

	सीमा शुल्क (निवारक) के आयुक्त का कार्यालय, सीमा शुल्क भवन, जामनगर - राजकोट हाइवे, विक्टोरिया ब्रिज के पास, जामनगर (गुजरात) - 361 001
	Office of the Commissioner of Customs (Preventive), 'SEEMA SHULK BHAVAN', Jamnagar - Rajkot Highway, Near Victoria Bridge, Jamnagar (Gujarat) - 361 001 Email: <a href="mailto:commr-custjmr@nic.in">commr-custjmr@nic.in</a> ; <a href="mailto:adj-custjmr@nic.in">adj-custjmr@nic.in</a>

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## SHOW CAUSE NOTICE

*(Issued under Section 28(4) read with Section 124 of the Customs Act, 1962)*

Intelligence was received regarding the evasion of Customs Duty including IGST by various mobile dealers/ retailers situated in the areas of Jamnagar, Rajkot and Morbi District. Acting on the Intelligence, it was noticed that, the mobile dealers/retailers are selling smuggled goods i.e. Foreign Origin Mobile Phones and their Accessories, mainly of Apple Brand without any Invoices/ Bills.

2. Whereas, acting on the intelligence a search was carried out at the office premises of **M/s Mobile Villa**, Near Ramkrishna, Dairy Farm, Street No. 22, Jagnath Plot, Rajkot (PAN BWMP55068R) (hereinafter referred to as "**the Noticee**") on 12.01.2022 under Search Warrant dated 11.01.2022 (DIN- 20220171MM000041414E). During the search proceedings, the owner of the Noticee, Shri Rutvik Dinesh Sheth was asked to produce the stock of the mobile phones and accessories available in his shop. Further, the bills/ invoices regarding the sale of mobile phones/accessories were also verified from the stocks. It was noticed that, the owner of the shop was neither able to produce the bills/invoices of mobiles and accessories of Apple brand which were of foreign origin lying in stocks nor any supporting documents with respect to its procurement at any point of time. Further, on being asked, Shri Rutvik Dinesh Shah, the Proprietor of the Noticee firm, informed that the said mobile phones/accessories are imported goods, which were purchased from different suppliers without cover of invoice or other import documents. Further, incriminating documents i.e. Registers were also found at the premises of the Noticee firm, which contained the details of sales of mobiles phones of various brands.

3. Whereas, the entire search proceedings were recorded under Panchnama dated 12.01.2022 (**RUD SI. No.1 of Annexure-A to this Show Cause Notice**) and the mobile phones and accessories of Apple Brand of Foreign Origin found at the premises of the Noticee i.e. M/s. Mobile Villa were listed in the Panchnama dated 12.01.2022 and were placed under seizure vide Seizure Memo 12.01.2022 issued under Section 110 of the Customs Act, 1962. (**RUD SI. No. 2 of Annexure-A to this Show-Cause Notice**).

4. Whereas, during the search, some incriminating documents viz. Register-R1, Register-R2 and Register-R3, were found in the premises of the Noticee and the same were seized under





the reasonable belief under the provisions of the Customs Act 1962 for further investigation. On being asked about the said three Registers i.e. Register -R1, Register-R2 and Register R3, Shri Rutvik Dinesh Sheth, the Proprietor of the Noticee stated that, these registers contain the details of purchase and sale of Mobile Phones and Accessories of various brands. These registers also include the entries of purchase and sale of new as well as old used Imported Apples Mobiles, Watches, Airpods and the same were received through grey market without any documents. It also appears that the Noticee is not registered with GST Department.

5. Whereas, on being asked, Shri Rutvik Dinesh Sheth, the Proprietor of the Noticee, stated that the above listed mobile phones and accessories were purchased from different suppliers without cover of Invoices or any other import documents, so that he had not produced the supporting purchase/ import documents for the said items. He also stated that, he mainly performs business of second hand/ used mobiles manufactured in India without issuing Invoice, however, he sold New I-Phone in small quantity on receipt-of demand from customers.

6. Subsequently, the Show Cause Notice No. 08/2022-23 dated 05.01.2023 has been issued by the Additional Commissioner, Customs (Prev.) Commissionerate, Jamnagar, demanding duty amounting to Rs. 8,18,982/- (Rupees eight lakh, eighteen thousand, nine hundred and eighty two only) in respect of smuggled Mobile Phones and accessories of Apple Brand of Foreign Origin seized from the premises of Shri Rutvik D Sheth, Proprietor-cum-Owner of M/s. Mobile Villa, Rajkot, seized under Seizure Memo dated 12.01.2022.

7. Whereas, during the course of investigation, a statement of Shri Rutvik Dinesh Sheth, Proprietor of the Noticee, was recorded on 12.01.2022 (RUD SI. No. 3 of Annexure-A to this Show Cause Notice), wherein he has *inter alia* stated that; he is the owner of M/s. Mobile Villa, Near Ram Krishna Dairy, Street No. 22, Jagnath Plot, Rajkot and has been operating M/s Mobile Villa, since 2013; that he is engaged in the purchase and sale of Apple Mobile Phones, Apple Air-Pods, Apple Watches, Apple Mobile Charges and accessories of other brands; that he had perused the Panchnama dated 12.01.2022 drawn at the premises of the M/s. Mobile Villa, Near Ram Krishna Dairy, Street No. 22, Jagnath Plot, Rajkot and agreed to the truthfulness and correctness of the same; that he used to purchase the imported New/refurbished Apple Mobile Phones Apple Air-Pods, Apple Watches, Apple Mobile Charges without the cover of any purchase documents and sell the same without any sales document; that he had purchased the aforesaid seized mobile phones and accessories mainly from Ahmedabad, Mumbai, Chennai and Surat; that he also provided the details to the Dealers from whom he was purchasing the new as well as refurbished imported Apple Brand phones and Accessories without the cover of proper invoices or import documents; that he mainly procured these mobile-phones and accessories from Shri Idrish Bhai, Mumbai (Mob. No.9867777792), Shri Bilal Bhai, Surat (Mob. No.9825533700), Shri Rajul Bhai, Ahmedabad (Mob. No.9825189354) and Shri Sultan Bhai, Chennai (Mob. No.9884212866); that he does not "have sale/purchase documents "for





new/refurbished Apple Mobile Phones, Apple Air Pods, Apple Watches and Apple Mobile Chargers, therefore, he could not produce the same.

