

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Single Member Bench
Court – I

Customs Appeal No. 30203 of 2023

(Arising out of OIA No. VJD-CUSTOM-000-APP-126-2022-23 dt.29.03.2023 passed by the
Commissioner of Central Tax & Customs (Appeals), Guntur)

Sri Rayapudi Rajasekhar

Managing Partner, M/s Rayapudi Lakshmi Narasimha
Bullion, D.No.13/50, Addala Bazaar, Jaggaiahpetta,
NTR District, Andhra Pradesh – 521 175

.....Appellant

VERSUS

Commissioner of Central Tax

Vijayawada

D.No.55-17-3, C-14, 2nd Floor, Industrial Estate,
Autonagar, Vijayawada, Andhra Pradesh – 520 007

.....Respondent

with

Customs Appeal No. 30206 of 2023

(Arising out of OIA No. VJD-CUSTOM-000-APP-125-2022-23 dt.29.03.2023 passed by the
Commissioner of Central Tax & Customs (Appeals), Guntur)

Sri Vemula Venkata Rama Krishna

S/o Sri Venkata Balarama, D.No.112-93, Akashpuri
Vari Street, Krishna Gudi, Jaggaiahpetta,
NTR District, Andhra Pradesh – 521 175

.....Appellant

VERSUS

Commissioner of Central Tax

Vijayawada

D.No.55-17-3, C-14, 2nd Floor, Industrial Estate,
Autonagar, Vijayawada, Andhra Pradesh – 520 007

.....Respondent

and

Customs Appeal No. 30207 of 2023

(Arising out of OIA No. VJD-CUSTOM-000-APP-124-2022-23 dt.29.03.2023 passed by the
Commissioner of Central Tax & Customs (Appeals), Guntur)

Sri Nomula Pavan Kumar

S/o Gurunadham, D.No.3-184, Ramalayam Bazaar,
Jaggaiahpetta, NTR District, AP – 521 175

.....Appellant

VERSUS

Commissioner of Central Tax

Vijayawada

D.No.55-17-3, C-14, 2nd Floor, Industrial Estate,
Autonagar, Vijayawada, Andhra Pradesh – 520 007

.....Respondent

Appearance

Shri B. Seetha Ramaiah, Advocate for the Appellants.

Shri A. Rangadham, AR for the Respondent.

**CORAM:
HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30259-30261/2024

**Date of Hearing: 17.11.2023
Date of Decision: 08.04.2024**

[Order per: ANIL CHOUDHARY]

The appellants are in appeal against impugned OIA by which the adjudication order has been confirmed, (I) ordering absolute confiscation of three gold bars and one small piece of remelted gold, totally weighing 1000.460 gms valued at Rs.50,07,302/-, seized under Panchanama dt.02.12.2020 & 03.12.2020 from the possession of Mr. N. Pavan Kumar with imposition of penalty of Rs.2,00,000/- under section 112(a) and (b)(i) of the Act; (II) against absolute confiscation of one gold bar and two uneven small pieces of gold totally weighing 129 gms valued at Rs.6,45,000/-, seized vide Panchanama dt.02.12.2020 & 03.12.2020 from the possession of Mr. V. Venkata Rama Krishna with imposition of penalty of Rs.50,000/- under section 112(a) & (b)(i); (III) against imposition of penalty of Rs.1,00,000/- under section 112(a) & (b) on Mr. R. Rajasekhar.

2. As the appeals arise from common SCN & OIO, these are taken up together. The brief facts are that Mr. R. Rajasekhar – appellant is the managing partner of M/s Lakshmi Narasimha Swamy Bullion Merchants. He is running a firm in the name and style of M/s Rayapudi Lakshmi Narasimha Rao Son, Jaggaiahpetta. The other two appellants viz., Mr. N. Pavan Kumar (NPK for short) and Mr. V. Venkata Rama Krishna (VVRK for short) are his employees.

