

**IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [CUSTOMS]
ORIGINAL SIDE**

CUSTA 30 OF 2025

IA NO: GA 2 OF 2025

**COMMISSIONER OF CUSTOMS PREVENTIVE KOLKATA
VS
SHRI ANIL KUMAR SONI**

CUSTA 31 OF 2025

IA NO: GA 2 OF 2025

**COMMISSIONER OF CUSTOMS PREVENTIVE KOLKATA
VS
SHRI ANIL KUMAR GAUR**

BEFORE:

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
AND
THE HON'BLE JUSTICE UDAY KUMAR**

For the Appellant : *Mr. Bhaskar Prasad Banerjee, Ld. Adv.*
Mr. Tapan Bhanja, Ld. Adv.

For the Respondent : *Mr. Arijit Chakraborti, Ld. Adv.*
Mr. N.K. Chowdhury, Ld. Adv.
Ms. Nilotpall Chowdhury, Ld. Adv.
Mr. Prabir Bera, Ld. Adv.
Mr. Deepak Sharma, Ld. Adv.

Hearing concluded on : *13.02.2026*

Judgment on : *31.03.2026*

Uday Kumar, J:-

1. INTRODUCTION

- 1.1 These two appeals, preferred by the Commissioner of Customs (Preventive), Kolkata, under Section 130 of the Customs Act, 1962 (hereinafter "the Act"), challenge a common Final Order of the CESTAT, Eastern Zonal Bench, dated November 22, 2024. The litigation originates from a singular investigative operation resulting in the interception of 1,999.90 grams of gold bullion and its subsequent absolute confiscation by the Adjudicating Authority.
- 1.2 CUSTA 30 of 2025 concerns Shri Anil Kumar Soni (Respondent No. 1), the proprietor of M/s A.R.P. Ornaments, who asserts lawful ownership of the seized metal. CUSTA 31 of 2025 pertains to Shri Anil Kumar Gaur (Respondent No. 2), the carrier from whose physical possession the bullion was recovered. Since both appeals arise from an identical evidentiary bedrock and involve synchronous questions of law regarding the interpretation of Sections 108 and 123, they are hereby disposed of by this Common Judgment.

2. ADMISSION AND SUBSTANTIAL QUESTIONS OF LAW

2.1. Upon a preliminary perusal of the records and having heard the learned counsel for the Appellant, this Bench admits the appeals on the following substantial questions of law:

- a. Whether the Learned Tribunal was correct in holding that the Department failed to establish "reasonable belief" for seizure under Section 123 in a town seizure?
- b. Whether a confessional statement under Section 108, retracted after a period of two years, loses its evidentiary value?
- c. Whether the production of GST invoices without a documentary nexus to the melting process is sufficient to discharge the reverse burden of proof?

3. FACTUAL MATRIX

3.1 On May 25, 2018, acting on specific and credible intelligence, Customs officers intercepted Shri Anil Kumar Gaur (Respondent No. 2), at Howrah Railway Station. A search of his person led to the recovery of two gold bars, weighing 1,999.90 grams, who was transporting the same surreptitiously by hiding it within a specially stitched cotton waist belt, worn beneath his garments. The contention of

Revenue that this unconventional clandestine way to carry the gold constitutes the primary "fact in issue", was erroneously brushed aside by the Learned Tribunal merely on the ground of technicality.

3.2 Following the interception and seizure, a statement was recorded under Section 108 of the Act on May 26, 2018. In this initial deposition, Shri Gaur admitted that he was an employee of M/s A.R.P. Ornaments, Varanasi, and categorically stated that the gold was of foreign origin, having been received from an unidentified individual in the Sonapatty area of Kolkata for transit to Varanasi. Notably, this stance was not a momentary admission; it was reaffirmed by him in a subsequent statement recorded nearly a year later, on April 5, 2019, wherein he once again confirmed the illicit nature of the transit.

3.3 The narrative took a definitive turn when Shri Anil Kumar Soni (Respondent No. 1), the proprietor of M/s A.R.P. Ornaments, appeared before the authorities to claim ownership of the seized metal. His defence was anchored on the assertion that the gold was of "indigenous origin," purportedly resulting from the melting of approximately 4.7 kg of scrap ornaments accumulated through his business over time and personal sources.

