafter all the gold from these purchases were melted and formed into 12 gold bars. It is also submitted that out of the above 12 gold bars, 6 gold bars were given to local gold artisans for the purpose of making gold jewellery and the other 6 gold bars were sent to the Guwahati shop owned by the appellant, and were being brought back to Kolkata, which have been subsequently seized by the Customs Authorities in the impugned proceedings.

7.1. It is further submitted on behalf of the appellant that he has two Gold Jewellery shops viz. one in Hooghly, West Bengal and the other in Guwahati, Assam. The Ld. Counsel for the appellant informs as an internal process in the course of their jewellery business, gold is transferred from one branch to another i.e., Kolkata to Guwahati and Guwahati to Kolkata, which is for the purpose of making gold jewellery in the normal course of their business. It is also submitted that such transfer of gold depends upon their requirement and it is purely a business arrangement.

7.2. It is also pointed out by the Ld. Counsel for the appellant that the appellant is having valid documents for purchase of the said gold and have produced tax invoices in respect of purchase of the said gold bars from M/s. Nirmala Trading Co., Kolkata. It is thus the appellant's contention that he has been able to produce sufficient documentary evidence to prove licit purchase of the gold in question. In this regard, it is submitted that Sk. Amjad Ali was the employee of the appellant, who was carrying the gold from Kolkata to Guwahati to their own unit for the purpose of transferring gold jewellery in the normal course of business; that he was having documentary proof at

the time of seizure of the gold, but the Departmental officers have not taken cognizance of the said documents.

7.3. Further, the appellant claims that at the time of seizure itself, Sk. Amjad Ali had categorically informed that the said gold belonged to their Kolkata unit and he was carrying the same to their unit in Guwahati. In this regard, the Ld. Counsel for the appellant refer to the following documents which were given to Sk. Amjad Ali by the appellant before coming to Guwahati, which has been recorded at paragraph 11 of the Order-in-Original dated 05.06.2020: -

- a. Jay Maa Tara Tax Invoice dt. 27.02.2019
- b. Mallick Jewellery Issue Voucher, Hooghly dt. 28.02.2019
- c. Mallick Jewellery Issue Voucher, Hooghly dt. 28.02.2019
- d. Mallick Jewellery, Guwahati Issue Voucher book.

7.4. It is stated by the appellant that, however, the Id. adjudicating authority did not accept the above documents towards legal purchase of the said gold.

7.5. It is also the appellant's submission that the gold in question was seized from Guwahati Railway Station and it is a town seizure; the gold was also not having any foreign marking and was only having a purity of 99.5%. Therefore, it is contended by the appellant that there is no evidence on record regarding the alleged smuggling of the gold bars into the country. In this regard, it is further submitted that the burden of proof falls on the Revenue, under Section 123 of the Customs Act, 1962, to establish the

smuggled nature of the gold; however, the Revenue has failed to bring in any evidence to substantiate the allegation that the gold in question had been smuggled without payment of appropriate Customs duties. In view of these submissions, the appellant has contended that the gold in question cannot be confiscated when it was seized within the country and no evidence has been adduced by the respondent in support of their allegations. Reliance has been placed by the appellant on the decision of this Tribunal in the case of *Om Prakash Shah &ors. v. Commissioner of Customs (Preventive), Kolkata [Final Order No. 76099-76102 of 2025 dated 28.04.2025 in Customs Appeal No. 75293 of 2025 &ors. – CESTAT, Kolkata]*.

7.6. The appellant has also relied upon the following judgements in support of his contentions: -

(i) *Ram Naresh Chaurasiya –vs- Commissioner of Customs (Prev.) [2019 (365) ELT 940]*

(ii) *Nand Kishore Sumani –vs- Commr. Of Cus., C.Ex. & S.T., Siliguri [2016(333) ELT 448]*

wherein it has been held that gold having 99.5% purity cannot be construed as foreign origin gold and cannot be held liable for confiscation.

7.7. Moreover, the appellant has pointed to the fact that the gold was already in India and was only being transported internally between two branches, in the course of legitimate business.

7.8. In view of the above submissions, the appellant prays for setting aside the order of confiscation of the gold in question and imposition of penalty on the appellant, and thus to allow their appeal.

8. On the other hand, the Ld. Authorized Representative of the Revenue submits that the gold was seized from Sk. Amjad Ali and he was not having the valid documents to show legal procurement of the gold at the time of seizure. Hence, he contends that the gold has been rightly confiscated by the Id. adjudicating authority and penalties have also therefore been correctly imposed.