3. The said two employees, while travelling by bus bearing number: AP 26 Z 0359, were intercepted by the officers of DRI on 02.12.2020 at about 19:20 hrs at RTC Bus Stand, Ongole. Upon enquiry by the officers, these two persons admitted that they are carrying gold, which they had purchased in Chennai on cash payment as per the instructions of their owner – Mr. R. Rajasekhar and further stated that they were not carrying any documents/purchase bills for the gold carried by them. The officers detained the two persons and brought them to the office of Superintendent of Customs (Preventive) at Ongole at about 20:00 hrs. Upon reaching the office, both these persons placed the gold on the table. From the packet submitted by Mr. NPK, 5 yellow metal biscuits containing inscription "sam/ 100 gm/999.0/Fine gold/ and a 6 digit unique number" were found. Inside the second packet, there were 3 yellow rectangular metal bars and one very small piece and Bill No.329 dt.01.12.2020 of M/s Lakshmipathy

Thulabaram, NSC Bose Road, Chennai-79. On all the three rectangular bars, a number "999" was found inscribed several times. Mr. NPK informed that the yellow metal in the shape of biscuits, bars and pieces are gold. He also informed that Bill No.329 dt.01.12.2020 of M/s Lakshmipathy Thulabaram is related to the 3 yellow metal rectangular bars and one very small piece totally weighing 1000 gms approximately. He also informed that in total, he was carrying approximately 1500 gms of gold in the said two packets.

4. From the packet taken out by Mr. VVRK, one yellow metal rectangular shaped bar and two uneven small pieces were available. On the rectangular yellow metal bar, number "999" was found inscribed. It was informed that the said yellow metal is gold weighing approximately 129 gms (in total). Both the persons also informed that Mr. R. Rajasekhar is their employer, who handed over to them melted gold of 22 ct weighing approximately 140 gms and directed him to hand over the said gold in Chennai to a person named Mr. Jawahar and take delivery of 24 ct gold. Accordingly, he had handed over 140 gms of 22 ct gold and obtained approximately 129 gms of 24 ct gold in the shape of three bars/pieces from them.

5. On being questioned by the officers, they informed that as per the instructions of their employer Mr. R. Rajasekhar, they handed over the cash in Chennai to two persons viz., Mr. Jawahar and Mr. Rajesh and received said gold from them. Further, they did not have any receipt/voucher/bill in respect of gold carried by them.

6. In the statement recorded, Mr. NPK informed that he is working as a clerk in M/s Rayapudi Lakshmi Narasimha Bullion for the last one year and the Proprietor of the firm is Mr. R. Rajasekhar. Mr. VVRK is also working as a clerk in the said firm. Mr. R. Rajasekhar had instructed them to proceed to Chennai via Tirupati on 01.12.2020 and obtain gold of around 1500 gms from Mr. Jawahar and Mr. Rajesh, who are staying in Shaokarpet, Chennai. Mr. R. Rajasekhar had given an amount of Rs.74,50,000/- for handing over the same to Mr. Jawahar and Mr. Rajesh. Mr. R. Rajasekhar had also given approximately 140 gms of 22 ct melted gold to Mr. VVRK and instructed him to hand over the same to Mr. Jawahar and collect 24 ct equivalent gold. On 01.12.2020 evening, they had started their journey and via Tirupati reached Chennai by 10:00 hrs on 02.12.2020. Thereafter, they proceeded to Shaokarpet, Chennai and proceeded to melting shop near Elephant Gate in Shaokarpet area where they met Mr. Jawahar and handed over cash of Rs.49,63,280/- and collected gold

approximately 1000 gms. Mr. VVRK handed over 140 gms of 22 ct melted gold and in exchange collected 129 gms of 24 ct gold. Thereafter, they proceeded to nearby melting shop and met Mr. Rajesh and handed over cash of Rs.24,86,720/- and collected 500 gms of gold. Thereafter, during the return journey, they have been intercepted by the officers at Ongole Bus Stand. They also stated that the said gold collected/purchased by them at Chennai is according to their knowledge smuggled gold of foreign origin and it was remelted into biscuits and bars to conceal its identity of foreign origin. They also stated that on 2-3 earlier occasions also they have travelled to Chennai for collecting/purchasing gold by making payment in cash.

7. The Panchanama proceedings were continued next day on 03.12.2020. The officers had called Mr. J. Maheswara Rao, approved jewellery valuer, who examined all the gold bars and pieces and issued certificate wherein he certified the gold recovered from the two appellants as follows:

S.No.	Particulars	Weight in gms	Purity	Value of gold in Rs.	Recovered from the possession of
1	5 No. of Gold Biscuits inscribed with markings "sam/100 gm/999.0/Fine gold/ and a 6 digit unique number" - Unique Nos. are 004405, 004407 to 004410	500	99.9	75,09,802 (@Rs. 5,005 per gram)	Sri Nomula Pavan Kumar
2	3 No. of Rectangular gold Bars inscribed with markings "999" and 1 very small piece	1000.46	99.9		
3	1 No. of rectangular gold bar inscribed with markings "999" and 2 uneven shaped small pieces	129.00	99.8	6,45,000 (@Rs.5,000 per gram)	Sri Vemula Venkata Ramakrishna
		1629.46		81,54,802	