- 3.4 He asserted that these ornaments were converted into two bars of 99% purity and sent to Kolkata through Respondent No. 2 for an exchange that allegedly failed due to unfavourable market rates. To fortify this claim, the Respondents produced a "paper trail" comprising GST returns for "old ornaments" and corresponding purchase invoices.
- 3.5 The Revenue sought to dismantle this defence by relying on scientific data that presents a formidable challenge to the Respondents' version of events. A report from the Central Revenues Control Laboratory (CRCL) indicated that the gold possessed a fineness of 99.5% to 99.6%. The Adjudicating Authority identified a glaring "Identity Mismatch" in the Respondents' provenance; while the local melting of scrap jewellery (commonly referred to as *Kachcha* gold) rarely transcends a purity threshold of 91% to 92%, the seized bars exhibited the 24-carat industrial standard typical of international bullion. Achieving 99.6% requires industrial electrolytic refining.
- 3.6 Crucially, despite claiming a transformation of scrap into bullion, the Respondents signally failed to produce a single "melting memo," "refinery slip," or "conversion certificate" from a recognized refinery to explain how crude jewellery reached such a high degree of scientific purity.

- 3.7 The Adjudicating Authority, applying the "Prudent Man" test, found the clandestine concealment and the total lack of industrial documentation to be irreconcilable with a legitimate domestic transaction and accordingly ordered absolute confiscation of the gold along with consequential penalties, noting the CRCL Lab Report indicated a purity of 99.5% to 99.6%—atypical for local melting.
- 3.8 However, the tide turned at the appellate stage. This order was overturned by the Commissioner (Appeals) and subsequently by the Tribunal. They took the view that this was a "town seizure" far from the international border.
- 3.9 This decision was subsequently overturned by the Commissioner (Appeals) and affirmed by the Learned Tribunal, primarily on the ground that the interception was a "town seizure" occurring far from the international border. The Learned Tribunal held that the absence of foreign markings on the gold bars precluded the Department from harbouring a "reasonable belief" of smuggling. The Tribunal further dismissed the 850-day delay in the carrier's retraction of his confession as a mere "technical or venial" breach, thereby vacating the confiscation and exonerating the Respondents.
- 3.10 Aggrieved by this total exoneration, the Revenue has approached this Bench, asserting that the Tribunal's reliance

on the "Town Seizure" doctrine constitutes a misdirection in law. The Revenue reiterates that the jurisdictional trigger of Section 123 does not vary based on geography; once a "Reasonable Belief" is formed—grounded in the surreptitious conduct of the carrier and the nature of the goods—the statutory burden shifts entirely to the claimant.

3.11 In its pursuit of an unattainable standard of proof, the Tribunal has effectively sidelined the "Prudent Man" test established by the Hon'ble Supreme Court in *Collector of Customs, Madras v. D. Bhoormall* [1983 (13) E.L.T. 1546 (S.C.)]. The law does not demand mathematical certainty, which is the foil of every smuggling investigation. It requires only that the cumulative weight of the evidence, the sophisticated concealment, the extreme purity of the goods, and the revealing delay in retraction, creates a degree of probability that any reasonable mind would accept as proof of smuggling. To ignore this collective gravity is to render the Customs Act toothless.

3.12 The Tribunal's order is not merely erroneous; it is perverse. It flagrantly ignores settled law regarding the potency of statements recorded under Section 108. Such a statement is a cornerstone of evidence, yet the Tribunal has allowed it to be dismantled by a retraction that bears all the hallmarks of a "calculated afterthought" and a legal ruse. By failing to

scrutinize the timing and motive of this retraction, the Tribunal has rewarded the claimant's subversion of the truth, prioritizing a procedural facade over substantive justice.

3.13 We are now called upon to determine whether the Respondents' defence, when weighed against the scientific data and the clandestine conduct of the carrier, is sufficient to discharge the heavy onus placed upon them by the legislature.

4. SUBMISSIONS ON BEHALF OF THE APPELLANT (REVENUE)

4.1 Mr. Bhaskar Prasad Banerjee, Learned Counsel appearing for the Revenue, opened his challenge by characterizing the impugned order of the Learned Tribunal as a "legal non-sequitur" that fails to harmonize the clandestine facts of the case with the specialized evidentiary standards of the Customs Act. He contended that the Revenue's case is anchored on a "tripod of evidence"— namely

- (i) The surreptitious modus operandi of concealment;
- (ii) The voluntary judicial admissions recorded under Section 108 of the Act, and
- (iii) The scientific purity of the metal (99.6%) as established by the CRCL Report.

All of which were brushed aside by the Tribunal as fundamental evidentiary error. Mr. Banerjee contended that the Tribunal's failure to evaluate these factors cumulatively, rather than in isolation, constitutes a perversity of approach.

- 4.2 Building on this factual foundation, Mr. Banerjee submitted that the gold in question squarely falls within the ambit of "prohibited goods" as contemplated under Section 2(33) of the Act. Relying on the seminal decision of the Apex Court in *Balkrishna Chhaganlal Soni v. State of West Bengal [(1974) 3 SCC 567]* (particularly paragraphs 17 and 20), he argued that the "reasonable belief" harboured by the seizing officers was not a product of idle conjecture; clandestine transport of two kilograms of gold bars (the notified commodity under Section 123), surreptitiously concealed in a specially stitched cotton waist belt, is the quintessential hallmark of smuggling. This position is further fortified by the ratio in *Rahul Goyal v. Commissioner of Customs (Prev.), 2017 (357) E.L.T. 1007 (Tri. - Del.)* where it was held that the illicit nature of such notified goods triggers the immediate rigors of Section 123, shifting the onus of proof squarely upon the possessor.
- 4.3 In the light of surreptitious conduct, Mr. Banerjee, Learned Counsel for the Revenue vehemently challenged the Tribunal's finding that the Department failed to establish "Reasonable

Belief" merely because the interception occurred in domestic territory—a "town seizure"—and the bars lacked foreign markings. Drawing strength from the recent judgment of this Court in *Commissioner of Customs (Prev.) v. Rajendra Kumar Damani* [(2024) 389 ELT 444, CUSTA 16 of 2023], Mr. Banerjee emphasized that "Reasonable Belief" is a subjective satisfaction based on a "Standard of Prudence" rather than a standard of mathematical certainty. This principle is mirrored in *Sampad Narayan Mukherjee v. Union of India* [2019 (366) ELT 280 (Cal)], which clarifies that the lack of foreign inscriptions does not *ipso facto* preclude a prudent officer from forming a belief of illicit origin when faced with clandestine *modus operandi*. suspicious behaviour

- 4.4 Transitioning from the validity of the seizure to the weight of the investigation, Mr. Banerjee placed heavy reliance on the initial statements of Respondent No. 2 recorded under Section 108 of the Act. Ld. Counsel reminded this Bench that under Section 138A, there exists a statutory presumption of a culpable mental state, which the Respondents failed to rebut. He argued that the carrier's confession was not a solitary instance but was reaffirmed a year later, making the subsequent retraction after a staggering 850-day interval a "calculated afterthought." Citing *Ciabro Alemao v. Commissioner of Customs, Goa* [2018 (362) ELT 465 (Bom)]

and the Division Bench rulings in *Commissioner of Customs, Airport and Adm. v. Himadri Chakraborty* [2023 (386) ELT 418 (Cal)] and *Ajay Saraogi v. Union of India* [2023 (386) ELT 333 (Cal)], he argued that a stale retraction without contemporaneous evidence of duress cannot diminish the evidentiary sanctity of a statement recorded in a "deemed judicial proceeding."

4.5 Further, Mr. Banerjee contended that the Respondents' defence of "indigenous melting" is a scientific fallacy. Relying on the Kerala High Court in *Commissioner of Customs, Cochin v. Om Prakash Khatri* [2019 (366) ELT 402 (Ker)] (specifically paragraphs 12, 19-21), he submitted that the 99.6% purity of gold (International Bullion Standard), as confirmed by the CRCL Report, acts as a silent but formidable rebuttal to the claim of crude local refining. The Respondents failed to bridge the "Identity Mismatch"—producing a "paper trail" of GST returns and invoices for 22-carat scrap while possessing 24-carat industrial bullion, but failed to produce a single "melting memo" or "refinery slip" to explain the transformation into 24-carat bullion.

4.6 Addressing the preliminary objection regarding maintainability and monetary limits, Mr. Banerjee invoked the "Threshold-Neutral" exceptions. While acknowledging the revised Rs. 1 Crore limit under Instruction No. 390/Misc./30/2023-JC dated

02.11.2023, Mr. Banerjee pointed to the parent Circular dated 17.08.2011 and the Instruction dated 26.12.2014, which exempt cases involving the interpretation of statutory provisions like Section 123. Given that the combined value of the gold and penalties in the present case exceeds Rs. 2.5 Crores, it was submitted that the appeal is fully maintainable and that the Tribunal's total exoneration of the respondents constitutes a perversity of law that warrants this Court's intervention.

4.7 In view of the submissions made and the legal authorities cited, Mr. Banerjee, moved this Court with the prayer that the Final Order of the Learned CESTAT, Kolkata, dated November 22, 2024, be set aside in its entirety as being hit by the vice of perversity, and sought the restoration of the Order-in-Original, thereby upholding the absolute confiscation of the 1,999.90 grams of gold and the consequential penalties under Sections 112(b) and 114AA of the Act. It is also prayed to hold that the "Reverse Burden of Proof" under Section 123 remains undiluted by the location of seizure and that the Respondents signally failed to discharge the same. Ultimately, Mr. Banerjee prayed for a decree that reinforces the statutory rigor of "Reasonable Belief" based on the clandestine conduct and scientific purity of the metal, and for such other orders as

this Bench deems fit to protect the interests of the National Exchequer.

5. SUBMISSIONS ON BEHALF OF THE RESPONDENTS

- 5.1. *Per contra*, Mr. Arijit Chakraborti, Learned Counsel appearing for the Respondents, has raised a multi-layered defence, primarily contending that the Revenue's appeal is a "procedural overreach" that ignores both the binding nature of departmental circulars and the constitutional safeguards protecting citizens against coerced evidence. He argued that the Tribunal's order is a well-reasoned finding of fact, which correctly identified that the Revenue failed to cross the jurisdictional threshold from "mere suspicion" to "reasonable belief."
- 5.2. Opening with a formidable preliminary objection, Mr. Chakraborti submitted that this appeal is hit by the bar of maintainability. Relying on the recent dictum of the Meghalaya High Court in *Commissioner of Customs (Preventive) v. Daleep Kumar Verma & Ors. [Cus App No. 1/2024, dated 22.10.2024]* and the Manipur High Court in *Commissioner of Customs (Preventive) Shillong v. R.K. Swami Singh [2025 (35) Centax 262 (Manipur)]*, he contended that the subject matter relates to valuation and is hit by the monetary limits prescribed in the Revenue's own Instruction

No. 390/Misc./30/2023-JC dated 02.11.2023, which precludes appeals where the amount is below Rs. 1 Crore. He further fortified this stance by invoking the Constitution Bench in *Collector of Central Excise, Vadodara v. Dhiren Chemical Industries [(2002) 2 SCC 127]* and the Madras High Court in *Commissioner of Central Excise, Chennai-IV v. Sundaram Fasteners Limited [2014 (304) ELT 7 (Mad)]*, asserting that departmental instructions are mandatory commands that the Revenue cannot bypass at its convenience, thereby creating an "estoppel by circular."

- 5.3. Inextricably linked to this procedural bar, Mr. Chakraborti argued that the entire proceedings are vitiated by the lack of a valid "Reasonable Belief" at the inception of the seizure. Drawing support from the Gujarat High Court in *Union of India v. Abdulkadar Abdulgani Hasmani [1991 (55) ELT 497 (Guj)]* and this Court's decision in *Commissioner of Customs Excise & Service Tax v. Nand Kishore Somani [2016 (337) ELT 10 (Cal)]*, Mr. Chakraborti submitted that in an inland "town seizure" where gold lacks foreign markings, the Department cannot harbour a belief of smuggling based solely on the manner of transport. He emphasized that as per the ratio in *Commissioner of Customs, Excise & Service Tax Rohtak v. Merino Panel Product Ltd. [(2022) 1 Centax 59 (S.C)]*, and *Rara Brothers v. M.L. Dey [2000 (125) ELT 425 (Patna HC)]*,

"Reasonable Belief" must be a judicial conclusion, rooted in tangible material rather than "suspended animation" or "mere suspicion," a threshold the Revenue failed to satisfy.

- 5.4. Transitioning to the evidentiary weight of the carrier's statement, Mr. Chakraborti placed heavy reliance on the landmark ruling in *Vinod Solanki v. Union of India & Anr.* [(2008) 16 SCC 537], for the contention that a confession is "weak evidence," particularly when the same was extracted under duress and physical threat. The legal principle explained in *Vinod Solanki (supra)*, that the Court must weigh the evidentiary value by bearing in mind the attending circumstances of the retraction, as the initial statement was extracted under duress and physical threat. Therefore, these statements should be excluded as not admissible due to effect of Section 24 of the Indian Evidence Act, read with the constitutional safeguards of Article 20(3).
- 5.5. He further contended that the 850-day delay in retraction, characterized by the Revenue as an afterthought, must be weighed against the attending circumstances and the lack of independent corroboration. Relying on the principles of natural justice highlighted in *Ajay Saraogi (supra)*, *Commissioner of Customs Airport and Adm. v. Himadri Chakraborty (supra)*, and the Bombay High Court in *Union of India v. Imtiaz Iqbal Pothiawala [2019 (365) ELT 167 (Bom)]*,

he contended that the absence of regular books of account cannot *ipso facto* lead to an inference of smuggling, and Revenue's reliance on the CRCL report without allowing cross-examination of the experts is a fatal flaw in the adjudicatory process.

- 5.6. Mr. Chakraborti maintained that the Respondents successfully discharged their burden by producing a "paper trail" of GST returns and purchase invoices for old ornaments. Citing the very recent decision in *Commissioner of Customs (Preventive) v. Shri Prahlad Kumar Das [Cus Ref 2/2025, dated 13.10.25]*, Mr. Chakraborti asserted that once purchase invoices and GST returns for "old ornaments" are produced, the Department cannot discard them in favour of a presumed "identity mismatch."
- 5.7. He submitted that the purity of 99.6, in itself, would not be a sole ground for holding the presumption of smuggled gold bar. He further underscored that the minor difference in weight (1,999.900g vs 2000g) is an artefact of scale calibration rather than any criminal intent. Referring the above facts he argued that any minor discrepancy in weight or purity is merely a "technical or venial" breach as per the ratio held in *Hindustan Steel Ltd. v. State of Orissa [1969 (2) SCC 627]*, which does not warrant the draconian measure of absolute confiscation.

5.8. Mr. Chakraborti underscored that the Respondents successfully discharged their onus validly by producing documentary evidence, including GST returns and purchase invoices. Therefore, he prayed for dismissal of the Revenue's appeal at the threshold and the affirmation of the Tribunal's order, was seeking total exoneration and the release of the seized gold.

6. THE CORE CONTROVERSY

6.1. We find ourselves at the intersection of two competing legal narratives. On one hand, the Revenue seeks to enforce the strictures of the "Reverse Burden" under Section 123, predicated upon the carrier's surreptitious conduct and the high scientific purity of the metal. Conversely, the Respondents seek sanctuary under the "Town Seizure" doctrine and the purported regularity of their commercial documentation.

6.2. The threshold issue before this Bench is whether the Tribunal's decision to prioritize the Respondents' "paper trail" of domestic transactions over the Department's investigative findings and scientific data constitutes a perversity of law. We must determine if the Respondents successfully bridged the "Identity Mismatch"—the vast scientific gulf between the "raw

scrap" they allegedly processed and the international-standard "high-purity bullion" intercepted by the Revenue.

7. DETERMINATION ON THE PRELIMINARY OBJECTION AS TO MAINTAINABILITY

- 7.1. In adjudicating the challenge to the maintainability of these consolidated appeals, we must first address the Respondents' contention that this Court is divested of jurisdiction by both statutory mandate and administrative policy. The challenge is twofold: first, that the dispute falls within the exclusionary category of "valuation" under Section 130(1) of the Customs Act, 1962; and second, that the appeal is barred by the ₹1 Crore monetary threshold prescribed by CBIC Instruction No. 390/Misc./163/2010-JC (as modified on November 2, 2023). We find it imperative to dissect these objections through the prism of the specialized evidentiary architecture of the Act.
- 7.2. The Respondents assert that since the Learned Tribunal vacated the "confiscation," such a determination is inextricably linked to "assessment," thereby reserving exclusive jurisdiction for the Hon'ble Supreme Court under Section 130E(b). We find this objection to be a fundamental misconstruction of the statutory scheme. The "valuation" contemplated under the exclusionary clause refers to the technical quantification of duty for assessment purposes. In

sharp contradistinction, an order of "Absolute Confiscation" under Section 111 is an enforcement action predicated on the illicit nature of the goods—an *action in rem* against the property itself.

- 7.3. This position is firmly anchored in the celebrated *ratio decidendi* of *Navin Chemicals Mfg. & Trading Co. Ltd. v. Collector of Customs [1993 (68) E.L.T. 3 (S.C.)]*, which clarifies that determining whether goods are liable to confiscation is a question of statutory violation, not an arithmetic exercise of tax quantification.

"The determination of a question relating to the rate of duty or the value of goods for the purposes of assessment... does not include a question of whether the goods are liable to confiscation or whether a penalty is imposable." (Paragraph 11)

- 7.4. Parallel to this statutory objection, the Respondents invoke the policy bar, contending that the appeal is precluded by the Rs. 1 Crore threshold. While departmental circulars are binding on the Revenue, they do not act as an absolute ouster of judicial review, as observed by the Constitution Bench in *Dhiren Chemical Industries (supra)*. The parent Circular No. 390/Misc./163/2010-JC dated August 17, 2011, identifies "threshold-neutral" scenarios where an appeal must be filed regardless of the amount. Specifically, cases involving the interpretation of a statutory provision (such as Section 123)

or those of a recurring legal nature are exempt from monetary bars. The "Town Seizure" doctrine and the discharge of the reverse burden are recurring legal controversies that demand judicial finality.

- 7.5. Furthermore, even if the monetary threshold were to be strictly applied, the Respondents' objection is both legally infirm and factually moot. The value of the 1,999.90 grams of gold at the time of seizure was approximately Rs. 1.5 Crores, which, when coupled with the cumulative penalties exceeding Rs. 1 Crore, places the financial impact of this litigation well above the revised limit. Most significantly, where a Tribunal arrives at a finding by ignoring material evidence—specifically the 99.6% purity and the 850-day delay in retraction—such a finding is hit by the vice of perversity. Since perversity in a finding of fact constitutes a Substantial Question of Law, this Court is duty-bound to intervene.
- 7.6. Accordingly, we hold that the setting aside of an absolute confiscation is an enforcement dispute, the interpretation of Section 123 is a recurring legal necessity, and the total value exceeds the policy threshold. The preliminary objections as to maintainability are, therefore, overruled.
- 7.7. We shall now proceed to evaluate the merits of the "tripod of evidence" presented by the Revenue.

8. THE MERITS OF THE SEIZURE AND SCIENTIFIC PURITY

8.1. Having navigated the procedural thickets of maintainability, we now enter the substantive core of this controversy: the merits of the seizure and the scientific purity of the subject gold. Our inquiry is directed toward whether the Learned Tribunal was legally justified in reversing the order of absolute confiscation by compartmentalizing the evidence, rather than evaluating the cumulative weight of what the Revenue aptly describes as a "tripod of evidence." This tripod—comprising the clandestine manner of transport, the voluntary admissions under Section 108, and the high scientific purity of the metal—forms the bedrock of the Department's case. Conversely, the respondents seek sanctuary under the "town seizure" doctrine, arguing that an inland interception of unmarked gold creates an insurmountable evidentiary gap that a mere "paper trail" of commercial transactions can sufficiently bridge.

8.2. As a preliminary factual observation, we note that the value of the 1,999.90 grams of gold (approx. Rs. 1.5 Crores) and the total penalties (Rs. 1.02 Crores) satisfy both the monetary and legal thresholds for this Court's intervention. The sheer volume of the metal and its concentration into high-purity

bars elevate this matter beyond a routine commercial dispute into the realm of a grave statutory violation under the Act.

8.3. Regarding the first evidentiary pillar—the clandestine manner of transport—it is an admitted fact that the gold was found neither in a briefcase, nor a commercial parcel, nor even personal baggage. It was found secreted within a specially stitched cotton waist belt worn by Respondent No. 2 beneath his garments. The Learned Tribunal characterized this as a "technicality" of transport; however, we find this characterization to be legally fragile. Applying the "Prudent Man" test as envisaged under Section 123, the choice of a hidden waist belt for transporting high-value bullion is a potent indicator of an intent to evade detection—a quintessential hallmark of illicit transit that warrants the formation of "Reasonable Belief."

8.4. The second, and perhaps most scientifically damning pillar, is the purity of the metal. The Respondents' defense rests on the claim that they melted "old ornaments" (22-carat jewellery) to produce these bars. However, the CRCL Lab Report confirms a fineness of 99.5% to 99.6%. We must observe that the transition from scrap jewellery to industrial-standard 24-carat bullion is not a product of simple "indigenous melting" in a local crucible. It requires an

electrolytic refining process to remove the alloys (copper, silver, or zinc) inherent in jewellery.

- 8.5. While the Respondents produced GST returns for "old ornaments," they signally failed to produce any "Melting Memos" or "Refinery Certificates" from a recognized refinery to explain how 22-carat scrap reached a 99.6% international bullion standard. This "Identity Mismatch" creates a chasm in the defense that the Tribunal appears to have overlooked. In the absence of a documented industrial provenance, the high purity of the metal, when coupled with the surreptitious concealment, provides a robust foundation for the Revenue's invocation of the reverse burden under Section 123.

9. ANALYSIS ON REASONABLE BELIEF AND STATUTORY BURDEN (SECTION 123)

- 9.1 The tectonic plates of this legal dispute rest upon the interplay between "Reasonable Belief" under Section 123 and the evidentiary sanctity of the investigations conducted therein. We find that the Learned Tribunal's primary justification for exoneration—the domestic location of the interception—represents a fundamental misapplication of the statutory framework. Section 123 constitutes a self-contained code; it does not establish a geographical hierarchy for the formation of "Reasonable Belief." Whether bullion is intercepted at an

international border or within a domestic metropolis, the jurisdictional trigger remains the "Prudent Man Test" as propounded in *D. Bhoormall (supra)*.

9.2 In distilling the essence of "Reasonable Belief," we are guided by the seminal observations of the Hon'ble Supreme Court in *D. Bhoormall (supra)*, which clarify that the Revenue is not mandated to establish its case with mathematical certainty at the threshold stage. Rather, it must demonstrate a degree of probability such that a "prudent man" would, based on the available material, believe in the illicit origin of the goods. This subjective satisfaction, as reaffirmed by this Court in *Rajendra Kumar Damani (supra)*, is generally insulated from judicial review unless found to be wholly arbitrary or capricious. The Patna High Court observed in *M.L. Dey (supra)* that reasonable belief is more than mere suspicion; it is a belief reached by a prudent man applying his mind judicially to the facts.

9.3 We find that the Tribunal's reliance on a "town seizure" doctrine creates an artificial evidentiary barrier that ignores the realities of modern smuggling. Under settled law, the validity of a seizure under Section 110 must be tested against the Standard of Prudence, not a Standard of Location. The "Reasonable Belief" mandated by statute is not a final

conviction of guilt, but a *prima facie* satisfaction derived from the totality of the circumstances.

- 9.4 In the instant case, the "belief" was not anchored in the mere possession of gold, but in the highly surreptitious conduct of Respondent No. 2. Two kilograms of bullion were not transported through transparent commercial channels; they were bound to the carrier's person in a specially stitched cotton waist belt—a quintessential hallmark of clandestine movement. To hold that such a *modus operandi* does not constitute "material" for reasonable belief is to substitute judicial reality with clinical isolation.
- 9.5 Furthermore, the absence of foreign markings does not *ipso facto* vitiate "Reasonable Belief." To hold otherwise would be to ignore the strategic defacement frequently employed by smuggling syndicates to mask provenance. Smuggled gold does not lose its illicit character by moving inland or through the tactical removal of origin stamps. Applying the ratio of *D. Bhoormall (supra)*, we find that the clandestine manner of transport and the lack of contemporaneous provenance constituted sufficient "material" for a prudent officer to form a valid belief.
- 9.6 Consequently, we hold that the jurisdictional prerequisite of Section 123 was fully satisfied, and the burden of proof

shifted squarely and inextricably to the Respondents—a burden they signally failed to discharge.

10. THE EVIDENTIARY SANCTITY OF SECTION 108 STATEMENTS

10.1. Regarding the Learned Tribunal's summary dismissal of the statements recorded under Section 108 of the Act, we find it imperative to delineate the specialized statutory landscape governing such evidence. Section 108 empowers a Gazetted Officer of Customs to summon any person to provide evidence or produce documents. Sub-section (3) mandates that all persons so summoned are "bound to state the truth," and crucially, under sub-section (4), such inquiries are elevated by legal fiction to the status of "judicial proceedings" within the meaning of Sections 193 and 228 of the Indian Penal Code. This statutory character fundamentally distinguishes these depositions from ordinary confessions recorded by police authorities.

10.2. Following the celebrated Constitution Bench decision in *Illias v. Collector of Customs, Madras* [AIR 1970 SC 1065], it is settled law that Customs Officers are not "police officers" for the purposes of Section 25 of the Evidence Act. Their primary mandate is the protection of the National Exchequer and the prevention of smuggling; since they lack the power to file a

charge sheet under Section 173 of the Code of Criminal Procedure, a confession recorded by them is admissible as substantive evidence. Such statements are neither hit by the exclusionary rules of the Evidence Act nor do they violate the constitutional protection against self-incrimination enshrined in Article 20(3). As the Apex Court clarified in *Ramesh Chandra Mehta v. State of West Bengal* [AIR 1970 SC 940], at the stage of a Section 108 inquiry, the deponent is not an "accused" in the technical sense, rendering the shield of Article 20(3) unavailable.

10.3. The core controversy here lies in the evidentiary weight attached to a retracted statement. For a retraction to be legally potent, it must be contemporaneous. We are guided by the ratio in *K.I. Pavunny v. Asst. Collector (HQ), Central Excise Collectorate, Cochin* [1997 (3) SCC 721], wherein the Supreme Court held:

"It is the duty of the court to look into the facts and circumstances of each case to find whether the confession was voluntary... If the court is satisfied that the confession was voluntary and true, it can form the basis of conviction."

10.4. As held in *Ciabro Alemao (supra)* and reaffirmed by this Court in *Ajay Saraogi (supra)*, the failure to complain of duress before a Magistrate at the first available opportunity is fatal to a plea of coercion. In the present case, Respondent No. 2

(Shri Gaur) appeared before the authorities a full year after the initial seizure and voluntarily reaffirmed his statement.

10.5. The silence of the Respondents for over two years, followed by a retraction—a staggering 850 days later—only upon the receipt of a Show Cause Notice, marks it as a "calculated afterthought" and a strategic ruse. The Tribunal's decision to prioritize this stale denial over a twice-confirmed judicial statement is perverse. The law cannot allow a "deemed judicial proceeding" under Section 108 to be neutralized by a belated signature of convenience. A voluntary statement recorded in such proceedings cannot be displaced by a subsequent denial unless the attending circumstances clearly demonstrate coercion. In this instance, the Respondents' prolonged silence speaks louder than their belated protestations.

11. THE SCIENTIFIC REBUTTAL: PURITY AND PROVENANCE

11.1 The Respondents' defense rests upon a purported "paper trail" that collapses under the weight of scientific reality. While they maintain that the seized gold was "indigenous"—refined from local 22-carat scrap ornaments—the CRCL Report confirms a fineness of 99.6%. We find a total "Identity Mismatch" here: the production of documentation for "Scrap" (Material X)

cannot, in law or science, discharge the burden of proof for "High-Purity Bullion" (Material Y).

11.2 In the specialized gold trade, an immutable distinction exists between "Kachcha gold" (locally melted jewelry) and "995 Bullion" of international standards. Achieving 99.6% fineness through crude local melting, without industrial-grade electrolytic refining, is a scientific improbability. High-purity gold of this grade is the product of sophisticated chemical and electrolytic processes specifically designed to extract base metal alloys (copper, silver, or zinc) inherent in jewellery—a transformation far beyond the capabilities of rudimentary local crucibles.

11.3 Following the ratio of the Kerala High Court in *Commissioner of Customs v. Om Prakash Khatri* [2019 (366) E.L.T. 402 (Ker)], we hold that high purity acts as a "silent but formidable rebuttal" to any claim of indigenous origin. As observed in Paragraph 19 of the said judgment, such purity constitutes potent circumstantial evidence of foreign origin when the possessor fails to establish industrial provenance. In the absence of a "Melting Memo" or "Refinery Certificate," the Respondents' paper trail is effectively a "trail to nowhere."

11.4 Furthermore, we find the Learned Tribunal's invocation of the "Venial Breach" doctrine from *Hindustan Steel Ltd. v. State of Orissa* (*supra*) to be wholly misplaced. The ratio in *Hindustan*

Steel protects *bona fide* technical errors where there is no contumacious conduct. However, the total failure to prove the legal origin of two kilograms of industrial-grade bullion is a foundational failure of proof, not a technicality. As observed in *Merino Panel Product Ltd. (supra)*, the protection of "technical breaches" cannot be extended to shield conduct fundamentally designed to circumvent the rigors of Section 123.

11.5 Applying the "Prudent Man" test, we hold that a legitimate trader would neither transport high-value bullion concealed in a waist belt nor lack the essential refinery documentation required to verify its transformation. The cumulative weight of the scientific purity matching international standards, the absence of payment particulars in the ledgers, and the lack of refinery records satisfy us that the Respondents signally failed to discharge their statutory burden. The Tribunal's finding that these discrepancies were merely "technical mistakes" is perverse and cannot be sustained.

12. CONCLUSION AND FINAL DETERMINATION

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 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 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 non-contemporaneous 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. CONSEQUENTIAL ORDERS AND DIRECTION

13.1 Accordingly, the Substantial Questions of Law are answered in the affirmative, in favour of the Revenue. The impugned order of the Learned Tribunal dated November 22, 2024, is found to be legally unsustainable and perverse. We, therefore, pass the following orders and directions:

- i. CUSTA 30 of 2025 and CUSTA 31 of 2025 are hereby allowed.
- ii. The common Final Order Nos. 77590-77591 of 2024 dated November 22, 2024 passed by the Learned CESTAT, Eastern Zonal Bench, Kolkata, is hereby set aside for being perverse and contrary to the settled principles of the Customs Act.
- iii. The Order-in-Original No. 59/ADC(P)/CUS/ WB/2020-21 dated November 12, 2020, passed by the Adjudicating Authority, directing the absolute confiscation of the 1,999.90 grams of gold and imposing consequential penalties on Respondent No. 1 and Respondent No. 2, is restored in its entirety.

- iv. The absolute confiscation of the 1,999.900 grams of gold is upheld.
- v. The Revenue is directed to proceed with the final disposal of the said confiscated gold in accordance with the prescribed statutory procedures and the Disposal Manual.
- vi. A penalty of Rs. 6,00,000/- (Rupees Six Lakhs) under Section 112(b) and a further penalty of Rs. 90,00,000/- (Rupees Ninety Lakhs) under Section 114AA (for the production of manufactured/fabricated documentation) against Shri Anil Kumar Soni (Owner/ respondent no. 1) are confirmed.
- vii. A penalty of Rs. 6,00,000/- (Rupees Six Lakhs) under Section 112(b) against Shri Anil Kumar Gaur (Carrier/ respondent no. 2) is confirmed.
- viii. The Respondents are directed to deposit the aforesaid penalty amounts within four weeks from the date of this order.
- ix. In the event of default, the Revenue is granted the liberty to initiate recovery proceedings under Section 142 of the Act, including the attachment of personal and business assets.

- x. The appellant-Department is directed to immediately invoke, encash, and appropriate any Bank Guarantees, Cash Deposits, or securities furnished by the respondents during the pendency of the litigation.
- xi. Given our specific finding that the accounting trail produced was "manufactured," we direct the Registry to forward a copy of this judgment to the Jurisdictional Commissioner of GST and the Income Tax Authorities for an inquiry into the potential "Kachcha" accounts of M/s A.R.P. Ornaments.
14. All connected pending applications, including GA 2 of 2025 in both appeals, stand disposed of accordingly.
15. No order as to costs.
16. Urgent certified copy of this judgment, if applied for, be issued to the parties on usual terms.
17. Order pronounced in open Court.

I AGREE

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

Later:

Learned Counsel appearing for the respondent prays for stay of operation of this judgment and order for a period of four weeks. Such prayer is considered and rejected.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)