8.1. It is also his contention that the documents submitted by the appellant are not matching with the gold seized in this case and therefore, the evidence submitted by the appellant does not necessarily indicate that the gold in question has been procured from domestic sources.

8.2. In support of his contentions, the Ld. Authorized Representative of the Revenue placed reliance on the following case-laws: -

- (i) *State of Gujarat v. Shri Mohanlal Jitamalji Porwal & anr.* [1987 (29) E.L.T. 483 (S.C.)]
- (ii) *Commissioner of Customs (Preventive) v. Shri Rajendra Kumar Damani @Raju Damani* [2024 (389) E.L.T. 444 (Cal.)]
- (iii) *Commissioner of Customs, Cochin v. Om Prakash Khatri* [2019 (366) E.L.T. 402 (Ker.)] as affirmed by the Hon'ble Apex Court [2019 (368) E.L.T. A155 (S.C.)]
- (iv) *R.K. Angangbi Singh & ors. v. Commissioner of Customs (Preventive), Shillong* [Final Order Nos. 76536-76539 of 2023 dated 01.09.2023 in Customs Appeal No. 76086 of 2016 & ors. – CESTAT, Kolkata]
- (v) *Deepak Handa & anr. v. Pr. Commissioner of Customs (Preventive)* [Final Order No. 51520-51521 of 2021 dated 25.05.2021 in Customs Appeal No. 52922 of 2019 & ors. – CESTAT, New Delhi]

8.3. In view of the above submissions, the Ld. Authorized Representative of the Revenue supported the impugned order upholding the order of confiscation of the gold and imposition of penalty on the appellant herein.

9. Heard both sides and perused the appeal records.

10. I find that in this case, 06 (six) pieces of gold bars have been seized from the possession of Sk. Amjad Ali by the Personnel of Government Railway Police, Guwahati Railway Station, which were subsequently handed over to the Customs Authorities for initiating further proceedings. Thereafter, the Customs Authorities drew samples from the said gold bars, got the same tested and ultimately the same were seized under the 'reasonable belief' that they were smuggled into the country by illegal means without payment of Customs duties thereon.

11. I observe that, in the instant case, the said gold was seized within the country. Further, it is a fact that the said gold was not having any foreign markings engraved, but there were some diamond markings available on the said gold. In this regard, the appellant's contention is that the said diamond markings would not establish foreign origin of the gold and that after importation, the said diamond markings can be made on the gold procured from domestic sources as well. I agree with the submission of the appellant that the diamond markings on the gold bars alone is not sufficient to arrive at the conclusion that the said gold bars are of foreign origin.

11.1. Further, I find that the gold is having 99.5% purity, which would not automatically make the gold as foreign origin gold. Department must establish the foreign origin of gold with corroborative evidence. In this case, I find that no such corroborative evidence adduced by the Department.

11.2. In this regard, I find that this view is supported by the decision of the Tribunal in the case of *Ram Naresh Chaurasiya v. Commissioner of Customs (Prev.), Patna [2019 (365) ELT 940 (Tri. – Kol.)]* cited by the appellant in support of his contentions. The relevant paragraph of the above said order is reproduced below: -

"18. I find that there is no dispute with the said two Gold Bars recovered from the residential premises owned by the appellant's father and the appellant and his brother Shri Harish Kumar Chaurasia were residing along with their respective families in the said premises. There is no dispute that the said gold bars did not have any foreign marking. No further investigation has been made by the Department thereafter. Thus, the department could not adduce any evidence whatsoever to prove that the said two gold bars were smuggled in the two countries. Therefore, the presumption regarding the smuggled nature of seized gold under Section 123 of the Customs Act, is not invocable."

11.3. I also find that a similar view has been expressed in the case of *Nand Kishore Sumani v. Commr. Of Cus., C.Ex. & S.T., Siliguri [2016(333) E.L.T. 448 (Tri. – Kol.)]*, wherein the following observations have been made: -

