OD 5 & 6

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CUSTA/30/2025
IA NO: GA/2/2025

COMMISSIONER OF CUSTOMS PREVENTIVE KOLKATA
VS
SHRI ANIL KUMAR SONI

WITH

CUSTA/31/2025
IA NO: GA/2/2025
COMMISSIONER OF CUSTOMS PREVENTIVE KOLKATA
VS
SHRI ANIL KUMAR GAUR

BEFORE:
The Hon'ble JUSTICE RAJARSHI BHARADWAJ
AND
The Hon'ble JUSTICE UDAY KUMAR
Date: 4th February, 2026.

Appearance:
Mr. Bhaskar Prosad Banerjee, Adv.
Mr. Tapan Bhanja, Adv.
…for the appellant

Mr. A. Chakraborty, Adv.
Mr. N. Chowdhury, Adv.
Mr. P. Bera, Adv.
Mr. D. Banerjee, Adv.
Mr. S. Bhattacharya, Adv.
…for the respondent

The Court:

1. The present appeal, preferred by the Revenue under Section 130 of the Customs Act, 1962, appears before us for admission. The Revenue seeks to assail the Final Order of the Learned Tribunal dated 22.11.2024, whereby the confiscation of 1999.900 grams of gold was set aside and the consequential penalties were quashed.
2. The Learned Advocate for the Appellant has proposed the following Substantial Questions of Law as enumerated in the Memorandum of Appeal for our consideration:

   (i) 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?

   (ii) Whether a confessional statement under Section 108, retracted after a period of two years, loses its evidentiary value?

   (iii) Whether the production of GST invoices without a documentary nexus to the melting process is sufficient to discharge the reverse burden of proof?
3. Upon a preliminary perusal of the records and the relevant Circulars of the Board of Revenue governing the litigation policy of the Department, a threshold issue regarding the maintainability of this appeal has surfaced. We note that the current Board Circulars prescribe a specific monetary limit for filing appeals before the High Court. On a prima facie examination, the tax effect-specifically the penalty amounts involved-appears to fall significantly below the said prescribed limit.

4. However, it is a settled principle that monetary limits may not act as an absolute bar where the matter involves a substantial question of law of a recurring nature or where the legality of a seizure under Section 110 and subsequent confiscation under Section 111 is at stake. We find that the Appellant has primarily focused the proposed questions on the penalties and the burden of proof, whereas the core of the controversy - the legality of the confiscation of the gold - has not been explicitly framed as a Substantial Question of Law.
5. Since the imposition or setting aside of a penalty is merely consequential to the primary finding on the confiscability of the goods, the appeal cannot be determined in a vacuum without addressing the root of the litigation. Furthermore, the issue of whether this appeal can be entertained notwithstanding the deficit in the monetary limit requires a formal determination.
6. Accordingly, in addition to the questions proposed by the Appellant, this Bench deems it necessary to frame the following two additional Substantial Questions of Law to ensure a logical and exhaustive adjudication:

    (iv) Whether the present appeal is maintainable before this Court in view of the prevailing Board Circulars on monetary limits for litigation, particularly when the core issue pertains to the statutory interpretation of “reasonable belief” under Section 123?

    (v) Whether the Learned Tribunal committed a perversity in law by setting aside the absolute confiscation of 1999.900 grams of gold recovered from the possession of Shri Anil Kumar Gaur, ignoring the clandestine manner of concealment and the scientific evidence of the metal's purity?

7. We direct the parties to address this Court on the question of maintainability as a preliminary issue on 05-02-2026.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

B.Pal