8. On query by the officers if they were in possession of any documents to show the licit import or purchase of the gold, they stated that they had purchased the same by making payment through cash and were not in possession of any documents to show that the same is licit transport of gold. The officers, as it appeared to them that these persons are carrying gold which appears to be smuggled in nature and as they have reasons to believe that the gold found from these persons is melted gold in order to erase the foreign markings and purchased without valid bills/documents and vouchers and hence are liable for confiscation under Customs Act. The officers also seized the

packing material, the newspaper used to wrap and carry the gold and also recovered the following documents:

- a) Bill No.329 dt.01.12.2020 of M/s Lakshmi Pathy Thulabaram, Chennai found in the packet used to pack the gold.
- b) Bus Ticket for the journey from Nellore to Vijayawada for two passengers.

9. The Panchanama proceedings were concluded at about 12:00 hrs on 03.12.2020.

10. The premises of M/s Sri Lakshmi Narasimha Swamy Bullion Merchants, Jaggayapet, AP was searched on 09.12.2020 under Panchanama proceedings and no incriminating documents or things were recovered. On 21.12.2020, the statement of Mr. R. Rajasekhar was recorded, who inter alia stated as follows:

- 10.1. That he is the managing partner of M/s Lakshmi Narasimha Swamy Bullion Merchants, which was established 15 years back. His elder brother – Mr. R. Seetharam Kumar is the other partner. They are engaged in trading of gold and silver bullion.
- 10.2. That he is the proprietor of M/s Rayapudi Lakshmi Narasimha Rao Son, which was established about 4 years back and is engaged in retail sale of gold and silver jewellery.
- 10.3. That they purchased gold bullion from Sri Visakha Bullion Corporation, Vijayawada; CAPS Gold, Hyderabad/Vijayawada; DP Gold, Vijayawada; Augmount Enterprises (P) Ltd, Vijayawada; Balaji Bullion, Chennai, etc.
- 10.4. That they mostly purchase gold from the aforementioned firms through online. They maintain margin amount with these firms. They book required quantity of gold bullion online and make payment through banking channel. After making payment, they send any of their staff with the authorisation to collect gold bullion from the outlets of the said firms.
- 10.5. That Mr. NPK, Mr. VVRK and Mr. Basha are working in M/s Lakshmi Narasimha Swamy Bullion Merchants and M/s Rayapudi Lakshmi Narasimha Rao Son. They used to attend the work such as assisting in sale and purchase of jewellery for both the firms. They also attend bank related works of these firms.
- 10.6. He admitted that the gold of 1629.46 gms, seized from the possession of his employees Mr. NPK & Mr. VVRK belongs to him. Their firm M/s Lakshmi Narasimha Swamy Bullion Merchants had purchased 500 gms of gold bullion in 5 Nos. of 100 gms bisuits from M/s Balaji Bullion and

Jewellery, Chennai vide Invoice No.149 dt.02.12.2020. He also submitted a copy of the said invoice. Further stated that he ascertained from Balaji Bullion and Jewellery, the said gold bullion was imported one with proper payment of Customs duties. Further, he gave imported 1269 gms approximately of gold jewellery/ornaments (22 ct/18 ct) from the stock of M/s Rayapudi Lakshmi Narasimha Rao Son. He directed his employees Mr. NPK & Mr. VVRK to go to Chennai and hand over the same to Mr. Gorakh at Chennai and to get equivalent 24 ct gold bullion from him. As per his instructions, they proceeded to Chennai on 01.12.2020 and reached Chennai on 02.12.2020 and thereafter, proceeded to the shop of Mr. Gorakh, near Elephant Gate and handed over 1269 gms (approx). In exchange, they obtained equivalent 24 ct gold being 1129 gms (approx) from Mr. Gorakh. After that as per the directions, the said appellants went to M/s Balaji Bullion and Jewellery at Chennai and collected 5 Nos. of 100 gms biscuits totally weighing 500 gms of gold bullion from there. After collecting, both of them were returning from Chennai and on the way they were intercepted by the officers of DRI, Vijayawada at Ongole RTC Bus Stand.