"5. Heard both sides and perused the case records. The first issue required to be decided in these proceedings is whether 10 gold bars (1746.580 gms.) seized by the officers on 2-2-2012 are of foreign origin. The said 10 gold bars of different size

and weight were seized on a reasonable belief of being smuggled as per the information of DRI and that the same is brought from Bangladesh and subjected to some retreatment. It is observed from the weighment sheet of seized 10 gold bars that the weight of these gold bars was ranging from 52.470 gms. to 344.720 gms. None of the two seized gold bars were having identical weights. There were no markings of foreign origin of gold on the seized gold bars. No person in these proceedings ever confessed that the seized gold originated from Bangladesh. Though it was in the information that some retreatment on the said gold bars could have been done but no documentary evidence exist on record that any defacing of the foreign markings was done by the appellants on the seized gold bars. The weight of foreign origin gold bars is standard which is not the case in the gold bars seized. It is the argument of the Revenue that report of chemical examine will prevail over the oral statements made. However, it is observed that a chemical examiner can only give the percentage of gold in the gold bars but cannot say whether the seized goods are of foreign origin. Only the purity of the gold has been certified to be 99.92% to 99.96%. There is no rebuttal to the claim of the appellant that in case of gold of foreign origin the % purity of gold is never below 99.99%. Even the findings and calculations made by the Adjudicating authority at Paras 38 & 39 of the Order-in-Original dated 6-2-2014 will not help the case of the Revenue as to how seized goods will become of foreign origin when there are no foreign markings on them and there is no oral evidence also conveying the same of foreign origin. An information received in this case is only a hearsay not corroborated by any other documentary evidence. The seizure of gold bars was also not made in a Custom area or a vehicle coming from the side of Border with Bangladesh. In the light of the above factual matrix it has to be held that the seized goods cannot be considered to be of foreign origin.

6. Regarding applicability of Section 123 of the Customs Act, 1962 it is relevant to go through the provisions of this Section reproduced below.

"Section 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. It is true that as per the above provisions of Section 123 of the Customs Act, 1962 it is not required that gold should contain foreign markings and even gold in primary form or jewellery could also be covered as per the language of the provision. But whether onus of Indian origin on any primary gold or jewellery bearer is cast upon the person in possession of such gold. It may be appreciated that when the provisions of Section 123 of the Customs Act, 1962 were enacted the Gold Control Act was also in operation and gold was considered to be a very sensitive commodity. There was subsequent liberalisation in import policy with respect to gold and even foreign marked gold was allowed to be imported through baggage and through Banks on fulfilling certain conditions. On licit import these foreign marked gold bars can be freely bought and sold in India. However, if any person is found to carry a foreign marked gold in India without a bill then by simply having foreign markings on the gold it cannot be said that the same is of smuggled nature. Once the holder of such gold produces a bill, subsequently, then also the confiscation made by Revenue has been held to be improper by CESTAT in the case of Kapildeo Prasad v. CCP, Patna (supra) decided by this Bench. Following observations have been made by this Bench in Paras 12, 13 & 14 of this case law :

"12. The gold biscuits seized from Shri Awadesh Kr. Thakur have been confiscated by the adjudicating authority after rejecting the documentary evidence produced by the appellants showing the legal purchase of the same from M/s. Chauhan Zevares Pvt. Ltd. and by referring to certain discrepancy in the said document of the seized gold biscuits. However, I find that the discrepancies referred to by the adjudicating authority are not real inasmuch as he has held that whereas the sale voucher shows the goods to be "T.T. Bars", the seized gold is biscuit. He has thus observed that such descriptive variation between the biscuits and the bars raises a reasonable doubt regarding the genuineness of the transaction. The appellants have contended that biscuits and the bars are synonymous terms used by the persons dealing in gold and are interchangeable "T.T. Bars" represent ten tola bars which are also referred to as biscuits. The Commissioner in his impugned Order has nowhere observed as to what is the difference between a biscuit and a bar. Similarly, as regards weight, I find that there is a variation of about 2 gms. in the weight of all the sixteen pieces of gold. The standard 10 tola bars weigh 116.640 gms., and as such, the total weight of 16 pieces of biscuits would come to 1866.240 gms., which is reflected in the sale voucher of M/s. Chauhan Zevares. Similarly, it is a matter of common knowledge that the standard purity of gold is 999.00. As such, as rightly contended by the learned consultant, the small variation in the weight or in the purity of gold is attributable to the human error and cannot be made the basis for rejecting the sale voucher of M/s. Chauhan Zevares who have admitted to have sold the goods to the appellants. This has also been observed by the Commissioner that M/s. Chauhan Zevares have subsequently stated that they were not sure that the gold under seizure was the same as was purchased from them. Naturally a person who has sold the gold, cannot confirm whether the gold seized by the Customs Officers from that person, is the same gold or not. But the said statement made by M/s. Chauhan Zevares further confirms that the sixteen pieces of gold were, in any case, purchased by Shri Kapildeo Prasad from the said M/s. Chauhan Zevares Pvt. Ltd.

