
(2015) 08 MEG CK 0014
In the Meghalaya High Court
Case No : WP(C) No. 344 of 2014

R.K. Angangbi Singh

APPELLANT

Vs

Commissioner of Customs (Preventive) and Others

RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(1)(g), 19(i)(g), 226, 31
Customs Act, 1962 — Section 108, 11, 110, 110(1), 110(1B)

Citation : (2015) 08 MEG CK 0014

Hon'ble Judges : U.N. Singh, C.J;T. Nandakumar Singh, J

Bench : Division Bench

Advocate : V.K. Jindal, Senior Advocate, for the Appellant; R. Debnath, Advocates for the Respondent

Judgement

U.N. Singh, C.J—This writ petition has been filed with prayer(s) (i) to set aside and quash the inventory of goods (Seizure Memo) dated 27.08.2014 prepared by the Customs Inspector (Preventive) Unit, Shillong under Section 110 of the Customs Act, 1962 and the proceedings initiated by Customs Authorities under provisions of the Customs Act pursuant thereto; (ii) to direct the release of 26 pieces of gold biscuits rectangular in shape and size along with other seized articles as per Seizure Memo; and (iii) to pass any other order/orders as deemed fit and proper in the facts and circumstances of the case.

2. The brief facts of the case as pleaded herein are : the petitioner claims to be owner of a jewellery shop in the name and style as M/s. Radhika Jewellery with Registration No. 6192 of Municipal Council at Imphal. It is in the name of the wife of the petitioner Smjti RK Sonia Devi, but the business is mainly managed by the petitioner with the help of his wife, relatives and employees. The Head Office is situated at Sagolband Bijoy Govinda near NRL Pump, Imphal-795001 and the Branch Office is at Paona Bazar, Governor Road, Imphal. The business of the petitioner, inter alia, includes sale of gold, jewellery and gold coins. The petitioner purchases gold from the bona fide sources with valid documents.

Besides, the petitioner is also engaged in side business of granites, tiles and marbles.

3. The Commissioner of Customs (Preventive), NE Region, Shillong (respondent No. 1) has the jurisdiction over the entire North Eastern Region under the Customs Act, 1962 and the rules made thereunder. The Superintendent (Preventive) of Customs Shillong (Respondent No. 2) is an Officer subordinate to respondent No. 1. The Inspector of Customs (Headquarters) Preventive Unit, Shillong, (respondent No. 3) is an Officer subordinate to respondent Nos. 1 and 2. Respondents No. 2 and 3, both, have some delegated powers under Section 5 of the Customs Act, 1962. Respondent No. 3 is an Officer who made the seizure in question under the provisions of Section 110 of the Customs Act. The seizure of contravening goods made by a subordinate Officer like Inspector under the provisions of the Customs Act, 1962 is reported to higher Officers, namely, the Commissioner of Customs (Respondent No. 1) and Superintendent of Customs (Respondents No. 2).

4. The petitioner states that during the course of his business of sale and purchase of gold, between 1st April, 2013 to 17th April, 2014, he purchased 17.340 kg of gold bars amounting to Rs. 13,05,33,419.00 from one authorized dealer namely, M/s. Magna Projects Pvt. Ltd., 163 Rabindra Sarani, 2nd Floor, Room No. 2/3, Kolkata-700007. All payments were made through Bank transactions by the petitioner under Account No. 91302000035118723 at Axis Bank. Valid documents/invoices were issued by the aforesaid dealer M/s. Magna Projects Pvt. Ltd. The details of the purchase of gold from M/s. Magna Projects Pvt. Ltd. during the period commencing from 1st April 2013 to 17th April, 2014 along with the respective invoices number, date, quantity and value are as hereunder:--

5. The petitioner states that the "Ningol Chak Kouba" festival in Manipur is a very important festival and the people on that occasion buy huge amount of gold according to their financial status. The said festival fell on 28th October, 2014. The petitioner decided to get "Hallmark gold coins" made in Kolkata before the start of the festival. The petitioner, accordingly, during the course of his usual business transactions dispatched 26 (twenty six) pieces of gold bar, with gross weight 4350 grams and average purity between 99.5 to 99.9 through Smti T Santibala Devi and Smti RK Rojita Devi. The said Smti T Santibala Devi and Smti RK Rjita Devi are the wives of the cousin brothers of the petitioner namely Shri RK Semsong Singh and RK Ranjit Singh respectively, who, also accompanied their wives Smti T Santibala Devi and Smti RK Rojita Devi. They decided to travel by bus from Imphal to Dimapur on 25.08.2014 and then by 15960 DN Kamrup Express Train from Dimapur to Howrah on 26.08.2014. The reservation of the aforesaid four persons was done by the petitioner vide PNR No. A6133126565 and the payment thereof was also effected from the account of the petitioner. As a security measure the carriers of the gold biscuits were instructed to carry the items concealed in their cloth and not to carry the same in a bag etc. The

petitioner who since could not travel by train/bus was to meet the aforesaid persons at the Kolkata Airport. The transit challan dated 25.08.2014 issued by the petitioner for and on behalf of Radhika Jewellery along with related invoices issued by Magna Project Pvt. Ltd. in respect of the alleged contravening gold items, namely, 26 (twenty six) pieces of gold biscuits were handed over to Smti T. Santibala Devi and Smti RK Rojita Devi. The details of invoices issued by the Magna Project Pvt. Ltd. to cover 26(twenty six) pieces of gold biscuits are as follows:

6. On 26.08.2014 in the late night/early morning, the aforesaid four persons boarded the train 15960 DN Kamrup express for Kolkata at Dimapur. During the course of the journey they were checked by the Railway Protection Force and on being checked the carriers of gold biscuits voluntarily disclosed that they were carrying the gold bars/biscuits and they also produced 26(twenty six) pieces of gold biscuits along with the transit challan dated 25.08.2014 and the related invoices in support thereof to justify that the gold biscuits are legally carried. The Railway Protection Force prepared a seizure list and after interrogation of all the aforesaid four persons arrested them on 26.08.2014 at Dimapur and produced them before the Special Magistrate, Tinsukia on 27.08.2014. Thereafter, the Special Magistrate, Tinsukia was requested by Customs Superintendent CPF Tinsukia to handover the case to the department as the accused persons seemed to have violated various provisions of the Customs Act and the rules framed thereunder. The said prayers of Customs authority was placed before the Chief Judicial Magistrate, Tinsukia. The CJM allowed the prayer of the Superintendent of Customs CPF, Tinsukia. In fact such a prayer had been made by the Inspector of Customs, Headquarters Preventive Unit, Shillong vide petition dated 27.08.2014. At about 6.00 PM on 27.08.2014, all the gold biscuits, mobiles, other belongings along with relevant documents (seizure list, arrest report/memo etc) and four accused persons were handed over to the Customs Authority (respondent No. 3) by Sub Inspector of Railway Protection Force in the Customs Office, Tinsukia. However, all the four accused persons were later released on bail by the Chief Judicial Magistrate, Tinsukia, District.

7. On 29.08.2014, the Commissioner of Customs, Shillong, issued search warrant No. 04/14-15 and pursuant thereto, the Customs Officers searched the residential premises of the petitioner. However, they could not find any material except a few account records which were seized by them.

8. Upon handing over of the gold items by Sub Inspector Railway Protection Force, Dimapur at 6 PM on 27.08.2014 to the Customs Authority, respondent No. 3 the Customs Inspector, Headquarters, Shillong in purported exercise of the power under Section 110 of the Customs Act, 1962 seized 26 (twenty six) pieces of gold biscuits, yellow rectangular in shape having gross weight 4334.79 grams which were valued at Rs. 1,22,15,438 by the Sub Inspector, Railway Protection Force at CPF Office, Tinsukia believing it to be gold of foreign origin. Three numbers of duplicate bills of Magna Project Pvt. Ltd., Kolkata were also seized by

the Customs Authorities but it seems that they did not find any mention about the transit challan dated 25.08.2014 issued by petitioner to the carriers of gold. It is pertinent to mention herein that three bills of Magna Project Pvt. Ltd. which the carriers were possessing were also seized by the Customs Authorities.