7.1 Whereas, during the course of investigation, a further statement of **Shri Rutvik Dinesh Sheth**, Proprietor of the Noticee, was recorded on 01.02.2022; (**RUD SI. No. 4 of Annexure-A to this Show Cause Notice**) wherein he *inter alia* stated that; he was dealing in smuggled mobile phones and accessories, since last 10 Months i.e. from April 2021; that he is the Sole Proprietor of M/s. Mobile Villa, Rajkot, since its inception in 2013 and was looking after the purchase and sales; that at M/s Mobile Villa, he had been selling phones with or without bills which includes International/smuggled/ Indian Origin and second hand old phones and their accessories; that upon asking about the physical stock of Mobile Phones and accessories thereof, he stated that, they used to purchase phones/accessories without bill only and during search also all phones and accessories in Mobile Villa were without Bill; that to purchase these phones/accessories without bill, he used to contact with Shri Idrish Bhai, Mumbai (Mob. No. 9867777792), Shri Biial Bhai (Surat Mob. No. 9825533700), Shri Rajul Bhal, Ahmedabad (Mob.No.9825189354) and Shri Sultan Bhai Chennai (Mob.No.9884212866) over phone/whatsapp; that after getting the rates confirmed over phone/whatsapp, these persons send mobile phone through Maruti Courier, Tirupati Courier and Anjani Courier; that upon receipt of the phone, he used to sell it to retail customers on taking payment in cash only; that he used to make payment only in cash; that he used to make payments to his suppliers in cash through SG Angaidya and RK Angadiya, Rajkot and receive payment from retail customers in cash in person; that he does not have any sale and purchase invoices for International/ smuggled mobile phones and accessories; that he used to maintain 03 kaccha registers that were also seized during the search proceedings on 12.01.2022.

8. Whereas, during the course of investigation, statement of **Shri Akshay Shaileshbhai Chavda**, Manager of M/s SG Enterprise was recorded on dated 11.10.2022 (**RUD SI. No.5 of Annexure-A to this Show Cause Notice,**) wherein he *inter alia* stated that, M/s. SG Enterprise is a partnership firm and branch of M/s SG Enterprise is located in Jalaram Complex, Near, Ram Krishna Dairy, Rajkot and its main office is situated in Ahmedabad; that he has been operating the branch office of M/s. SG Enterprise at Rajkot for last 1.5 years as per the verbal agreement with Shri Bhagesh Bhai, Rajkot; that upon perusing the statement dated 12.01.2022 and 01.02.2022 of Shri Rutvik Dinesh Sheth, Proprietor of M/ s Mobile Villa Rajkot, he agreed that, they had received amount on some occasions, before one year from Shri Rutvik D. Sheth; that Shri Rutvik D. Sheth had told them to transfer the money to various stations i.e. Chennai, Ahmedabad, Surat, Mumbai; that he further stated that mostly the payments transferred by Shri Rutvik D. Sheth was between Rs. 25,000/- to Rs. 1,50,000/-; that they do not keep the records of the transfers of money more than 02 months.

9. Whereas, during the course of investigation, statement of **Shri Yatin Bafubhai Chudasama**, Manager of M/s. R K Enterprise, Rajkot, was recorded on dated 11.10.2022 (**RUD**





Sl. No. 6 of Annexure-A to this Show Cause Notice), wherein he *inter alia* stated that, M/s R K Enterprise is a partnership firm and branch of M/S R K Enterprise is located in Spundun Complex, Commissioner Bangla Road, Rajkot and its main office is situated in Ahmedabad at Iskon Market CG Road, Navrangpura, Ahmedabad; that he has been operating the branch office of M/s R K Enterprise at Rajkot for last 02 years as per the verbal agreement with Shri Raghavbhai, Ahmedabad; that upon perusing the statements dated 12.01.2022 and 01.02.2022 of Shri Rutvik Dinesh Sheth, Proprietor of M/s Mobile Villa, Rajkot, Shri Yatin Balubhai Chudasama agreed that they had received amount on some occasions before one year from Shri Rutvik D Sheth; that Shri Rutvik D Sheth had told them to transfer the money to various stations i.e. Chennai, Ahmedabad, Surat, Mumbai; that he further stated that mostly the payment transferred by Shri Rutvik D Sheth was between Rs. 25,000/- to Rs. 1,50,000/-; that they do not keep the records of the transfer of money more than 02-months.

10. Whereas, a further statement of Shri Rutvik Dinesh Sheth, was recorded on 14.12.2022 (RUD Sl. No. 7 of Annexure-A to this Show Cause Notice), wherein he *inter alia* among other things stated as follows:

**Q.1:** Kindly peruse the registers R1, R2 & R3 seized under Panchnama dated 12.01.2022 drawn at the premises of M/s Mobile Villa, Rajkot. Please explain the entries in detail.

**Ans.1:** In this regard, I want to state that I have perused the Register no. R1, R2 and R3 Seized from my premises i.e. M/s Mobile Villa, Near Ram Krishna Dairy Farm, Street No. 22, Jagnath Plot, Rajkot under the Panchnama dated 12.01.2022. In token of my perusal, I am putting my dated signature on the first and last page of these registers. I want to state that in these Registers, I use to make entries of the mobile phones that have been purchased and sold by me.

For Example Page no. 01 of the Register no. R1, entries in the first Column are of S. No., entries in the second column show the name of the person/firm from which I use to purchase/ procure the mobile phone/IPAD/Watch/other Accessories etc, entries in the third column shows the Brand name/ Model/Color/memory/size Specification of the mobile phone/watch/i-pad or any other mobile accessory that has been procured, fourth column shows the IMEI No. in case of Mobile phone/S No. of watch/S. No. of IPad etc., fifth column shows the name of person/ firm to whom the said procured mobile phone/IPAD / Watch/other Accessories etc. is sold. In these registers, there are entries of new phones/watches/I-pads as well as old/refurbished phones/watches/I-pads that has been procured/purchased and supplied/ sold by me. In all the three registers i.e. R1, R2 and R3 above mentioned type of entries are mentioned only. I am producing the Annexure A1, B1, C1 prepared on the basis of Registers R1, R2 and R3 respectively showing the entries mentioned in these registers.

**Q.2:** Kindly provide the IEC code and GSTIN of your firm i.e. M/s Mobile Villa?





**Ans.2:** In this regard, I want to state that I do not have any IEC code for my firm or myself. Neither, I have taken registration under GST Act, 2017.

**Q.3:** Please see the copy of Seizure Memo bearing DIN- 20220171MM0000000D53 dated 12.01.2022 wherein details of 54 mobile phones, 16 Airpods, 02 Apple Watches and 08 Mobile Chargers of Apple Brand of foreign origin are mentioned that were seized from your possession/premises on 12.01.2022. Please provide the invoices or import documents of the same.

**Ans.3:** In this regard, I want to state that 54 mobile phones, 16 Air pods, 02 Apple Watches and 08 Mobile Chargers of Apple Brand of foreign origin mentioned in Seizure Memo dated 12.01.2022 have been procured by me from various persons. These are smuggled goods and customs duties have not been paid on the same. I do not have any Invoice or Import Document related to the same goods. The total value of these 54 mobile phones, 16 Air pods, 02 Apple Watches and 08 Mobile Chargers works out to be Rs. 26,82,000/- (Rs. 23,83,200/- + Rs. 2,18,000/- + Rs. 68,000/- + Rs. 12,800/-).

**Q.4:** Kindly see the Register no. R1 having entries from Sr. 01 to Sr. No. 674, from page no. 01 to 71. Please provide the details about the entries of the Apple Brand iPhone/watches/I-pads. Which of these phones are old/new, at what price you have sold these mobile phones, also provide the origin of these mobile phones.

**Ans.4:** In this regard, I want to state, that, I have perused the register R1 having entries from Sl. 01 to Sr. No. 674, from page no.01 to 71. I have already submitted Annexure A1 showing these entries. Now, I am providing the Annexure A2 prepared on the basis of transaction value and name of the supplier, showing at what price the mobile phone was sold by me, whether it was old or new and its origin.

**Q.5:** Kindly see the Register no. R2 having entries from Sr. 675 to Sr. No 2874, from page no. 01 to 210. Please provide the details about the entries of the Apple brand iPhone/watches/I-pads. Which of these phones are old/new, at what price you have sold these mobile phones, also provide the origin of these mobile phones.

**Ans.5:** In this regard, I want to state that, I have perused the register R2 having entries from Sl. 675 to Sr. No. 2874, from page no. 01 to 210. I have already submitted Annexure B1 showing these entries. Now, I am providing the Annexure B2 prepared on the basis of transaction value and name of the supplier, showing at what price the mobile phone was sold by me, whether it was old or new and its origin.

**Q.6:** Kindly see the Register no. R3 having entries from Sl. 01 to Sl. No. 431, from page no. 01 to 210. Please provide the details about the entries of the Apple brand iPhone/watches/I-pads. Which of these phones are old/new, at what price you have sold these mobile phones, also provide the origin of these mobile phones.





**Ans.6:** In this regard, I want to state that, I have perused the register R3 having entries from Sl. 01 to Sl. No. 431, from page no. 01 to 210. I have already submitted Annexure C1 showing these entries. Now, I am providing the Annexure C2 prepared on the basis of transaction value and name of the supplier, showing at what price the mobile phone was sold by me, whether it was old or new and its origin. Further, I am also providing the details.

**Q.7:** Please segregate the details of I-phones/watches/I-pads as provided by you in Annexure A2, B2 and C2. Out of these phones which are of foreign origin?

**Ans.7:** In this regard, I want to state that I have procured foreign origin mobile Phones mostly from Idrish Bhai, Mumbai; Bilalbhai, Surat; Raju Bhai, Ahmedabad; Sultan Bhai, Chennai. I have mainly procured the same from Ahmedabad, Chennai, Mumbai and Surat. Therefore, by identifying the name of the supplier, I am providing the details of the mobile phones which are of foreign origin and which have been procured from the local dealers and sold to local customers. Further, I want to state that I use to purchase the old phones along with original invoices from suppliers and then sold the same by adding my commission of Rs. 500/- or Rs. 1,000/- to the buyers along with the invoices that was received from the suppliers.

**10.1** Whereas, the Annexure A1 & A2 are enclosed as **RUD Sl. No. 8 & 9** respectively of Annexure-A to this Show Cause Notice; Annexure B1 & B2 are enclosed as **RUD Sl. No. 10 & 11** respectively of Annexure-A to this Show Cause Notice and Annexure C1 & C2 are enclosed as **RUD Sl. No. 12 & 13** respectively of Annexure-A to this Show Cause Notice.

**11.** Whereas, during the Statements dated 12.01.2022, 01.02.2022 and 14.12.2022 of Shri Rutvik Dinesh Sheth, Proprietor of M/s Mobile Villa, Rajkot i.e. the Noticee, accepted that he was dealing in the smuggled goods viz. mobile phones & accessories and added with the fact that he had also not obtained IEC & GSTIN for his firm, therefore, it appears that the details/records of purchase and sale of mobile phones and accessories found in Registers R1, R2 and R3 (seized under Panchnama dated 12-01-2022 from the premises of Noticee during the Search proceedings) may be related to goods imported without proper documents & procedures and without payment of applicable Customs Duty.

**12.** Whereas, the Ministry of Communications, Department of Telecommunications, (Security Assurance Wing) vide Office Memorandum dated 4<sup>th</sup> July, 2022, has issued Standard Operating Procedure (Version 1.1) (**RUD Sl. No. 14 of Annexure-A to this Show Cause Notice**) for "Implementation of Central Government notification prohibiting import of mobile phones with duplicate, fake and non-genuine International Mobile Equipment Identity", wherein the Para 2 enlist the provision framework of IMEI and their allocation, which is reproduced as follows:





2.1 IMEI is a 15-digit unique identification number for each mobile device used in Global System for Mobile (GSM) network

2.2 The format of IMEI consist of 8-digit Type Allocation Code (TAC), 6-digit Serial Number (SNR) and last digit is checksum.

2.3 The TAC identifies the type of the Mobile Equipment (ME). It consists of two parts. The first two digits (NN) defines the Reporting Body (RB) allocating the TAC and the next six digits (XXXXXX) defines the ME Model.

2.4 TAC numbers (first 8 digits of IMEI) are allocated to the Mobile Equipment manufacturers or Brand owners (Type allocation Holder) by GSMA, which is an international body representing the interests of worldwide telecom operators.

2.5 GSMA performs its role through authorized representatives (Reporting Bodies) and keeps records of the TACs that are allocated to mobile device manufactures/Brand owners including information on some of the technical capabilities of the mobile device in its Data Base.

12.1 Whereas, in view of the above framework, it appears that the mobile phone/devices with registered and valid IMEI are allowed for import; and IMEI (International Mobile Equipment Identity) is a unique number to each device and mobile phone, mobile devices & accessories which manufacturing companies/ firms are required to get registered so that they are able to verify the place of manufacture of these devices.

13. Whereas, in view of the above, mobile phone, mobile devices & accessories manufacturing companies/firms were contacted and respective IMEI/Serial No. of devices available in the Registers R1, R2 and R3 were sent to these companies/firms for verification, so as to ascertain whether the said devices were manufactured in India or otherwise. In response the said manufacturing companies/firms have provided the details regarding whether devices were manufactured in India or not. The details of information provided by the said manufacturing companies/firms are as follows:

I. (i) M/s. Apple India Pvt. Ltd., 19<sup>th</sup> Floor, Concorde Tower C, UB City, No.24, Vittal Mallaya Road, Bangalore-560001 via e-mail dated 23-07-2024 provided the list of devices i.e. Apple products either manufactured or imported by M/s. Apple India Pvt. Ltd. for sale within India stating that devices other than mentioned in the list are not manufactured in India and are also not imported by M/s Apple India Pvt. Ltd. **(RUD Sl. No. 15 of Annexure-A to this Show Cause Notice)**

(ii) On comparative analysis of list provided by M/s Apple India Pvt. Ltd. w.r.t. Apple products either manufactured or imported by M/s. Apple India Pvt. Ltd. for sale within India with that to the records of found in seized registers, it appears that some of the goods which Shri Rutvik Dinesh Sheth had stated to be of local origin were actually not of local origin and thus, were of foreign origin.





(iii) During the search proceedings on 12-01-2022 and statements dated 12-01-2022, 01-02-2022 and 14-12-2022, Shri Rutvik Dinesh Sheth had stated that he does not have any supporting documents or invoices of goods purchased by him therefore, it appears that goods stated to be of local origin which actually were of foreign as clarified above were actually smuggled goods and therefore, the applicable Customs Duty is liable to be recovered on these goods.

(iv) During recording of Statement dated 14-12-2022, Shri Rutvik Dinesh Sheth submitted Annexure A2, B2 & C2 which contained details of goods which were of foreign origin and since, he does not have any supporting documents or invoices of goods purchased by him therefore, it appears these were actually smuggled goods and therefore, the applicable Customs Duty is liable to be recovered on these goods.

II. (i) M/s Samsung India Electronics Private Limited, 6th Floor, DLF Centre Sansad Marg, New Delhi-110001 via e-mail dated 13-01-2024 provided the list of devices manufactured in India as well as outside India i.e. of Foreign Origin by M/s Samsung India Electronics Private Limited. **(RUD Sl. No. 16 of Annexure-A to this Show Cause Notice)**

(ii) On comparative analysis of list provided by M/s Samsung India Electronics Private Limited with that to the records of found in seized registers, it appears that some of the goods were actually not of local origin and were of foreign origin.

(iii) During the search proceedings on 12-01-2022 and statements dated 12.01.2022, 01.02.2022 and 14.12.2022, Shri Rutvik Dinesh Sheth had stated that he does not have any supporting documents or invoices of goods purchased by him therefore, it appears that these goods were actually smuggled goods and therefore, the applicable Customs Duty is liable to be recovered on these goods.

III. (i) M/s Xiaomi Technology India Private Limited, Building Orchid, Block E, Embassy Tech, Village Marathahalli Outer Ring Road, Devarabisanahalli, Bengaluru 560103 via Email dated 07-08-2024 provided the list of devices manufactured in India as well as outside India i.e. of Foreign Origin. **(RUD Sl. No. 17 of Annexure-A to this Show Cause Notice).**

(ii) On comparative analysis of list provided by M/s Xiaomi Technology India Private Limited with that to the records of found in seized registers, it appears that some of the goods were actually not of local origin and were of foreign origin.





(iii) During the search proceedings on 12-01-2022 and statements dated 12.01.2022, 01.02.2022 and 14.12.2022, Shri Rutvik Dinesh Sheth had stated that he does not have any supporting documents or invoices of goods purchased by him therefore, it appears that these goods were actually smuggled goods and therefore, the applicable Customs Duty is liable to be recovered on these goods.

IV. (i) M/s Oppo Mobiles India Private Limited, 05th Floor, Tower B Building Number 8, DLF Cyber, City, Gurgaon, Gurgaon, Haryana, India, 122002 via e-mail dated 08-11-2024 provided the list of devices manufactured in India as well as outside India i.e. of Foreign Origin by M/s Oppo Mobiles India Private Limited. **(RUD Sl. No. 18 of Annexure-A to the Show Cause Notice)**

(ii) On comparative analysis of list provided by M/s Oppo Mobiles India Private Limited with that to the records of found in seized registers, it appears that some of the goods were actually not of local origin and were of foreign origin.

(iii) During the search proceedings on 12-01-2022 and statements dated 12.01.2022, 01.02.2022 and 14.12.2022 Shri Rutvik Dinesh Sheth had stated that he does not have any supporting documents or invoices of goods purchased by him therefore, it appears that these goods were actually smuggled goods and therefore, the applicable Customs Duty is liable to be recovered on these goods.

V. (i) M/s Asus India Private Limited, 402, Supreme Chambers, 17/18, Shah Industrial Estate, Veer, Road, Andheri (West), Mumbai City, Mumbai, Maharashtra-400053 via e-mail dated 14-12-2023 informed that none of the devices were manufactured in India. **(RUD Sl. No. 19 of Annexure-A to this Show Cause Notice)**

(ii) During the search proceedings on 12-01-2022 and statements dated 12-01-2022, 01-02-2022 and 14-12-2022, Shri Rutvik Dinesh Sheth had stated that he does not have any supporting documents or invoices of goods purchased by him therefore; it appears that these goods were actually smuggled goods and therefore, the applicable Customs Duty is liable to be recovered on these goods.

VI. (i) M/s Huawei Telecommunications (India) Company Private Limited, 9th Floor, Capital Cyberscape, Gurugram Manesar Urban Complex, Sector - 59, Ullahwas, Gurgaon, Gurugram, Haryana, India, 122011 via e-mail dated 27.02.2024 provided the list of devices manufactured in India as well as outside India i.e. of Foreign Origin by them. **(RUD Sl. No.20 of Annexure-A to this Show Cause Notice)**

(ii) On comparative analysis of list provided by M/s Oppo Mobiles India Private Limited with that to the records of found in seized registers, it appears





that some of the goods were actually not of local origin and were of foreign origin.

(iii) During the search proceedings on 12-01-2022 and statements dated 12-01-2022, 01-02-2022 and 14-12-2022, Shri Rutvik Dinesh Sheth had stated that he does not have any supporting documents or invoices of goods purchased by him therefore it appears that these goods were actually smuggled goods and therefore, the applicable Customs Duty is liable to be recovered on these goods.

VII. (i) M/s NOKIA INDIA PRIVATE LIMITED B-41, Nizamuddin East, New Delhi-110013 via letter dated 23-01-2024 provided the list of devices manufactured in India as well as outside India i.e. of Foreign Origin by them. **(RUD Sl. No.21 of Annexure-A of Show Cause Notice).**

(ii) On comparative analysis of list provided by M/s Oppo Mobiles India Private Limited with that to the records of found in seized registers, it appears that some of the goods were actually not of local origin and were of foreign origin.

(iii) During the search proceedings on 12-01-2022 and statements dated 12-01-2022, 01-02-2022 and 14-12-2022, Shri Rutvik Dinesh Sheth had stated that he does not have any supporting documents or invoices of goods purchased by him therefore it appears that these goods were actually smuggled goods and therefore, the applicable Customs Duty is liable to be recovered on these goods.

VIII. (i) M/s ONEPLUS TECHNOLOGY INDIA PRIVATE LIMITED, UB City, 24, Vittal Mallya Road, KG Halli, D'souza Layout, Ashok Nagar, Bengaluru 560001 via e-mail letter dated 20-12-2023 informed that none of the devices are manufactured in India by them. **(RUD Sl. No. 22 of Annexure-A to this Show Cause Notice).**

(ii) During the search proceedings on 12-01-2022 and statements dated 12-01-2022, 01-02-2022 and 14-12-2022, Shri Rutvik Dinesh Sheth had stated that he does not have any supporting documents or invoices of goods purchased by him therefore, it appears that these goods were actually smuggled goods and therefore, the applicable Customs Duty is liable to be recovered on these goods.

IX. (i) M/s. Realme Mobile Telecommunications (India) Private Limited, 3rd Floor, Tower B, Building Number 8, DLF Cyber City, Gurgaon, Urugram, Haryana, India, 122002 was contacted and IMEI numbers were shared with them on 15.03.2024. The reply from the foreign based company is awaited and therefore, in view of the fact that during the search proceedings on 12-01-2022 and statements dated 12-01-2022, 01-02-2022 and 14-12-2022, Shri Rutvik Dinesh Sheth had stated that he does not have any supporting documents or invoices of





goods purchased by him therefore at present under reasonable belief it appears that these goods were actually smuggled goods and therefore, the applicable Customs Duty is liable to be recovered on these goods.

- X. (i) M/S LENOVO (INDIA) PRIVATE LIMITED RBD Icon, Level 2 Doddenakundi Village, Marathhalli Outer Ring Road, Marathhalli Post, KR Puram Hobli, Bangalore, Karnataka-5600372 was contacted and IMEI number were shared with them on 11-01-2024. The reply from the foreign based company is awaited and in view of the fact that during the search proceedings on 12-01-2022 and statements dated 12-01-2022, 01-02-2022 and 14-12-2022, Shri Rutvik Dinesh Sheth had stated that he does not have any supporting documents or invoices of goods purchased by him therefore at present under reasonable belief it appears that these goods were actually smuggled goods and therefore applicable Customs Duty is liable to be recovered on these goods.

14. Whereas, in the instant case, no document such as purchase invoice, sales invoice or import documents such as Bill of Entry etc. were recovered during the search proceedings dated 12.01.2022 and as Shri Rutvik Dinesh Sheth vide his statements dated 12.01.2022, 01.02.2022 and 14-12-2022 stated that he does not have any supporting documents or invoices of goods purchased by him therefore, it appears that these goods were actually smuggled goods and therefore, for the purpose of ascertaining the applicable Customs Duty along with IGST, it appears that the value needs to be determined under the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (as amended).

14.1 Whereas, Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (as amended) reads as follows:

**3. Determination of the method of valuation:**

*(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*

.....

.....

*(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.*

14.1.1 Rule 4 *ibid* prescribes method to be followed in case of identical goods, however in the instant case the goods are not available as well as completed details regarding the offending goods are not available, therefore, it appears that the valuation methods under Rule 4 cannot be followed.

14.1.2 Rule 5 *ibid* prescribes method to be followed in case of similar goods, however in the instant case the goods are not available as well as completed details regarding the offending





goods are not available, therefore, it appears that the valuation methods under Rule 5 cannot be followed.

**14.1.3 Rule 6 *ibid*** states that if the value cannot be determined under Rule 3, Rule 4 or Rule 5 then, the deductive methods under Rule 7 *ibid* shall be followed, however, the information required for determining the value under Rule 7 *ibid* such as usual commission, general expenses in connection with the sales, usual costs of transport and insurance and associated costs incurred within India is not available with this office. Therefore, it appears that the valuation methods under Rule 6 and Rule 7 cannot be followed.

**14.1.4 Rule 8 *ibid*** prescribes computed value method, however, in given case the cost or value of materials and fabrication or other processing employed in producing the imported goods is not available, therefore, it appears that the valuation methods under Rule 8 cannot be followed.

**14.1.5 Rule 9 *ibid*** prescribes residual method for cases where value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India.

**14.2** Whereas, in the instant case, as discussed hereinabove, it is not feasible to determine value of smuggled goods under Rule 3 to 8 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (as amended), therefore, it appears that for determining the value of smuggled goods, Rule 9 *ibid* is to be resorted to.

**14.3** Whereas, Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (as amended) reads as under:

**9. Residual method. —**

*(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India:*

**Provided** that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

*(2) No value shall be determined under the provisions of this rule on the basis of:-*

- (i) the selling price in India of the goods produced in India;*
- (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;*
- (iii) the price of the goods on the domestic market of the country of exportation;*
- (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;*
- (v) the price of the goods for the export to a country other than India;*
- (vi) minimum customs values; or*
- (vii) arbitrary or fictitious values.*





**14.4 Rule 13 Interpretative notes** read as, "The interpretative notes specified in the Schedule to these rules shall apply for the interpretation of these rules." It is therefore, in terms of Rule 13 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (as amended), the interpretative notes specified in the Schedule to these rules shall apply for the interpretation of these rules.

**Note to Rule 9 *ibid* read as under:**

1. *Value of imported goods determined under the provisions of rule 9 should to the greatest extent possible, be based on previously determined customs values.*
2. *The methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9.*
3. *Some examples of reasonable flexibility are as follows :*
  - (a) **Identical goods.** - *The requirement that the identical goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of rules 7 and 8 could be used.*
  - (b) **Similar goods.** - *The requirement that the similar goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of rules 7 and 8 could be used.*
  - (c) **Deductive method.** - *The requirement that the goods shall have been sold in the "condition as imported" in rule 7(1) could be flexibly interpreted; the ninety days requirement could be administered flexibly.*

**14.5** Whereas, definition of 'Similar goods' is provided in the Rule 2(f) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, which reads as under:

2(f) "*similar goods*" means imported goods -

- (i) *which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;*
- (ii) *produced in the country in which the goods being valued were produced; and*
- (iii) *produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,*  
*but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;*

**15.** Whereas, it appears that, since the goods were smuggled goods as per the admission of Sh. Rutvik D. Sheth, the Proprietor of the Noticee firm and as only limited information is available and no supporting documents were available, therefore, in view of Rule 9 *ibid* read





with interpretive Notes to Rule 9 in the Schedule to said rules *ibid*, for arriving at the value for calculating the Customs Duty liability, the available description of goods (i.e. available in the Registers R1, R2 & R3-seized during the search proceedings) was matched with the import data of similar goods available in the EDI System of Customs Department.

16. Whereas, the EDI data contains the import and export data of all the imports and exports occurring in the India and is reliable official source for ascertaining the value of goods during export or import. The EDI data contains the details viz. Port of Import, Date of import, Bill of Entry Number, Description of goods imported, item-wise assessable value, rate of customs duty and quantity.

17. Whereas, as per the description of goods found in the seized Registers R1, R2 & R3 seized during the search proceedings, the Noticee had sold the following goods without any documents viz. invoice, purchase order, commercial invoice, etc.

(a) Mobile Smart Phones classifiable under CTH 85171211

(b) Smart Watches classifiable under CTH 85176210

(C) Bluetooth based ear buds for mobile phones classifiable under CTH 85171890

18. In view thereof, the data available in the EDI System for given CTH was matched for the similar goods imported in and around same time to that of the date of sale of smuggled goods by the Noticee. In cases, where no similar goods were available, the value matching to the nearest description as available in the records was matched with the records of smuggled goods found in the said seized Registers R1, R2 & R3.

19. In case, where no matching data is available in EDI database too, the value available in the records seized from the Noticee, is considered as the value inclusive of Basic Customs Duty, Swacch Bharat Cess & IGST. The basis of arriving value is mentioned in the remarks column Annexures D1, D2, D3, D4, D5 & D6.

20. In view of the investigation carried out, it appears that Sh. Rutvik D. Sheth, Proprietor of Noticee has dealt in smuggled goods viz. mobile phone and accessories of imported goods having foreign origin as listed in the RUD list at Sl. No. 23, 24, 25, 26, 27 & 28 in the form of Annexure D1, D2, D3, D4, D5 & D6 respectively of Annexure A to this Show Cause Notice).

21. In view of the statements dated 01-02-2022 and 14-12-2022, Shri Rutvik Dinesh Sheth, Proprietor of the Noticee, has stated that he does not have any supporting documents or invoices of goods purchased by him, therefore, it appears that, these goods were actually smuggled goods. Whereas, it further appears that, the facts has also been corroborated by the mobile manufacturing companies on the basis of Unique IMEI numbers & Serial Numbers (the details of which are available in the Registers R1, R2 & R3 seized during search dated 12.01.2022).





22. Whereas, it appears that this act of Shri Rutvik Dinesh Sheth, Proprietor of the Noticee, has rendered the said smuggled foreign origin goods, having total assessable value of Rs. 7,31,22,519/- (Rupees seven crore, thirty one lakh, twenty two thousand, five hundred and nineteen only) liable for confiscation under Section 111(d) of the Customs Act, 1962. The Noticee is also required to pay the appropriate Customs Duty amounting to Rs. 3,21,44,660/- (Rupees three crore, twenty one lakh, forty four thousand, six hundred and sixty only) as per the calculation sheets marked and attached as Annexures D1, D2, D3, D4, D5 & D6 under Section 28(4) of the Customs Act, 1962. The provisions of Section 28 (4) of the Customs Act, 1962, are reproduced as under:-

*Section 28- Recovery of Duties not levied or not paid or short levied or short paid or erroneously refunded –*

.....

*(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*

*(a) Collusion; or*

*(b) any wilful mis-statement; or*

*(c) Suppression of facts,*

*by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.*

23. Further, it also appears that Shri Rutvik Dinesh Sheth, Proprietor of the Noticee has procured the said smuggled foreign origin goods and accessories without payment of Customs duty and this, fact was suppressed by them before the Customs authorities. Therefore, it appears that this act of suppression has rendered them liable for penalty under Section 114A of the Customs Act, 1962. The provisions of section 114A of the Customs Act, 1962 are reproduced as follows:

**SECTION 114A: Penalty for short levy Or non-levy of duty In certain cases.** – *Where the duty has not been levied or has been short- levied or the interest has not been charged or paid or has been part paid of the duty or the interest has been erroneously refunded by reason of collusion or any wiful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined*

24. Whereas, in terms of Section 28BB of the Customs Act, 1962, the due date of completion of investigation in the matter was 11.01.2024, however, in terms of the proviso to Section 28BB (1) of the Customs Act, 1962, Hon'ble Commissioner of Customs has granted the extension of period for completion of the investigation, to further period of one year i.e. up to





11.01.2025. The matter was intimated to the Noticee vide office letter F. No. CUS/SIIB/INT/42/2022-Prev-O/o Commr-Cus-Prev-Jamnagar dated 10-01-2024.

25. Now, therefore, Shri Rutvik Dinesh Sheth, Proprietor of M/s Mobile Villa, Near Ramkrishna Dairy Farm, Street No. 22, Jagnath Plot, Rajkot (PAN BWMP55068R) is hereby called upon to show cause in writing to the Commissioner of Customs (Preventive), Commissionerate, Jamnagar, having his office situated at "Seema Shulk Bhavan", Near Victoria Bridge, Jamnagar-Rajkot Highway, Jamnagar- 361001, Gujarat (India) within thirty days from the receipt of this notice as to why:

- i. The smuggled goods details of which are as per the Annexures D1, D2, D3, D4, D5 & D6 attached to this show cause notice having total assessable value of Rs. 7,31,22,519/- (Rupees seven crore, thirty one lakh, twenty two thousand, five hundred and nineteen only) for the period from 30.11.2019 to 12.01.2022 should not be confiscated under Section 111(d) of the Customs Act, 1962;
- ii. The total duties of customs amounting to Rs. 3,21,44,660/- (Rupees three crore, twenty one lakh, forty four thousand, six hundred and sixty only) for the period from 30.11.2019 to 12.01.2022 (as per calculation sheet attached as Annexures D1, D2, D3, D4, D5 & D6 in respect of smuggled goods mentioned in para 25(i) above should not be demanded under Section 28(4) of the Customs Act, 1962 and recovered from them;
- iii. Interest at the applicable rate should not be recovered from them under Section 28AA of the Customs Act, 1962;
- iv. Penalty under Section 114A of the Customs Act, 1962 should not be imposed upon them.

26. The Noticee is hereby directed to produce all evidences upon which they intend to rely in support of their defence at the time of showing cause.

27. The above Noticee is further required to state specifically in their written replies as to whether they wish to be heard in person before the case is adjudicated. If no specific mention is made about this in their written submissions, it shall be presumed that they do not wish to be heard in person.

28. Their reply should reach within 30 (thirty) days or within such extended period as may be allowed by the Adjudicating Authority. If no cause is shown against the action proposed above within 30 days from the receipt of this SCN or if they do not appear before the adjudicating authority as and when the case is posted for hearing, the case is liable to be decided ex-parte on the basis of facts and evidence available on record.

29. The show cause Notice is issued without prejudice to any other action that may be taken against them or against any other persons, under provision of the Customs Act, 1962 and/or the Rules framed there under or under any other law for the time being in force.





30. This show cause notice is being issued on the basis of the evidence available on record and relied upon documents as enclosed herewith in Annexure-A.

31. The department reserves the right to add, alter, amend, modify, or supplement this notice at any time on the basis of any evidence, material facts related to the import of goods under investigation, which may come to the notice of the department after issuance of this notice and prior to the adjudication of the case.

  
(Dhirendra Lal)  
Commissioner

F. NO. CUS/6513/2024-Adjn

Date: 28.11.2024

BY Email / Hand Delivery/ Speed Post:

To

Shri Rutvik D Sheth  
Proprietor of M/s. Mobile Villa,  
Near Ramkrishna Dairy Farm,  
Street No. 22, Jagnath Plot,  
Rajkot (Gujarat) -360001.

Copy to:

1. The Deputy Commissioner (Prev.), Customs (Preventive), Jamnagar.
2. Guard File.





**Annexure – A**

List of the Relied Upon Documents (RUD) for the purpose of Show Cause Notice No. Commr-06/2024-25 Dated 28.11.2024 Issued to Shri Rutvik D Sheth owner of M/s. Mobile Villa, Near Ramkrishna Dairy Farm, Street No. 22, Jagnath Plot, Rajkot.

Sr. No. of RUD	Description of the Documents	Remarks
1	Copy of panchnama dated 12.01.2022	Copy available with the noticee
2	Copy of Seizure Memo dated 12.01.2022	Copy available with the noticee
3	Copy of statement of Shri Rutvik Dinesh Sheth recorded on 12.01.2022	Copy enclosed
4	Copy of statement of Shri Rutvik Dinesh Sheth recorded on 01.02.2022	Copy enclosed
5	Copy Of Statement Dated 11.10.2022 Of Shri Akshay Shaileshbhai Chavda, Manager Of M/S. S. G. Enterprise	Copy Encl.
6	Copy Statement Dated 11.10.2022 (RUD06) Of Shri Yatin Balubhai Chudasama, Manager Of M/S. R K Enterprise, Rajkot	Copy Encl.
7	Copy of statement of Shri Rutvik Dinesh Sheth recorded on 14.12.2022	Copy Encl.
8	Copy of Annexure A1	Copy Encl.
9	Copy of Annexure A2	Copy Encl.
10	Copy of Annexure B1	Copy Encl.
11	Copy of Annexure B2	Copy available with the noticee
12	Copy of Annexure C1	Copy available with the noticee
13	Copy of Annexure C2	Copy enclosed
14	Copy of O. M. from F. No. 5-2/2018/UDS dated 04.07.2022 issued by the Director (UDS) Ministry of Communications, Department of Telecommunications, (Security Assurance Wing),	Copy enclosed
15	Copy of e-mail dated 23.07.2024 in r/o. M/s. Apple India Pvt. Ltd	Copy enclosed
16	Copy of e-mail dated 13.01.2024 in r/o. M/s Samsung India Electronics Private Limited.	Copy enclosed
17	Copy of e-mail dated 07.01.2024 in r/o. M/s Xiaomi Technology India Private Limited.	Copy enclosed
18	Copy of e-mail dated 08.11.2024 in r/o. M/s Oppo Mobiles India Private Limited	Copy enclosed
19	Copy of e-mail dated 14.12.2023 in r/o. M/s Asus India Private Limited	Copy enclosed
20	Copy of e-mail dated 22.12.2023 in r/o. M/s Huawei Telecommunications (India) Company Private Limited	Copy enclosed
21	Copy of e-mail dated 23.01.2024 in r/o M/s NOKIA INDIA PRIVATE LIMITED	Copy enclosed





22	Copy of e-mail dated 20.12.2023 in r/o. M/s ONEPLUS TECHNOLOGY INDIA PRIVATE LIMITED	Copy enclosed
23	Annexure D-1	Copy enclosed
24	Annexure D-2	Copy enclosed
25	Annexure D-3	Copy enclosed
26	Annexure D-4	Copy enclosed
27	Annexure D-5	Copy enclosed
28	Annexure D-6	Copy enclosed