13. The Tribunal in the case of S.K. Chains v. Commissioner of Customs (Prev.), Mumbai reported

in [2001 \(127\) E.L.T. 415](#) (Tri. - Mum.) observed as under : -

"7. Thus, today there exists a very peculiar situation. On the one hand the Customs Act considers it necessary to ask a person to establish the legality of the origin of the gold seized from him while on the other hand in pursuance of the relaxations made in the Import Policy and the Baggage Rules framed under that very Act, there is a flood of foreign marked gold in the town. Such gold changes hands several times on importation. Since the repeal of the Gold (Control) Act in 1968, there is no legal requirement for the buyers and sellers of gold to maintain any register nor is there any requirement to issue invoices under any Central Act."

14. In the case of *Sri Samir Kumar Roy & Others v. C.C. (Prev.) West Bengal, Calcutta* - decided by the Tribunal in Order No. A-475-478/Kolkata/2001, dated 4-7-2001 [[2001 \(135\) E.L.T. 1036](#) (T)], the Tribunal has considered the effect of liberalised policy as regards the import and dealing in gold and thereafter, concluded that onus as placed under Section 123 was discharged when the appellants produced the sale/purchase vouchers showing the sale of the goods from the gold dealer who has admitted having sold the same. In the absence of any requirement of law requiring the gold dealers enjoying the sale/purchase of foreign-marked gold in India, to indicate the brand names of the same in the sale/purchase vouchers, the sale documents produced by the appellants cannot be dismissed on the said ground. In the instant case also, we find that the entire chain of sequence starting from importation of gold biscuits of M/s. Kan Karan Impex, its sale to M/s. Chauhan Zevares and further sale to Shri Kapildeo Prasad, is established. As such, taking the said factor into accounts, I am of the view that the onus cast upon the appellants under the provisions of Section 123 stands fully discharged. The confiscation of the gold biscuits is not called for. Accordingly, I set aside the same.

15. Inasmuch as the confiscation of the gold biscuits has been set aside, the confiscation of the truck is not called for. For the similar reasons, there is no warrant for imposition of penalties upon the

various persons. The same is, accordingly, set aside."

7.1 In the light of the above relied upon case law in the case of foreign marked gold also it was held by this Bench that appellant has discharged the onus when the bills covering the foreign marked gold bars are furnished. In the present case the seized gold bars do not bear foreign markings, do not have uniform weight/purity and appellant has shown the purchase bills covering the said gold bars having assorted size, weight and purity. The person who sold the seized goods has also confirmed to have supplied the same to Shri Nand Kishore Somani. In his statement, reproduced in Para (23) on Page 16 of the Order-in-Original dated 6-2-2014, Shri Ajay Kr. Saraff of M/s. SaraffJewellers has confirmed to have supplied the gold bars made out of jewellery, purchased by him. Minor mismatching of difference in weight as calculated by the Adjudicating authority will not make the bills as an afterthought. There could be non-observance of provisions of some other enactments like income-tax or sales tax laws but the same cannot be grounds for confiscation of goods under Section 111 of the Customs Act, 1962 when there is no iota of evidence that seized gold bars are of foreign origin or smuggled into India. Suspicion/presumption howsoever strong cannot take the place of an evidence."

12. It is also a fact that the gold bars in question have been seized from Guwahati Railway Station and therefore, it is a case of town seizure. I find that the Department has not brought in any evidence to establish the foreign origin or smuggled nature of the gold. Under such circumstances, I hold that the provisions of Section 123 *ibid.* are not applicable and hence, the onus is on the Department to prove that the gold is smuggled in nature. I observe that the Department has failed to bring in any evidence in this regard to substantiate their allegation that the gold had been smuggled into the country. Accordingly, I find that the gold in question is not liable for confiscation.