- 10.7. Upon seizure by the officers, he had enquired from Balaji Bullion and Jewellery, Chennai regarding the origin of the gold in question. He was informed by them that they purchased the said gold biscuits from M/s Tarun Chains, Chennai vide Invoice No.TC/103/2020-21 dt.01.12.2020. They further informed that M/s Tarun Chains had purchased the said gold from DP Gold, Chennai vide Invoice CH No.429/2021 dt.03.08.2020 and further the said gold was imported by DP Gold, Chennai vide Bill of Entry No.8323533 dt.30.07.2020.
- 10.8. That he had contacted the partner of Balaji Bullion and Jewellery on 02.12.2020 over landline phone and had ordered for 500 gms of bullion comprising in 5 biscuits form, each weighing 100 gms. He had requested them to hand over the said gold bullion to his staff Mr. NPK and Mr. VVRK, who were already at Chennai. Thereafter, he directed his staff and accordingly, they had collected the gold from Balaji Bullion and Jewellery at Chennai. He further stated that payment for the purchase of 500 gms gold bullion was made on the very next day i.e., 03.12.2020 through SBI and also submitted the RTGS slip indicating transfer of Rs.25,13,500/- to Balaji Bullion and Jewellery.
- 10.9. That M/s Rayapudi Lakshmi Narasimha Rao Son had stock of 985.222 gms 916 grade (22 ct) and 284.678 gms 18 ct as on 29.11.2020 and

also submitted the stock statement showing the stock of ornaments in M/s Rayapudi Lakshmi Narasimha Rao Son. As these are old fashioned ornaments, he decided to melt these and convert them into 24 ct gold bullion. On 29.11.2020, he got this gold ornaments melted with a person named Mr. Vishnu of Jaggayyapet, who has got his house cum shop at Karumanchivari Street, Beside Indian Gas Company, Jaggayyapet. He paid Rs.1,000/- to Mr. Vishnu for which he did not issue any bill/receipt. Thereafter, he had tested the remelted gold through scratch method. The remelted gold of 985.222 gms had purity of 91% approx., and 284.678 gms had purity of 81.6% approx. Both the aforementioned weights have been melted separately into two lumps.

- 10.10. That he has got acquaintance with Mr. Gorakh through the other gold jewellery shops in Vijayawada and Jaggayyapet, his Mobile Number is 9962055952. The shop of Mr. Gorakh is in Ganesh Towers, Near Elephant Gate, Shaokarpet, Chennai.
- 10.11. That although there are smelters available in Vijayawada and Jaggayyapet, but for conversion into 24 ct, they charge 0.3% of the gold value. In addition they extract silver and copper, which is contained in the melted gold ornaments and keep it themselves. In Chennai, the extracted silver and copper is kept as conversion charge and they do not charge any additional amount. Further, the purified gold returned by the smelters at Chennai is approx., 24 ct and purity is ranging from 99.8% to 99.9%.
- 10.12. That he does not know if Mr. Gorakh has required machinery and equipment for conversion of melted ornament gold into 24 ct gold.
- 10.13. On being asked, he stated that earlier also he had handed over 70 gms of melted gold to Mr. Gorakh through Mr. NPK and had received equivalent 24 ct gold. He further admitted that both Mr. NPK & Mr. VVRK are working in his firm and as per his instructions only they have proceeded to Chennai.
- 10.14. That he neither gave any cash to them nor directed them to proceed to Chennai for handing over cash to Mr. Jawahar and Mr. Rajesh to collect foreign origin smuggled gold. The gold seized by the officers from his two staff was collected by them from Mr. Gorakh and Mr. Prasad only.
- 10.15. That the name of the person Mr. Rajesh referred by Mr. NPK is one of the partners of Balaji Bullion and Jewellery, Chennai.
- 10.16. On query regarding Bill No.329 dt.01.12.2020 of M/s Lakshmi Pathy Thulabaram, recovered from Mr. NPK along with 1000.460 gms of gold

vide Panchanama dt.03.12.2020, he stated that he has no idea about the bill.

10.17. With regard to 500 gms of gold in biscuit form purchased from Balaji Bullion and Jewellery, he stated that they had raised invoice but in a hurry, Mr. NPK had forgotten to collect invoice. Further, in respect of 1129.460 gms of gold in bar and piece form, he stated that the said gold was received from Mr. Gorakh in lieu of remelted gold given by him. Further stated that since there is no sale or purchase of gold involved, he has not raised any bill. He also did not raise any delivery challan for the melted gold carried by Mr. NPK and Mr. VVRK from Jaggayyapet to Chennai.

11. In the course of further investigation, the officers recorded the statement of Mr. J. Vishnu Vardhan on 10.02.2021, who is said to have melted the ornaments at Jaggayyapet for Mr. R. Rajasekhar and he inter alia stated that he has gold and silver smelting shop in the front portion of his house where he melts gold ornaments or gold biscuits brought by the customer and turns them into rods and return. He charges Rs.100/- for melting 100 gms of gold. He does not give any receipt/bill nor he has GST registration. He does not maintain any record or details such as date gold was melted, the customer name, quantity of gold, etc. Further, he stated that he knew Mr. R. Rajasekhar as he regularly gets gold jewellery melted from him. Mr. R. Rajasekhar owns a gold jewellery shop in Jaggayyapet; and on November 27 or 28, he got melted gold jewellery with him; he brought around 290 gms of 22 ct readymade gold jewellery and about 1 kg of 22 ct showroom display gold jewellery for melting. He had melted the same and changed them into a single rod and returned them. For this, he was given Rs.1,200/- in cash. He confirmed that he is Mr. Vishnu mentioned by Mr. R. Rajasekhar in his statement. He further stated that he does not remember exactly into how many rods he converted the melted jewellery. He normally converts the molten gold exactly in the form of rods.

12. The statement of Mr. Gorakhnath was recorded on 12.02.2021 by the DRI, Chennai wherein he, inter alia, stated as follows:

12.1. that he is the proprietor of M/s Ganesh Gold Testing located at Hanumantharayan Koil Street, Edapalayam, Sowcarpet, Chennai-3 since 2012. He is solely engaged for testing purity of gold. His father has a melting shop in the name of M/s Ganesh Refinery, which is located in the ground floor of his residence. The melting shop is functioning for more

than 20 years. Both the shops are being run by him and he has total of two workers in the melting shop and testing shop.

12.2. That they charge Rs.70/- and 20 mg per item; as far as melting is concerned, they do not charge any money but they take wastage (silver & copper) as well as 1 gm of gold per kg.

12.3. That he knew Mr. R. Rajasekhar, proprietor of M/s Rayapudi Lakshmi Narasimha Rao Son at Jaggayyapet since 2019.

12.4. That Mr. R. Rajasekhar had contacted him in the year 2019 to obtain pure gold from already melted gold from jewellery. Further stated that he would have converted gold 3 or 4 times for Mr. R. Rajasekhar till now and only in December, the weight was around 1 kg. Mr. R. Rajasekhar would call him and inform in advance that his staff would be coming with melted gold of jewellery and he needs 999 purity gold to be extracted out of it.

12.5. Mr. NPK and Mr. VVRK who were working for Mr. R. Rajasekhar used to come to deliver the melted jewellery gold and take back the converted 24 ct gold.

12.6. That the said persons/employees used to bring melted gold in the form of bars and last time they had come in the month of December, 2020. They had brought one bar weighing around 950 to 980 gms and one round ball weighing around 200 to 250 gms. The total weight of gold brought by them was about 1250 to 1300 gms.

12.7. That since he does not charge anything for the work done other than retaining the wastage/impurity, therefore, he does not issue any documents nor keep record. In December 2020, he had given one bar weighing around 950 gms having 999 purity and one gold bit weighing around 125 to 150 gms having 999 purity. Normally for conversion, they retain 1 gm gold per kg along with wastage/impurity being copper and silver.

13. With respect to Bill No.329 dt.01.12.2020 of M/s Lakshmi pathy Thulabaram, Chennai, which was found and recovered during Panchanama proceedings on 03.12.2020, the officers requested the DRI, Chennai to conduct further investigation to find out the role of the appellants, etc. DRI, Chennai vide their letter dt.16.02.2021 reported that there was no such firm in the name and style of M/s Lakshmi pathy Thulabaram at the given address as mentioned in the bill. It was also informed that Mr. Jawahar and Mr. Rajesh could not be traced as the address is insufficient and hence, no verification/ investigation could be conducted of the said persons.

14. The officers also conducted further investigation with respect to 500 gm of gold (100 gms bars in 5 Nos.) with markings "sam/100 gm/999.0/Fine gold/and a 6 digit unique number" in respect of which Mr. R. Rajasekhar stated that the same has been purchased from Balaji Bullion and Jewellery vide Invoice No.149 dt.02.12.2020. The officers confirmed the claim from Mr. V. Ramamurthy Prasad Kumar, partner of Balaji Bullion and Jewellery and recorded his statement on 08.01.2021 and further enquired from Mr. Mohan Maddala, Proprietor of M/s Tarun Chains and further confirmed the transaction from M/s DP Gold Pvt Ltd, Nellore and confirmed the licit import. The officers were satisfied as recorded in Para 19.7 of OIO that the said 500 gms of gold comprising 5 gold bars with numbers – 004405, 004407 to 004410, were imported by M/s Yes Bank vide Bill of Entry No.8323533 dt.30.07.2020.

15. Both the employees – Mr. NPK & Mr. VVRK vide letter dt.30.03.2021, received in DRI office on 05.04.2021, retracted their earlier statements stating inter alia as follows:

- a) Mr. NPK stated that he is working as clerk in M/s Lakshmi Narasimha Swamy Bullion Merchants.
- b) He noticed some mistakes in Panchanama dt.02.12.2020 & 03.12.2020.
- c) He does not have any objection about the quantity of gold seized from him. However, the contents of the statement recorded are not correct.
- d) His owner – Mr. R. Rajasekhar gave them 1270 gms of remelted gold and instructed them to go to Chennai and meet Mr. Gorakh, who has a melting shop, and get equivalent valued 24 ct gold bullion from him. He also instructed them to go to Balaji Bullion and Jewellery and receive 5 gold biscuits of 100 gm each. As per instructions, they proceeded to Chennai on 02.12.2020 and gave the remelted gold to Mr. Gorakh at his melting shop and Mr. Gorakh gave them 1000.46 gms of gold in the form of 3 rectangular bars with one small bit and 129 gms gold in one rectangular bar and two small pieces.
- e) His owner – Mr. R. Rajasekhar had not given any cash to them for purchase of gold.

16. Similar retraction letter was given by the other employee – Mr. VVRK. Further it appeared to Revenue that the aforementioned retractions have been given after four months and are by way of afterthought in order to match with the version of Mr. R. Rajasekhar. It also appeared to Revenue that the proceedings of Panchanama were duly explained to them in their mother tongue and the depositions made by them were recorded under section 108 in

Telugu language. Pursuant to investigations, SCN dt.12.11.2021 was issued by the DRI, Hyderabad Zonal Unit, proposing to confiscate 5 gold biscuits of 100 gms each with foreign markings and 3 gold bars and 1 small piece of remelted smuggled gold totalling 1500.460 gms valued at Rs.75,09,802/- seized under Panchanama dt.02.12.2020 and 03.12.2020 from the possession of Mr. NPK under section 111(d) and (o) of the Customs Act with further proposal to impose penalty under section 112(a) and (b) of the Act.

17. Further proposed to confiscate one gold bar and 2 uneven small pieces of remelted gold of foreign origin weighing 129 gms valued at Rs.6,45,000/- under Panchanama dt.02.12.2020 & 03.12.2020 from Mr. VVRK under section 111(d) and (o) of the Customs Act with further proposal to impose penalty under section 112(a) and (b) of the Act.

18. Further, Mr. R. Rajasekhar was required to show cause as to why 5 gold biscuits with markings (100 gms in 5 Nos.) and 3 gold bars and one very small piece of remelted gold weighing 1500.460 gms seized from Mr. NPK should not be liable for confiscation and similarly, one gold bar and 2 uneven small pieces of remelted gold totally weighing 129 gms valued at Rs.6,45,000/- (seized from Mr. VVRK) be not seized and confiscated with further proposal to impose penalty under section 112(a) & (b) of the Act.

19. The SCN was adjudicated on contest ordering release of the 5 gold biscuits (100 gms x 5). Further the balance gold 1000.460 gms seized from Mr. NPK and 129 gms seized from Mr. VVRK were absolutely confiscated under section 111(d) & (o) of the Act. Further penalty was imposed under section 112(a) & (b) on all the three appellants as follows:

- a) Mr. R. Rajasekhar – Rs.1,00,000/-
- b) Mr. N. Pavan Kumar – Rs.2,00,000/-
- c) Mr. V. Venkata Rama Krishna – Rs.50,000/-

20. Being aggrieved, the appellants preferred appeals before the Commissioner (Appeals), who vide separate OIAs was pleased to dismiss the appeals confirming the order of confiscation and penalty as per the OIO. Being aggrieved, the appellants are in appeals before this Tribunal.

21. Learned Counsel for the appellant in the appeal of Mr. R. Rajasekhar inter alia urges that in support of the deposition given by this appellant, as to the licit source of gold recovered from his two employees, the other appellants, he had submitted statement of 91.6 gold ornaments account for the period 01.04.2020

to 31.03.2021 and also the gold ornament account register for the period 01.11.2020 to 30.11.2020, gold ornament account item register for the period 01.11.2020 to 30.11.2020, old gold item register for the period December 2020, Balance Sheet for the period 2021-22, Profit & Loss account for the period 2021-22, stock in transit item register for the period 2021-22, stock summary for the period 2021-22, Balance Sheet for the period 2020-21, Profit & Loss account for the period 2020-21, stock summary for the period 2020-21, stock journal voucher dt.03.12.2020.

22. Learned Counsel further reiterates the facts as narrated in the statement of Mr. R. Rajasekhar and further relying on the retraction by the other two appellants, urges that the gold in question has been properly explained and no case of smuggled gold is made out by the Revenue. In the retraction statement, both the clerks of Mr. R. Rajasekhar have stated that their statements recorded at the time of Panchanama/seizure was not given freely or voluntarily by them and the same was recorded by the officers as dictated by them. It was further urged that the retracted statements are no longer reliable as held by Hon'ble Supreme Court in the case of KTMS Mohammed vs UOI [AIR 1992 (SC) 1831]. Further the appellants have laid cogent evidence regarding possession of gold as stock in trade in the shape of gold ornaments which the appellant got melted and further got converted to pure gold of 24 ct purity as is evident from the facts aforementioned. Revenue has recorded the statements of the persons who have melted and purified the gold and the same has been corroborated by the said persons.

23. It is further urged that the officers did not draw a seizure report as is evident on the face of record, in terms of section 165 of Cr.P.C. and also as per CBIC Circular No.01/2017-Cus, wherein instructions were given that the officers should issue an order of seizure clearly mentioning therein the reasons to believe that the goods are liable for confiscation as held by the Apex Court in Sheonath Singh vs AAC [AIR 1971 (SC) 2451]. In the absence of seizure report/memo, it cannot be known if the officers have followed the guidelines issued by the Board and the existence of reasonable grounds for believing that the gold is liable for confiscation. Hence, the whole proceedings are ab initio void and illegal.

24. It is further urged that admittedly, 5 gold bars with foreign markings (100 gms x 5) have been found by the Revenue to be properly explained regarding source and licit import and have accordingly ordered for release of

the same. Further, admittedly, the balance gold does not have any foreign markings nor it is of standard weight and size or shape as in the case of gold bars of foreign origin. Thus, there can be no presumption that the balance gold is of foreign origin. It is further urged that the cogent explanation supported with the business records maintained in the ordinary course of business have not been found to be untrue but have been arbitrarily rejected by the Court below upholding the confiscation and penalty.

25. It is further urged that in the facts and circumstances, it was incumbent upon the Revenue to lead evidence as to the smuggled nature of the gold in question. Without making any such effort it has only been alleged that the appellant has been unable to submit evidence of licit possession of the gold. The whole case of Revenue is based on assumptions and presumptions, which has no base. The only basis was the statements recorded of the persons carrying gold viz., Mr. NPK and Mr. VVRK, which have been subsequently retracted. Evidently, as the whole country and people were disturbed due to COVID-19 pandemic, retraction made by these persons after a gap of four months from the date of recording of the earlier statements cannot be said to be by way of afterthought. It is further urged that Revenue failed to examine the witnesses as required under section 138B in the adjudication proceedings and accordingly, such statements recorded during investigation cannot be relied upon as they have no evidentiary value under the provisions of section 138B of the Act.

26. During the course of hearing before this Tribunal, learned Counsel referred to the copy of gold ornament account, gold ornament register, old gold item register, stock in transit register and copies of balance sheet, profit & loss account, etc., for the relevant period and pointed out that the records support the contentions of the appellant as to the licit possession of gold in question. As per 91.6 gold ornament account, the appellant had issued on 29.11.2020, 990.222 gms; further from gold ornament account (monthly summary), the appellant had in the month of December sent out 284.678 gms gold. Further these entries also find mention in old gold item register for the month of November 2020 and further on 01.12.2020, stock in transit is shown as 1269 gms. Similar entries are also found in stock in transit register. Further, in the balance sheet as on 31.03.2022 of M/s Rayapudi Lakshmi Narasimha Rao Son, there is closing stock of Rs.65.25 lakhs. Further, in the stock journal voucher, the appellant has reflected on 03.12.2020, the stock lying with DRI 1129.460 gms valued at Rs.51,44,141/-.

27. Learned Counsel further urges that in view of the aforementioned facts and circumstances on record and the source of gold confiscated being duly explained, the impugned order is fit to be set aside with consequential relief to the appellant.

28. Arguing the appeals of Mr. NPK & Mr. VVRK, learned Counsel inter alia urges the aforementioned submissions made in the case of Mr. R. Rajasekhar. He further urges that these appellants – Mr. NPK & Mr. VVRK have rightly retracted their statement recorded at the time of Panchanama and seizure proceedings as the same was recorded as dictated by the officers, being not voluntarily given by them. It is further urged that no case of confiscation and penalty is made out on the basis of facts on record. Revenue has failed to record the reason which indicates at the time of seizure that the gold in question appears to be of smuggled in nature. Thus, the whole proceedings are vitiated. Further, Revenue has failed to lead any evidence as to the smuggled nature of gold in question. Admittedly, the gold has been seized by way of town seizure and it is incumbent upon Revenue to lead evidence as to the smuggled nature of gold which it has not done.

29. Opposing the appeals, learned AR for Revenue inter alia urges that gold can be seized by the officers if it appears to them to be of smuggled in nature. No categorical reason need to be assigned. At the time of interception, the said persons – Mr. NPK & Mr. VVRK had stated that they were carrying gold which was purchased by them in cash at Chennai as per the instructions of their owner/ employer – Mr. R. Rajasekhar and further they did not have any invoice/document. Both of them had admitted that they had travelled to Chennai at the behest of their employer – Mr. R. Rajasekhar and have collected gold from Mr. Jawahar and Mr. Rajesh at Shaokarpet, Chennai after paying cash and also delivering 22 ct gold lump. They had further stated that the gold they were carrying is smuggled in nature and has been melted to conceal its identity.

30. He further urges that the smelter/gold smith – Mr. Vishnu in his statement categorically stated that the gold melted by him for Mr. R. Rajasekhar and the gold seized by Revenue may be different. Further, in the course of enquiry/investigation, Revenue could not find the firm by the name – M/s Lakshmi pathy Thulabaram at the given address nor Revenue could trace Mr. Jawahar and Mr. Rajesh. It is further urged that as per section 123 of the Act, the burden of proof is on the person from whose possession the gold is found or such other person who claims the gold to be his. Thus, once gold has

been seized by Revenue on the apprehension of it being smuggled, the onus is on the persons from whose possession it is seized or on the person who claimed the gold to explain the licit source of such gold. Accordingly, he prays for dismissing the appeals.

31. Having considered the rival contentions, I find that admittedly, there were no foreign markings on the gold seized and subsequently confiscated, being 1129 gms of gold. Further, admittedly the gold is comprised of bar/rods and bits and is not of standard shape, size and weight, as in the case of gold of foreign origin. I further find that Revenue has not laid any evidence as to the smuggled nature of gold save and except assumption and presumption based on the statements of Mr. NPK & Mr. VVRK recorded at the time of seizure. As such statements have been subsequently retracted, the initial statements have lost their evidentiary value. I further find that Revenue has failed to examine their witnesses during adjudication proceedings, as required under section 138B of the Act.

32. I further find that the appellant – Mr. R. Rajasekhar who has claimed the ownership of the gold has led cogent evidence in the form of his business records and account statements in support of the gold in question. I further find that such cogent explanation has not been found to be untrue but have been arbitrarily rejected by Revenue. I also find that the explanation given by these appellants has been corroborated by the statement of smelters/melters both at Jaggayyapet and at Chennai. Accordingly, I find that appellants have discharged the onus under section 123 of the Act.

33. In view of my aforementioned findings and observations, I allow these appeals and set aside the impugned orders. Appellants are entitled to consequential benefits, including return of the confiscated gold to Mr. R. Rajasekhar. In case the gold has already been disposed of by Revenue, he is entitled to receive sale proceeds along with interest as per Rules. All penalties imposed are set aside.

34. All the three appeals stand allowed in the aforementioned terms.

(Pronounced in the Open Court on 08.04.2024)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)