9. Thereafter, the petitioner was summoned by the Superintendent of Customs under Section 108 of the Customs Act, 1962 to appear before him on 09.09.2014 and accordingly, the petitioner appeared before the Authority at Imphal on 09.09.2014 where respondent No. 3, Customs Inspector had also gone from Shillong. He recorded the statement of petitioner at 1600 hours on 09.09.2014, at 1030 hours, on 11.09.2014 and also on 12.09.2014. However, the interrogation of the petitioner could not reveal any incriminating information against him. During the course of interrogation, the petitioner submitted the documents supporting the possession and ownership of 26 (twenty six) numbers of gold biscuits and explained all the circumstances whereunder the aforesaid gold biscuits were purchased and sent through the aforementioned four persons with seized documents. The petitioner also clarified before respondent No. 3 in his statement that the seized gold is having purity varied from 99.5 to 99.9 purity. The petitioner thus claimed the ownership of the aforesaid seized gold.

10. The petitioner has stated that the matter centres only around the exercise of powers by the Customs Officials under Section 110(1) of the Customs Act, which reads:

"Section 110(1) : Seizure of goods, documents and things : If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods."

As per the record, the detection of the seized gold biscuits was made at Dimapur Railway Station by Railway Protection Force on 26.08.2014 at about 0330-0345 hours and the same were formally seized by respondent No. 3 at Tinsukia CPF Office on 27.08.2014 on being handed over by Sub Inspector, Railway Protection Force. The impugned seizure memo/inventory of goods seized, on the face of it, discloses that the gold biscuits were rectangular in shape and size, and bore no marking. The seizure memo does not even disclose the purity of gold. Moreover, the seizure memo also discloses that three duplicate bills issued by Magna Project Pvt. Ltd. Kolkata were also seized, which according to the petitioner, shows that the gold items were validly purchased from Magna Project Pvt. Ltd. Kolkata and were carried under the transit challan dated 25.08.2014. Thus, there was no ground for the Customs Inspector to come to the conclusion that the seized gold biscuits are believed to be gold of foreign origin and are illegally imported into India. The action of the Customs Authority itself speaks that the power under Section 110(1) of the Customs Act, 1962 has been exercised for extraneous or irrelevant considerations or reasons. According to the petitioner, it is unquestionably a colourable exercise of power or a fraud on power and the exercise of the power in such a manner has vitiated the entire exercise.

11. In terms of Section 110(1) of the Customs Act, 1962, the power to effect seizure is to be preceded by "reason to believe" that the goods are liable to be confiscated under the Act. Thus, it is for the Customs Authorities to establish that they had prior reason to believe that the 26 pieces of gold biscuits rectangular in shape and size, which bore no marking are of foreign origin and are illegally imported into India. According to the petitioner the terms "reason to believe", has to be understood with reference to the Customs Act, and has thus a well known connotation which is the only safeguard available to a person as against otherwise unguided and indiscriminate power of seizure conferred on the Customs Authority. The safeguard has to be strictly followed. In the instant case, it is not understood how respondent No. 3 at the time of making seizure could identify the 26 pieces of gold biscuits, which are rectangular in shape and size and bore no marking are of foreign origin and if that be so, how could there be a bona fide reason to be believe that the same were illegally imported when gold of Indian origin as well as legally imported gold of foreign origin is abundantly available in the market. The seizure memo also does not disclose as to how the Customs Authorities could assert that the seized gold biscuits are of foreign origin. It was obligatory on the part of the Customs Department first to establish "reasons to believe" to assume jurisdiction in the matter and then to establish that the gold biscuits were of foreign origin. According to the pleadings of the case, on the facts, it is clear that the Customs Department has been unable to establish any such ground to proceed with.

12. The only safeguard that is available to a person against indiscriminate seizure, which is a serious intrusion into the fundamental and legal rights of individual, has been provided in the expression "reason to believe". What is the law on this point has been repeatedly dealt with and elucidated by various High Courts and the Apex Court in the judgments. It is settled law that " the power of seizure cannot be used as a roving and fishing enquiry". Reason to believe is not the same as "reason to suspect" because if such an interpretation was given, then no citizen would be safe and property of any person could be seized. "Reason to believe" must exist prior to seizure and it is not a thing that is acquired after the seizure i.e. when the explanation of the person is not found to be correct. Such views have been taken by the Courts in (i) Angou Golmei Vs. Vizovolie Chakha Sang (ii) Bawa Gopal Das Bedi and Sons and Others Vs. Union of India (UOI) and Others, AIR 1982 Patna 152 : (1998) PLJR 288 : (1982) PLJR 288 (iii) Yogendra Prasad Vs. The Union of India and Others, (2004) 4 PLJR 675 and (iv) R.G. Holdings Private Limited Vs. The State of Bihar and Another .

13. The petitioner further states that the power to seize the goods under Section 110(1) of the Customs act, 1962 by the Customs Authority is for the purpose of the enforcement of the Act. The said power cannot be used in an indiscriminate manner or in any manner a Customs Authority would like to use. In this context, reference has been made to the decision of the Apex Court in the case of the Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, AIR 1985 SC 1622 : (1985) 1 SCALE 1044 : (1985) 3 SCC 1 : (1985) 3 SCR 995 ,

wherein their Lordships in para 26 of the judgment have observed as under:

"Where power is conferred to achieve a purpose, the power must be exercised reasonably and in good faith to effectuate the purpose and in this context, "in good faith" means for legitimate reasons. Where power is exercised for extraneous or irrelevant consideration or reasons, it is unquestionably a colourable exercise of power or fraud on the power and the exercise of power is vitiated".

14. The petitioner herein has, thus, submitted that in the facts as stated above, there is no prior reasons to believe and nor is there any material to justify, even prima facie, the allegations that 26 gold biscuits rectangular in shape and size and which bore no marking are of foreign origin and are illegally imported into India for exercising the power under Section 110 of the Customs Act, 1962. As such the conditions precedents to assume jurisdiction under Section 110(1) of the Customs Act, are completely missing and totally lacking. Thus, the very foundation of seizure being without jurisdiction, is not sustainable in law and the goods seized are required to be released forthwith. In support of the contention, the judgment of the Apex Court, in the case of Smti Kusum Lata Singhal v. Commissioner of Income Tax, Rajasthan, reported in (1990) 4 SCC 1998, has been placed reliance. Para 8 of the judgment on reproduction reads as:

"..... Our attention was also drawn to the observation of this Court in v. Ramkrishnan Srikishan Jhaver in support of the proposition that when a search was found illegal, the goods should be returned....."

15. The petitioner has pleaded that the illegal seizure of the goods amounted to infringement of the fundamental rights as contained in Article 19(1)(g) and Article 31 of the Constitution of India and thus relief as prayed for, can be granted under Article 226 of the Constitution of India. The plea of availability of alternate remedy in such cases cannot be pleaded as a valid defence. This view has been taken by Hon''ble the Apex Court in the case of Wazir Chand Vs. The State of Himachal Pradesh, AIR 1954 SC 415 : (1954) CriLJ 1029 : (1955) 1 SCR 408 , vide para 8.

16. The petitioner also submits that the gold biscuits have not been seized by the Customs Authority either from the possession of the petitioner or from the possession of its employees but the same were handed over by the Railway Protection Force to the Customs Authority, therefore, onus to prove that the gold in question is smuggled is on the seizing officer and in such an eventuality the provisions of Section 123 of Customs Act, 1962 would not be attracted. Besides, the petitioner, has otherwise, discharged the burden of proving that the seized gold biscuits are not smuggled gold and are also not illegally imported into India, by producing the related invoices etc. In this context, the petitioner refers to and relies on the judgment of the Constitution Bench of the Hon''ble Apex Court in the case of Gian Chand and Others Vs. The State Of Punjab, AIR 1962 SC 496 : (1983) 13 ELT 1365 : (1962) 1 SCR 364 Supp . The Hon''ble Court has held that

if the goods are seized by the police and delivered to the Customs Authorities under Section 180 of the Sea Customs Act, 1978, it is not seizure by the Customs within the meaning of Section 178A of the Sea Customs Act, 1878. This is because when the police officer seized the goods under some other law, such as Code of Criminal procedure, the accused lost possession of the goods, which then vested in the police and when that possession was transferred to Customs Authorities under Section 110, there was no fresh seizure under the Sea Customs Act, 1878. It is submitted that the provisions of Sea Customs Act, and the Customs Act, 1962 are identical in respect of seizure and the onus of proof in the instant case would be only on the Customs Authorities. From the record it is evident that it is the Railway Protection Force which detected the gold biscuits on 26.08.2014 at Dimapur Railway Station from the aforesaid four persons and seized the same in connection with a complaint of creating disturbance in the Railway Compartment. Later the Customs Authorities took possession of the seized goods under the provisions of Section 110(1) of the Customs Act, 1962. In other words, the Customs Authorities did not seize the goods either from the petitioner or from the said carriers; therefore, the provisions of Section 123 of the Customs Act, 1962 which cast the onus on the petitioner to prove that the goods are not smuggled would not be applicable.

17. In reply to the aforesaid averments made in the writ petition, on behalf of respondents, an affidavit has been filed by Mr. Apu Biswas, Inspector of Customs (Preventive) Unit, Shillong. According to him, the total quantity of gold is 4.335 kgs worth Rs. 1.22 crores. At the time of seizure, they were in the form of rough biscuits without any markings/inscriptions or any number. Each gold biscuit weighed 166.52 gms to 167.05 gms. These biscuits were carried from Imphal through bus and then by sleeper class of train by the carriers without any covering documents like Challan, Invoice, Bill, etc. issued by the consignor to the consignee. Three photocopies of invoices carried by the carriers were also examined. The descriptions of invoices were like (i) Invoice No. 37260/13-14 dated 01.06.2013; (ii) No. 38757/13-14 dated 11.06.2013 and (iii) No. 47709/13-14 dated 19.07.2013 which have been issued against sale of gold by one M/s. Magna Projects Pvt. Ltd., Kolkata to one Rajkumar Angangbi Singh, Imphal, during June and July, 2013. The gold items sold under the three tax invoices are bigger, namely, 1 Kg bars and some, of course, smaller biscuits. Gold bars, biscuits or coins sold in commercial parlance are normally in polished/finished condition and bears logo/inscriptions/number or writings for identification etc. Even after closer examination, no nexus between the present consignment (all almost of same weight 166.52 gms to 167.05 gms) and the gold sold under the three Tax Invoices of M/s. Magna Projects Pvt. Ltd., Kolkata, could be established, nor could the same be explained by the carriers. According to respondents, when any commercial quantity of goods/gold moves from one State to another State, proper declarations/documentation under the Sales Tax laws of the States passing through, is required to be followed, till it reaches the destination of a State. One Mr. RK Templer arrested by the Railway Protection

Force in this case, was found to be the same person who was earlier arrested for smuggling of gold from Myanmar through Moreh to Imphal and prosecuted vide Case No. 10/CL/IMP/CUS/DPF/DCI/2014-15 dated 20.06.2014. In the earlier case dated 20.06.2014, this RK Templer had given his name as RK Swami. Thus a serious doubt was raised in the mind of officers that the same person with different name is the carrier of this huge consignment of gold. On being questioned the carriers, however, stated that the said gold belonged to Rajkumar Angangbi Singh, Imphal and he will proceed to Kolkata by Flight and receive the gold from them at Howrah, Kolkata. There was a suspicion as to why one will take the risk of sending gold worth more than Rs. 1.22 crores through carriers by bus/train and would himself travel by air to receive the gold there. If the said gold was legally acquired and possessed, the owner would have carried the said gold with himself by air to Kolkata, while making full declaration to the security/enforcement agencies.

18. It is also the submission of respondents that as per information available at their end, there is spurring in smuggling of gold mainly of Myanmar's origin from across the border along Manipur. Numerous seizures of smuggled gold have been effected in recent times while being transported by air/trains. In the instant case, the four persons who were arrested have been involved in carrying, keeping, concealing or any other manner dealing with 26 seized gold biscuits which were without proper documents, and believed to be illegally smuggled/procured. One of the accomplices, namely, RK Templer was found to be involved in an earlier case with a different name as RK Swami Singh. The three tax invoices appeared to be just a cover-up, in case of detection by the law enforcing agencies. The identifying particulars mentioned in the three tax invoices were different from the identification of seized gold which is one of the elements amongst others that formed a reasonable belief. As there were no documents of Sales Tax, the State Govt. was also deprived of the revenue and it also amounted to a grave threat to national economy. Therefore, there was reasonable belief that the gold was smuggled. Mr. RK Angangbi Singh was directly involved in illegally importing and clandestinely sending the gold through his relatives to various destinations for his personal interest and gain by defying various law enforcing agencies. He appears to be a big time smuggler. Thus, according to the Customs authorities, there is a reasonable belief that the instant goods have been smuggled into India without payment of customs duty and in violation of Section 7(i)(c) and Section 11 of the Customs Act, 1962, and are liable for confiscation under Section 111 of the said Act, hence the same were seized under Section 110 of the Customs Act, 1962. The Customs department has referred to a judgment of Hon"ble the Apex Court in the case of State of Maharashtra Vs. Natwarlal Damodardas Soni, AIR 1980 SC 593 : (1980) CENCUS 85 : (1980) CriLJ 429 : (1983) 13 ELT 1620 : (1980) 4 SCC 669 : (1981) SCC(Cri) 98 : (1980) 2 SCR 340 : (1980) 12 UJ 171 . Thus, the Officer concerned has discharged the burden by explaining circumstances from which a reasonable man, acting prudently, may infer that in all probabilities the gold items were smuggled goods. The officer has sufficient materials before

him to entertain a reasonable belief that the gold seized was smuggled from a foreign country. Further another judgment of Hon"ble the Apex Court in State of Gujarat Vs. Mohanlal Jitamalji Porwal and Another, AIR 1987 SC 1321 : (1987) CriLJ 1061 : (1987) 2 Crimes 1 : (1987) 13 ECC 12 : (1987) 29 ELT 483 : (1987) 1 JT 783 : (1987) 1 SCALE 598 : (1987) 2 SCC 364 : (1987) 2 SCR 677 : (1987) 2 UJ 129 , has also been referred to explain the reasonable belief as required under Section 123 of the Customs Act. In order to argue that the Court will not sit in appeal on the question of reasonable belief, the Court has to accept the Officer"s belief regardless of fact whether the Court, of its own, might not have entertained the same belief.

19. In rejoinder affidavit sworn by the petitioner Shri RK Anganbi Singh, he has tried to clarify the position that there were no grounds of reasonable belief as claimed to have been arrived at by the Department under Section 110(1) of the Customs Act, 1962. According to the petitioner, the reasonable belief was said to be based on some reasons and circumstances as detailed in the rejoinder affidavit which are reproduced in verbatim as under:

"(a) The large quantity of gold that was being carried in the Sleeper Class of the Train (4.335 kgs).

(b) Huge quantify and high value of gold were being carried without any covering documents like Challan, invoice, Bill, etc.

(c) The description of gold mentioned in the 3(three) seized invoices were different than the description of gold seized by the Custom Authority.

(d) The carriers of the seized gold could not explain the aforesaid discrepancies between the description of gold mentioned in the invoices and the description of gold seized by the Custom Authority.

(e) The seized gold was being carried contrary to the requirement of Form 61 under Assam VAT Rules 2005.

(f) One of the carrier/co-passenger in the Train (Shri RK Templer) is involved in some other case.

(g) The manner in which the goods had been kept and concealed with the body of the carriers.

(h) Information existed that there is a spur in smuggling of gold mainly of Myanmar origin from across the border along Manipur."

20. According to the petitioner, the Inspector of Customs in his affidavit in order to justify the exercise of powers under Section 110(1) of the Customs Act, 1962, has taken the aforesaid grounds which, do not constitute a reasonable belief. It is not disputed by the respondents that the gold in question was in the form of rough metal biscuits without any markings, inscriptions or numbers. Regarding the consignment of gold weighing 4.335 Kgs, the petitioner asserts that he was sending the consignment of gold for processing to make Hallmark gold coins at

Kolkata for sale during the Nigol Chak Kouba festival in the State of Manipur, because during that festival, the demand of gold coins is very high. It cannot be suo motu concluded that the consignment of gold, being big one was only smuggled or contraband item. Quantity of gold only suggests the quantum of business and not a ground to decide that it is a smuggled goods or a bona fide item of gold. The petitioner has also denied the assertion of the Department of Customs that the gold was being carried without any covering documents, whereas, it was accompanied by the purchase documents and road challans. Moreover, since the gold was seized by the RPF and not by the Customs Authorities, there was no scope or occasion to produce any document before them. It was not a case of search and seizure by the Customs Department and they had simply received the gold and documents from the RPF. The gold was accompanied by the purchase documents issued by M/s. Magna Projects Pvt. Ltd., Kolkata. Thus, it was not justified for the Customs Authorities to hold a view that the gold was being carried without any covering documents. It is also clarified by the petitioner that the belief of Customs Authorities that the gold with 100% purity is generally soft and is not suitable for coinage is also not correct. The gold with utmost purity is usually mixed with an alloy to make a gold coin or they are mixed with other metals to make them more durable. Thus, the gold bars which were initially purchased by the petitioner from M/s. Magna Projects Pvt. Ltd., Kolkata were melted by mixing other substances so as to make the same suitable for making gold coins. That is why the gold in question did not retain its original shape, size and weight as it was at the time of purchase, and that is the precise reason for having difference in description of the gold seized and the gold purchased, and on that basis, it cannot be said to be a smuggled item and thus, liable to confiscation. The gold was seized by the RPF at Dimapur. The RPF had no expert knowledge regarding assessment of purity of gold as also matching the description as mentioned in the invoice at the time of purchase. There was no basis for the Customs Authorities to hold that at the time of receiving the gold seized by the RPF, they could have reasonable belief that the gold in question was smuggled item and that question still remains to be answered by the Customs Authorities. The petitioner has claimed that in bona fide business of gold during the last one year, prior to the date of seizure, he has purchased gold worth Rs. 13 crores from an authorized Bullion merchant, namely, M/s. Magna Projects Pvt. Ltd., Kolkata, which is supported by valid purchase documents and moreover all such transaction of purchase were made only through petitioner's Axis Bank Account No. 91302000035118723. Besides, during the course of normal trade practice, the gold bars purchased by the petitioner were transformed by processing (Dhalai) to make them suitable for making gold. Thus, the arguments of Customs Department that the shape, size and weight of the gold bar mentioned in the accompanied purchase invoices did not match the shape, size and weight of the gold in question does not in any manner suggest that the gold in question was smuggled. The Customs Department has only raised irrelevant grounds to justify their act of search and seizure. The persons from whom the search and seizure were made did not make

any statement under Cr.P.C. or Railway Act. Besides, RPF personnel are not supposed to function as Customs Officer, not being entrusted with any powers under the Customs Act. Moreover, the seizure of gold made by the RPF and the statement alleged to have been recorded were not as per procedure and that apart, they had also taken signatures of the Carriers on blank papers. As regards the question as to why the Carriers of the gold were not carrying Form 61 under the Assam VAT Rules 2005, the petitioner states that the gold was being carried from Manipur and was seized at Dimapur (Nagaland) where the Assam VAT Rules 2005 has no application. Thus, the stand of Customs Department is also not justified. The RPF seized the gold from the possession of two female passengers, namely, Smti T Santibala Devi and Smti RK Rojita Devi and there was absolutely no seizure of gold from one RK Templer Singh by the RPF. Thus, in the absence of any nexus between Shri RK Templer Singh and the persons from whom the gold was seized by the RPF, there could and should not have been any ground to believe that the gold was smuggled and that the said RK Templer Singh was accomplice in this case, rather an accomplice is one who actively participates in the commission of the crime. The petitioner has asserted that, in the instant case, the gold was being transported in a bona fide manner from one place to another alongwith supporting documents by two other persons. Thus, there was no question of Shri R.K Templer Singh being an active participant in the commission of any offence. The case referred to by the Customs Department against Shri R.K. Templer Singh is sub-judice and that cannot be a ground to justify the statement that the goods seized are smuggled goods. It is necessary that the Customs Department should have a reasonable belief as a pre-requisite for seizure of gold under Section 110(1) of the Customs Act, 1962. The affidavit of the Customs Department is nothing but a post-seizure analysis and is also hypothetical in nature. It cannot constitute a reason or circumstance to formulate a reasonable belief under Section 110(1) of the Customs Act, 1962. Subsequent developments and statements cannot be considered as the justification to say that the respondent had reasons to believe that the gold was smuggled. Moreover, according to the petitioner, there were sufficient reasons for not transporting the gold in question by himself. It is widely known that the entire North Eastern Region especially the State of Manipur is fraught with criminal activities in the guise of insurgency and there have been countless incidents of businessmen falling prey to such activities for the sole purpose of ransom/demand of money. The fact that the petitioner himself did not carry the gold by air to Kolkata cannot, in itself, constitute a reasonable belief that the ownership of gold in question was suspicious being smuggled and thus, was liable to be confiscated is totally be unfounded. Further, no person is expected to carry valuable goods more particularly, gold openly in a bag or suitcase in a crowded public place or train. The owner is supposed to adopt safety measures to avoid threat or loss in any other manner. The persons from whom the gold was seized by RPF were travelling in an area known as disturbed area having frequent law and order problems. It was, therefore, obvious to carry the gold by concealing the same in their persons for safety. It is a common practice in every part of the

world to carry valuables or even a small amount of money with utmost care and secrecy. The mode of transportation of valuables in a covert manner has been accepted as a general practice. Thus, carrying gold in person cannot provide a basis to have presumption about its possession being illegal in nature. The claim of Customs Department that there existed prior information that there is smuggling of gold mainly of Myanmar origin from across the border existing along Manipur has been denied and according to the petitioner, the Customs Authority did not act on the aforesaid information and nothing was seized or recovered in pursuance thereof. Simple intelligence report that there was spur of smuggling of gold in a particular area could not have justified the Customs Department to form a suo motu belief that the gold that was transported under genuine documents was a contraband. It can at the most give rise to a reasonable suspicion but based on that, no inference can be drawn that the gold in question was smuggled for the purpose of exercise of powers of seizure under Section 110 of the Customs Act, 1962. The petitioner has also placed reliance on a judgment of Hon^{ble} the Supreme Court in this regard rendered in the case of State of Gujarat Vs. Mohanlal Jitmalji Porwal and Another, AIR 1987 SC 1321 : (1987) CriLJ 1061 : (1987) 2 Crimes 1 : (1987) 13 ECC 12 : (1987) 29 ELT 483 : (1987) 1 JT 783 : (1987) 1 SCALE 598 : (1987) 2 SCC 364 : (1987) 2 SCR 677 : (1987) 2 UJ 129 . The Supreme Court has held as under:

"The reasonable belief should not be based on mere presumption and there must be a prima facie material. Without a properly formed reasonable belief it becomes a fishing expedition."

21. Thus, the intelligence report of spur in smuggling activities cannot be a prima facie material to hold that the gold was smuggled. Moreover, the report of smuggling cannot be used as a tool by the Customs officers to interfere with the genuine business transaction supported by purchase documents and challan. It is widely known that there is huge quantity of illicit import of gold into India. Based on intelligence report that there was spur in gold smuggling, the Customs authorities had no right or statutory power to obstruct bona fide trading of gold. The petitioner has also placed reliance on another judgment in the case of Union of India v. Kasambhai Umerbhai Kureshi, 1979 Criminal Law Journal 1173, rendered by the Gujarat High Court which was referred to and relied upon by the Punjab and Haryana High Court in the case of Assistant Collector Vs. Daljit Singh and Others, (1995) ECR 43 : (1992) 58 ELT 54 . Relevant portion of the observation is reproduced as under:--

"The goods were seized from the Petitioner by the Police. The accused and the goods seized were taken to the Police Station and a Panchnama was prepared. Thereafter, the goods were handed over by the Police to the Customs Authority. It is evident that the seizure of the goods was not made by the Customs Authority. The expression, "seize" was defined by the Supreme Court in Gian Chand and State of Punjab, in the context in which it is used in the Act. That word was stated to mean the taking of possession, contrary to the wishes of the

owner of the Property. It cannot be denied that in the instant case, as far as the Police was concerned, there was a seizure of the goods from the accused/respondent, but as far as the Customs Authorities were concerned, the goods were received and not seized by them, because they were willingly parted with by the RPF, who by that time had the custody of the goods, to the Customs Authorities. There was therefore no seizure of goods within the meaning of Section 123 in the instant case. Besides, the seizure must be with the reasonable belief that they are smuggled goods. There is nothing on record to show that the goods were seized by the Police in the reasonable belief that they were smuggled goods."

22. Thus, according to the petitioner, the ratio decidendi of the judgment can also apply in the instant case for the reason that the gold was seized by the RPF personnel under the Cr.P.C. (having no power under the Customs Act, 1962) at Dimapur (Nagaland) and handed over to the Customs at Tinsukia (Assam). Therefore, the goods were not seized by the Customs but received from the RPF. As such, the Customs Officers did not have reasonable belief in this case that the gold was liable to confiscation under the Customs Act, 1962. Reason to believe at the time of seizure that the goods are contravening goods is a pre-condition to the seizure, otherwise seizure would become illegal. Further, from the seizure list prepared by the Customs Department dated 27.8.2014, it also appears that the Customs Officer took possession of gold from the custody of RPF by exercising power of seizure under Section 110(1) of the Customs Act, 1962 without having any reasons to believe that the items that were seized were gold and the same were smuggled and thus liable to confiscation under the Customs Act, 1962. The Customs Inspector, Shillong, while making seizure inventory, recorded "yellow rectangular metal biscuits believed to be gold of foreign origin" and he also recorded that the gold bore no markings. Thus, the Customs Inspector, at the time of seizure was not even certain that the items seized were gold, and that is why, in his seizure, he has stated, "yellow rectangular metal biscuits." It is submitted that the respondents only entertained suspicion instead of reasonable belief to exercise power of seizure under Section 110 of the Customs Act, 1962. The petitioner has also taken objection to defamatory statement made against him that he was a big time smuggler, an accusation which according to him is not at all supported by material facts. Rather the Customs Department has exceeded its jurisdiction in making personal allegations against the petitioner who claims to be a law abiding and respectable citizen of the country. He being a genuine businessman also pays a substantial amount of income tax. The facts and circumstances to make a reasonable belief should exist prior to the seizure, which according to the petitioner, were non-existent in the instant case. The Kolkata High Court, in the case of P.K. Ghosh Vs. Kailash Kumar Mazodia, (2000) 117 ELT 14 has held, that the Customs Officers cannot search and seize goods in the hope of ultimately discovering some grounds to justify the search and seizure, nor can they go on fishing expedition to find out whether any irregularity has been committed. In the judgment referred to by the Customs Department in

the affidavit in reply namely, in Natwarlal Damodardas Soni's case, the Supreme Court has made observation in relation to requirements of guilty knowledge or mens rea under clauses (a) and (b) of sub section 1 of Section 135 of the Customs Act, 1962. Another case sought to be relied upon by the Customs Department, namely, State of Gujarat v. Mohanlal Jeetmalji Porwal is the one where in the burden of proof under Section 123 of the Customs Act, 1962 has been discussed. In the instant case, the petitioner has rather challenged the very basis of this seizure by referring to affidavit-in-opposition of the Customs Department wherein it is stated in paragraphs 12 and 13 that the seizure of goods is initially made to find out as to whether the same are smuggled goods/ contraband items.

23. During the proceedings, this Court passed a detailed order dated 8.12.2014. Paragraphs 8 and 9, contain the operative portion of the order as:

"8. However, at this stage during the course of hearing, an apprehension was expressed that in two cases of seizure of huge quantity of gold, at the time of return of the articles, it was found that the gold was converted into golden colour articles. On being asked about the custody, it was also told that the custody was given to the Superintendent of Customs.

9. Therefore, we direct the Chairman, Board of Customs and Central Excise that the Department of Custom shall open Bank Account and Locker in the name of department for keeping costly articles, which shall be operated by an Officer not below the rank of Commissioner, so that the articles remain intact. The Commissioner of Customs shall take the custody of gold under seizure which is worth Rs. 1,23,00,000/- and ensure its safe custody."

24. Pursuant to the above order, the Customs Department has, again through the Commissioner of Customs (Preventive), North Eastern Region, Shillong, filed a detailed affidavit and tried to clarify and reiterate the position further. The affidavit reads as:

"1. That I am conversant with the fact and circumstances of the case based on records.

2. That on 26.8.2014 at about 0330-0345 hrs, the officials of Railway Protection Force (RPF) Dimapur intercepted four persons namely, Shri RK Templer Singh, Male, aged 45 years, S/o (L) Ketuki Singh, Village-Sagolband, Bijoy Govinda Leikai, P.O/P.S Imphal West, Dist : Imphal West, Manipur. Shri RK Semson Singh, aged 22 years, S/o RK Boysama Singh, Village-Sagolband, Bijoy Govinda Leikai, PO/PS Imphal West Dist : Imphal West, Manipur. Smti T Santibala Devi, aged 26 years, W/o RK Semson Singh, Village- Sagolband, Bijoy Govinda Leikai, PO/PS Imphal West, Dist : Imphal West, Manipur. Smti RK Rojita Devi, aged 32 years, W/o RK Ranjit Singh, Village-Sagolband, Bijoy Govinda Leikai, PO/PS Imphal West, Dist : Imphal West, Manipur from 15960 DN Kamrup Express (destined to Howrah from Dibrugarh), standing/stationed at Dimapur Railway Station. The four passengers had reservation bearing PNR No. A6133126565 dated 26.8.2014

and were allotted berth No. 17, 18, 19 and 22 of Coach No. S8. The RPF personnel found that the above mentioned four persons were creating nuisance, causing disturbance to other passengers and when the RPF officials acted, these four passengers resisted and tried to flee, however, the officials overpowered and apprehended them and took them to RPF post, Dimapur at about 1530 hrs.

3. That on search of the belongings and persons, amongst others, 13 pcs of rectangular yellow metal biscuits believed to be gold was recovered from Smti T Santibala Devi, which was kept concealed insider her Jeans Pant. Similarly another 13 pcs of rectangular yellow metal biscuits believed to be gold were recovered from Smti RK Rojita Devi, which were kept concealed insider her Petticoat. At total of 26 pcs of Gold Biscuits were recovered and none of the Gold biscuits bore any markings. No contraband goods were found from the two male accomplices. It was further confirmed by the RPF officials that during their investigation that the gold biscuits were given by one RK Anganbi Singh of Village-Sagolband, Bijoy Govinda Leikai, PO/PS Imphal West, Dist : Imphal West, Manipur and were meant to be delivered to the said person at Howrah, West Bengal. Shri RK Anganbi Singh was supposed to go to Kolkata by flight. It was also stated that they came from Imphal to Dimapur by road and were supposed to board Kamrup Express from Dimapur as they were having reservation vide PNR No. A 6133126565 dated 26.8.2014. The RPF personnel also recovered 3 mobile phones cash Rs. 13,400, 4 Identity Cards, 4 Air Bags containing clothing items. These were seized by the RPF personnel in presence of witness vide their case No. 16/14 dated 26.8.2014.

4. That during interrogation by the RPF, the accused disclosed that they are all related to each other and are in this business for personal gain and that the gold biscuits were smuggled. Accordingly, a seizure list was prepared incorporating all the details by the RPF. After interrogation, all the accused were arrested by the RPF officials on 26.8.2014 at Dimapur and were produced before the Hon''ble Special Railway Magistrate, Tinsukia, was requested by Customs Superintendent, CPF, Tinsukia to hand over the case to the Customs Formation as they have violated various sections and rules under Customs Act, 1962. The Hon''ble Railway Magistrate forwarded the same to the Hon''ble Chief Judicial Magistrate, Tinsukia, Assam and the prayer of the Superintendent Customs, CPF Tinsukia was allowed.

5. That in Customs CPF (Custom Preventive Force) Office, Tinsukia all the Gold Biscuits, mobiles phones, other belongings along with the relevant documents (seizure list, arrest report, personal search list, arrest memo, statements etc) along with the 4 accused were handed over to the Customs by Shri PR Meena, Sub-Inspector, Railway Protection Force, Dimapur at 6 pm on 27.8.2014. Then, in the presence of the witnesses, the officers on a reasonable belief that the recovered Gold Biscuits were without any supportive documents and were smuggled from Myanmar, seized the said 26 gold biscuits. Then, a registered goldsmith was called in the Customs CPF Office, Tinsukia by the officers and the

weighment of the seized gold biscuits were taken with the help of digital weighing scale and are serially numbered as 1 to 26. The weights of the Gold bars are (1) 166.82 gm, (2) 166.62 gm, (3) 167.02 gm, (4) 167.00 gm, (5) 166.55 gm, (6) 166.74 gm, (7) 166.58 gm, (8) 166.65 gm, (9) 166.77 gm, (10) 166.82 gm, (11) 166.69 gm, (12) 167.04 gm, (13) 166.57 gm, (14) 166.66 gm, (15) 166.70 gm, (16) 166.50 gm, (17) 167.05 gm, (18) 166.73 gm, (19) 166.52 gm, (20) 166.71 gm, (21) 166.75 gm, (22) 166.84 gm, (23) 166.76 gm, (24) 166.62 gm, (25) 166.53 gm, (26) 166.55 gm respectively totaling 4334.79 gms (gross weight). The Goldsmith has also examined the purity of the Gold biscuits by Flame method and found to be in the purest form (99.9%) and accordingly issued certificate against the said Gold biscuits.

6. That the Customs officers then prepared the inventory incorporating all the details in the presence of independent witnesses and a Claimed Case was booked vide Case No. 06/CL/IMP/CUS/HQRS. PREV/SH/14-15 dated 27.8.2014 totally valued at Rs. 1,22,15,438/- (Rupees One Crore Twenty Two Lakh Fifteen Thousand Four Hundred Thirty Eight) only under the relevant provisions of Customs Act, 1962. Thereafter, the 26 gold biscuits were packed and sealed in the presence of two independent witnesses, 4 accused persons, seizing officer and a gazette officer in a cloth pouch with departmental seal bearing inscription CCP/NER/SHILLONG/No. 17. The samples of all the 26 gold biscuits which were drawn and were put in separate envelopes and sealed with the same seal for the purpose of assaying in Government Mint, Kolkata.

7. That the sample of seized gold biscuits were sent for Assaying to the Deputy General Manager, India Government Mint, New Alipore, Kolkata, West Bengal vide letter C. No. 06/CL/IMP/CUS/HQRS.PREV/SH/14-15/9804(B) dated 01.09.2014 and the report of the same is still awaited.

8. That your deponent humbly submits that the 26 gold biscuits were packed and sealed in the presence of two independent witnesses, 4 accused persons, seizing officer and a gazette officer in a cloth pouch with departmental seal bearing inscription CCP/NER/SHILLONG/No. 17, and now the seized gold are under safe custody of this Commissionerate in the "Strong Room" of Customs House at Shillong, which has been duly recorded in the register of the Superintendent (Disposal) vide GR No. 03/GOLD/2014 dated 01.09.2014. Moreover, as per the Disposal Manual of Government of India, Department of Revenue, Central Board of Excise and Customs, all the requisite formalities had been complied with for storage of valuables. It is submitted that as per Manual, instruction specified in Paragraph 2.5.1(iv), it is stated that when the valuable are stored in a strong room. Following measures must be taken strictly:

- a) Strong room storing valuables such as Gold, Silver, Diamonds, Gems & Jewellery and precious/semi-precious stones, should invariably have a double lock system,
- b) Two keys for operating the Strong Room should be entrusted to two separate

officers; one of the in-charge of the Strong Room or godown and the other to a superior/supervisory officer of gazette rank;

In the instant case, the seized goods has been kept in the strong room having double lock system and one of the key is with the Assistant Commissioner and another key with the Superintendent Disposal). The Strong Room can be accessed only when both the keys are inserted. Moreover, as per clause (viii) of the said manual instruction, no officer, including custodian-in charge of the Strong Room/godown should be allowed to open the strong room/godown on any holiday (including Saturday/Sunday) without a prior specific written permission of the Additional Commissioner/Commissioner concerned. Hence, it is stated that the seized goods are in proper custody of the Commissioner on behalf of President of India. (Copy of disposal manual is annexed as Annexure A).

9. That the said seized gold along with other seized gold present in the "Strong Room" have been authenticated by Smti RM Kharsyntiew, Lt. Judicial Magistrate First Class, Shillong, on 2.12.2014. In view of the disposal of gold arisen out of Crl. Misc. Appln. 24(H) 2014 in connection with disposal of seized gold other than the instant case has been ordered for disposal on fixing the date 08.01.2015 for report. The aforesaid exercise have been followed under Section 110(1B) of Customs Act, 1962. (Copy of the authenticated Inventory of the seizure and order of the District and Sessions Judge, Shillong is annexed as "Annexure B").

10. That in respect of the Tax Invoices bearing No. 37260/13-14 dated 01.06.2013, 38757/13-14 Dt. 11.6.13 and 47709/13-14 Dt. 19.07.13, purportedly issued by M/s. Magna Projects Pvt. Ltd., 163, Rabindra Sarani, Kolkata (which were seized along with the 26 Nos. of gold biscuits), follow-up investigation has been taken up with the Additional Director General, Directorate of Revenue Intelligence, Kolkata to verify the genuineness and authenticity of the same vide letter C. No. 06/CL/IMP/CUS/HQRS.PREV/SH/14-15/9800(B) dated 01.09.2014. They have been also asked to provide specifications of gold if at all sold to Shri RK Angangbi Singh. The investigation report is still awaited. The case is still under investigation under the said Act by the competent authority and till the adjudication process under the said Act is completed the seized gold would be remain under the safe custody of the Commissioner of Customs on behalf President of India".

The Customs Department has again filed another affidavit dated 28th January, 2015 to the following effect:

"1. That there is a mismatch between the gold seized and the description on the Tax Invoices bearing Nos. 37260/13-14 Dt. 01.06.13, 38757/13-14 Dt. 11.06.13 and 47709/13-14 Dt. 19.07.13, purportedly issued by M/s. Magna Projects Pvt. Ltds., 163, Rabindra Sarani, Kolkata recovered from the carriers along with gold. The discrepancies noticed is shown below:

It is clearly evident from the above that gold biscuits physically recovered from the carriers do not match with the description written in the recovered invoices.

2. Further, the assay report of the seized gold furnished by the Government of India Mint, Kolkata has shown higher purity, then what is mentioned in the recovered invoices, whereas on the contrary the petitioner has claimed that he had processed the gold with alloys which had reduced the purity to a lower fineness. Thus, it is evident that the gold biscuits under seizure were not the same as the ones written in the Invoices under seizure.

3. That, Shri R.K. Angangbi Singh misused the purchase invoices issued by M/s. Magna Projects Pvt. Ltd., Kolkata as covering documents for transporting the gold biscuits while he also claimed that said biscuits were reprocessed by him though no Invoice/Challan of his own business establishment was issued.

4. That no intimation is required to be made to Customs for change of shape/character of gold bars or gold items.

5. In terms of section 123(2) of the Customs Act, 1962, Gold is declared as notified item and the burden of proving that the said gold are not smuggled lies with the possessor/owner or any person who claims to be the owner of the goods so seized. Since, there is gross mismatch of the description in the Invoices under seizure with the seized gold biscuits; the burden of proving has not been discharged by the petitioner.

6. That in view of the facts and circumstances described in the aforementioned paras there is strong reason to believe that the seized gold biscuits were smuggled into India and investigation is under progress in this regard.

7. That as case is still under investigation and the Writ Petition with its prayer inter alia for release of the goods is premature."

25. There is a further affidavit filed by Assistant Commissioner dated 25th February, 2015 reiterating the points highlighted in affidavit in opposition with certain further details on behalf of the respondents. Thereafter, yet another detailed affidavit has been filed by the Assistant Commissioner of Customs in furtherance of earlier affidavits. The Assistant Collector has also filed a furthermore affidavit dated 17th March, 2015 with similar averments as made in earlier five affidavits.

26. From the foregoing rival submissions and the pleadings, it appears that this petition involves some vital disputed questions of facts which cannot be gone into and appreciated in the exercise of prerogative writ jurisdiction and the same would need scrutiny of evidence as well as supporting documents to ascertain the veracity of the such contentions. The petitioner has stated that during the period commencing from 1st April 2013 to 17th April 2014 he purchased a huge quantity of gold bars as entered into sales invoices with dates and numbers. He has also submitted that the "Ningol Chak Kouba festival" is a very important festival in the State of Manipur and the people over there spend huge amount in purchasing gold according to their financial status. That festival was being celebrated on 28th October, 2014. Thus, the petitioner being the owner of a

famous jewellery shop at Imphal decided to get "Hallmark gold coins" made in Kolkata before the start of the festival. The petitioner, accordingly, during the course of his usual business transactions dispatched 26 (twenty six) pieces of gold bar, with gross weight 4350 grams and purity average 99.5 to 99.9 through Smti T Santibala Devi and Smti RK Rojita Devi. The said Smti T Santibala Devi and Smti RK Rjita Devi are the wives of the cousin brothers of the petitioner namely Shri RK Semsong Singh and RK Ranjit Singh respectively, who, also accompanied the two ladies. They decided to travel by bus from Imphal to Dimapur on 25.08.2014 and then by 15960 DN Kamrup Express Train from Dimapur to Howrah on 26.08.2014. The reservation and the payments were also made from the account of the petitioner. As a security measure, the gold biscuits/bars were instructed to be carried while being concealed in their clothes and not in a bag etc. The petitioner travelled by air and was supposed to meet the carriers at Kolkata Air Port. He also issued a challan on 25.08.2014 for and on behalf of the jewellery shop along with related invoices issued by the Kolkata Jewellers, namely, Magna Project Pvt. Ltd. On 26.08.2014, in the late night/early morning, the carriers aforementioned boarded the train for Kolkata at Dimapur. The carriers disclosed that they were carrying gold bars/biscuits and also produced 26 pieces of gold biscuits along with transit challan dated 25.08.2014 and the related invoices in support thereof to justify that the gold biscuits are legally carried. The Railway Protection Force prepared a seizure list and after interrogation, arrested all the aforesaid four persons on 26.08.2014 at Dimapur. Thereafter, they were produced before the Special Magistrate, Tinsukia on 27.08.2014. On request by the Customs Superintendent, CPF Tinsukia to hand over the case to the department as the accused persons seemed to have violated various provisions of the Customs Act and the rules framed thereunder, the application of the Customs authority was placed before the Chief Judicial Magistrate, Tinsukia, who allowed the request. Thus, all four accused persons were handed over to Customs authority (respondent No. 3) namely, the Inspector, Preventive, by Sub inspector Railway protection Force in the Customs Office, Tinsukia. Thereafter, all the four accused persons were released on bail by the Chief Judicial Magistrate, Tinsukia. On 29.08.2014, the Commissioner of Customs, Shillong issued search warrant No. 04/14-15 and searched the residential premises of the petitioner. According to the petitioner, the Railway Protection Force handed over the seized gold items at 6PM on 27.08.2014 to the Customs authority which the authority received in purported exercise of the power under Section 110 of the Customs Act, 1962. The description of the gold items were recorded as yellow rectangular in shape having gross weight 4334.79 grams and valued at Rs. 1,22,15,438 and thus believed to be gold of foreign origin. Three duplicate bills of Magna Project Pvt. Ltd., Kolkata were also seized by the Customs Authorities but it seems that they did not find any mention about the transit challan dated 25.08.2014 issued by the petitioner to the carriers of the gold. Thereafter, the petitioner was summoned by the Superintendent of Customs under Section 108 of the Customs Act, 1962 to appear before him on 09.09.2014. The petitioner thus appeared before the authority at Imphal on the

said date 09.09.2014 where respondent No. 3 Customs Inspector had also gone from Shillong. He recorded the statement of the petitioner at 1600 hours on 09.09.2014, at 1030 hours, on 11.09.2014 and also on 12.09.2014. However, according to the petitioner, the interrogation could not reveal any incriminating information. The petitioner has also claimed to have produced the documents required in support of the possession and ownership of 26 gold biscuits, and explained the circumstances whereunder the said gold biscuits had been purchased and sent through the carriers.

27. On the other hand, the Department of Customs while taking a divergent stand has contended that there was no marking or inscription on any of the gold bars/biscuits and the 3 Tax Invoices contained different descriptions than the actual shape; size and weight of the gold biscuits. At the time of seizure, the gold items were only in the form of rough biscuits without any marking or inscription or any number. Each gold biscuit weighed 166.52 gms to 1637.05 gms. The gold biscuits were carried from Imphal through buses and thereafter in sleeper class of the train by the carriers without any valid covering documents like challan, invoices, bills, etc., issued by the consignor to the consignee. The three photo copies of invoices carried along with the gold biscuits were like (i) Invoice No. 37260/13-14 dated 01.06.2013; (ii) No. 38757/13-14 dated 11.06.2013 and (iii) No. 47709/13-14 dated 19.07.2013 which have been issued against sale of gold by one M/s. Magna Projects Pvt. Ltd., Kolkata to one Rajkumar Angangbi Singh, Imphal, during June and July, 2013. However, the gold items sold under three tax invoices were found to be bigger in size namely, 1 Kg bars and some, of course, smaller biscuits. Gold bars or gold coins sold in commercial parlance are normally in polished/finished condition and bear logo/inscription/number or writing for identification etc. Even after close examination, no nexus between the present consignment and the gold sold under three Tax Invoices of M/s. Magna Projects Pvt. Ltd., Kolkata, could be established, nor could the same be explained by the carriers. Moreover, when any commercial quantity of goods/gold moves from one state to another, a proper declaration/documentation under the Sales Tax laws of the states through which such goods are to pass is required to be carried, up to the place of destination. One person alleged to be with carriers was RK Templer who upon enquiry by the Railway Protection Force was identified to be the same person who had earlier been arrested for smuggling of gold from Myanmar through Moreh to Imphal vide Case No. 10/CL/IMP/CUS/DPF/DCI/2014-15 dated 20.06.2014 said to be still pending. In that case, the said RK Templer has given his name as RK Swami Singh. It had thus created a serious doubt and bona fide belief in the mind of RPF Officers that the gold items were not being carried under a valid transaction and could be the smuggled goods. Though the carriers disclosed that the gold items belong to Mr. RK Angangbi Singh, Imphal, but they also informed that he was to proceed to Kolkata by flight and receive the gold at Howrah, Kolkata. It also created a strong suspicion: for, why one will take the risk of sending gold biscuits worth more than Rs. 1.22 crores through carriers by bus/train while he himself would

travel by air to receive the gold only at the destination point. If the gold biscuits were legally acquired and possessed, then the owner should have carried the gold with him by air to Kolkata, after making a full declaration to the security/enforcement agencies. That apart, the Department was also alert having received prior information about the spurring in smuggling of gold mainly of Myanmar's origin from across the border along Manipur. The seizure of the gold in this case was not an exception, but on earlier occasions also, such seizure of smuggled gold while being transported by air or train had been carried out. Moreover, the gold items in the instant case were being carried stealthily by the accused persons. Thus, according to Customs authorities, there was a reasonable belief that the instant goods have been smuggled into India without payment of customs duty in violation of Section 7(1)(c) and Section 11 of the Customs Act, 1962 and were liable for confiscation under Section 111 of the Act after seizure under Section 110 of the customs Act, 1962. The reasons furnished by the petitioner in the petition as well as subsequent affidavits seem to be only hyper-technical and learned counsel has tried to build up his case mainly on the basis of case laws. There is no dispute about the settled legal propositions but the same have to apply in a case with similar facts. It is argued that the conditions precedent required under Section 110 of the Customs Act, 1962 for carrying the seizure are non-existent; the power of seizure has not been exercised in good faith, but for extraneous consideration; a reason to believe must exist prior to the exercise of seizure, and the reason to suspect can not form a reason to believe. Gold biscuits were covered by the Tax Invoices while being carried by the carriers and there was no valid ground to seize such items. Thus according to the petitioner, there is violation of the fundamental right under Article 19(i)(g) of the Constitution of India.

28. This Court can certainly exercise the powers under Article 226 of the constitution of India even in the case of seizure but not in a case which involves the disputed questions of facts. In the instant case, moreover, there is an allegation of gold smuggling against the petitioner by the Customs Department and the seizure of the items was effected in highly suspicious circumstances when the accused persons were found to be accompanied by Shri. RK Templer who had earlier indulged in the smuggling of gold and a criminal case is pending against him.

29. Yet another point that needs to be noticed is that the petitioner instead of invoking the powers of this Court under Article 226 of the Constitution of India should have exhausted alternative remedy in the nature of being a substantive and unfettered right to file statutory appeal. Hon'ble the Apex Court in the case of Gulabdas and Co. and Another Vs. Assistant Collector of Customs and Others, AIR 1957 SC 733 : (1983) 3 ECR 1618 has held that;

"..... Unless the provisions relating to the imposition of duty are challenged as unconstitutional, or the orders in question are challenged as being in excess of the power given to the Customs Authorities and therefore without

jurisdiction, it is difficult to see how the question of any fundamental right under Article 19(1), Cls. (f) & (g), of the Constitution can at all arise.

If the provisions of law under which the impugned orders have been passed are good provisions and the orders passed are with jurisdiction, whether they be right or wrong on facts, there is really no question of the infraction of a fundamental right. If a particular decision is erroneous on facts or merits, the proper remedy is by way of an appeal."

30. This is not a case where despite existence of an efficacious alternative remedy in the nature of substantive right this Court has to exercise its discretionary jurisdiction. There is no violation of the principle of natural justice or a fundamental right or there is impugment of vires of the Act by way of any challenge. Moreover, we also do not find that the proceedings of the case are pending at a stage which could foreclose the right to avail the alternative remedy of filing appeal. In the case like the one in hand, the petitioner cannot be allowed to take recourse to prerogative writ under Article 226 of the Constitution of India otherwise it may amount to enabling and empowering a litigant to defeat the provisions of the statute providing for certain conditions for filing the appeal, like limitation, payment of Court fee, or deposit of some amount for entertaining the appeal. It is also not a case where there is arbitrary exercise of powers by statutory authority in clear violation of the provisions of statute. Though the petitioner has tried to offer some explanations in support of the arguments on the requirement of "reason to believe" as contained in Section 110 of the Customs Act, 1962 but it is also not a case where the appeal or any further proceedings under the statute were not or would not be dealt with on merit and may end as a mere idle formality because the administrative authorities under the Customs Act are also a quasi judicial authority and as such, they are under a legal obligation to decide the matter carefully and pass speaking and reasoned orders in accordance with law after giving full opportunity to the parties. Chapter XV of the Customs Act contains a complete code on the effective and efficacious remedies like appeals and revision etc.

31. Hon"ble the Apex Court in the case of A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, AIR 1961 SC 1506 : (1983) ECR 2151 : (1983) 13 ELT 1327 : (1962) 1 SCR 753 while dealing with a case where the Central Board of Revenue had issued a ruling to the effect that fountain-pens with nibs or caps being gold-plated fell within item 61(8), has held that, the basis of the rule by which Courts insist upon a person exhausting his remedies before making application for the issue of a prerogative writ is that the Court's jurisdiction ought not to be lightly invoked when the subject can have justice done to him by resorting to the remedies prescribed by statutes.

Hon"ble the Apex Court in the case of Province of Bombay Vs. Kusaldas S. Advani and Others, AIR 1950 SC 222 : (1950) 1 SCR 621 has observed as:

"If a statutory authority has power to do any act which will prejudicially affect

the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially." "Now the Sea Customs Act empowers the Customs authorities to impose a certain duty on goods imported and this no doubt prejudicially affects the importer. The Act, further clearly requires the authorities to proceed judicially in imposing that duty when a dispute arises, that is, after giving a hearing to the party affected"

(emphasis is ours).

The Hon''ble Court has also placed reliance on its earlier judgments in Rashid Ahmed Vs. The Municipal Board, Kairana, AIR 1950 SC 163 : (1950) 1 SCR 566 and Union of India (UOI) Vs. T.R. Varma, AIR 1957 SC 882 : (1958) 2 LLJ 259 : (1958) 60 PLR 126 : (1958) 1 SCR 499 and held as:

"We see considerable force in the argument of the learned Solicitor-General. We must, however, point out that the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law, is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a rule which Courts have laid down for the exercise of their discretion. The law on this matter has been enunciated in several decisions of this Court but it is sufficient to refer to two cases : In Union of India v. TR Varma (1), Venkatarama Ayyar, J, speaking for the Court said:

It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the court to issue a writ; but, as observed by this Court in Rashid Ahmed v. Municipal Board, Kairana (a), "the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs."

KS Rashid and Son v. The Income Tax Investigation Commission ("). And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 unless there are good grounds therefore."

32. In the case of Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, AIR 1969 SC 556 : (1971) 2 SCC 489(1) : (1969) 1 SCR 518 , the Hon''ble Supreme court has ruled that the High Court can entertain a writ petition even in the case where alternative remedies have not been exhausted provided a tribunal or a quasi-judicial authority has acted on the provision of law which is ultra vires and where the natural justice is denied. In Babu Ram Prakash Chand's case, Hon''ble the Apex Court discussed in great detail the point as to when the discretionary jurisdiction is to be exercised as:

"It is a well-established proposition of law that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, as observed by this Court in *Rashid Ahmed Vs. The Municipal Board, Kairana*, AIR 1950 SC 163 : (1950) 1 SCR 566 "the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs"" and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefore. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the court may therefore in exceptional cases issue a writ such as a writ of certiorari notwithstanding the fact that the statutory remedies have not been exhausted. In *The State of Uttar Pradesh Vs. Mohammad Nooh*, (1958) 1 SCR 595 , SR Das, C.J., speaking for the Court, observed:

"In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute (*Halsbury's Laws of England*, 3rd Ed., Vol. II, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. In *the King v. Postmaster General Ex parte Carmichael* (1928)(1) K 291 a certiorari was issued although the aggrieved party had an alternative remedy by way of appeal. It has been held that the superior court will readily issue a certiorari in a case where there has been a denial of natural justice before a court of summary jurisdiction. The case of *Rex v. Wandsworth Justice Ex parte Read* (1942)(1) KB 281 is an authority in point. In that case a man had been convicted in a court of summary jurisdiction without giving him an opportunity of being heard. It was held that his remedy was not by a case stated or by an appeal before the quarter sessions but by application to the High Court for an order of certiorari to remove and quash the conviction."

There are at least two well recognised exceptions to the doctrine with regard to the exhaustion of statutory remedies. In the first place, it is well settled that where proceedings are taken before a Tribunal under a provision of law, which is

ultra vires, it is open to a party aggrieved thereby to Move the High Court under Article 226 for issuing appropriate writs for quashing them on the ground that they are incompetent, without his being obliged to wait until those proceedings run their full course (See the decisions of this Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, AIR 1955 SC 661 : (1955) 2 SCR 603 : (1955) 6 STC 446 and *The State of Uttar Pradesh Vs. Mohammad Nooh*, (1958) 1 SCR 595 . In the second place, the doctrine has no application in a case where the impugned order has been made in violation of the principles of natural justice (See *The State of Uttar Pradesh Vs. Mohammad Nooh*, (1958) 1 SCR 595)".

33. It should be remembered that the rule requiring the exhaustion of a statutory remedy before the writ is to be granted is more appropriately a rule of policy, convenience and discretion than a rule of law and the Court may, therefore, in exceptional cases, issue a writ, such as, a writ of certiorari notwithstanding the fact that the statutory remedies have not been exhausted.

34. The proceedings under the Customs authorities being in the nature of quasi-judicial cannot be quashed lightly. The exercise of prerogative writ jurisdiction is pre-eminently one of discretion and no inflexible rule can be laid.

35. Where the provisions of Customs Act have not been complied with or if the fundamental principles of judicial procedure have been given a goodbye, the High Court can certainly grant relief in exercise of prerogative writ. However, the right of appeal as provided in the Customs Act should not be by passed merely on the ground that it is an appeal from one administrative authority to another.

36. However the facts of the case in hand are not such that can attract the exercise of writ jurisdiction.

37. Writ petition is thus dismissed with liberty to file Statutory Appeal and institute any other or further proceedings as provided in Chapter XV of the Customs Act, 1962 (Act 52 of 1962).

38. It is also clarified that the appellate authority under the Customs Act shall not be influenced by any observation or finding recorded in this judgment in deciding the appeal on merit and shall also pass a speaking order.