Annexure - A
 (DUPLICATE FOR TRANSPORTER)

Tax Invoice
 JAY MAA TARA

NIRMALA TRADING CO (2018-19)
 6, NALINI SETH ROAD
 1ST FLOOR
 COLKATA-700 007
 PAN- AAKFN 6395D
 MOB: 98313 48381
 Phone-033 2258 1600
 GSTIN/UIN: 19AAKFN6395D1ZU
 State Name : West Bengal, Code : 19
 Buyer

MALLICK JEWELLERY
 MUKUNDAPUR
 MASAT
 HOOGHLY
 GSTIN/UIN : 19BMAPM9233N1Z
 State Name : West Bengal, Code : 19

Invoice No. GSTNCT/1819/2489	e-Way Bill No.	Dated 13-Feb-2019
Delivery Note		Mode/Terms of Payment CHQ- RTGS
Supplier's Ref.		Other Reference(s)
Buyer's Order No.		Dated
Despatch Document No.		Delivery Note Date
Despatched through		Destination
Terms of Delivery BAR NO- CUT PICES		

Sl No.	Description of Goods	HSN/SAC	Quantity	Rate	per	Amount
1	GOLD -9950 Batch : K 174100	71080000	499.705 GMS 499.705 GMS	3,283.49	GMS	16,40,776.70
	SGST @1.5%			1.50 %		24,611.65
	CGST @1.5%			1.50 %		24,611.65
	Total		499.705 GMS			₹ 16,90,000.00

Amount Chargeable (in words) E. & O.E

Indian Rupees Sixteen Lakh Ninety Thousand Only

HSN/SAC	Taxable Value	Central Tax		State Tax		Total Tax Amount
		Rate	Amount	Rate	Amount	
71080000	16,40,776.70	1.50%	24,611.65	1.50%	24,611.65	49,223.30
Total	16,40,776.70		24,611.65		24,611.65	49,223.30

Tax Amount (in words) : **Indian Rupees Forty Nine Thousand Two Hundred Twenty Three and Thirty paise Only**

Company's Bank Details

Bank Name : **STATE BANK OF INDIA**

A/c No. : **33652892551**

Branch & IFS Code : **Burrabazar Kolkata & SBIN00000050**

for **NIRMALA TRADING CO (2018-19)**


Company's VAT TIN : **19362753068**

Company's PAN : **AAKFN 6395D**

Declaration
 WE DECLARE THAT THE INVOICE DESCRIBE SHOWS
 THE ACTUAL VALUE OF GOODS DESCRIBE AND THAT
 ALL PARTICULARS ARE TRUE AND CORRECT

SUBJECT TO KOLKATA JURISDICTION

This is a Computer Generated Invoice



14. I find that the documents submitted by the appellant indicate that they had purchased gold from M/s. Nirmala Trading Company, which, as submitted by the appellant, has been converted into 12 gold bars. The Department has contested this claim of the appellant on the ground that there is mismatch in the weight of the gold bars. In this regard, I find that the appellant has submitted to have already melted the said gold and made 12 new gold bars. Thus, the original numbers available at the time of purchase would not be available in the new bars made after melting. Thus, I find that the appellant has submitted evidence which establishes domestic purchase of the gold from M/s. Nirmala Trading Company.

15. In this regard, I find it apt to refer to the decision of this Tribunal in the case of *Om Prakash Shah & ors. v. Commissioner of Customs (Preventive), Kolkata [Final Order No. 76099-76102 of 2025 dated 28.04.2025 in Customs Appeal No. 75293 of 2025 & ors. – CESTAT, Kolkata]*, wherein it was held as under:–

"6. We find that it is a case of town-seizure and no foreign marking on the gold and purity of the gold is also below 99.9%. In that circumstances, it is the duty of the Revenue to show the reasonable belief why the gold in question is of foreign origin. The Appellants are not required to discharge their obligation under Section 123 of the Customs Act, 1962. Moreover, the Appellant No.(4) has claimed to be the owner of the gold in question and the said owner has shown the invoices for procurement of the said gold by producing his profit and loss account, balance sheet, income tax return and payment of GST on the said gold in question. In that circumstances, the gold in question is not liable for confiscation.

7. In view of this, we hold that the confiscation of gold in question is not sustainable. As we hold that the gold in question is not liable for confiscation and the same is to be released to the Appellant No.(4). Further, as the gold in question is not liable for confiscation, no penalties are imposable on the Appellants. Hence, the vehicle in question is also required to be released to the Appellant No.(1)."

15.1. It is also relevant to refer to the decision rendered by the Tribunal in the case of *Prahlad Kumar Das v. Commissioner of Customs (Prev.), NER, Shillong [Final Order No. 75054 of 2025 dated 15.01.2025 in Customs Appeal No. 75449 of 2023 – CESTAT, Kolkata]*, wherein the Tribunal observed that: -

"13. As it is a case of town seizure having no foreign marking on the gold and gold is of different shape, size and weight and purity of 99.30% to 99.39%, in that circumstances, the gold in question cannot be absolutely confiscated. Therefore, the conditions of Section 110 for seizure of gold are not complied with as there is no reasonable believe that the gold in question is of foreign origin.

14. In view of this, the impugned gold is not liable for confiscation and is to be released to the appellant and no penalty is imposable on the appellant."

15.2. I find that the decisions cited above support the claim of the appellant that the gold in question are purchased domestically and hence they are not liable for confiscation.

16. I have also examined the decisions referred to by the Ld. Authorized Representative of the Revenue in support of his arguments for confiscation of the gold. I find that the decision cited in the case of *State of Gujarat v. Shri Mohanlal Jitamalji Porwal & anr. [1987 (29) E.L.T. 483 (S.C.)]*, pertains to the period when the restrictions under Gold Control Act were in operation. There were specific restrictions for keeping foreign marked gold within the country. Presently, foreign marked gold imported legally are freely available in the country. Hence, the decision rendered under the Gold Control regime is not relevant for the present period where such restrictions are not there. Further, I find that both cases are distinguishable on facts.

16.1. In the judgement of the Hon'ble Calcutta High Court cited by the Ld. Authorized Representative of the Revenue in *Commissioner of Customs (Preventive) v. Shri Rajendra Kumar Damani @Raju Damani [2024 (389) E.L.T. 444 (Cal.)]*, I find that the

reasonable belief, that the goods were of smuggled nature, had been established. However, in the present case on hand, the smuggled nature of the gold has not been established. Also, I find that the appellant has produced evidence of purchase of the gold from domestic sources, which is not there in the decision cited by the Ld. Departmental Representative. Hence, the facts of this judgement are distinguishable from that of the present case.

16.2. I find the other decisions cited by the Ld. Authorized Representative of the Revenue are also distinguishable on facts. In all those cases, there were no corroborative evidences available on record to support the domestic purchase of the gold. However, in this case, it is on record that the appellant is a goldsmith and he had purchased gold from M/s Nirmala Trading Co, Kolkata, on two dates i.e., 13th February, 2019 and 27th February, 2019 and thereafter, all the gold purchased were melted and formed into 12 gold bars, for which the appellant has also produced documentary evidence.

17. Moreover, I observe that in the present case, out of the above 12 gold bars, 6 gold bars were given to local gold artisans for the purpose of making gold jewellery and other 6 gold bars were sent to the Guwahati shop owned by the appellant, which were being brought back to Kolkata. The appellant in this case, claims that it is a case of transfer of gold from one unit of the appellant to the other unit, i.e., from Kolkata to Guwahati and vice versa, which is purely an internal mechanism. In this regard, I am of the view that minor variations in the statements of the employee at the time of his interception cannot be a reason to disregard the documentary evidence of

domestic purchase submitted by the appellant. It may also be relevant to observe that the employee may not be having the full information regarding the source of domestic purchase of the gold at the time of his interception, but, in his statements, he always maintained that the gold was being brought from their other unit. I find that he was having some documents in his procession evidencing domestic purchase of the gold, but, the said documents were not considered by the authorities citing minor variations in his statements. Since the Department could not produce any evidence for establishing the smuggled nature of the gold, I do not find any reason to reject the documentary evidence submitted by the appellant in this case for the domestic purchase of the said gold. Consequently, I find that the documentary evidence submitted by the appellant establishes domestic purchase of the gold and hence, I hold that the gold bars in question are not liable for confiscation.

18. In view of the above discussion and by relying on the decisions cited supra, I hold that the confiscation of the gold bars in question is not sustainable. Hence, I set aside the order of confiscation of the gold bars in question.

19. With regard to the penalty imposed on the appellant under Section 112(b)(i) of the Customs Act, 1962, I find that the appellant has produced documentary evidence for licit purchase of the gold in question. Under these circumstances, I hold that the violations alleged against the appellant in this case do not sustain and therefore, I set aside the penalty imposed on the appellant under Section 112(b)(i) of the Customs Act, 1962.

20. In the result, I pass the following order: -

- (1) I set aside the order of confiscation of the 06 (six) pieces of gold bars totally weighing 499.17 grams valued at Rs.16,87,694/-.
- (2) The penalty of Rs.1,60,000/- imposed on Shri Monirul Mallick under Section 112(b)(i) of the Customs Act, 1962 is set aside.

21. The appeal is disposed of in the above manner.

(Order pronounced in the open court on **25.06.2025**)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd