



प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद
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निबन्धितपावतीडाकद्वारा / By **SPEED POST A.D.**

फा. सं./F. No.: VIII/10-05/Pr. Commr/O & A/2017

DIN- 20260171MN0000315017

आदेशकीतारीख/Date of Order :.13.01.2026

जारीकरनेकीतारीख/Date of Issue :13.01.2026

द्वारापारित :-

शिव कुमार शर्मा, प्रधान आयुक्त

Passed by :-

Shiv Kumar Sharma, Principal Commissioner

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-42-2025-26 dated13.01.2026

in the case of M/s Riddisiddhi Bullions Ltd (IEC 0398017042), Office No 27, 2nd Floor, 109, Shaikh Memon Street, Shahi Galli, Zaveri Bazar, Mumbai - 400002 & M/s International Cargo Services, Customs Broker, 403/404/405, "Himadri", Old High Court Lane, Ahmedabad-380009.

- 1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad - 380004

3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।
3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ए के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शीर्ष जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice F.No. VIII/10-05/Pr. Commr/O & A/2017 dated 07.08.2017 issued by the Principal Commissioner, Customs, Ahmedabad to M/s Riddisiddhi Bullions Ltd (IEC 0398017042), Office No 27, 2nd Floor, 109, Shaikh Memon Street, Shahi Galli, Zaveri Bazar, Mumbai – 400002 & M/s International Cargo Services, Customs Broker, 403/404/405, "Himadri", Old High Court Lane, Ahmedabad-380009.

M/s Riddisiddhi Bullions Ltd (“RSBL” and also “Importer” for brevity) are holding Importer Exporter Code 0398017042. They have their registered office at Office No 27, 2nd Floor, 109, Shaikh Memon Street, Shahi Galli, Zaveri Bazar, Mumbai – 400002 and corporate office at Bullion House, 115, Tambakata Lane, Opp. Dagina Bazar, Pydhonie, Mumbai – 400003. They have a branch office at 2286, 1st Floor, Opp. Girish Cold Drinks, Manek Chowk, Ahmedabad – 380001. On 09/09/2009, they were awarded certificate of recognition as ‘Star Trading House’ by the Directorate General of Foreign Trade (DGFT), Ministry of Commerce, Government of India. Further, on 08/08/2011, they were awarded status of “Premier Trading House”.

2. Notification No 88 (RE-2008)/2004-2009 dated 26.02.2009 issued by DGFT added ‘Star Trading House (only for Gems & Jewellery sector)’, amongst others, to the list of Nominated Agencies mentioned in Para 4A.4 of Foreign Trade Policy 2004-09. According to Para 4A.4 of Foreign Trade Policy 2009-2014, Exporters (except EOUs and units in SEZ) of Gold/silver/platinum jewellery and articles thereof were permitted to import their essential inputs such as Gold, Silver, Platinum, Mountings, Findings, Rough Gems, Precious and Semiprecious Stones, Synthetic Stones and Unprocessed Pearls etc in accordance with the procedure specified in this behalf through the Nominated Agencies. Nominated Agencies were MMTC Ltd, Handicraft and Handloom Export Corporation (HHEC), State Trading Corporation (STC), the Project and Equipment Corporation of India Ltd (PEC), STCL Ltd, MSTC Ltd, Diamond India Limited (DIL), Gems & Jewellery Export Promotion Council (G&J EPC), Star Trading House (only for Gems & Jewellery sector) and Premier Trading House and any other agency authorised by RBI. The monitoring mechanism thereof was to be as per the provisions laid down in Hand Book of Procedures (HBP) in this regard.

3. DGFT issued Policy Circular No77(RE-2008)/2004-2009 dated 31/03/2009. Para 2 of the Circular mandated that “For the Premier Trading Houses and the Star Trading Houses (only for Gems & Jewellery exporters), the Certificate holder shall be required to request to the concerned Regional Authority (RA) (who had issued the Status Certificate / the Registered office is located) enclosing therewith a self-attested copy of the valid Status Certificate. RA, in turn, shall issue a Certificate to the Status Certificate Holder in the format appended to the Circular. This Certificate shall be valid for one year starting from 1st Day of the Financial Year of filing application. This Certificate shall be renewed every year based on the validity of the Status Certificate and the performance of the Nominated Agency on annual basis”. Further, Para 3(c) mandated that at least 10% of the imports of each entity shall be supplied to the exporters. At Para 5 of the Circular, it had been stipulated that clearance of import consignment shall be allowed by the Customs Authority as per the Procedure laid down by them for the Nominated Agencies by way of Customs Notification and/ or Circular issued by them from time to time.

4. The Policy Circular No 77 (RE-2008) was further amended by DGFT vide Policy Circular No 01/2009-2014 dated 27.08.2009 mandating that at least 15 % of the imports of each entity shall be supplied to the exporters thus increasing the mandatory supply of Gold for export purpose by 5%. In tune with the above, CBEC issued Notification No 106/2009-Customs dated 14.09.2009 amending Notification No 57/2000 Cus dated 08.05.2000 by inserting a proviso that the nominated agencies (except for those authorized by RBI) shall follow the procedure and fulfill the conditions as specified in the Policy Circular No. 77 (RE-2008)/2004-09 dated 31.03.2009, as amended from time to time issued by DGFT. Further, CBEC issued Circular No 28/2009-Cus dated 14.10.2009 prescribing certain procedure in order to avoid divergent practices and to streamline supply of precious metal for exports.

5. On 18/05/2010, DGFT granted M/s RSBL 'Nominated Agency Certificate' (NAC) for direct import of precious metals in terms of Para 4A of the Foreign Trade Policy. DGFT, while issuing the Nominated Agency Certificate, stated on the body of the certificate that *"This is subject to provisions of FTP and Procedure laid there under, RBI Guidelines and the Customs Rules and Regulations"*. The Nominated Agency Certificate had been thereafter renewed every year and M/s RSBL had been importing bullions through various ports in the country including Air Cargo Complex, Ahmedabad.

6. Policy Circular No 77 (RE-2008) was withdrawn by DGFT vide Policy Circular No 14(RE-2010)/2009-14 dated 01.02.2011. This meant that free import for domestic consumption had been allowed to all Nominated Agencies.

7. On 22.07.2013, the Reserve Bank of India issued Circular No 15 dated 22.07.2013 laying down conditions on import of Gold. The scheme introduced by this Circular is popularly known as 80:20 scheme. The Circular being central to this SCN is reproduced here below:

RBI/2013-14/148

A.P. (DIR Series) Circular No 15

July 22, 2013

To

All Scheduled Commercial Banks which are Authorised Dealers (ADs) in Foreign Exchange/ All Agencies nominated for import of Gold

Madam / Sir,

Import of Gold by Nominated Banks / Agencies/ Entities

Attention of Authorised Persons is drawn to the Reserve Bank's A.P. (DIR Series) Circulars No 103, 107 and 122 dated May 13, June 04 and June 27, 2013 respectively on the captioned subject. As per these instructions, certain restrictions were imposed on the import of various forms of Gold by nominated banks/nominated agencies/ premier or star trading houses/SEZ units/EOUs which have been permitted to import Gold for use in the domestic sector. None of these restrictions was applicable to import of Gold for the purpose of exports or to import of Gold by units in SEZ exclusively for the purposes of exports.

2. Based on a review of the above instructions and in consultation with Government of India, it has been decided to rationalize the import of Gold in any form/purity including import of Gold coins/Dore bars into the country. Accordingly, the following instructions are issued:

- a) It shall be incumbent on all nominated banks/nominated agencies to ensure that at least one fifth of every lot of import of Gold (in any form/purity including import of Gold coins/Dore bars) is exclusively made available for the purpose of export. Such imports shall be linked to financing of exporters by the nominated agencies (i.e. average of last three years or any one year whichever is higher). Further, they shall make available Gold in any form for domestic use only to entities engaged in jewellery business/bullion dealers supplying Gold to jewellers.
- b) They will be required to retain 20 per cent of the imported quantity in the Customs bonded warehouses.
- c) They are permitted to undertake fresh imports of Gold only after the exports have taken place to the extent of at least 75 per cent of Gold remaining in the Customs bonded warehouse.
- d) Any import of Gold under any type of scheme, shall follow the 20/80 principle set out at (a) and (b) above. The extant instructions, as regards import of Gold on consignment basis, LC restrictions etc. stand withdrawn.
- e) A working example of the operation the scheme envisaged in terms the present instructions is given in the Annex.

3. Entities/units in the SEZ and EOUs, Premier and Star trading houses are permitted to import Gold exclusively for the purpose of exports only.

4. AD Category I Banks are advised to strictly ensure that foreign exchange transactions effected by / for their constituents are compliant with the above instructions. Head Offices of nominated agencies / International Banking Divisions of banks would be responsible for monitoring operations of the revised scheme taking into account transactions put through different centres.

5. Government of India will be issuing separate instructions, if any, to the Customs authorities/DGFT to operationalize and monitor these import restrictions.

6. The above instructions will come into force with immediate effect. Authorised dealers may please bring the contents of this Circular to the notice of their constituents and customers concerned.

7. The directions contained in this Circular have been issued under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999), and are without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully

Rudra Narayan Kar
Chief General Manager-in-Charge

Annex

An example of the working of the scheme:

1. Nominated Agency ABC imports say 100 kg of Gold in any form/purity.
2. Out of the above import of 100 kg, 20 kg Gold held in the bonded warehouse can be got released in part or full to be sold to exporters of Gold against undertaking to Customs authorities as is the practice now.
3. Any further import of Gold by ABC shall be permitted by the Customs authorities only to the extent of actual export out of 20 kg of Gold held in bonded warehouse. This can happen only after at least 15 kg of Gold out of 20 kg is actually exported from the previous lot.
4. If ABC wants to place order for the second lot of import, only 75 kg of import (including 15 kg for exports) will be permitted which will again follow the procedure outlined above. At this stage, total Gold with the bonded warehouse meant for the exporter will be (5 + 15) i.e. 20 kg. Out of this at least 15 kg (i.e. 75% of the above 20 kgs) will have to be actually exported to enable ABC to import again. This procedure will be followed for every lot of import.
5. If for any reason, ABC is not able to channelize the Gold held in bonded warehouse for exports, no further imports can be undertaken by ABC who will also arrange for re export of the Gold in the bonded warehouse.

8. According to Para No 3 of this Circular, M/s RSBL being in the category of 'Premier and Star Trading Houses' were permitted to import Gold exclusively for the purpose of exports only. In other words, they were not entitled to import Gold for supply for Home Consumption with effect from 22.07.2013. Reserve Bank of India further reiterated the restriction on Premier and Star Trading Houses vide Circular No 25 dated 14.08.2013. Subsequent to issuance of this Circular by RBI, CBEC issued detailed instructions vide Circular No 34/2013-Cus dated 04.09.2013 modifying earlier Circular No 28/2009-Cus dated 14.10.2009. The facility of 80:20 scheme had been extended to Star and Premier Trading Houses too vide RBI Circular No 133 dated 21.05.2014. M/s RSBL started operating under this Circular thereafter. This facility remained in force till issuance of RBI Circular No 42 dated 28.11.2014 whereby all instructions issued about the 80:20 scheme from time to time were withdrawn with immediate effect.

9. On the date RBI issued Circular No 15 dated 22.7.2013, M/s RSBL booked 100 Kg of Gold purchased from M/s Bin Sabt Jewellery LLC, P O Box No 25515, Building No 158, Naif Road (South), Deira, Dubai, UAE vide Invoice No USD-5275 dated 22/07/2013 and Airway Bill No 176 52586273 dated 22/07/2013. For clearance of this consignment, Bill of Entry No 2784490 dated 23.07.2013 for Home Consumption was filed by them at Air Cargo Complex, Ahmedabad. A similar transaction had also taken place at Air Cargo Complex, Hyderabad. Clubbing both these instances together, DGFT issued a Show Cause Notice dated 14/10/2014 proposing rejection of request for renewal of Nominated Agency Certificate under Section 14 read with Section 11(2) of the Foreign Trade (Development & Regulation) Act for non-compliance with the conditions of RBI Circular No 15 dated 22/07/2013 and proposing fiscal penalty upon the Importer. In the said Show Cause Notice, it was observed that M/s RSBL had imported Gold on or after 22/07/2013 i.e. the date of issue of RBI Circular No 15 dated 22/07/2013, according to which Premier and Star Trading Houses were permitted to import Gold exclusively for the purpose of exports only, and therefore the entire Gold so imported should have been utilized for export purpose as per the conditions of RBI Circular No 15 dated 22/07/2013. An addendum to the Show Cause Notice was issued vide F No 03/91/105/0007/AM12 dated 30.10.2014 calling upon the Importer to show cause as to why the Nominated Agency Certificate dated 05.05.2014 (for the period 2014-2015) should not be cancelled in terms of Section 9(4) of Foreign Trade (Development & Regulation) Act and Rule 10 of Foreign Trade (Regulation) Rules, 1993.

10. On 31.10.2014, the licensing authority suspended M/s RSBL's Nominated Agency Certificate dated 05.05.2014 for the period 2014-2015 in terms of Rule 9(2) of Foreign Trade (Regulation) Rules, 1993 which empowers the licensing authority to suspend operation of any license granted under these rules where proceedings for cancellation of such license has been initiated under Rule 10 of Foreign Trade (Regulation) Rules, 1993. In the mean time, M/s RSBL had already started operating

under RBI Circular No 133 dated 21.05.2014 which extended the 80:20 scheme to the Star and Premier Trading Houses. However, the fact of suspension was suppressed from Customs and during the suspension period, M/s RSBL have removed a quantity of 600 Kg of Gold by filing ex-bond Bill of Entry No 7243541 dated 01.11.2014 at Air Cargo Complex, Ahmedabad, which was imported vide Warehouse into-Bond Bill of Entry No 7137639 dated 21/10/2014.

11. The suspension order dated 31/10/2014 was challenged by M/s RSBL before the Hon'ble High Court of Bombay in Writ Petition No 9873 of 2014. Hon'ble High Court vide order dated 03.11.2014 quashed and set aside the impugned suspension order and ruled that the Nominated Agency Certificate would continue to be effective and operative till its validity date but subject to the outcome of pending proceedings for cancellation initiated vide Show Cause Notice dated 14.10.2014 by the DGFT.

12. In the meantime, M/s RSBL filed another Writ Petition bearing No 10001 of 2014 seeking relief from the probable cancellation of Nominated Agency Certificate. The Hon'ble Court vide interim order dated 10.11.2014 directed that without prejudice to rights and contentions of both sides including on the point of maintainability of the Writ Petition, in the event DGFT passes an order adverse to the petitioner (M/s RSBL), then the same shall not be acted upon for a period of four weeks from the date of communication to the petitioners, so as to enable them to either pursue the Writ Petition or to adopt appropriate proceedings.

13. The said Show Cause Notice dated 14/10/2014 was adjudicated by Additional Director General of Foreign Trade vide Order-in-Original dated 14/01/2015 issued under Adj File No 03/91/105/00007/AM12. It has been brought on record in the Order-in-Original at Para No 12 that the Nominated Agency Certificate dated 05/05/2014 had been returned by the Importer on 09/05/2014 as called back by the office of the DGFT, Mumbai. The Adjudicating Authority observed under para 18 of the OIO that M/s RSBL had supplied 200 Kg of Gold imported vide Bills of Entry dated 23/07/2013 to domestic units and thus failed to comply with the conditions of RBI Circular No 15 dated 22.07.2013 and therefore, violated Rule 13(2) of Foreign Trade (Regulation) Rules, 1993 which attract provisions of Section 9(4) and 11(2) of Foreign Trade (Development and Regulation) Act 1992, as amended. Since M/s Riddi Siddhi Bullions Ltd had violated the conditions of Nominated Agency Certificate dated 09.04.2013 (for the period 2013-2014), in terms of Para 4A.35 of Hand Book of Procedure 2009-2014 they were not eligible for renewal of Nominated Agency Certificate for the period 2014-2015 and therefore the Nominated Agency Certificate dated 05.05.2014 (for the period 2014-2015), issued to M/s Riddi Siddhi Bullions Ltd is ab-initio void. The Adjudicating Authority accordingly ordered for cancellation of the Nominated Agency Certificate dated 05.05.2014 (for 2014-2015), ab-initio and imposed fiscal penalty of Rs 100 Crore on M/s RSBL.

14. Further, Hon'ble Bombay High Court, passed another interim order dated 09/02/2015 in Writ Petition No 10001 of 2014. The petitioner M/s RSBL submitted before Hon'ble Court that the Customs Authorities were apparently confused as to whether the adverse order of Addl. Director General of Foreign Trade should be acted upon or they must abide by the Court's order dated 03.11.2014 in the Writ Petition No 9873 of 2014. In the interim order, Hon'ble High Court directed that pending admission of the Writ Petition, the Order-in-Original dated 14/01/2015 shall not be acted upon by the respondents. Hon'ble High Court also ordered that the Customs Authorities shall abide by the interim order (dated 09/02/2015) and granted stay in favour of the petitioners pending admission. However, it was clarified that the order was issued without prejudice to the rights and contentions of both the parties.

15. M/s RSBL had filed the Writ Petition bearing No 10001 of 2014 before Hon'ble Bombay High Court under Article 226 of the Constitution of India questioning the legality and validity of Circular No 15 dated 22/07/2013, and its subsequent circulars issued by the Reserve Bank of India, and proceedings consequent thereto initiated vide Show Cause Notice dated 14/10/2014 by the Zonal Director General of Foreign Trade and also the order passed in furtherance thereof dated 14/01/2015. It was prayed that these be quashed and set aside.

15.1 The petitioners, namely, M/s RSBL, its Vice President and Directors had sued the Union of India, the Reserve Bank of India (Foreign Exchange Department) and the Additional Director General of Foreign Trade (Mumbai Zonal Unit) in the Writ Petition. The petitioners contended that the Reserve Bank of India has no jurisdiction to regulate import of bullion. It has not been mentioned in the RBI Circular No 15 dated 22/07/2013 that imported gold cannot be made available for domestic use. Once it is not an absolute bar then that Circular should not have been applied at all to the imports of the petitioners. Neither the Reserve Bank of India Act, 1934, nor the Foreign Exchange Management Act, 1999, particularly section 10(4) thereof or sub-section (1) of section 11 thereof would have application to a Nominated Agency. Section 10 speaks of an Authorised Person whereas section 11 spells out RBI's powers to issue directions to Authorised Person. There is no reference in these provisions to the Nominated Agencies. Further, the Reserve Bank of India is not the authority empowered by law to issue any instructions or directions regulating import of gold or bullion. The Reserve Bank of India has no power to enunciate a policy to channelize the import of gold into India and its utilisation for export only. The reliance placed by the Additional Director General of Foreign Trade on the Schedule - I - Import Policy below ITC(HS) 2012 is entirely misplaced. The ITC(HS) Code 71081200 refers to Gold (including gold plated with platinum) unwrought or in semi manufactured forms or in powder form, and its import is free. Merely because that refers to Reserve Bank of India Regulations does not mean that the subject transaction would fall within the purview of the same. The petitioners had entered into the transaction prior to the Circular dated 22/07/2013 was issued. In these circumstances, the impugned order insofar as it relies upon the above material cannot be sustained and must be quashed

and set aside. The Additional Director General of Foreign Trade has acted beyond the jurisdiction vested in it by law. It has taken cognizance and note of certain instructions issued by authorities not contemplated by the Foreign Trade (Development & Regulation) Act, 1992. In any view of the matter, if the essential function of the RBI is to maintain control over reserves interlinked to import and export of gold, then, even that power will not enable it to issue the Circulars as are relied upon. Once the RBI itself lacked jurisdiction, then the Additional Director General of Foreign Trade's order placing reliance on the Circular of the RBI is wholly illegal. Consequently, the impugned order must fall to the ground for absence of jurisdiction or lack of power in the RBI.

15.2 The respondents contended that by Annexure-2 which is appended to Policy Circular No.77/2004-2008 dated 31/03/2009, there is a reference in Note 4 to Nominated Agencies. They are obliged to follow the RBI guidelines and particularly, Circular No.2 dated 09/07/2004, as amended from time to time. The guidelines for import and supply of precious metal by Nominated Agencies may have been withdrawn by the DGFT by Policy Circular No.14 dated 01/02/2011, yet there is nothing erroneous or illegal when the DGFT relies upon the RBI Circular No.15 dated 22/07/2013. The petitioners' contentions, on lack of power in the RBI or the impugned order is erroneous or illegal because it refers to extraneous material, are inaccurate and unacceptable. Once there are guidelines of the RBI so as to guide the Nominated Agencies in the import of precious metal, then, reference to the same cannot be criticized or assailed by the petitioners. The Respondent submitted that all RBI Circulars are part of the Foreign Trade Policy. All the licences are subject to the condition of compliance with the RBI guidelines. The Nominated Agency Certificate is referring to the provisions of the Foreign Trade Policy 2009-2014 and the status of Premier Trading House is in accordance therewith. The certificate itself states that it is subject to the provisions of the Foreign Trade Policy and procedure laid down thereunder, RBI guidelines and the Customs, Rules and Regulations. If the RBI is the controller and manager of foreign exchange, it controls the foreign exchange movement through its supervisory powers with the aid of its supervisory and controlling powers over the authorised dealers, then, it must be understood that it is the authorised dealer who remits foreign exchange abroad on behalf of the constituents, namely, the importers such as the petitioners. A condition imposed on the authorised dealer that it would have to comply with the RBI circulars and guidelines, then, those would bind equally the constituent of the authorised dealer.

15.3 While disposing off the Writ Petition vide Order dated 23.12.2015, the Hon'ble High Court concluded that none of the contentions as raised by M/s RSBL have any merit. M/s RSBL contended that the Reserve Bank of India may be empowered to regulate the dealings in foreign exchange and foreign securities, but in exercise of such powers it can only proceed against the Authorised Dealer. In the garb of exercising such powers, it cannot regulate or restrict the imports. The Hon'ble Court observed that once it is conceded that the powers of the Reserve Bank of India as a

controller of foreign exchange so also in terms of the Reserve Bank of India Act, 1934, enable it to issue the directions to Authorised Person, then, such directions would also bind those claiming through the Authorised Person. In other words, if the Reserve Bank of India directs the Authorised Person to insist on certain compliances before the foreign exchange is released by it, then, it can proceed not only against the Authorised Person but others in the event they are not made. Therefore, once foreign exchange is sought to fulfil the commitments such as import, then, appropriate conditions and restrictions can be placed while releasing foreign exchange. The Reserve Bank of India could very well impose a condition that before the foreign exchange is released, certain directives issued by it to Authorised Person should also form a part of any authorisation enabling import. In any event, the authority permitting import of goods can certainly impose a condition that the importer will have to fulfil or act in accordance with the Reserve Bank of India directives, else it would not be in a position to obtain the release of foreign exchange. Hence, the Reserve Bank of India has enough powers and, therefore, there is no basis for the complaint that it lacks jurisdiction or authority to regulate the dealings in foreign exchange. Though the petitioners rely upon the withdrawal of the Policy Circular No 77 of 2009 with effect from 01/02/2011, what the petitioners state is that they applied for issuance of a certificate as Nominated Agency. That certificate granted to them itself states that the petitioners have been nominated as a Nominated Agency under paragraph 4A.4 of the Foreign Trade Policy as amended from time to time for the purpose of direct import of precious metal. This certificate is subject to provisions of the Foreign Trade Policy and the procedure laid down under the Reserve Bank of India guidelines and the Customs Rules and Regulations. This certificate as Nominated Agency has been renewed and even the renewals incorporate the same condition. It is, therefore, futile to urge that there was no obligation or duty to comply with the Reserve Bank of India guidelines. The petitioners have raised self-defeating and self destructive pleas. On the one hand, they question the Reserve Bank of India's authority and jurisdiction to prescribe any guidelines by urging that the Reserve Bank of India is indirectly regulating and restricting import, but on the other hand by relying on their status as a Nominated Agency, the petitioners admit the applicability of Reserve Bank of India guidelines. They then urge that though the Reserve Bank of India guidelines would govern their dealings and that would include a Circular or directive issued by the Reserve Bank of India from time to time, but such imports do not violate the Policy Circular dated 22/07/2013. Hon'ble High Court stated that such pleas being raised itself indicates that the petitioners are blowing hot and cold. The petitioners being importers, the Authorised Dealer remits foreign exchange abroad on behalf of its constituents, namely, the importer. It is in these circumstances that the petitioners are aware of what provisions of law they were required to comply and in terms of the Nominated Agency Certificate. All terms and conditions as imposed by the NAC would have to be fulfilled by them. Any breach thereof, therefore, would empower issuance of a Show Cause Notice and demanding penalty. It was too late to question either the authority of the Reserve Bank of India or the contents of these Circulars. Advisedly therefore, the petitioners try and urge that their import is prior to the issuance of this Circular

and hence this Circular would not apply. There is absolutely no substance in this contention. First of all, there is no difference between the Reserve Bank of India's Circular No 15 dated 22/07/ 2013 and Circular No 25 dated 14/08/2013, with regard to import of gold by export oriented units / SEZ units, Premier Trading Houses and Star Trading Houses. Both these Circulars are containing a clause for import of gold exclusively for export. The petitioners being a Nominated Agency and on account of being Premier Trading House were subject to 100% export condition. The petitioners imported 200 kg of gold evidenced by the bills of entry dated 23/07/2013, which was not exported by the petitioners. Therefore, the show-cause notice. It was also alleged in the show-cause notice that there is a violation of the Circular dated 22/07/2013. This Circular was also, on the petitioners own showing, uploaded on the website on 22/07/2013, at 19:47 IST. The affidavit-in-reply pointed out the reference to the Airway bills and claims that these were handed over to the Airlines only after uploading of the Reserve Bank of India's Circular. Hon'ble High Court observed that apart from the above being factual, in the impugned order, it has been found after detailed reference to the documents relied upon by the petitioners themselves that this Circular was very much in force and applied to the imports by the petitioners. This is a factual finding and is in consonance with the overwhelming record. The speaking order passed by the respondents makes detailed reference to the facts. It makes reference to the imports of precious metals and supply made to domestic units and supply made to exporters during the period 01/04/2013 to 31/03/2014. Once the certificates in favour of the petitioners were subject to the provisions of the Foreign Trade Policy and the procedure laid down thereunder, the Reserve Bank of India guidelines and Customs Rules and Regulations, then the import of 550 kg of gold during the period 01/04/2013 to 31/03/2014 was governed by the same. The Show Cause Notice alleged that from the import of 550 kg of gold only 350 kg of gold was exported and as per the export details 200 kg of gold was supplied to the domestic unit. This is a violation of the Reserve Bank of India's Circular. Each of the terms and conditions, either in the certificates relied upon by the petitioners or the Reserve Bank of India guidelines are in consonance with the policy of the Government that precious metals having been brought in they ought to be exported so that the cost of imports could be mitigated by the earnings from export. That would save valuable foreign exchange as well. That is how the diversion in the domestic market was termed as a violation of Reserve Bank of India guidelines. For the violation to be established and proved, the Show Cause Notice made specific reference to bills of entries, related papers including previous orders etc. It also made reference in details to the denials in the petitioners' reply and the stand therein that the Circular does not govern the subject import or in other words, it is inapplicable to the imports in question. The extensive arguments were noted and the observations therein are that the records available in the file would prove and establish import of gold and diversion of 200 kg therefrom in the domestic market / sector. The Hon'ble High Court stated that they have no reason, therefore, to reject this finding of fact. It is based on appreciation and appraisal of all relevant and germane materials placed on record. This is not a case of an order based on no evidence. It is an order based on appreciation and appraisal of

the relevant and material documents before the Adjudicating Authority. The findings of fact cannot be termed as perverse or vitiated by any error of law apparent on the face of the record either. The petitioners were aware that the relevant date and time was that of filing of bill of entry and not the date and time of shipment of goods. The import into India and the above act of filing of Bills of Entry are, therefore, rightly relied upon to enter a factual finding against the petitioner on the point of applicability of RBI Circular dated 22/07/2013. Hon'ble High Court therefore concluded that none of the contentions as raised before them by the petitioners have any merit. The petitioners made a request that the ad-interim relief granted on 10/11/2014 be continued for a period of two months so as to enable the petitioners to challenge this order in a higher court. The Hon'ble High Court took a view that interest of justice would be served if the order passed on 10/11/2014 is continued for a period of eight weeks, but without prejudice to the rights and contentions of the parties.

16. The effect of Hon'ble High Court's order is that it upheld the Order in Original dated 14/01/2015 issued by the Additional Director General of Foreign Trade. Accordingly, the removal/sale of Gold imported vide Bill of Entry No 2784490 dated 23.07.2013 into domestic market had been held improper in as much as it violated RBI Circular No 15 dated 22.07.2013. Hon'ble High Court also upheld the cancellation of the Nominated Agency Certificate dated 05.05.2014 (for 2014-15) which was ordered ab initio void. Further the order upheld imposition of fiscal penalty of Rs 100 crores on the Importer.

17. Statement of Shri Amitkumar Amritlal Solanki, Tax Compliance Officer in the importer firm was recorded on 30.1.2016. He deposed that they had filed a Bill of Entry No 2784490 dated 23/07/2013 for clearance of 100 kg of gold for home consumption at ACC, Ahmedabad. The gold was purchased from M/s Bin Sabt Jewellery LLC, Dubai, UAE on the strength of having a Nominated Agency Certificate. They were entitled to import gold for home consumption without any limit and there were no conditions for its utilization. The Airway Bill dated 22.7.2013 was issued at 7.21 PM (Indian time 8.50 PM). They had engaged M/s International Cargo Services, Ahmedabad as a customs broker for their formalities. At the time of assessment by the Customs of their Bill of Entry No 2784490 dated 23.7.2013 in the EDI System, a query was raised saying "Put up Compliance to the RBI Circular No 15 dated 22.7.2013". A reply was filed by their broker who stated that the goods were cleared by Customs from other Ports in similar circumstances. He further deposed that under Circular No 14 (RE-2010) 2009-14 dated 1/2/2011, there were no restriction on import of gold and its subsequent utilization till the issuance of Circular No 15 on 22.7.2013. He further deposed that the Bill of Entry was cleared on payment of applicable duties on 24.7.2013, and the gold was sold in the domestic market without making any exports.

18. Statement of Shri Kartik Anant Pancholi was recorded on 08/02/2016 wherein he deposed that they were running their business as a customs broker with

Registration No AACFI0674ACH001 and that they had been doing business with the importer for about 4 to 5 years. It was stated by Shri Pancholi that before filing the documents in the EDI system they had informed the importer about the Circular No 15 dated 22/07/2013 issued by RBI. However, the importer had informed them that the airway bill was of date 22/07/2013 and therefore, the shipment was covered under the provisions of Para 9.11A of the Handbook of Procedures. Shri Pancholi further deposed that while replying to the query in EDI on 24/07/2013, they had submitted copies of Para 9.11A and Para 2.12.2 of Handbook of Procedure along with Para 5 of RBI Circular No 15/2013 dated 22/07/2013, as supplied by the importer, to say that the RBI Circular was not applicable to their case. According to Para 9.11A (ii), the date of shipment / dispatch for import would be reckoned as under: *“by air – date of relevant airway bill provided this represents date on which goods left last airport in the country from which the import is effected”*. Para 2.12.2 of the Handbook of Procedures was cited to say *“Validity of an import authorization is decided with reference to date of shipment / dispatch of goods from supplying country as given in paragraph 9.11A of Handbook of Procedure Vol.I and not the date of arrival of goods at an Indian port”*. On the basis of the airway bill which reflected the date as 22.7.2013, the full duty was paid on 24.7.2013 and out of charge was given by the Customs. Shri Pancholi further stated that the import record file did not contain the copy of Para 9.11A and Para 2.12.2 of Handbook of Procedure. He also could not remember as to who produced the photocopy of the Bill of Entry No 3791023 filed by M/s M D Overseas pertaining to 100 kg of gold import through ACC, Bangalore though M/s M D Overseas is their client at Ahmedabad. He had checked on the CBEC website and no separate instructions were issued by the Government of India, as mentioned in the RBI Circular No 15/2013. On the above basis, they had filed the Bill of Entry for home consumption on the instructions of the importer. On being asked about further consignments imported by the importer, he deposed that the next shipment of gold was made in June 2014 after RBI Circular No 133 of 2014 dated 21.5.2014 was issued.

19. Statement of Shri Bhawarlal Saremal Kothari, Director in the importer firm M/s RSBL was recorded on 3.5.2016. He deposed that he was agreeable to the depositions of Shri Amitkumar Solanki made on 30.1.2016 and Shri Kartik Pancholi made on 8.2.2016. He stated that Shri Pancholi had informed them about Circular No 15 of 2013 dated 22.7.2013 issued by RBI before clearance of their goods under Bill of Entry No 2784490 dated 23.7.2013. However, after considering para 5 of the Circular, they were of the opinion that their consignment would not be hit by the RBI's Circular. Further, the Circular was issued and uploaded late in the evening at 7: 47 PM and on that day, there was no instruction on the CBEC website as envisaged under the RBI Circular. Thereafter, the Customs had cleared their consignment and they had paid up the customs duty on 24.7.2013. He further deposed that he had not supplied the copy of Bill of Entry filed by M/s M D Overseas as referred above to the customs broker, which pertained to clearance of 100 Kg of gold through ACC, Bangalore. The reply to the query in EDI had been submitted by the broker only.

20. M/s RSBL, vide their letter dated 09.05.2016, submitted photocopies of the into-bond/ex-bond Bills of Entry, Invoices, Export Shipping Bill and Invoices. Further, vide letter dated 28.04.2016, the Importer had submitted photocopies of the invoices of Gold supplied to jewelers for the purpose of manufacturing jewelry for meeting export obligation under 80:20 scheme and a statement showing details of their import and exports. Certain discrepancies were noticed in the information in the tables annexed to M/s RSBL's letter dated 28/04/2016, which were informed to them. M/s RSBL, accordingly submitted revised data vide their letter dated 26/12/2016 and clarified that there was some typographical error in the particulars mentioned under the head "export under 20%" and that the quantity and amount figures were error free.

21. Hon'ble High Court of Bombay upheld the effect of the Order in Original dated 14/01/2015 issued by the Additional Director General of Foreign Trade. It also upheld the cancellation of the Nominated Agency Certificate dated 05/05/2014 (for 2014-15) which was ordered ab initio void. It appears from the above facts, circumstantial evidences and decision of Hon'ble High Court of Bombay that M/s Riddi Siddhi Bullions Limited had cleared into domestic tariff area 100 Kg of Gold valued at Rs 24,81,44,000 imported vide Bill of Entry No 2784490 dated 23/07/2013 in violation of RBI Circular No 15 dated 22/07/2013. It also appears that all imports of Gold and Silver effected by M/s Riddisiddhi Bullions Ltd during 2014-15 on the strength of Nominated Agency Certificate (which has been held ab-initio void and cancelled) become unauthorized imports. During this period, 22,000 Kg of Gold valued (Tariff rate) at Rs 54,14,56,00,000 and 73,217.409 Kg of Silver valued (Tariff rate) at Rs 2,48,21,14,391 had been imported by M/s RSBL at Air Cargo Complex, Ahmedabad and cleared into Domestic Tariff Area. Details of these imports are mentioned in Annexure A and Annexure B of this Show Cause Notice respectively for Gold and Silver. Out of the Gold imports, a quantity of 17,600 Kg of Gold valued (Tariff rate) at Rs 43,25,92,37,500 had been removed under ex-bond Bills of Entry for Home Consumption as detailed in Annexure A. The balance quantity of 4,400 Kg valued (Tariff rate) at Rs 10,82,70,33,470 had been issued to Exporters under invoices for the purpose of meeting export obligation under 80:20 scheme, the details of which too are incorporated in Annexure-A.

22. The Nominated Agency Certificate had been suspended and held ab-initio void by Zonal Joint Director General of Foreign Trade on 31/10/2014. However, the Importer did not disclose the matter to Customs and removed a quantity of 600 Kg of Gold valued at Rs 1,45,56,93,000 by filing ex-bond Bill of Entry No 7243541 dated 01/11/2014 at Air Cargo Complex, Ahmedabad, which was imported vide Warehouse into-Bond Bill of Entry No 7137639 dated 21/10/2014. Hence, this omission resulted in clearance of Gold without having a valid Nominated Agency Certificate. The Gold thus removed appears to be liable for confiscation under Section 111 (d) & (o) of the Customs Act, 1962. This 600 Kg Gold under ex-bond Bill of Entry No 7243541 dated

01/11/2014 is a part of the total 17,600 Kg Gold removed under ex-bond Bills of Entry for Home Consumption as detailed in Annexure A.

23. Therefore, it appears that clearance 100 Kg of Gold valued at Rs 24,81,44,000 effected vide Bill of Entry No 2784490 dated 23.07.2013 and the imports of Gold and Silver made during 2014-2015 as per Annexure – A and Annexure – B are liable for confiscation under Section 111 (d) & (o) of the Customs Act. However, the Gold and Silver in question are not available for confiscation. It also appears that penalty is imposable on M/s RSBL under Section 112 (a) of the Customs Act, 1962 for all the aforementioned acts and omissions.

24. It also appears that since the Nominated Agency Certificate was cancelled ab-initio, the Importer was not entitled to operate as Nominated Agency and they were not entitled to supply duty free Gold to exporters under 80:20 scheme. Such removals are, therefore, required to be charged to the duty of Customs. During the period from 01/04/2014 to 31/03/2015, they have removed 4,400 Kg of Gold valued (Tariff rate) at Rs.10,82,70,33,470 for supplying to exporters without payment of Rs 1,08,27,03,347 as Basic Customs Duty, Rs 2,16,54,067 as Education Cess, and Rs 1,08,27,033 as Secondary and Higher Education Cess, thus aggregating to Rs 1,11,51,84,447 as detailed in Annexure-A. This duty is required to be demanded and recovered from the Importer under Section 28 (1). As per Section 28 (7), in computing the period of two year referred to in clause (a) of sub section (1) or five years referred to in sub-section (4), the period during which there was any stay by an order of a Court or Tribunal in respect of payment of such duty or interest shall be excluded. Accordingly, the period up to 16/02/2016 is excluded from the period for computation of two years. Further, they are required to pay interest at the prescribed rate under Section 28AA of the Customs Act, 1962 on the duty thus short paid.

25. As per Regulation No 11 (d) of the Customs Brokers Licensing Regulations, 2013, a custom broker is obliged to advise his client to comply with the provisions of the Act and in case of non compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. From the aforementioned facts and circumstances, it appears that M/s International Cargo Services ('ICS'), Customs Broker failed to advice their client to comply with the provisions of the Act in as much as the clearance of 100 Kg of Gold valued at Rs 24,81,44,000 effected vide Bill of Entry for home consumption No 2784490 dated 23.07.2013 was in violation of the provisions governing import of Gold. Further, as per Regulation No 11 (m) the Customs Broker is obliged to discharge his duties as a Customs Broker efficiently. M/s International Cargo Services, Customs Broker in this case, appears to have failed to efficiently discharge their duties as Customs Broker in as much as they have not correctly followed the law regarding import and clearance of 100 Kg of Gold effected vide Bill of Entry for home consumption No 2784490 dated 23.07.2013. They have also not replied to the query given by the Deputy Commissioner regarding applicability of RBI Circular No 15 dated

23.07.2013 and instead of clarifying the correct legal position that the Gold could not be removed for home consumption they made a remark "reply submitted" in the Indian Customs EDI System (ICES) whereas no such reply was recorded either in the system or in the file. Regarding the reply submitted, Shri Amitkumar Amritlal Solanki, Compliance Officer of RSBL in his statement as narrated above stated that M/s International Cargo Services on enquiry informed them that under similar circumstances Bills of Entry for home consumption were cleared by other Customs Port and they had supplied copy of a Bill of Entry of Home Consumption for cases having identical facts and requested for equal treatment. A copy of a Bill of Entry in the name of M/s M D Overseas is also available in the import docket file. M/s International Cargo Services was a Customs Broker for M/s M D Overseas too as confirmed by Shri Kartik A Pancholi, Partner in M/s International Cargo Services, Customs Broker. They have thus misled the Customs to clear the cargo and abetted the improper clearance of 100 Kg of Gold valued at Rs 24,81,44,000 under Bill of Entry for Home Consumption No 2784490 dated 23.07.2013 in a manner rendering the goods liable for confiscation under Section 111 (d) & (o) of the Customs Act and thereby appear to have rendered themselves liable for penalty under Section 112 (a) of the Customs Act, 1962. Due to the aforementioned acts and omission on the part of M/s International Cargo Services also appears to have rendered themselves liable for penalty under Regulation 22 of the Custom Brokers Licensing Regulations, 2013.

26. Therefore, M/s Riddisiddhi Bullions Ltd having their registered office at 109, Shaikh Memon Street, O.No 27, 2nd floor, Shahi Galli, Zaveri Bazar, Mumbai – 400002 are called upon to show cause to the Principal Commissioner/Commissioner of Customs, First Floor, Custom House, Near Akashwani, Navrangpura, Ahmedabad, as to why:

- i. 100 Kg of gold valued at Rs 24,81,44,000 imported and cleared vide Bill of Entry for Home Consumption No 2784490 dated 23.7.2013 should not be held liable for confiscation under Sections 111 (d) & (o) of the Act as discussed above;
- ii. 22,000 kg of gold valued at Rs 54,14,56,00,000/- and 73217.409 kg of silver valued at Rs 2,48,21,14,391/- imported for the period from 1.4.2014 to 31.3.2015 should not be held liable for confiscation under Sections 111(d) & (o) of the Act as discussed above;
- iii. customs duty short paid/ not paid on the 4400 kg of gold issued by the importer to jewellers for export obligation amounting to Rs 1,11,51,84,447(BCD- 1,08,27,03,347+ Education Cess Rs 2,16,54,067+ SHE Cess Rs 1,08,27,033) as detailed in Annexure A to this SCN, should not be demanded and recovered from them, under the provisions of Section 28(1) of the Act;
- iv. penalty should not be imposed on the importer under the provisions of Section 112(a) of the Act on each of the offences as discussed above;

- v. Interest at the prescribed rates should not be recovered under Section 28AA of the Act on the duty short paid;

27. M/s International Cargo Services, Customs Broker, having their office at 403/404/405, "Himadri", Old High Court Lane, Ahmedabad-380009 are called upon to show cause to the Principal Commissioner/Commissioner of Customs, First Floor, Custom House, Near Akashwani, Navrangpura, Ahmedabad, as to why:

- (i) Penalty under Section 112 (a) of the Customs Act should not be imposed on them
- (ii) Penalty under Regulation 22 of the Custom Brokers Licensing Regulations, 2013, should not be imposed.

28. Written submission: Importer vide their letter dated--- filed reply to the Show Cause Notice wherein they inter alia stated as under:

28.1 that they are a company incorporated under the Companies Act, 1956, inter alia, engaged in the import and sale of bullion; that on 31.03.2009, the Directorate General of Foreign Trade ("DGFT") issued Circular No. 77(RE-2008)/2004 – 2009, prescribing guidelines for the import of precious metals by Nominated Agencies, requiring, *inter alia*, at least 10% of imports to be supplied to the exporters; that on 09.09.2009, they were granted a Certificate of Recognition as Star Trading House by DGFT; that on 11.02.2010, DGFT issued Policy Circular No. 24/2009-2010, requiring Nominated Agencies to supply 15% of the imported precious metals to the exporters; that on 18.05.2010, they were granted a Nominated Agency Certificate for importing precious metals under para 4A.4 of the Foreign Trade Policy ("FTP"), for the period 01.04.2010 to 31.03.2011; that the said certificate was subsequently renewed on 15.03.2011, 17.04.2012, 09.04.2013 with its final renewal dated 05.05.2014 valid until 31.03.2015; that they were also awarded the status of "Premier Trading House" by DGFT on 08.08.2011 for the period 01.04.2011 to 31.03.2016; that on 01.02.2011, vide its Policy Circular No. 14(RE-2010)2009 – 14, DGFT withdrew the Policy Circular No. 77(RE-2008); that a meeting of the Ministry of Finance, Department of Economic Affairs, Multilateral Relation Division was held on 13.06.2013 to examine the issue of gold imports, wherein the official from DGFT was advised to first issue a notification under the EXIM policy, to be followed by a circular from RBI, which was to be done in a week's time; that thereafter, a meeting of the Foreign Exchange Department ("FED") of the RBI was held on 27.06.2013, wherein it was commented that the action point at paragraph 4(a) therein would be taken up by the FED, RBI, only after issue of notification by DGFT; that on 10.07.2013, the Department of Economic Affairs, while relying on the said meeting of the Ministry of Finance, Department of Economic Affairs, Multilateral Relation Division dated 13.06.2013, stated that the said decisions were conveyed to the DGFT, who was advised to issue a notification within a week under the EXIM Policy; that it was clarified that the RBI would issue an enabling circular only upon such notification being issued by the DGFT ; that notably, the

DGFT amended the Foreign Trade Policy in relation to gold imports only on 18.10.2017, vide Notification No. 34/2015-20 with use of the expression "henceforth"; that on 19.07.2013 and 22.07.2013, they placed two purchase orders with the foreign supplier in the UAE, for 100 kgs of gold each and basis which two invoices both dated 22.07.2013 were issued by the said supplier; that under invoice Nos. USV-5274 and 75, both dated 22.07.2013, for Ahmedabad and Hyderabad respectively, two consignments of gold were shipped from UAE for importation into India; that on 22.07.2013, the foreign supplier handed over the shipment at about 4:30 p.m. (UAE time) to Brinks Global Agency, the renowned International Logistic Company handling precious metals, for importation into India. Collection Note No. 30117 issued by Brinks Global Agency evidences such handover. At about 6:05 pm (UAE time), Dubai Customs formalities were completed and two airway bills bearing numbers 17652586273 (for Ahmedabad shipment) and 17652586262 (for Hyderabad shipment) both dated 22.07.2013 were issued at 7:21 p.m. and 9:13 p.m. (UAE time), respectively; that subsequently, on the same day, the RBI issued Circular No.15 which was uploaded on its website at 7.47 p.m.; that the Circular was issued purportedly under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act, 1999 ("FEMA"), with a caveat that the Government of India would be issuing separate instructions, if any, to the Customs authorities/DGFT to operationalize and monitor the import restrictions stipulated therein;

28.2 that on 23.07.2013, two bills of entry for home consumption were filed for the said consignments upon their reaching the respective destination ports in India; that consequent to the grant of permission by the Authorized Dealer, they made outward remittances vide Ref. Nos. 001IMPOR13098756 and 001IMPOR13098455, against the subject imports, and certificate of debits were issued by the Bank; that the consignments were released by the Customs Authorities under Section 47 of Customs Act, for home consumption and on payment of assessed Customs Duties, after forming an opinion that RBI Circular No. 15 dated 22.07.2013 was not applicable/operational; that on 14.08.2013, RBI issued Circular No. 25, clarifying/modifying Circular No. 15 dated 22.07.2013 and mandating that all nominated agencies to make at least one fifth i.e. 20% of every lot of gold imported exclusively available for the purpose of exports and the balance for domestic use; that the said RBI Circular also stipulated that Premier Trading Houses, irrespective of whether they were nominated agencies or not, were permitted to import gold exclusively for the purpose of exports only; that on 04.09.2013, the Central Board of Excise and Customs ("CBEC") issued Circular No. 34/2013-Cus in order to operationalize RBI Circular No. 25 dated 14.08.2013 with the repeated use of the word "henceforth"; that on 27.09.2013, the Directorate General of Export Promotion ("DGEP") issued instructions to all the Chief Commissioners of Customs and Central Excise, directing that the gold imported between 22.07.2013 and 14.08.2013, and pending clearance, be cleared by applying the RBI Circular dated 14.08.2013 and the CBEC Circular dated 04.09.2013; that on 09.05.2014, on being orally summoned, their representative appeared before the Additional DGFT with the original Certificate, which was retained by the said office allegedly for the purpose of

verification; that on 21.05.2014, the RBI issued Circular No. 133 providing revised guidelines and permitting 'Premier Trading Houses' registered as 'Nominated Agencies' to import gold under 20:80 Scheme, subject to certain conditions; that on an application made by them, the Assistant/Deputy Commissioner of Customs, ACC Customs, Ahmedabad, issued Private Bonded Warehouse License No: **PBW/ACC/RSBL/004 dated 31.05.2014 to us after accepting bank guarantee No. 13940100002592 dated 23.05.2014 and bond; that they had** imported 11 consignments of gold weighing 2000 kgs of gold for which 11 in-bond bills of entry were filed; that they had exported 20% of the gold imported by them viz. 4400 kgs directly from the bonded warehouse without clearing for home consumption; that the show cause notice admits that we did export 4400 of gold, which was in due compliance of the RBI guidelines; that they cleared 80 per cent of the quantity of gold viz. 17,600 kgs for home consumption on payment of appropriate duty; that the bills of entry filed for clearance of gold for home consumption were finally assessed; that they did not submit any bond for clearance of 17,600 kgs. of gold for home consumption; that the bond was given only for warehousing of the goods; that accordingly, they duly complied with the RBI guidelines and exported 20 per cent of the gold imported by them directly from the bonded warehouse and 80 per cent of imported gold was cleared for home consumption on payment of duty; that thereafter, being satisfied that they had complied with all the conditions of the circular and notifications, the warehousing license dated 31.05.2014 was duly cancelled on 25.04.2015 and the bond and bank guarantees were returned to them duly cancelled and discharged; that post 14.01.2015, we have not imported any gold;

28.3 that on 08.09.2014, RBI, in response to an RTI application, clarified that the exact timing of uploading the Circular No.15 dated 22.07.2013 on the RBI website was 7:47 p.m. on 22.07.2013; that on 25.09.2014, they addressed a letter to Additional DGFT stating that the shipment had already been handed over for export from Dubai prior to the uploading of RBI Circular dated 22.07.2013; that on 14.10.2014, the Additional DGFT issued a Show Cause Notice under Section 14 read with Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992 alleging that the request for renewal of the certificate could not be considered owing to non-compliance with the conditions and the RBI Circular No.15 dated 22.07.2013, and proposed to impose a fiscal penalty on the Company and its Directors for alleged violation of Rule 13(2) of Foreign Trade Regulation Rules; Hereto annexed and marked as **Annexure "22"** is a copy of said show cause notice dated 14.10.2014; that on 21.10.2014, they showed cause and contended, *inter alia*, that Circular No. 15 could not apply to consignments already handed over for exports; that further, they requested additional time to file a detailed reply and for a reasonable opportunity of hearing; that on 30.10.2014, an addendum was issued to the said Show Cause Notice, proposing cancellation of the certificate dated 05.05.2014 issued to us, and fixing the personal hearing for 11.11.2014 at 11.30 a.m.; that it is pertinent to note that there was no proposal and could not have been to cancel the certificate dated 5.5.2014 ab-initio as there is no power vested in DGFT to cancel the said certificate ab-initio; that on

31.10.2014, at about 4:45 pm, an ex-parte suspension order was passed suspending certificate granted to them; that they challenged the said Suspension Order dated 31.10.2014 before this Hon'ble Bombay High Court in Writ Petition No. 9873 of 2014; that by an order dated 03.11.2014, the Hon'ble Bombay High Court was pleased to set aside the suspension order dated 31.10.2014; that thereafter, they filed Writ Petition No. 10001 of 2014 before the Hon'ble Bombay High Court challenging the RBI Circulars dated 22.07.2013, 14.08.2013 and 21.05.2014 and consequential proceedings emanating from the Show Cause Notice dated 14.10.2014; that by an order dated 10.11.2014, the Hon'ble Bombay High Court was pleased to grant a stay on the operation of any adverse order, if passed by the Additional DGFT; that immediately, after filing the said Writ Petition No. 10001 of 2014, RBI issued Circular No. 42 dated 28.11.2014, withdrawing the restrictions imposed by the earlier circulars on imports of gold; that on 14.01.2015, the Additional DGFT passed an Order-in-Original, cancelling our certificate and imposing a colossal penalty of Rs. 100,00,00,000/- (Rs. 100 crores) for supplying to the domestic market, 200 Kgs of imported duty paid gold cleared under Section 47 of the Customs Act, 1962; that no imports are made by them post 14.01.2015, which is the purported date of cancellation of the certificate; that they filed Civil Application No. 131 of 2015 in Writ Petition No. 10001 of 2014 seeking amendment to the said Writ Petition and challenge the said Order-in-Original dated 14.01.2015. The said civil Application was allowed by the Hon'ble Bombay High Court vide its order dated 20.01.2015;

28.4 that by an order dated 09.02.2015, the Hon'ble Bombay High Court was pleased to grant a stay on the implementation and operation of the Order-in-Original dated 14.01.2015 and directed that the Customs Authorities at Ahmedabad shall abide by the order; that thereafter, the DGFT and RBI filed their respective affidavits in replies dated 12.03.2015 and 24.04.2015 to the said Writ Petition; that DGFT also filed an additional affidavit dated 08.06.2015 in the said Writ Petition; that they filed the affidavits in rejoinder on 25.08.2015 and 26.08.2015 in the Hon'ble High Court; that vide its order and judgment dated 23.12.2015, the Hon'ble Bombay High Court was pleased to dismiss the said Writ Petition No. 10001 of 2014 filed by them; that post the said decision of the Hon'ble Bombay High Court, statements of their director, employees and customs broker were recorded; that they Special Leave Petition (C) No. 4901 of 2016 ("SLP") before the Hon'ble Supreme Court challenging the said judgment and order dated 23.12.2015 passed by the Hon'ble Bombay High Court; that on 22.02.2016, the Hon'ble Apex Court was pleased to issue notice to the Respondents therein and grant stay on the order/judgment dated 23.12.2015 upon furnishing a bank guarantee of Rs. 50 Crores by them; that accordingly, a valid and subsisting bank guarantee of Rs. 50 Crores has been furnished by them and is valid as on date; that by their letter dated 28.04.2016, 09.05.2016 and 26.12.2016, they submitted photocopies of the invoices of gold supplied to jewelers for the purpose of manufacturing jewellery for meeting export obligation under 80:20 scheme, a statement showing details of their import and exports and clarifications on the discrepancies raised by the Department; that pending the said SLP, on 07.08.2017,

the show cause notice under reply was issued to them proposing to confiscate the imported gold and seeking recovery of customs duty with interest and penalties as stated above; that their Advocate's reply dated 08.09.2017, we filed a preliminary reply to the above show cause notice under reply, *inter alia*, placing on record the sequence of events leading to the filing of SLP (C) No. 4901 of 2016 and requested that the adjudication of the show cause notice under reply be kept in abeyance and no coercive action be taken till final disposal of the SLP filed by them; that however, as the adjudication of the show cause notice was not kept pending and personal hearings were fixed from time to time, they filed Special Civil Application No. 1982 of 2018 challenging the above Show Cause Notice under reply before the Hon'ble Gujarat High Court; that by an order dated 02.02.2018, after noting that the entire proceedings stemmed from the cancellation of our certificate and that the Supreme Court had directed that no coercive steps be taken against us, the Hon'ble Gujarat High Court was pleased to grant stay on the said show cause notice and directed the then Principal Commissioner of Customs, Ahmedabad, to not proceed further with the hearing of the show cause notice; that by an order dated 12.07.2018, the Hon'ble Gujarat High Court disposed of the said Special Civil Application, observing that the adjudication of the show cause notice would remain in abeyance until the pending SLP is disposed of by the Supreme Court and as soon as the outcome of such proceedings are known, it would be open for the Department to move further; that the DGFT filed its counter affidavit to the SLP filed by us before the Hon'ble Apex Court on 27.06.2016; that the RBI filed its counter affidavit to the SLP on 07.10.2023; that the Petitioner filed a common affidavit in rejoinder on 01.11.2023; that on 04.07.2023, they filed Interim Application No. 123834 of 2023 in the Special Leave Petition (C) No. 4901 of 2016, placing on record certain vital documents (obtained through RTI) which went to the root of the matter, *inter alia*, including those which ought to have been disclosed prior to the passing of the judgment dated 23.12.2015 by the Hon'ble Bombay High Court; that DGFT had filed its counter affidavit in reply to the said interim application on 06.09.2024; that vide its order dated 22.07.2025, the Hon'ble Supreme Court, *inter alia*, was pleased to dismiss the said Special Leave Petition and dispose off pending applications; that on 11.08.2025, we filed Review Petition (Stamp) No. 28376 of 2025 in Writ Petition No. 10001 of 2014 before the Hon'ble Bombay High Court, on the grounds that certain crucial and relevant documents, which go to the root of the proceedings, were not produced by the Department before the Hon'ble Court earlier; that an Interim Application (St.) No. 28941 of 2025 has also been filed seeking condonation of delay in filing the above Review Petition; that by an order dated 22.09.2025, the Hon'ble Bombay High Court, *inter alia*, was pleased to adjourn the Review Petition to 17.11.2025, with directions to the Respondents therein to file their affidavit-in-reply on or before 03.11.2025; that further, by an order dated 04.11.2025, the Hon'ble Bombay High Court was pleased to direct that status quo as on the said date shall be maintained qua the Bank Guarantee till the next date of hearing; that by an order dated 17.11.2025, the Hon'ble Bombay High Court was pleased to adjourn the said review petition to 02.12.2025 at the request of the Advocate for the Respondents in the said review petition; that, the Hon'ble Bombay High Court was

pleased to continue the ad-interim relief granted earlier, till the next date of hearing; that in the meantime, a personal hearing was fixed on 18.11.2025 in the above show cause notice under reply; that since, the Hon'ble Bombay High Court was hearing the said review petition and has also granted a status quo order, they through their Advocates had request not to proceed with the hearing fixed on 18.11.2025 and keep the adjudication of the show cause notice under reply in abeyance, till the Hon'ble Bombay High Court hears and decides the said Review Petition; that however, once again, a personal hearing has been fixed on 03.12.2025 in the subject show cause notice under reply; that they submit that the proceedings pursuant to the show cause notice, are liable to be dropped on the following amongst the other submissions, which are urged without prejudice to one another;

28.5 that at the outset, they deny each and every allegation made in the show cause notice under reply, and nothing that is alleged in the show cause notice under reply is admitted or deemed to be admitted by us either by reason of not specifically dealt with or denied in this reply or otherwise unless it is specifically admitted in this reply; that the adjudication of the above show cause notice be kept in abeyance till the Hon'ble Bombay High Court decides the review petition filed by them; that the show cause notice under reply seeks to confiscate the goods, demand the duty with interest and impose penalty mainly on the basis of the Circular No. 15 of 2013 issued by RBI, the order passed by the Additional DGFT and the judgment passed by the Hon'ble Bombay High Court in Writ Petition No. 10001 of 2014; that post the said orders, they have filed Review Petition (Stamp) No. 28376 of 2025 in Writ Petition No. 10001 of 2014 before the Hon'ble Bombay High Court, on the grounds that certain crucial and relevant documents, which go to the root of the proceedings, were not produced by the Department before the Hon'ble Court earlier; that after considering the submission of the parties in the said review petition, the Hon'ble Bombay High Court, vide its order dated 04.11.2025, was pleased to direct the parties to maintain a status quo in respect of the Bank Guarantees furnished by them; that when the entire basis of the show cause notice is on the order of the Additional DGFT and the judgment passed by the Hon'ble Bombay High Court, it would be appropriate to keep the proceedings in the show cause notice under reply in abeyance till the Hon'ble Bombay High Court decides the said Review Petition filed by them, as the order passed by the Hon'ble Bombay High Court in the said Review Petition will have a direct bearing on the said show cause notice under reply; that in fact, they have specifically urged before the Hon'ble Bombay High Court that the minutes of meeting dated 13.06.2013, 27.06.2013 and 10.07.2013 mentioned above support their bonafide contention that the restrictions qua nominated agencies was not operationalized vide RBI Circular No. 15 dated 22.07.2013; that they have also urged that Section 9(4) of the Foreign Trade (Development & Regulation) Act, 1992, and Rule 10 of the Foreign Trade (Regulation) Rules, 1993, do not confer jurisdiction upon the DGFT to cancel the certificate "ab-initio"; that in the interest of justice and to avoid multiplicity of proceedings, it is most respectfully prayed that this Hon'ble Commissioner be pleased to await the decision of the Hon'ble Bombay High Court in the review petition filed by them;

28.6 that in any event and without prejudice to the above, certificate was valid when the goods were imported and allowed by the Proper Officer to be cleared vide Orders under Section 47 to us, and use of words 'ab-initio' while directing cancellation of certificate cannot makesuch imports invalid and liable for confiscation; that the show cause notice under reply seeks to confiscate the goods and impose penalty on the allegation that the import of gold and silver,vide bill of entry dated 23.07.2013 (on payment of duty) and various bills of entry filed during the period 01.04.2014 to 31.03.2015 (cleared as per RBI Circular),were unauthorized in view of the suspension/cancellation of nominated agency certificate; that admittedly, the nominated agency certificate was valid at the time of import and clearance of goods for home consumption; that it was only after the import was completed and goods were allowed to be cleared for home consumption on payment of duty, the nominated agency certificate was purportedly cancelled by the DGFT on 14.01.2015; that the purported cancellation of the said nominated agency certificate, post the assessment and clearance of goods cannot and do not affect the import made by them; that the import continues to be valid; that the Additional DGFT, in the order-in-original, did not find that the imports made by them, which are sought to be treated as unauthorised in the show cause notice under reply, were unauthorized, illegal or in contravention of the circular; that according to the DGFT, they did not fulfil post import condition in respect of 200 kg of gold. The fiscal penalty was imposed only for alleged failure to fulfil post import condition; that in any event, there was no proposal in the addendum issued to us to cancel the certificate ab-initio; that the adjudication order of the learned Additional DGFT purporting to cancel ab-initio was not only beyond the show cause notice but was clearly in breach of the principles of natural justice; that it is settled law that any order passed in breach of principles of natural justice is a nullity and such an order can be set up as a defense in collateral proceedings; that in any event, there is no provision under the FTDR Act which provides for cancellation of the licence with retrospective effect and therefore, the nomination agency certificate cannot be cancelled *ab initio*; that reliance is placed on the decision of the Hon'ble Punjab and Haryana High Court in Supreme Castings Ltd. reported in 2016 (342) ELT 176 (P&H); that without prejudice, the proper officer of customs, at the time of assessment of bills of entry had formed an opinion that RBI Circular No. 15 dated 22.07.2013 was not applicable/operational in respect of the goods imported by them and allowed them to clear the goods for home consumption on payment of assessed Customs Duties; that therefore, the goods were permitted to be cleared by the proper officer of customs after due consideration of the RBI Circular and upon proper final assessment of bills of entry; that admittedly, the said assessment has become final, and no proceedings known to law are taken to set aside the said assessment or any order of reassessment was made by the proper officer; that the orders of assessment were reviewed by the Commissioner under Section 129D of the Customs Act; that in the absence of any proceedings under section 128D of the Act by the Commissioner, no action contrary to final assessment could be taken against us, including the proposed confiscation of goods and imposition of the penalties; that it is now settled law that any subsequent suspension or cancellation of

the certificate or license, post the assessment and clearance of goods, does not invalidate the import that was valid and lawful at the time it was made; that reliance is placed on the following decisions:-

- (i) Union of India v. Sampat Raj Dugar & Anr., (1992) 2 SCC 66;
- (ii) Collector of Customs v. Sneha Sales Corporation, 2000(121) E.L.T. 577 (SC);
- (iii) East India Commercial Co. Ltd v. Collector of Customs Calcutta, 1983 (13) ELT 1342 (SC);
- (iv) Collector of Customs, Bombay v. Sneha Sales Corporation, 2000 (121) ELT 577 (SC);
- (v) Deep Exports v. Commissioner of Customs, 2016 (338) ELT 742;
- (vi) Jimit Diamonds v. Commissioner of Customs, 2016 (12) TMI 378 - Cestat Mumbai;
- (vii) Wadhvani Commodities Trading v. Commissioner of Customs (Port), Kolkata, 2023 (7) TMI 1481 - CESTAT KOLKATA.

that in fact, other similarly placed nominated agencies importers were allowed to clear the imported goods for home consumption through Ahmedabad and other ports, during the period 22.07.2013 to 14.08.2013, as can be seen from communication dated 03.03.2015 received from the CPIO, Asst. Commissioner of Customs, Ahmedabad and data available on EDI system, despite issuance of said circular; that the said communication and data of EDI system are forming part of the affidavit in rejoinder dated 25.08.2015 filed by us before the Hon'ble Bombay High Court; that thus, even in such cases, Customs had taken a view that the circular was not applicable to the imports; that when other importers were permitted clearance of goods, despite issuance of the circular by RBI, it cannot be alleged that there was an omission on their part to inform the Customs authorities that Nominated Agency Certificate was suspended, which suspension was set aside by the Hon'ble Bombay High Court, and the clearances of Gold and Silver were without a valid Nominated Agency Certificate and liable for confiscation under Section 111(d) and (o) of the Act; that during 23.07.2013 to 14.01.2015, there was effectively no suspension or cancellation, as the purported suspension of Nominated Agency Certificate, on 31.10.2014, was already set aside by the Hon'ble High Court by its order dated 03.11.2014 and therefore, there is no basis for the department to allege that there was an omission on our part in not informing the department about the said suspension and clearing the goods which are now sought to be confiscated;

28.7 that any event, proposed demand of duty on 4400 kgs of gold is otherwise unsustainable in law; that it is evidently clear from paragraph 21 of the show cause notice that entire 22,000 of gold imported by them was at the first instance warehoused by us by filing in-bond bill of entry; that they had filed ex-bond bills of entry for 80 per cent of the quantity of gold for home consumption on payment of duty; that admittedly 4400kgs. of gold, being 20 per cent of 22000 Kgs of gold, was directly exported from the bond without filing bill of entry for home consumption or

clearing for home consumption; that undisputedly, no bills of entry for home consumption for the said 4400 kgs of gold were filed by them and the said quantity was never cleared for home consumption; that no duty can be demanded on the said 4400 kgs of gold having regard to the fact that the same was never cleared for home consumption and was exported by them directly from the bond; that in view of the aforesaid, the propose demand of duty on the said 4400 kgs of gold is clearly unsustainable in law; that said 4400 kgs of gold is not liable to confiscation and no fine or penalty can be imposed on them; that without prejudice and any event, they are liable to duty of 2 per cent as they were admittedly entitled to drawback of 98 per cent as the said gold was exported as such and in this behalf they rely upon the judgment of the Hon'ble Bombay High Court in the case of Cipla Limited 1995(80)ELT 17 (Bom); that the ratio of this judgment is followed by the Hon'ble CESTAT in series of precedents;

28.8 that in any event, the demand proposed in the show cause notice under reply is clearly barred under Section 28(1) of the Act; that the show cause notice under reply, issued on 07.08.2017, seeks to demand duty allegedly short paid for the imports made on 23.07.2013 and 01.04.2014 to 31.03.2015, under Section 28 (1) of the Act; that they prior to 14.05.2016, Section 28(1) of the Act prescribed time limit of one year from the relevant date viz. date on which goods were allowed to be cleared for home consumption; that on and from 14.05.2016, Section 28(1) of the Act prescribed time limit of two years to issue show cause notice from the relevant date viz. date on which goods were allowed to be cleared for home consumption; that for ease of reference mentioned the relevant extract of amended Section 28 (1) of the Customs Act, 1962; that in terms of explanation 1(a) of Section 28 of the Act, the relevant date for issuance of show cause notice where duty is not levied or not paid or short levied or short paid was date of which proper officer made an order for clearance of goods; that in the present case, the imports were made on 23.07.2013 and 04.06.2014 to 24th November, 2014 and the proper officer had passed orders permitting the clearance of the gold for home consumption; that thus, the time limit to issue show cause notice under Section 28(1) of the Act expired on the expiry of one year from the date of each of the clearances and last clearance was made on 24.11.2015; that admittedly, the show cause notice under reply is issued after one year from the last relevant date i.e. 24.11.2015; that the demand was barred on the date on which section 28(1)(a) of the Act was amended and time to issue show cause notice was increased to 2 years from the relevant date; that the demand made pursuant to show cause notice is clearly barred under Section 28(1)(a) of the Act; that without prejudice and assuming without admitting that the amended provisions of Section 28(1)(a) of the Act are applicable even than the show cause notice having been issued after 2 years from the relevant date is barred under Section 28(1)(a) of the Act; that the show cause notice under reply in correctly relied upon Section 28 (7) of the Act to claim that the period upto 16.02.2016 is required to be excluded for computing period of 2 years referred to in sub-section (1) of Section 28 of the Act; that section 28(7) of the Act has no application to the facts of the present case; that the Section 28(7) of the Act provides for exclusion

of time during which there was any stay of a court or tribunal in respect of payment of duty; that in the present case, there was no stay of any court from payment of duty; that in the present case, in the absence of any stay in respect of payment duty, the show cause notice ought to have been issued within one year from the relevant date; that the stay granted by the Hon'ble High Court was only for future imports by them and not for recovery of any duties for the past imports; that the show cause notice issued much after the period of one year from the relevant date is clearly barred under Section 28(1) of the Act; that in any event, the purported exclusion of time upto 16.06.2016 for computing the period of one year to issue show cause notice is wholly mis-conceived; that they had had filed SLP on 17.02.2016 and there was no order, as contemplated under sub-section (7) of Section 28 of the Act, which was subsisting on 16.02.2016, hence, the demand under Section 28(1) of the Act is clearly barred; that in view of the aforesaid submission, the proceeding pursuant to the show cause notice under reply is liable to be dropped; that it is settled law that when the demand is not sustainable, no penalty can be imposed;

28.9 that in any event, the imported goods are not liable for confiscation under Section 111 (d) and (o) of the Act; that the proposal to confiscate the goods under Section 111(d) and (o) of the Act is wholly devoid of any meritas sine qua non to invoke both the clauses of section 111 is absent in the present case; that section 111(d) of the Act can be invoked when an import is contrary to any prohibition imposed either by the Customs Act or any other law for the time being in force; that in present case, there was there was no prohibition in import of gold and silver; that the import was under a valid authoritarian; that on the date of the import, the said goods were covered under a valid nominated agency certificate; that purported cancellation of the said certificate subsequent to the clearance of the goods does not render the import illegal; that the proper officer of customs, on the basis of said valid certificate, had permitted clearance of the imported goods under validly assessed bills of entry; that the imports made by them were not contrary to any prohibition imposed either by the Customs Act or any other law for the time being in force; that the purported cancellation of the nomination agency certificate, even if ab-initio, does not render the said import illegal and clause (d) of Section 111 of the Act has no application; that the subject goods are not liable for confiscation under Section 111(d) of the Act; that in any, condition, either for exemption or prohibition, has been violated by them in the present case to invoke Section 111(o) of the Act, that Clause (o) of Section 111 can be invoked when goods imported were subject any exemption from payment of duty or any prohibition in respect of which a condition is not observed by the importer and non-observation is not sanctioned by the proper officer; that in the present case, there is no allegation, in the show cause notice, of non-observance of the conditions of exemption; that the only basis for issuance of show cause notice is purported cancellation of the certificate, ab-initio; that in any event, they had imported 80% gold on payment of duty of appropriate duty and based on valid certificate at the time of clearance of the goods; that they had not claimed any exemption in respect of the said gold; that the 20% gold, which was imported duty-free, was duly exported from the

bonded warehouse; that even at the time of exports, the certificate was valid; that in fact, the bills of entry which were filed by them were finally assessed by the Customs authorities after accepting the fact that the certificate was valid at the time of import and export of goods and therefore, in such circumstances, Section 111(o) cannot be invoked and the question of confiscation under Section 111(o) does not arise; that in any event and without prejudice, it is settled law that once goods are allowed to be cleared for home consumption, they cease to be imported goods, and these goods cannot be confiscated under Section 111 of the Act and in this regard, reliance is placed on the following authorities:

- (i) *Bussa Overseas & Properties P. Ltd. vs. C.L. Mahar, Asstt. C.C., Bombay, 2004 (163) E.L.T. 304 (Bom.), affirmed in 2004 (163) E.L.T. A160 (SC)*
- (ii) *Southern Enterprises Vs. Commissioner of Customs, Bangalore, 2005 (186) E.L.T. 324 (Tri. – Bang.)*

That in any events, goods are not liable to confiscation when they are not available for confiscation and no fine can be imposed; that in the present case, the goods were not seized and are not available for confiscation and in this regard, reliance is placed on the following authorities to substantiate the same:

- (i) *Commissioner of Customs (Import), Mumbai Vs. Air India Ltd., (2023) 9 Centax 111 (Bom.)*
- (ii) *Shantilal Mehta Vs. Union of India and Others, 1983 (14) E.L.T. 1715 (Del.).*
- (iii) *Ganesh International Vs. Commissioner of Customs Mumbai, 2012 (278) E.L.T. 72 (Tri.- Mumbai)*

That in view of the finalization of bills of entry, the cancellation of the license for private bonded warehouse, the discharge and cancellation of the bond and bank guarantee submitted at the time of issuance of licenses for bonded warehouse, it is evidently clear that they had duly complied with all the circulars and notifications during the relevant time and there was no contravention of either RBI guidelines or Customs Act or condition of any notification issued thereunder by them and therefore, in such circumstances, there cannot be any question of confiscating the goods and imposition of penalty on them; that in view of the above, the imported goods are not liable for confiscation under Sections 111(d) and (o) of the Act;

28.10 that in any event, customs duty allegedly short paid/ not paid on the 4400 kg of gold should not be demanded and recovered under the provisions of Section 28(1) of the Act; that no customs duty allegedly short-paid or not paid on the 4400 kg of gold can be demanded or recovered from us under Section 28(1) of the Ac; that they had made bonafide import of 80% gold on payment of appropriate duty and based on valid certificate; that the remaining 20% gold i.e. 4400 kgs, which was imported duty free was duly exported by us during the period June 2014 to November 2014 based on the certificate and in compliance of the RBI Circular No. 25 dated 14.08.2013, which mandated them to remove 4400 kgs of gold for supply to the exporters; that they

mentioned the relevant portion of the said circular; that at the time of said exports, the certificate granted to them was valid; that all imports made by them were valid; they duly complied with the RBI Circular No. 25 dated 14.08.2013 and thus, the entire import by them, during the relevant time, was in accordance with law and therefore, there is no question of recovering the duty in respect of the said 4400 kgs of gold, which was duly permitted by Proper Office to be exported by them without clearing for home consumption; that subsequent suspension or cancellation of the certificate cannot affect the imports or exports made prior to such suspension and cancellation and in due compliance of the circular issued by RBI; that accordingly, the demand of customs duty short paid/ not paid on the 4400 kg of gold is wholly unsustainable in law and untenable in law; that no penalty can be imposed under Section 112(a) of the Act; that Section 112(a) of the Act provides for imposition of penalty on any person who does or omits to do any act in relation to any goods, rendering the goods liable for confiscation under Section 111 of the Act; that penalty under Section 112(a) of the Act cannot be imposed when the imported goods are not liable for confiscation under Section 111 of the Act; that in view of the submission made above, it is clear that the imported goods are not liable for confiscation under Section 111(d) and (o) of the Act, as reiterated in the above submissions; that it is a settled position in law that no penalty can be imposed when the goods are not liable for confiscation and cited the decision of [Commissioner of Customs (Import) vs. Air India Ltd. (2023) (386) E.L.T. 236 (Bom.)]; that in the present case, none of the ingredients of section 112(a) are satisfied, and the imposition of penalty thereunder is ex-facie erroneous and liable to be set aside; that the goods that were imported by them were based on a valid certificate; that the customs officers who cleared the goods also accepted that the certificate was valid at the time of clearance of goods and therefore, in such circumstances, the proposal that the imported goods are liable to confiscation under section 111(d) and (o) cannot be sustained and deserves to be set aside and consequently, the contention to impose penalties on us under Section 112(a) also cannot be sustained and, therefore, they need to be set aside and therefore, the question of imposition of penalty under Section 112(a) of the Act does not arise; that in any event, no interest can be recovered under Section 28AA of the Act; that in view of the aforesaid, when no duty can be demanded, there is no further question of levying any interest in accordance with Section 28AA of the Act in the present case; that Section 28AA of the Act can be invoked when there is delay in payment of duty, however, in the present case, they are not liable to pay any duty, and in view of the same, the question of invocation of Section 28AA of the Act does not arise; that in view of the above, Interest under 28AA of the Act is not liable to be levied upon them; that in view of the above submissions, they submitted that the proceedings initiated pursuant to the show cause notice under reply, are liable to be dropped and accordingly be dropped.

29. Customs House Broker M/s. International Cargo Services, Customs Broker, 403/404/405, "Himadri", Old High Court Lane, Ahmedabad-380009 submitted

their written submission vide their letter dated 14.09.2017, 29.12.2017 and 24.11.2025 wherein they interalia stated as under:

29.1 that the allegations leveled against them in show cause notice are incorrect and unjustified in facts as well as in law; that they have not misled the Customs Department nor have we abetted any improper clearance of 100 Kgs of gold covered under the above referred Bill of Entry dated 23.07.2013; and they have also not done anything nor omitted to do anything that would render the above goods liable for confiscation; that they have discharged their duties as a Customs Broker efficiently and diligently, and they have also advised their client to comply with the provisions of the Customs Act; that they have correctly followed the provisions of the law regarding import and clearance of 100 Kgs of gold covered under the above referred Bill of Entry, and they have not committed any irregularity or lapse in regard to the clearance of this cargo and therefore, the proposal to impose penalty on them do not hold any water, and accordingly such proposal deserves to be vacated in the interest of justice; that they have discharged our duty and obligation as a Customs Broker properly and honestly, they submitted that the proposal to impose penalty on them under Section 112(a) of the Customs Act and also under Regulation 22 of the Customs Brokers Regulations is unsustainable; that for them, the only issue in this case is about penal liability; that the core issue involved herein is about imports of gold and silver made by their client M/s. Riddhisiddhi Bullions Ltd; that for them, only one consignment of 100 Kgs of gold covered under Bill of Entry No.2784490 dated 23.07.2013 is relevant, the show cause notice refers to proposed confiscation and demand of customs duty not only for this solitary consignment of gold, but also to other consignments of gold weighing 12,000 Kgs. and also imports of silver weighing 73217.409 Kgs; that the imports made by this client from 01.04.2014 to 31.03.2015 are called in question in this show cause notice, though they are concerned about the import of only one consignment of 100 Kgs of gold, therefore would not prefer to go into merits of importers case but confine to charges against them only;

29.2 that the proposals for confiscation, recovery of customs duty etc. are made against the above client for quite a large period of April, 2014 to March, 2015 for the reason that the Additional DGFT, Bombay has passed an OIO dated 14.01.2015 under adjudication file No.03/91/105/00007/AM-12 thereby ab-initio cancelling the Nominated Agency Certificate issued in favor of M/s. Riddhisiddhi Bullions Ltd.; that fiscal penalty of a substantial amount is also imposed on them under this adjudication order by the Additional DGFT; that by virtue of this Certificate dated 05.05.2014, M/s. Riddhisiddhi Bullions Ltd. have imported several consignments of gold and silver, but said Certificate having been cancelled ab-initio, the case against them is that all the imports made by them during April, 2014 to March, 2015 (i.e. the period when the said Certificate was valid and in operation) have become illegal imports, and therefore the proposals for duty, confiscation etc. are leveled against them for all the imports of gold and silver made by them during April, 2014 to March, 2015; that the core issue involved in this case, though with regard to M/s. Riddhisiddhi Bullions Ltd.

and not in respect of their firm, is about the validity or otherwise of the adjudication order made by the Additional DGFT, Bombay in respect of the said Certificate, which has been ordered to be cancelled ab-initio; that the order of the Additional DGFT, Bombay was challenged by M/s. Riddhisiddhi Bullions Ltd. before the Hon'ble Bombay High Court, and details of such litigation are elaborated in various paragraphs of the show cause notice; that a Writ Petition No.10001/2014 was filed by M/s. Riddhisiddhi Bullions Ltd. before the Hon'ble Bombay High Court raising several contentions in respect of various actions taken by the Union of India, the Reserve Bank of India and also the Additional DGFT, Bombay; that one of the disputes raised in this Writ Petition was about the adjudication order made by the Additional DGFT because the Nominated Agency Certificate dated 05.05.2014 issued in their favor for F.Y.2014-15 has been cancelled ab-initio by virtue of this adjudication order, and a fiscal penalty of a substantial amount has also been imposed on them under the order; that it is also appears that the Writ Petition was decided finally by the Hon'ble High Court on 23.12.2015, and while delivering a detailed judgment on 23.12.2015, the Writ Petition of M/s. Riddhisiddhi Bullions Ltd. has been dismissed; that it is therefore the case of the Revenue in this show cause notice that the adjudication order of the Additional DGFT, Bombay stands upheld by the Hon'ble Bombay High Court and accordingly, the said Certificate issued in favor of M/s. Riddhisiddhi Bullions Ltd. stands cancelled ab-initio; and therefore M/s. Riddhisiddhi Bullions Ltd. was not eligible for importing any consignment of gold and silver as a Star Trading House for selling such goods in the domestic market; that in this in this regard, it is specifically alleged at para 16 of the show cause notice that the Hon'ble High Court having upheld OIO dated 14.01.2015 passed by the Additional DGFT, removal/sale of gold imported vide Bill of Entry No.2784490 dated 23.07.2013 into domestic market had been held improper because it violated RBI Circular No.15 dated 22.07.2013; that in addition to this allegation about the goods with which they are concerned, it is also alleged at para 16 of the show cause notice that the Hon'ble High Court having upheld the cancellation of the Nominated Agency Certificate dated 05.05.2014 (for 2014-15) which was ordered ab-initio void, the imposition of fiscal penalty on the importer (i.e. M/s. Riddhisiddhi Bullions Ltd.) is also upheld; that in this view of the matter, the proposals as stated in para 26 of the show cause notice are leveled against the importer M/s. Riddhisiddhi Bullions Ltd., and penalty is proposed to be imposed on their firm vide para 27 of the show cause notice as a consequence of the order against M/s. Riddhisiddhi Bullions Ltd. passed by the Additional DGFT, Bombay and the judgment of the Hon'ble High Court in the Writ Petition filed by them challenging, inter alia, the order of the Additional DGFT; that a crucial development has taken place after the Hon'ble High Court dismissed the above Writ Petition of the importer on 23.12.2015, but this development having a great bearing on the final outcome of this show cause notice appears to have been lost sight of; that the judgment of the Hon'ble Bombay High Court in Writ Petition No.10001/2014 has been challenged by M/s. Riddhisiddhi Bullions Ltd. before the Hon'ble Supreme Court by filing Petition for Special Leave to Appeal (C) No.4901/2016; that on this Petition, the Hon'ble has issued notice on 22.02.2016, and a direction not to take coercive steps against the Petitioner on

condition to furnish a Bank Guarantee of Rs.50 crores to the satisfaction of the concerned authority within a period of 3 weeks has also been issued by the Hon'ble Supreme Court; that, effectively the operation and implementation of the judgment of the Hon'ble Bombay High Court, and in turn that of the adjudication order dated 14.01.2015 made by the Additional DGFT, Bombay are stayed by the Hon'ble Supreme Court; that no action therefore can be taken against M/s. Riddhisiddhi Bullions Ltd. on the basis that their Certificate was cancelled ab-initio and that they were not eligible for importing goods like gold and silver during 2014-15; that no action against them can also be taken in respect of consignment of 100 KGs of gold imported and cleared by them vide Bill of Entry for home consumption No.2784490 dated 23.07.2013; that when nocoercive action can be taken against the importer in view of the interim protection granted to them by the Hon'ble Supreme Court, no action could be taken against them also for the same subject matter, namely, import and clearance of 100 Kgs of gold under the above referred Bill of Entry dated 23.07.2013; that the show cause notice is common and composite for M/s. Riddhisiddhi Bullions Ltd. as well as for them; that Penalty is proposed to be imposed on us with reference to the import and clearance of 100 Kgs of gold imported and cleared by M/s. Riddhisiddhi Bullions Ltd. vide Bill of Entry dated 23.07.2013, and proposal for confiscation of such goods and also imposition of penalty is leveled against M/s. Riddhisiddhi Bullions Ltd. also for the same goods; thus , the cause and the subject matter for proposing to impose penalty on us and on the said importer is also common and inter-linked to this extent and therefore, when no action in the nature of coercive steps can be taken against the importer for the above consignment of gold, no action could be taken against them also; that the import being common and inter-linked to that extent, requested to withdraw this show cause notice at once in view of the interim order made by the Hon'ble Supreme Court on the above referred Petition of M/s. Riddhisiddhi Bullions Ltd; ;that without prejudice to the aforesaid preliminary submission, we may also submit hereunder for your consideration that the proposal to impose penalty on us under Regulation 22 of CBLR 2013 and Section 112 (a) of Customs Act is even otherwise unsustainable and unjustified and therefore proposal deserves to be vacated at once in the interest of justice; that the proposal for imposition of penalty under Section 112(a) of the said Act is also unreasonable and arbitrary because there is no case for imposing even a token penalty on them; that all the documents required for clearance of imported goods were submitted by them and there is no dispute about genuineness of such documents also; that they have not done anything nor omitted to do anything which would render the goods liable to confirmation; that there is no wrong information supplied by us while importing and clearing the goods, and they have also not suppressed any information from the Custom Authorities; that the goods were cleared after inspection and verification, and the duties assessed by the competent Custom Officers were paid by before taking clearance of the goods and therefore, none of the ingredients of Section 112 (a) of the Customs Act is satisfied in this case for imposing any penalty on them; that the matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the land mark case of Messrs Hindustan Steel Limited reported in 1978 ELT

(J159) wherein the Hon'ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so; that the Apex Court has further held that only in cases where it was proved that the assessee was guilty to conduct contumacious or dishonest and the error committed by the assessee was not bonafide but was with a knowledge that the assessee was required to act otherwise, penalty might be imposed; that it is held by the Hon'ble Supreme Court that in other cases where there were only irregularities or contravention flowing from a bonafide belief, even a token penalty would not be justified; that in the present case also, there has not been any illegality committed by us and hence, no penalty under Section 112(a) of the said Act would be justified in the facts of this case. The proposal for imposing penalty on them therefore, deserves to be vacated.

29.3 that they denied all the charges and also that penalties are imposable upon him; that from a plain reading of the Imputations and the allegations made against the noticee it is very clear that there was no suppression or fraud involved in the clearance of the consignment covered under the B/E in question; that all the issues including the policy was brought to the knowledge of the Department and the Department has consciously cleared the consignment after due consultations with their counterparts in Delhi; that Customs Authority have not disputed (1) KYC documents were collected and produce from importer (2) Authority letter produce while filling of Bill of Entry (3) Import documents produced along with Bill of Entry are not in dispute (4) Description of imported goods mentioned in Bill of Entry is not in dispute (5) Classification of imported goods in Bill of Entry is not in dispute (6) Valuation of imported goods is not in dispute (7) Quantity of imported goods declared in Bill of Entry is not in dispute (8) Examination of imported goods tallied with Bill of Entry (9) Duty paid by importer on imported goods as per the existing rates and as assessed by the Customs Authorities (10) Documents submitted in reply by Customs Broker on behalf of importer are not in dispute (11) Bill of Entry assessed by Customs Appraiser/Superintendent (12) Query to "put up compliance to the RBI circular no: 15 dated: 22.07.2013" issued against the said Bill of Entry by customs (13) Reply submitted in EDI system (14) Reply accepted and counter sign done in EDI system by Customs (15) Duty paid by importer (16) Examination of goods done and reported by Customs in EDI system (17) Out of Charge given to the said Bill of entry by Customs (18) RMS facilitation has not been extended to this file instead shipment was cleared after completion of verification from each desk of customs (first check pattern) (19) The B/E has been cleared by the Ld. DC from his password protected system after cross checking with his counterpart in Delhi, and after being satisfied with the reply furnished by the Customs Broker on behalf of importer (20) Out of Charge given to shipment after due verification of the goods.

29.4 that incidentally, similar clearances have also been done at Delhi, Hyderabad and Bengaluru, on the same day and moreover the statement of the representative of the Noticee was also recorded in on 08-02-2016 i.e, before 1 year and 10 months appx; that as per the Customs Act 1962 as well as the CBLR 2013, the time period

fixed for issuance of SCN is Six months, extendable by the Ld. Principal Commissioner, and three months from the date of receipt of Offence Report; that no such extension has been granted in this case which is a result of interpretation of the Import Export Policy subsequently, (i.e, almost six months of the clearance of goods); that no offence report has been supplied to the Noticee in terms of regulation 21 of CBLR 2013, to enable them to effectively reply to the issue of time bar and other allegations of violations of CBLR 2013; that as such, the reply is being offered based on the date on which the Noticee's representative was examined; that similarly, copies of the B/E file have not been made available to the Noticee to enable him to understand as to the allegation of misleading the officers of Customs when overwhelming evidence both as statements of the employees/Director of the Importer as well as the EDI System of the Department is available to show that due diligence was followed at each step of Import by all the concerned including the Customs Authorities; thus from the above it is clear, as far as the Customs Broker is concerned, that the subject SCN is time barred;

29.5 that there is no duty sought to be evaded, hence no penalty is imposable under section 112 (a) of Customs Act 1962; that in the instant case, as the goods in question are not prohibited goods, the only sub section under which the penalty can be imposed is section 112 (ii) which stipulates that the penalty can be 10% of the duty "sought to be evaded" and thus, after the above B/E was filed assessed and cleared by the Customs on first check basis, the duty involved on the goods at the Tariff rate fixed by the government was duly paid, and there is no dispute as to the duty or any allegation as to intention to evade payment of duty and thus no penalty is imposable under Customs Act 1962 on the broker, in the instant case; that as regards the penalty under CBLR 2013, submitted that the procedure to impose penalty on a broker is specified in Regulation 20, which envisages issuance of notice within three months of offence report, enquiry by a Deputy/Assistant Commissioner (like a departmental enquiry against an employee), submission of his report, obtaining noticee's explanation/ representation on the enquiry report and final order by the Ld. Principal Commissioner/Commissioner; that as as none of these procedures have been followed, proposed penalty under CBLR 2013 is also not imposable;

29.6 that without prejudice to the above, submitted that it is an admitted position of fact that Bill of Entry No. 2784490 dated: 23.07.2013 was not self-assessed Bill of Entry; the fact of the matter is also that the said Bill of Entry have been processed by Customs Authority at all procedural stage of customs clearance for verification of declaration made by importer, applicable law and its terms and conditions with regard to import shipment of 100 Kg Gold covered vide Bill of Entry No. 2784490 dated 23.07.2013; that final clearance were given by Customs Authority for the said Bill of Entry after verification of all applicable law including R.B.I Circular with regard to import of Gold in India by Nominated Agencies and also after payment of Customs duty as assessed by Customs Authority on tariff rate basis; that it is an admitted fact in the S.C.N that Revenue has not disputed all above stated procedure took place

before clearance of shipment vide above referred Bill of Entry; that Bill of Entry No.2784490 was lodged by us at Air Cargo Complex, Ahmedabad, with all requisite import documents including the Air Way Bill, Invoice, Packing list, Nominated Agency Certificate and Authority letter of C.B; that it is evident from SCN that Revenue has not disputed any of such documents produce while filling of Bill of Entry and during clearance of the said shipment, thus there has been no irregularity or non-compliance of the procedure for clearance of imported goods by us which itself establish that they have properly discharged the obligation and complied with the provisions of the Act as required under Regulation No. 11 (m) of the Customs Brokers Licensing Regulations 2013; that it is evident from Para: 18 of SCN and reply to Q.2 in the statement of Shri Kartik A. Pancholi, which was recorded u/s 108 of Customs Act 1962, on 08.02.2016, that he has gone through the CBEC web site both on 23.07.2013 & 24.07.2013 for any instruction issued by CBEC with regard to condition 5 of said RBI Circular no: 15 dtd: 22.07.2013 to the effect that "Government of India will be issuing separate instructions, if any, to the Customs Authorities / DGFT to OPERATIONALISE and monitor these import restrictions" but he has not found any such Circular on 23.07.2013 & 24.07.2013; that later on, in reply to R.T.I filed by Shri Kartik A. Pancholi, the D.G.E.P (CBEC) vide file no: DGEP/RTI/01/2015/2898 dtd: 18.03.2016 replied that "No CBEC Circular has been issued from 22.07.2013 to 14.08.2013 with regard to and to comply (fulfill) the condition as prescribed in Para 5 of RBI Circular No. RBI/2013-14/148 A.P (DIR Series) Circular No. 15 dated: 22.07.2013", thus the RBI circular as per their understanding was not "OPERATIONAL" till 14-08-2013, when the scheme was further revised; that it is evident from reply letter no. S/26/Misc/41/2015-ACC dated 19-03-2015 issued by Hyderabad Customs address to JDGFT, Mumbai that Hyderabad Customs also considered Para: 5 of RBI Circular while clearing the Gold consignment under similar circumstances, on the same date and that the CBEC had not issued any guidelines for implementation of such scheme while clearance of shipment at their end; that it is an admitted position of fact from S.C.N that Customs Department have not sought any clarification from C.B.E.C/DGFT/RBI with regard to condition 5 of said RBI Circular no: 15 dtd: 22.07.2013 that is "Government of India will be issuing separate instructions, if any, to the Customs Authorities / DGFT to operationalize and monitor these import restrictions" nor have produce any evidence with regard to Non-Applicability of condition 5 of RBI Circular No 15 dated 22.07.2013 on 23/4-.07-2013; that the above facts which it is available on above referred S.C.N itself establish the evidence that allegation leveled against us under Para: 25 of S.C.N is not only contradictory to the facts of the matter but also incorrect allegation which needs to be set aside in interest of law and justice; that the allegation leveled against them under Para: 25 of S.C.N is that "They have also not replied to the query given by the Deputy Commissioner regarding applicability of RBI Circular No 15 dated 22.07.2013 and instead of clarifying the correct legal position that the Gold could not be removed for home consumption they made a remark "reply submitted" in the Indian Customs EDI System (ICES) whereas no such reply was recorded either in the system or in the file"; that they deny said allegation as the same itself contradictory to the facts available in

S.C.N itself, in Customs own record file and EDI system; that it is also an admitted fact that a query was raised by the proper Customs officer in EDI System at the time of assessment of the above Bill of Entry dated: 23.07.2013 with regard to compliance of RBI Circular No.15 dated 22.07.2013; that the fact regarding this query is referred to in the show cause notice itself, and thus the proper Customs Officers competent to assess the Bill of Entry dated 23.07.2013 were fully aware about the RBI Circular dated: 22.07.2013 as well as the conditions laid down there under for allowing import and clearance of gold; that there is no case of misleading the Customs Authorities by us in regard to clearance of the above referred cargo, inasmuch as the assessing officers were fully aware about the circular and the conditions laid down there under and also query raised by them in the Customs EDI system; that it is evident from Para: 18 of SCN that the query raised in the EDI System for compliance of RBI Circular was replied to, as per the instructions of importer; that copies of provisions made under Paras 9.11A and 2.12.2 of Hand Book of Procedure were submitted before the Customs authorities along with Para 5 of the above referred RBI Circular No.15/2013; that all these provisions were readily available on Public Domain of DGFT web site and RBI web site to verify by Customs Authority at the time of clearance; that Importer relied upon the provisions of the said Para's, because the date of shipment/dispatch for import was to be reckoned on the basis of date of relevant Airway Bill as per Para 9.11A and 2.12.2 of Hand Book of Procedure, and in the humble knowledge of the Noticee this appeared to be correct; that it is for the department to either agree or to disallow such submission, before clearance; that the Ld. DC also made necessary enquiries with Delhi Counterparts and cleared the query by punching the clear button from his password protected system which no other person can operate and thus, the query raised by the Customs was replied to, otherwise the Ld. Dc would not have cleared the B/E till a satisfactory reply was given; that it is also evident from the Statement of our Shri Kartik A. Pancholi, recorded on 08.02.2016 u/s 108 of Customs Act 1962 and relied upon by the department in this proceeding, that the clarification Circular no: 02/2015 issued by DGFT, New Delhi with regard to Para: 2.12.2 and 9.11 A for, "which date should be reckoned as date of import and validity of an import authorization", the date relevant for import authorization under the IE Policy is the date of shipment/AWB; that it is also evident from S.C.N that revenue is not disputing that query was not replied; that it is merely an expression of expectation of revenue as to how reply should have been given, but such expectation do not justify any reason for allegation made under SCN; that it is evident from software of Customs EDI SYSTEM itself that after production of reply along with necessary documents provided by importer, only on satisfaction of proper officer of Customs who has issued query after considering the subject in proper perspective applicable law, allow importer to submit reply in Service Center against the query issued; that it is fact and on record that all such query replied by importer the import file with that query reply submission appear on the EDI menu of concern officer of the Customs Department who has issued query in this case Deputy Commissioner; that only on verification of the reply submitted by importer in EDI system, the punching of approval in the EDI System was made by the Deputy

Commissioner of Customs in his password protected Customs EDI system, and therefore the remark "reply submitted", was well within his knowledge and after all means of verification of applicable law with regard to query issued allowed query in his EDI system; that once the EDI System contains a remark "reply submitted", itself establish the evidence that reply was submitted and approval of query reply in customs EDI system was given by Deputy Commissioner of Customs in the concerned case and the same also establish the evidence that the query reply and documents submitted therewith was satisfactory for Deputy Commissioner against the query issued by him.

29.7 that final clearance was given by Customs Authority for the said Bill of Entry after verification of all applicable law of Customs & DGFT including R.B.I Circular and terms and conditions mentioned therein along with reply submitted with copies of Para 9.11A and 2.12.2 of Hand Book of Procedure with Para 5 of RBI Circular No.15/2013 by importer with regard to import of Gold in India by Nominated Agencies and also after payment of Customs duty as assessed by Customs Authority on tariff rate basis and therefore, it is evident that the allegation leveled against them at Para 25 of S.C.N with regard to reply submission is contradictory to the facts of the matter and also the same is evident from Para 18 of S.C.N as well as from Customs EDI (ICES) System; that the above allegation needs to be vacated in interest of law and justice; that the allegation leveled against them under Para: 25 of S.C.N that "A copy of a Bill of Entry in the name of M/s. M.D. Overseas is also available in the docket file; that M/s. International cargo Services was a Customs Broker for M/s. M.D. Overseas too as confirmed by Shri. Kartik A. Pancholi, Partner in M/s. International Cargo Services, Customs Broker; that they have thus misled the Customs to clear the cargo and abetted the improper clearance of 100 Kg of Gold valued at Rs. 24,81,44,000 under Bill of Entry for home consumption No 2784490 dated 23.07.2013 in a manner rendering the goods liable for confiscation under Section 111 (d) & (o) of the Customs Act and thereby appear to have rendered themselves liable for penalty under Section 112 (a) of the Customs Act, 1962."; that they denied said allegation as the said allegation is contradictory to the facts available in S.C.N itself and on Customs own record file of the subject shipment; that the facts which established this contradiction available in Para: 18 of S.C.N and Para 11 of statement of Shri Kartik A. Pancholi recorded on 08.02.2016 u/s Section 108 of the Customs Act and Customs record file (docket); that it is on record that a Bill of Entry No.3791023 was filed by an importer, namely, M/s. M.D. Overseas Ltd with the Air Cargo Complex, Bangalore for a consignment of 100 Kgs. of gold imported by them after Circular No.15 dated 22.07.2013 was issued by RBI; that a statement of Shri Kartik A. Pancholi was recorded on 08.02.2016, and Shri Pancholi has stated before the investigating officer that he could not remember who produced a photocopy of Bill of Entry No.3791023 filed by M/s. M.D. Overseas at ACC, Bangalore as the said shipment was not handled by his company; that the said Bill of Entry of M/s. M.D. Overseas Ltd itself is the evidence that the said Bill of Entry was not filled by them nor they did clearance at ACC, Bangalore for M/s. M.D. Overseas and hence the question of their accessing

the copy of said B/E in such a short time from such a far place as Bangalore within hours of its clearance and submitting the same by 23rd July itself when the B/E at Ahmedabad was appraised for clearance, is quite difficult; that the possibility of the same having been kept in the file at a later date by the officers to safeguard their position can also not be ruled out; that presuming but not admitting, even if the B/E is on file due to them, it only reflects the truth of clearance of such goods at other ports under same conditions and seeking equality in treatment of such B/E at other ports at the relevant time can by no stretch of imagination be treated as 'Misleading the officers'; that the officers were at liberty to disagree with the clearances at the ports of Delhi, Hyderabad and Bangalore and deny the clearance for home consumption on payment of duty, thus it is improper to suggest that they have misled the officers into clearing the consignment in issue; that it is not out of place to mention here that the officers of Ahmedabad Air Cargo Customs verified at their own with Hyderabad Customs & New Delhi Customs and found from Delhi Customs that clearance for home consumption was allowed to gold on 24.07.2013 (i.e. after RBI Circular was issued on 22.07.2013) over there; that the fact of the said clearances are that the record of all such clearance allowed by Customs Delhi before clearance allowed by Ahmedabad Customs are in public domain on ICEGATE WEBSITE; that the above mentioned facts display that the whole procedure of filling of bill of entry, issuance of query, reply submission against query, assessment by appraiser of Customs, counter signature by Deputy Commissioner of Customs, examination by Customs Inspector and out of charge given by Customs Superintendent and also clearance done by other Customs Authority had been transparent; nothing was hidden or suppressed during import, assessment and clearance of these goods; and the goods were allowed to be cleared for home consumption by competent Customs authorities after due consideration of the whole issue in all respect with regard to all applicable law including RBI Circular at the same time completing verification procedure at each desk of Customs while clearance without giving any facility under RMS; that in this connection attention is invited to para 5.3 of the case of Devraj M.Salian vs Commissioner of Customs (I) Mumbai [2015 (316) ELT 139 (Tri.-Mumbai) and case laws of Premier Instruments & Controls Ltd. Vs C.C. (Airport) Chennai and therefore, no penalty could be imposed on us under Section 112(a) of the Customs Act 1962;

29.8 that the proposal for imposition of penalty under Section 112(a) of the said Act is also unreasonable and arbitrary because there is no case for imposing even a token penalty on them; that all the documents required for clearance of imported goods were submitted by them and there is no dispute about genuineness of such documents also; that they have not done anything nor omitted to do anything which would render the goods liable to confiscation; that there is no wrong information supplied by them while importing and clearing the goods, and they have also not suppressed any information from the Custom Authorities; that the goods were cleared after inspection and verification, and the duties assessed by the competent Custom Officers were paid by before taking clearance of the goods and therefore, none of the ingredients of Section 112 (a) of the Customs Act is satisfied in this case for imposing any penalty on

them; that there was no mis-declaration either in respect of value or in any other particular with the entry made under the Customs Act; that there is no dispute as to whether the description given in the bill of entry about the goods tallies with other import documents such as invoice, packing list, AWB and physical examination done by Customs Authorities; that in the instant case we had given the description of the imported goods correctly; that also various supporting documents have been furnished like commercial invoice, packing list, AWB confirming the description of the goods as per the bill of entry and also Nominated Agency certificate; that no attempt has been made by us to mis-declared the goods or taken wrong benefit of the exemption in question, instead full duty has been paid by importer; that it is evident from SCN that Revenue has not disputed any of above stated facts and all such documents produce while filling of Bill of Entry and during clearance of the said shipment, thus there has been no irregularity or non-compliance of the procedure for clearance of imported goods by them which itself display that they have properly discharged the obligation and complied with the provisions of the Act as required under Regulation No. 11(d) & (o) of the Customs Brokers Regulations and not violated any provisions of Section 112 (a) of Customs Act, 1962 and thus, all the three allegations and grounds raised against them for proposing to impose penalty are unsustainable in facts as well as in law and therefore, no penalty could be imposed on us under Section 112(a) of the Customs Act and under Regulation 22 of the Customs Brokers Regulations;

29.9 that in statement dated 08.02.2016, Shri Kartik Anant Pancholi has stated that "to ensure Customs clearance they were entrusted with all relevant documents with due authorization by the importer; that in terms of Regulation 11 (d) & (e) of Customs Broker Licensing Regulations, 2013 before filing of documents in the EDI system, he had informed importer that there was a RBI circular No. 15/2013 regarding import of gold by nominated agencies in India and therefore requested them to go through the same and revert; that the importer informed them over phone that their shipment was already effected from port of loading in terms of para 9.11 (a)(ii) ; that thereafter, they had gone through the para 9.11 (a)(ii) and also airway bill and found that the date mentioned was 22.07.2013"; that they requested to refer Para: 6 of statement dated 08.02.2016 and Para: 18 of SCN and stated that they had properly discharged obligations as customs' broker and that there was no violation of provisions of any Regulations, as alleged in the subject Show Cause Notice; that it is evident from SCN that query was issued by customs thus the proper officer of customs competent to assess the bill of entry were fully aware about the RBI Circular as well as the conditions laid down thereunder; that there is no case of misleading the Customs Authorities by them in regard to clearance of the above referred cargo, inasmuch as the assessing officers were fully aware about the circular and the conditions laid down there under; that none of the facts relevant as regards the details of goods have been disputed in any manner by the Customs Department and that out of charge was given to the goods subsequent to examination of the relevant details and thus the allegations made against them in the Show Cause Notice are totally fallacious and incorrect and that no penalty of any sort deserves to be imposed on them; that it is a

matter of understanding and interpretation that the issue pertains to applicability of circular no. 15 dated 22.07.2013 issued by RBI and as to on what date the restrictions imposed therein became applicable; that it was thus, a matter of understanding and interpretation of the said circular and they as a Customs Broker do not have any kind of authority to do interpretation and decide clearance and therefore no fault to be found with them; that in this regard, reliance is placed on advisory no. 02/2024-JMCH dated 23.10.2024 wherein on the basis of instructions issued by CBIC it has been stated that no penalties should be imposed on customs' broker where interpretation of statute is involved; that in view of the aforesaid no penalty deserves to be imposed on them and proceedings initiated against them are required to be dropped in the interest of justice.

30. Personal Hearing: Personal Hearing in this case was scheduled on 30.10.2025 for the Customs Broker M/s. International Cargo Services on 18.11.2025. Shri Kartik A. Pancholi Partner & their advocate Shri Uday Joshi, appeared for Personal Hearing on 18.11.2025 wherein they reiterated the contents of their submission dated 14.09.2017, 29.12.2017 and further submitted that they would be submitting additional submission within a week time. Further, Virtual Hearing was scheduled on 28.10.2025, 18.11.2025, 03.12.2025 & 09.12.2025 for the importer M/s. Riddhi Siddhi Bullion. Shri Prakash Shah, Sr. Advocate, and Shri Jas Sanghvi, Advocate appeared virtually on behalf of M/s. Riddhi Siddhi Bullions Limited on 09.12.2025. Shri Prakash Shah reiterated the contents of their written submissions dated 03.12.2025 and compilation of judgements submitted to this office through e-mail dated 08.12.2025.

31. Discussion and findings: I have carefully gone through the Show Cause Notice dated 07.08.2017 and written submission filed by importer vide letter dated 03.12.2025 and compilation of various judgements filed on 08.12.2025. I have also gone through the written submission of Customs Broker M/s. International Cargo Services dated 14.09.2017, 29.12.2017 and 02.12.2025 filed after personal hearing conducted on 18.11.2025.

32. The issues for consideration before me in these proceedings are as under:-

32.1. Whether 100 Kg of gold valued at Rs 24,81,44,000/- imported and cleared vide Bill of Entry No. 2784490 dated 23.7.2013 for Home Consumption, is liable for confiscation under Sections 111 (d) & (o) of the Customs Act, 1962?

32.2 Whether 22,000 kg of gold valued at Rs 54,14,56,00,000/- and 73217.409 kg of silver valued at Rs 2,48,21,14,391/- imported during the period from 1.4.2014 to 31.3.2015, is liable for confiscation under Sections 111(d) & (o) of the Customs Act, 1962?

32.3. Whether, Customs duty amounting to Rs 1,11,51,84,447/- (BCD-1,08,27,03,347+ Education Cess Rs 2,16,54,067+ SHE Cess Rs 1,08,27,033), as

detailed in Annexure A to SCN, short paid/ not paid on the 4400 kg of gold issued by the importer to jewellers for export obligation, should be demanded and recovered under the provisions of Section 28(1) of the Customs Act, 1962 alongwith Interest under Section 28AA of the Customs Act, 1962?

32.4 Whether, importer M/s. Riddhi Siddhi Bullion is liable for penalty under Section 112 (a) of the Customs Act, 1962?

32.5 Whether M/s International Cargo Services, Customs Broker, 403/404/405, "Himadri", Old High Court Lane, Ahmedabad-380009 is liable for penalty under Section 112 (a) of the Customs Act, 1962 and penalty under Regulation 22 of the Custom Brokers Licensing Regulations, 2013?

33 After having been gone through the Show Cause Notice and written submission as well as records of personal hearing, I find that the contravention of the importer are very well mentioned in the Show Cause Notice dated 07.08.2017 issued to the importer and Customs Broker. However, I find it worth to reiterate as to how the said importer contravened the provision of RBI, DGFT and Customs, and consequently liability to confiscation of the goods under Section 111 (d) and 111 (o) of the Customs Act, 1962 are elaborated as under :

33.1 DGFT vide F.No. 03/91/105/0026/AM10 dated 18.05.2021, as per the Policy Circular No. 77(RE-2008)/2004 – 2009, granted a Nominated Agency Certificate under Paragraph 4A.4 of Foreign Trade Policy (RE 2008), as amended from time to time for the purpose of Direct Import of Precious Metal for the period 01.04.2010 to 31.03.2011 to the said importer. It was renewed from time to time. The said Nominated Certificate was issued subject to provisions of FTP and the Procedure laid thereunder, RBI Guidelines and the Customs Regulations. I find that on 22.07.2013, the Reserve Bank of India issued Circular No. 15 dated 22.07.2013 laying down conditions on import of Gold. The scheme introduced by this Circular was popularly known as 80:20 scheme. However, as per Para 3 of the said RBI Circular dated 22.07.2013, **“Entities/units in the SEZ and EOUs, Premier and Star trading houses are permitted to import Gold exclusively for the purpose of exports only. Thus by virtue of said RBI Circular No 15 dated 22.07.2013, the Importer being a Premier and Star trading house was permitted to import Gold exclusively for the purpose of exports only.”**

33.2 I find that on the date RBI issued Circular No 15 dated 22.7.2013, the said importer booked 100 Kg of Gold purchased from M/s Bin Sabt Jewellery LLC, P. O Box No 25515, Building No 158, Naif Road (South), Deira, Dubai, UAE vide Invoice No USD-5275 dated 22/07/2013 and Airway Bill No 176 52586273 dated 22/07/2013. For clearance of this consignment, Bill of Entry No 2784490 dated 23.07.2013 **for Home Consumption** was filed by them at Air Cargo Complex, Ahmedabad and a similar transaction had also taken place at Air Cargo Complex, Hyderabad. Since there

was contravention of the RBI issued Circular No 15 dated 22.7.2013, in said both the import transaction at Air Cargo, Ahmedabad and Air Cargo, Hyderabad, DGFT issued a Show Cause Notice dated 14/10/2014 proposing rejection of request for renewal of Nominated Agency Certificate under Section 14 read with Section 11(2) of the Foreign Trade (Development & Regulation) Act for non-compliance with the conditions of RBI Circular No 15 dated 22/07/2013 and proposing fiscal penalty upon the Importer. Further, an addendum to the Show Cause Notice was issued vide F No 03/91/105/0007/AM12 dated 30.10.2014 calling upon the Importer to show cause as to why the Nominated Agency Certificate dated 05.05.2014 (for the period 2014-2015) should not be cancelled in terms of Section 9(4) of Foreign Trade (Development & Regulation) Act and Rule 10 of the Foreign Trade (Regulation) Rules,1993.

33.3 The licensing authority i.e. DGFT on 31.10.2014, suspended Importer's Nominated Agency Certificate dated 05.05.2014 for the period 2014-2015 in terms of Rule 9(2) of Foreign Trade (Regulation) Rules,1993 which empowers the licensing authority to suspend operation of any license granted under these rules where proceedings for cancellation of such license has been initiated under Rule 10 of the Foreign Trade (Regulation) Rules, 1993. The importer had filed Writ Petition No. 9873 of 2014 before the Hon'ble Bombay High Court challenging the suspension of Nominated Agency Certificate dated 05.05.2014 for the period 2014-2015 by the DGFT. The Hon'ble High Court vide Order dated 03.11.2024, held that the Authority has power to suspend. However, the suspension order was quashed and set aside by the Hon'ble Court. Relevant Para of the Order dated 03.11.2024 is re-produced as under:

"10) As a result of the above discussion, the Writ Petition succeeds. The impugned order is quashed and set aside. The Petitioners authorization and which is valied upto 2014-15 and vide the above communication at Annexure 'M' at page 66 shall continue to be effective and operative till that date, but subject to the pending proceedings for cancellation initiated by the authority vide the show cause notice dated 14th October.2014. In other words, subject to the outcome thereof, the authorization or the nominated agency certificate to remain valid till the date stipulated therein. The Petitioner shall cooperate with the authority in early conclusion of the proceedings initiated pursuant to the show case notice dated 14th October,2014 and its addendum dated 30th October,2014.

11) With the above clarification and by also observing that over intervention in Writ Jurisdiction at this stage shall not be construed as expression of any opinion on the rival contention and particularly on the allegation in the show cause notice we allow this Writ Petition. There would no' order as to costs."

33.4 Importer had filed another Writ Petition 10001 of 2014 seeking relief from the probable cancellation of Nominated Agency Certificate. The Hon'ble Court vide order dated 10.11.2014 without expressing any opinion ordered as under:

“4. Having heard Mr. Chagla, at length and perusing the Petition with his assistance, were of the view that at this stage, without prejudice to rights and contentions of both sides including on the point of maintainability of the Writ Petition, interest of justice would be served if a direction is issued namely , in the event Respondent No. 3 passes an order adverse to the Petitioners, then the same shall not to be acted upon for a period of four weeks from the date of its communication to the Petitioners, so as to enable them to either pursue this Writ Petition or to adopt appropriate proceedings. We direct accordingly. We clarify that we are not expressing any opinion on the rival contentions.”

33.5 The said Show Cause Notice dated 14/10/2014 was adjudicated by Additional Director General of Foreign Trade vide Order-in-Original dated 14/01/2015 issued under Adj File No 03/91/105/00007/AM12. It has been brought on record in the Order-in-Original at Para No 12 that the Nominated Agency Certificate dated 05/05/2014 had been returned by the Importer on 09/05/2014 as called back by the office of the DGFT, Mumbai. The Adjudicating Authority observed under para 18 of the OIO that M/s RSBL had supplied 200 Kg of Gold imported vide Bills of Entry dated 23/07/2013 to domestic units and thus failed to comply with the conditions of RBI Circular No 15 dated 22.07.2013 and therefore, violated Rule 13(2) of Foreign Trade (Regulation) Rules, 1993, which attract provisions of Section 9(4) and 11(2) of Foreign Trade (Development and Regulation) Act 1992, as amended. Since M/s Riddi Siddhi Bullions Ltd had violated the conditions of Nominated Agency Certificate dated 09.04.2013 (for the period 2013-2014), in terms of Para 4A.35 of Hand Book of Procedure 2009-2014 they were not eligible for renewal of Nominated Agency Certificate for the period 2014-2015 and therefore, the Nominated Agency Certificate dated 05.05.2014 (for the period 2014-2015), issued to M/s Riddi Siddhi Bullions Ltd is ab-initio void. The Adjudicating Authority accordingly ordered for cancellation of the Nominated Agency Certificate dated 05.05.2014 (for 2014-2015), ab-initio and imposed fiscal penalty of Rs 100 Crore on importer M/s Riddi Siddhi Bullions Ltd.

33.6 In the mean time, M/s RSBL had already started operating under RBI Circular No 133 dated 21.05.2014 which extended the 80:20 scheme to the Star and Premier Trading Houses. However, the fact of suspension was suppressed from Customs and during the suspension period, M/s RSBL have removed a quantity of 600 Kg of Gold by filing ex-bond Bill of Entry No 7243541 dated 01.11.2014 at Air Cargo Complex, Ahmedabad, which was imported vide Warehouse into-Bond Bill of Entry No 7137639 dated 21/10/2014. The said facility of 80:20 scheme remained in force till issuance of RBI Circular No 42 dated 28.11.2014 whereby all instructions issued about the 80:20 scheme from time to time were withdrawn with immediate effect.

33.7 Further, in Writ Petition 10001 of 2014 filed by the Importer before the Hon'ble Bombay High Court, they had contested that 'earlier protection granted by the court was not adhered to and the Customs Authorities were confused as to whether the

adverse order of the Additional Director General of Foreign Trade should be acted upon or they must abide Courts' protective order'. The Hon'ble High Court vide Order dated 09.02.2015 ordered as under:

"4. We grant four week's time to each of them to file the counter affidavit and serve the copy thereof on the petitioner's Advocate. We are clear in our mind that our earlier order in effect stays the implementation and operation of the order passed by the Additional Director General of Foreign Trade, namely, the order dated 14th January, 2015 styled as Order in Original, a copy of which is at Annexure-UU page 253 to 259 of the paper book, yet, we are required to clarify this and because of the apprehension of the learned Senior Counsel appearing for the petitioners.

5. In view thereof pending admission of this Writ Petition, we direct that the order passed styled as Order in Original, Annexure-UU of the paper book 14th January, 2015 and duly communicated to the petitioner, shall not be acted upon by the contesting respondent Nos. 1 and 3 – which include Union of India. **The Customs Authorities, therefore, shall abide by this order and the stay granted in favour of the petitioners pending admissions.** However, it is clarified that this order and protection is without prejudice to the right and contentions of both sides."

33.8 Writ Petition 10001 of 2014 was decided by Hon'ble Bombay High Court vide Order dated 23.12.2015 wherein the Hon'ble High Court held that none of the contentions as raised before the Court by the Importer have any merit and the Writ Petition failed. Relevant Para are reproduced as under:

"91. A perusal thereof would enable us hold that, it is not permissible to make any import or export, except under an Importer-Exporter Code number granted by the Director General or the officer authorised by the Director General in his behalf. This authorisation is to be made in accordance with the procedure specified in this behalf by the Director General. By sub-section (8), the Director General is empowered to suspend and cancel the Importer-Exporter Code number. Then comes section 9 and which enables issuance of licence, suspension and cancellation thereof and this could be either a licence, certificate, scrip or any instrument bestowing financial or fiscal benefits. By sub-sections (2), (3) and (4), a renewal of such a licence etc. is permissible and the format of the same is prescribed. Even this licence is capable of being cancelled and in terms sub-section(4) of section 9 and against such a cancellation or suspension the appeal would lie under section 15. Thus, these are the provisions under which the Central Government through its Ministry of Commerce and Zonal Director General (Joint) of Foreign Trade acted. It was empowered to impose conditions while granting or issuing the Certificates. Pertinently, the conditions at page 83 and the power to impose them are not challenged.

94. There is enough material on record which would indicate as to how the petitioners have understood the entire matter. In the Memo of the Petition and after referring to the

relevant provisions, the petitioners refer to the Foreign Trade Regulation Rules, 1993, and Rules 10 and 13(2) of these Rules. It refers to the Policy Circular No.77 issued by the Director General of Foreign Trade prescribing guidelines for import of precious metal by the Nominated Agencies which include Premier Trading Houses. The monitoring mechanism and the format of the certificate for the said purpose are also provided in the Policy Circular. The petitioners have themselves annexed as Annexures, a copy of this Circular dated 31 March, 2009. These are on the subject of the guidelines for import of precious metal by the Nominated Agency. These refer to Notification No.88 dated 28th February, 2009, wherein additional Nominated Agencies had been notified under paragraph 4A.4 of the Foreign Trade Policy for the purpose of direct import of precious metals for making it available to all concerned and in particular Exporting Community requiring precious metal for manufacture of its product. It is in terms of this paragraph that the agencies and entities mentioned in this Circular are entitled for direct import of precious metal. One of them is a Premier Trading House. Mr. Dada, therefore, is right in relying upon this Circular and to urge the monitoring mechanism therein would permit and enable the Director General of Foreign Trade to direct that the policy and procedure for import of precious metal shall be as per the guidelines stated in the Foreign Trade Policy and the relevant Reserve Bank of India guidelines.

95 Upon a reference to these Circulars what the petitioners state that both these Circulars were withdrawn by a further Circular bearing No. 14 dated 1st February, 2011. That relaxes the norms for doing away, inter-alia, with requirement of sale of 15% quantity to exporters. Annexure F is a copy of this Circular. It is evident that this relaxes the rigour of serial number 3(c) of the Circular No. 1 dated 27th August, 2009 and to a certain extent of the Circular dated 31st March, 2009 (77 of 2009). However, the petitioners refer to the status of Premier Trading House granted by the Ministry of Commerce. It also refers to the certificate of recognition as Star Trading House dated 9th February, 2009. Though the petitioners rely upon the withdrawal of the Policy Circular No. 77 of 2009 with effect from 1st February, 2011 what the petitioners state is that they applied for issuance of a certificate as Nominated Agency. That certificate was granted and copy of which is at Annexure-I. That certificate itself states that the petitioners have been nominated as a Nominated Agency under paragraph 4A.4 of the Foreign Trade Policy as amended from time to time for the purpose of direct import of precious metal. This certificate is subject to provisions of the Foreign Trade Policy and the procedure laid down under the Reserve Bank of India guidelines and the Customs Rules and Regulations. This certificate as Nominated Agency has been renewed and even the renewals incorporate the same condition. It is, therefore, futile to urge that there was no obligation or duty to comply with the Reserve Bank of India guidelines. The petitioners have raised self-defeating and self-destructive pleas. On the one hand, they question the Reserve Bank of India's authority and jurisdiction to prescribe any guidelines by urging that the Reserve Bank of India is indirectly regulating and restricting import, but on the other hand by relying on their status as a Nominated Agency, the petitioners admit the applicability of Reserve Bank of India guidelines. They then urge that though the Reserve Bank of India guidelines would govern their dealings and that would

include a Circular or directive issued by the Reserve Bank of India from time to time, but such imports do not violate the Policy Circular dated 22nd July, 2013. Such pleas being raised itself enables us to conclude that the petitioners are blowing hot and cold. They cannot approbate and reprobate as is rightly complained by Mr. Dada. We find much substance in the contentions of Mr. Dada that the petitioners have understood the matter as above. They have understood that the Reserve Bank of India guidelines have been quoted in the Foreign Trade Policy paragraph 4.4A and the Reserve Bank of India Circulars are part of the Foreign trade Policy. They have also understood that the licence issued is subject to the term of compliance with the Reserve Bank of India's guidelines. The status and position of the Reserve Bank of India is also known to the petitioners, namely, controller and manager of foreign exchange and that control and exercise by the Reserve Bank of India is through the Authorised Dealer. The petitioners being importers, the Authorised Dealer remits foreign exchange abroad on behalf of its constituents, namely, the importer. It is in these circumstances that the petitioners are aware of what provisions of law they were required to comply and in terms of the Nominated Agency Certificate. All terms and conditions as imposed by the NAC would have to be fulfilled by them. Any breach thereof, therefore, would empower issuance of a showcause notice and demanding penalty.

96. The petitioners are aware that there was a Circular issued by the Reserve Bank of India on 22nd July, 2013.

99. There is absolutely no substance in this contention. First of all, the affidavit-in-reply filed on behalf of the Director General of Foreign Trade makes it clear that there is no difference between the Reserve Bank of India's Circular No. 15 dated 22nd July, 2013 and No.25 dated 14th August, 2013, with regard to import of gold by export oriented units / SEZ units, Premier Trading Houses and Star Trading Houses. Both these Circulars are containing a clause for import of gold exclusively for export. The petitioners being a Nominated Agency and on account of being Premier Trading House were subject to 100% export condition. The petitioners imported 550 kgs of gold during the period 22nd July, 2013 to 31st March, 2014. In paragraph 32 of the affidavit-in-reply, the import of four consignments with the details of the bills of entries have been referred. The petitioners and as a matter record, imported 200 kgs of gold evidenced by the bill of entry dated 23rd July, 2013 and they were not exported by the petitioners. Therefore, the show-cause notice. It was also alleged in the show-cause notice that there is a violation of the Circular dated 22nd July, 2013. This Circular was also, on the petitioners own showing, uploaded on the website on 22nd July, 2013, at 19:47 IST. We are not entering into the controversy whether because this Circular came into force with immediate effect and, therefore, corresponded with the time at Dubai, namely, 18:47 Hrs. The affidavit-in-reply points out the reference to the Airway bills and claims that these were handed over to the Airlines only after uploading of the Reserve Bank of India's Circular. The affidavit extensively refers to the endorsements on the Airway bills, particularly of date and time. We do not wish to enter into this controversy as it is factual. Apart from the same being factual, in the impugned order, it has been found and after detailed

reference to the documents relied upon by the petitioners themselves that this Circular was very much in force and applied to the imports by the petitioners.

100. We should not disbelieve this factual finding and which is in consonance with the overwhelming record. The speaking order passed by the respondents, copy of which is Annexure-UU at page 253 of the paper-book makes detailed reference to the facts. It makes reference to the imports of precious metals and supply made to domestic units and supply made to exporters during the period 1st April, 2013 to 31st March, 2014. Once the certificates in favour of the petitioners were subject to the provisions of the Foreign Trade Policy and the procedure laid down thereunder, the Reserve Bank of India guidelines and Customs Rules and Regulations, then the import of 550 kgs of gold was governed by the same. The show-cause notice alleged that from the import of 550 kgs of gold only 350 kgs of gold was exported and as per the export details 200 kgs of gold was supplied to the domestic unit. This is a violation of the Reserve Bank of India's Circular. Each of the terms and conditions, either in the certificates relied upon by the petitioners or the Reserve Bank of India guidelines are in consonance with the policy of the Government that precious metals having been brought in they ought to be exported so that the cost of imports could be mitigated by the earnings from export. That, would save valuable foreign exchange as well. That is how the diversion in the domestic market was termed as a violation of Reserve Bank of India guidelines. For the violation to be established and proved, the show-cause notice made specific reference to bills of entries, related papers including previous orders etc. It also made reference in details to the denials in the petitioners reply and the stand therein that the Circular does not govern the subject import or in other words, it is inapplicable to the imports in question. The extensive arguments were noted and the observations therein are that the records available in the file would prove and establish import of gold and diversion of 200 kgs therefrom in the domestic market / sector. We have no reason, therefore, to reject this finding of fact. It is based on appreciation and appraisal of all relevant and germane materials placed on record. This is not a case of an order based on no evidence. It is an order based on appreciation and appraisal of the relevant and material documents before the Adjudicating Authority. The findings of fact cannot be termed as perverse or vitiated by any error of law apparent on the face of the record either. The petitioners are aware that the relevant date and time is that of filing of bill of entry and not the date and time of shipment of goods. The import into India and the above act of filing of Bills of entry are, therefore, rightly relied upon to enter a factual finding against the petitioner on the point of applicability of RBI Circular dated 22nd July, 2013."

101. We have, therefore, no hesitation in concluding that none of the contentions as raised before us by the petitioners have any merit.

105. As a result of the above ,discussion, the Writ Petition fails. Rules is discharged. There will be no order as to costs.

33.9 The said importer had filed SLP No. 4901/2016 before the Hon'ble Supreme Court against the final judgement and order dated 23.12.2015 in Writ Petition No. 10001/2014 passed by the Hon'ble High Court of Bombay. On 22.07.2025, the Hon'ble Supreme Court dismissed the Special Leave Petition. During the pendency of said SLP before the Hon'ble Supreme Court, the said importer had filed Special Civil Application No. 1982 of 2018 before the Hon'ble Gujarat High Court, wherein the Principal Commissioner of Customs was made Respondent No. 2 to keep the proceeding pending till the final disposal of the SLP filed against the judgement of the Bombay High Court dated 23rd December 2015. Hon'ble High Court of Gujarat vide Oral Order dated 12.07.2018 had ordered that adjudicating authority shall not proceed further with the adjudication of the show cause notice in question till the SLP is disposed of by the Supreme Court. On 22.07.2025, the Hon'ble Supreme Court dismissed the said Special Leave Petition filed by the importer.

33.10 From the discussion held in Para **33.1 to 33.9**, I find that the importer had violated the RBI Guidelines . The said Nominated Agency Certificate was issued subject to provisions of FTP and the Procedure laid thereunder, RBI Guidelines and **the Customs Regulations**. The 'Nominated Agency Certificate' issued by the DGFT had been canceled ab initio by the DGFT vide their Order In Original dated 14.01.2015. The importer had contested the said Order In Original dated 14.01.2015 before the Hon'ble High Court of Bombay vide Writ Petition No. 10001/2014. Further, In Writ Petition No. 10001/2014 , Shri Mahendra Bafna, Vice President of the Petitioner's company (M/s. Riddhi Siddhi Bullions Ltd) in his Affidavit in rejoinder on behalf of the petitioners in Para 8 have specifically stated as **"I submit that the adjudicating authority has no power or authority to cancel the Nominated Agency Certificate in such manner."** Hon'ble High Court of Bombay in its Order dated 23.12.2015 dismissed writ petition and specifically at Para 105 has mentioned that *"therefore, no hesitation in concluding that none of the contentions as raised before us by the petitioners have any merit."* Further, the said importer had filed SLP No. 4901/2016 before the Hon'ble Supreme Court against the final judgement and order dated 23.12.2015 in Writ Petition No. 10001/2014 passed by the Hon'ble High Court of Bombay. On 22.07.2025, the Hon'ble Supreme Court dismissed the Special Leave Petition. Thus, it is very much clear that the importer had contravened the RBI Guidelines and Provision of FTP. I find that to implement the provisions of FTP and RBI Guidelines, the CBIC had also issued Notification in consonance of the RBI Guidelines and Provision of FTP.

33.11 The DGFT vide F.No. 03/91/105/0026/AM10 dated 18.05.2021, as per the Policy Circular No. 77(RE-2008)/2004 - 2009, granted a Nominated Agency Certificate under Paragraph 4A.4 of Foreign Trade Policy (RE 2008), as amended from time to time, for the purpose of Direct Import of Precious Metal for the period 01.04.2010 to 31.03.2011 to the said importer. It was renewed from time to time. In consonance with the said Policy Circular of DGFT, CBEC also issued Notification No. 57/2000-Customs dated 08.05.2000 amended vide Notification No. 106/2009-

Customs dated 14-9-2009. Also Circular No. 28/2009-Cus dated 14.10.2009 and Circular No. 34/2013-Customs dated 10.06.2013 were issued during the relevant period by the CBIC prescribing the procedure and guidelines for import of Gold and Gold Dore Bars. The relevant amended notification is 106/2009-Customs dated 14-9-2009. I find it worth to reproduce the relevant para of this notification, which is as under:

“Reimport, gems & jewellery exports and EOUs — Amendment to Notification Nos. 94/96-Cus, 41/99-Cus., 42/99-Cus., 56/2000-Cus., 57/2000-Cus., 60/2002-Cus., and 52/2003-Cus.,

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government being satisfied that it is necessary in the public interest so to do, hereby directs that each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table hereto annexed shall be amended or further amended, as the case may be, in the manner specified in the corresponding entry in column (3) of the said Table, namely :-

TABLE

Serial number	Notification number and date	Amendments
(1)	(2)	(3)
		(2) in the Explanation, -
5.	57/2000-Customs dated the 8th May, 2000, G.S.R. 413(E), dated the 8th May, 2000	<p>In the said notification, -</p> <p>(1) in clause (a) of opening paragraph, for the words, letter and figures “paragraph 4A.15”, the words, letter and figures “paragraph 4A.14” shall be substituted;</p> <p>(2) after the second proviso, the following proviso shall be inserted, namely, -</p> <p>“Provided also that the <u>nominated agencies (except for those authorized by RBI) shall follow the procedure and fulfill the conditions as specified in the Policy circular No. 77 (RE-2008)/2004-09 dated 31st March, 2009 as amended from time to time, issued by Director General of Foreign Trade.”;</u></p> <p>(3) in the Explanation, -</p> <p>(i) for clause (a), the following clause shall be substituted, namely: -</p> <p>“(a) ‘Foreign Trade Policy’ means Foreign Trade Policy, 2009-2014, notified by the Government of India in the Ministry of Commerce and Industry published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii) vide notification No. 1/2009-2014, dated the 27th August, 2009, as amended from time to time.”;</p> <p>(ii) for clause (b), the following clause shall be substituted, namely :-</p> <p>“(b) ‘Handbook of Procedures (Volume-I)’ means Handbook of Procedures (Volume-I) notified by the Government of India in the Ministry of Commerce and Industry published in the Gazette of India, Extraordinary, Part-I, Section-1 vide Public Notice No. 1/2009-2014, dated the 27th August, 2009, as amended from time to time.”;</p> <p>(iii) for clause (c), the following clause shall be</p>

Serial number	Notification number and date	Amendments
(1)	(2)	(3)
		<p>substituted, namely:-</p> <p>“(c) “Nominated agencies” means,-</p> <p>(1) Metals and Minerals Trading Corporation Limited (MMTC);</p> <p>(2) Handicraft and Handloom Export Corporation (HHEC);</p> <p>(3) State Trading Corporation (STC);</p> <p>(4) Project and Equipment Corporation of India Ltd. (PEC);</p> <p>(5) STCL Ltd;</p> <p>(6) MSTC Ltd;</p> <p>(7) Diamond India Limited (DIL);</p> <p>(8) Gems & Jewellery Export Promotion Council (G&J EPC);</p> <p>(9) a Star Trading House (only for Gems and Jewellery sector) or a Premier Trading House under paragraph 3.10.2 of Foreign Trade Policy; and</p> <p>(10) any other agency authorised by Reserve Bank of India (RBI).”.</p>
		<p>(2) for the Explanation, the following Explanation shall be substituted, namely:-</p> <p>“Explanation. - For the purpose of this, notification, ‘Foreign Trade Policy’ means Foreign Trade Policy, 2009-2014 notified by the Government of India in the Ministry of Commerce and Industry published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii) vide notification No. 1/2009-2014, dated the 27th August, 2009, as amended from time to time.”</p>

33.12 I find that Import of Gold is governed by Section 3(2) of the FTDR Act, 1992 and RBI Guidelines and thus, by virtue of Section 11 of the Customs Act, 1962 import of Gold is prohibited/restricted and its import is subject to the DGFT Policy and RBI Guidelines and Customs Regulations. Further, I find it worth to re-produce the content of Section 111 (d) and (o) of the Customs Act, underwhich the confiscation of gold imported by the importer has been proposed by the Department.

“SECTION 111 : Confiscation of improperly imported goods, etc. — The following goods brought from a place outside India shall be liable to confiscation : —

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or **under this Act or any other law for the time being in force;**

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;”

33.13 I find that on 22.07.2013, the Reserve Bank of India issued Circular No 15 dated 22.07.2013 laying down conditions on import of Gold. The scheme introduced by this Circular was popularly known as 80:20 scheme. However, as per Para 3 of the

said RBI Circular dated 22.07.2013, "Entities/units in the SEZ and EOUs, Premier and Star trading houses are permitted to import Gold exclusively for the purpose of exports only. Thus by virtue of said RBI Circular No 15 dated 22.07.2013, the Importer being a Premier and Star trading house was permitted to import Gold exclusively for the purpose of exports only. However, the said importer filed Bill of Entry No 2784490 dated 23.07.2013 for clearance of 100 Kgs of gold having assessable value of Rs. 24,81,44,000/- for home consumption and contravened the provision of Customs Notification No. 106/2009-Customs dated 14-9-2009 and Circular No. 34/2013-Customs dated 10.06.2013, in spite of the fact that the importer was eligible for import of Gold exclusively for the purpose of **exports only** in terms of said RBI's Circular No. 15 dated 22.07.2013. The said importer was awarded 'Nominated Agency Certificate' by the DGFT subject to the compliance of RBI Guidelines, FTP and Customs Regulation. Thus, the said importer contravened the provision of Section 111 (d) and (o) of the Customs Act, 1962 and thereby said imported 100 Kgs of gold having assessable value (Tariff rate) of Rs. 24,81,44,000/- is liable for confiscation under Section 111 (d) and (o) of the Customs Act, 1962.

33.14 It is needless to reiterate that for the said contravention of RBI's Circular No. 15 dated 22.07.2013, the DGFT had issued Show Cause Notice dated 14.10.2015 and addendum dated 30.10.2014 to the Show Cause Notice which culminated in Order In Original dated 14.01.2015. Being aggrieved with said OIO, the importer had preferred writ petition No. 10001 of 2014 before Hon'ble High Court of Bombay which was dismissed by the Hon'ble High Court of Bombay vide its Order dated 23.12.2015 and against that Order, importer had filed SLP before Hon'ble Supreme Court, which was also dismissed by the Hon'ble Supreme Court vide Order dated 22.07.2025 and therefore, the issue of contravention of RBI Guidelines and FTP is settled now and it has been undoubtedly proved the contravention of RBI Guidelines and FTP on the part of the Importer and therefore, the 100 Kgs of gold having assessable value of Rs 24,81,44,000/- covered under Bill of Entry No 2784490 dated 23.07.2013 is liable for confiscation under Section 111 (d) and 111 (o) of the Customs Act, 1962.

33.15 Further, I find that the DGFT vide Order In Original dated 14.01.2015 had *ab initio* cancelled the 'Nominated Agency Certificate' issued by the DGFT. Further, the *ab initio* cancellation of the 'Nominated Agency Certificate' by the DGFT was affirmed by the Hon'ble Bombay High Court in its Order dated 23.12.2015 and SLP filed against said Order of Hon'ble Bombay High Court was also dismissed by the Hon'ble Supreme Court vide Order dated 22.07.2025. Therefore, I find that the import of 22000 Kgs of Gold having total assessable value (Tariff rate) of Rs. Rs. 54,14,56,00,000/- and 73,217.409 Kg of Silver valued (Tariff rate) at Rs 2,48,21,14,391/- on the strength of the said 'Nominated Agency Certificate' which has been ordered void and cancelled *ab initio*, is illegal and in contravention of the aforesaid RBI Guidelines, FTP Provisions and Customs Regulations. I find that there is no dispute that the said importer continued to import the gold in spite of having the knowledge that their 'Nominated Agency Certificate' dated 05.05.2014 issued for the period 2014-2015, was suspended

on 31.10.2014, by the licensing authority i.e. DGFT in terms of Rule 9(2) of Foreign Trade (Regulation) Rules, 1993 which empowers the licensing authority to suspend operation of any license granted under these rules where proceedings for cancellation of such license has been initiated under Rule 10 of Foreign Trade (Regulation) Rules, 1993. In the meantime, Importer had already started operating under RBI Circular No 133 dated 21.05.2014 which extended the 80:20 scheme to the Star and Premier Trading Houses. However, the fact of suspension was suppressed from Customs Department and during the suspension period, said Importer had removed a quantity of 600 Kg of Gold by filing ex-bond Bill of Entry No 7243541 dated 01.11.2014 at Air Cargo Complex, Ahmedabad, which was imported vide Warehouse In-Bond Bill of Entry No 7137639 dated 21/10/2014. Further, the said 'Nominated Agency Certificate' issued to the importer was cancelled *ab initio* by the DGFT vide its Order In Original dated 14.01.2015 and said importer contested the cancellation upto the Apex Court, however, they failed. I find that Notification No. 106/2009-Customs dated 14-9-2009 specifically inserted proviso "***Provided also that the nominated agencies (except for those authorized by RBI) shall follow the procedure and fulfill the conditions as specified in the Policy circular No. 77 (RE-2008)/2004-09 dated 31st March, 2009 as amended from time to time, issued by Director General of Foreign Trade.***", after second proviso to the Notification No. 57/2000- Customs dated 08.05.2000. Thus, I find that the import of 22,000 Kg of Gold valued (Tariff rate) at Rs. 54,14,56,00,000/- and 73,217.409 Kg of Silver valued (Tariff rate) at Rs 2,48,21,14,391/- made by the Importer on the strength of 'Nominated Agency Certificate' which is cancelled *ab initio*, has resulted in clearance of Gold and Silver without having a valid Nominated Agency Certificate and contravention of the Notification No. 57/2000-Customs dated 08.05.2000 as amended vide Notification No. 106/2009-Customs dated 14-9-2009 and Circular No. 34/2013-Customs dated 10.06.2013 for procedure and guidelines for import of Gold and Gold Dore Bars issued by the CBEC and **Policy circular No. 77 (RE-2008)/2004-09 dated 31st March, 2009 as amended from time to time, issued by Director General of Foreign Trade.** In view of the above contravention, I find that said 22,000 Kg of Gold valued (Tariff rate) at Rs 54,14,56,00,000/- and 73,217.409 Kg of Silver valued (Tariff rate) at Rs 2,48,21,14,391 is liable for confiscation under Section 111 (d) & (o) of the Customs Act, 1962.

33.16 As the impugned goods are found liable to confiscation under Section 111 (d) and 111(o) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. Section 125 (1) of the Customs Act, 1962 reads as under:-

"125 Option to pay fine in lieu of confiscation –

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such

owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit..."

33.17 I find that importer have contested that the Provisions of Section 111 (d) & (o) of the Customs Act, 1962 are not invocable for the goods already cleared. I find that though, the goods are not physically available for confiscation but in such cases redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

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23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operates in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).

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33.18 I also find that Hon'ble High Court of Gujarat by relying on the aforesaid judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.)**, has held *inter alia* as under: -

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174. In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of *M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)]*, wherein the following has been observed in Para-23;

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine

followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."

33.19 I find ratio of decision of jurisdictional Hon'ble Tribunal, Ahmedabad rendered in the case of M/s. Van Oord India Pvt. Ltd Vs. Commissioner of Customs, Ahmedabad vide Final Order No. 11039-11040/2025 dated 13.11.2025 is squarely applicable to the present case as the Hon'ble Tribunal after having considered the aforesaid decisions of Hon'ble Madras High Court in case of M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) and Hon'ble Gujarat High Court rendered in case of Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.), have upheld the confiscation and redemption fine even in absence of physical availability of the goods. Relevant Para of the said Final Order No. 11039-11040/2025 dated 13.11.2025 is re-produced as under:

"5.7 Relying on the decision in the case of Shiv Kripa Ispat Pvt. Ltd. and Chinku Exports, the appellant have challenged confiscation of the imported tugs on the ground that these are not physically available as the same were re-exported. We find that this has elaborately been discussed by the Adjudicating Authority in para 20.1 and 20.2 of the impugned order. We find that Hon'ble Madras High Court in the case of Visteon Automotive Systems India Limited reported at 2018 (009) GSTL 0142 (Madras) and Hon'ble Gujarat High Court in the case of Synergy Fertichem Pvt. Ltd. reported at 2020 (33) G.S.T.L. 513 (Guj.), have held that availability of the goods is not necessary for confiscation of the seized goods. The opening words of Section 125 mention that, "Whenever confiscation of any goods is authorized by this Act....." brings out the point clearly. Qua power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. Once power of authorization of confiscation of goods gets traced to that Section, physical availability of the goods is not so much relevant. The redemption is in fact, to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves goods from getting confiscated. Therefore, physical availability of goods does not have any

significance for imposition of redemption fine under Section 125 of the Act. We therefore, agree with the learned Adjudicating Authority that non availability of goods physically does not impact their confiscation and imposition of redemption fine. We however find that the learned Adjudicating Authority has imposed very heavy redemption fine equal to 10% of the value of the tugs. What has been saved by the appellant in this case is an amount equal to 5% of the duty because if the appellant had paid full duty, they would have been entitled to 95% of the duty amount as draw back. Therefore, quantum of redemption fine to be imposed in lieu of confiscation in this case should be governed by the amount of benefit that would have been accrued to the appellant.”

In view of the above, I find that 100 Kg of gold valued at Rs 24,81,44,000 imported and cleared vide Bill of Entry No 2784490 dated 23.7.2013 for Home Consumption, though not available are liable for confiscation under Section 111 (d) & (o) of the Customs Act, 1962 and Redemption is required to be imposed.

33.20 As the impugned goods are found liable to confiscation under Section 111 (d) and 111(o) of the Customs Act, 1962, I find it needless to re-discuss and re-produce the relied upon case laws for confiscation and redemption fine in absence of physical availability of the goods, as the same has already been elaborated in Para-33.16 to 33.19 herein above. Without prejudice to the case laws relied upon for confiscation and Redemption fine as relied upon at Para Para-33.16 to 33.19 hereinabove, I find that out of total 22,000 kg of gold valued at Rs 54,14,56,00,000/- imported for the period from 1.4.2014 to 31.3.2015, total 4400 kg of gold having assessable value (Tariff Rate) of Rs.10,82,70,33,470/- were exported from the bonded warehouse after having been submitted warehousing Bond and Bank Guarantee. Thus, for the confiscation and consequential imposition of redemption fine for the said 4400 Kgs gold out of total 22,000 kg of gold which was cleared to jewellers under warehouse bond which is liable for confiscation and consequently for redemption fine. To fortify my this stand, I rely on the ratio of decision of Hon'ble Gujarat High Court rendered in case of Commissioner of Central Excise and Customs Vs. M/s. Kay Bee Tax Spin Ltd reported in 2017 (349) ELT 451 (Guj). Relevant Para of the said decision is reproduced as under:

“5.5 *Under the circumstances, considering the decision of Apex Court rendered in case of Weston Components Limited (supra) and the decision of Karnataka High Court in the case of Shilpa Trading Company (supra), the Tribunal ought to have held that the Adjudicating Authority ought to have imposed redemption fine in lieu of confiscation of the goods which were illicitly diverted in the open market, which were permitted to be warehoused on certain terms and conditions; including without making payment of Customs duty.*

5.6 *Now, so far as reliance placed upon a decision of Bombay High Court rendered in case of Finesse Creation Inc. (supra) and the subsequent decision of the said High Court in the case of National Leather Cloth Mfg. Company (supra) are concerned, on facts, the same shall not be applicable to the facts of the case on hand, since in the matters before*

the Bombay High Court, there was no bond/legal undertaking executed. The submission made on behalf of the respondent-Unit that unless and until the goods are first seized, there is no question of confiscation and consequently, there is no question of imposing the redemption fine in lieu of confiscation is concerned, considering the language used in Section 125 of the Customs Act, we do not agree with the same. As observed hereinabove, Section 125 of the Act shall be applicable in a case where confiscation of any goods is authorized by the Customs Act. If it is found that there is breach of any of the provisions of the Customs Act and/or even the Export/Import Policy, and/or there is a breach of any of the terms and conditions on which goods were permitted to be imported without payment of duty and permitted to be deposited in the warehouse, confiscation of such goods can be said to be authorized thereafter, when it is found that the goods are not available for confiscation as the same were illicitly diverted to the open market, and the purpose for which the goods were permitted to be imported without payment of duty is frustrated, in lieu of such goods, redemption fine is imposable.

6. *For the reasons stated above, as the goods were not available for confiscation, as the goods were already diverted/permitted to be warehoused without payment of duty, on furnishing the bond and the undertaking and thereafter, the respondent-Unit clandestinely and illicitly diverted the goods to the open market, the goods which otherwise were liable to be confiscated, in lieu of confiscation, redemption fine was imposable..”*

Thus, in view of the above discussion and finding in Para 33.16 to Para 33.20, I find that physical availability of goods does not have any significance for imposition of redemption fine under Section 125 of the Act and therefore, I hold that said 22,000 Kg of Gold valued (Tariff rate) at Rs 54,14,56,00,000/- and 73,217.409 Kg of Silver valued (Tariff rate) at Rs 2,48,21,14,391 is liable for confiscation under Section 111 (d) and 111 (o) of the Customs Act, 1962 and consequently redemption fine is required to be imposed under Section 125 (1) of the Customs Act, 1962.

33.21 The said importer has contested that the DGFT have no power to cancel their ‘Nominated Agency Certificate’ *ab initio* and relied on certain case laws. I find no hesitation to reiterate that ‘Nominated Agency Certificate’ issued by the DGFT to the importer had been canceled *ab initio* by the DGFT vide their Order In Original dated 14.01.2015. The importer had contested the said Order In Original dated 14.01.2015 before the Hon’ble High Court of Bombay vide Writ Petition No. 10001/2014. Further, in Writ Petition No. 10001/2014, Shri Mahendra Bafna, Vice President of the Petitioner’s company (M/s. Riddhi Siddhi Bullions Ltd) in his Affidavit in rejoinder on behalf of the petitioners in Para 8 have specifically stated as “I submit that the adjudicating authority has no power or authority to cancel the Nominated Agency Certificate in such manner.” Hon’ble High Court of Bombay vide Order dated 23.12.2015 dismissed the writ petition No. 10001/2014 filed by the importer and specifically at Para 105, the Hon’ble High Court in its said Order have mentioned that “therefore, no hesitation in concluding that none of the contentions as raised before us by the petitioners have any merit.” Further, the said importer had filed SLP No.

4901/2016 before the Hon'ble Supreme Court against the final judgement and order dated 23.12.2015 in Writ Petition No. 10001/2014 passed by the Hon'ble High Court of Bombay. On 22.07.2025, the Hon'ble Supreme Court dismissed the Special Leave Petition. Thus, the plea of the importer that the DGFT have no power to cancel their 'Nominated Agency Certificate' *ab initio* and relied on certain case laws is not acceptable.

Without prejudice to the above, I would like to rely on the ratio of case law of Hon'ble High Court of Punjab & Haryana in the case of Golden Tools International Vs. Joint DGFT, Ludhiana reported in 2006 (199) ELT 213 (P&H) upheld by the Supreme Court as reported in - 2013 (293) E.L.T. A57 (S.C.)], wherein counsel of the appellant had argued before the Hon'ble High Court that cancellation of DEPB *ab initio* is not contemplated under Section 9(4) of the Act, particularly when the period of its validity was already over. The Hon'ble High Court has dismissed the appeal and has held as under:

“13. There is no substance in the plea that a DEPB cannot be cancelled after it has outlived its life. Sub-section (4) of Section 9 of the Act, confers upon the Director General or the authorised officer power to suspend or cancel any licence granted under the Act. Suspension is an interim measure, pending passing of a final order, but cancellation envisages annulment, a complete abolition of the right for the exercise of which a licence is granted. The power to suspend or cancel the licence vested in the Director General is determined by reference to the language used in the Statute and not by reference to any predilections about the legislative intent. We are unable to read into Section 9(4) of the Act anything which would indicate that expression “cancel” means only revocation of a licence which is otherwise valid and operative and that too retrospectively. In our opinion, the power to cancel a licence includes cancellation of both, whether unutilised or utilised.”

33.22 Similarly, Hon'ble Gujarat High Court in the case of Adani Enterprise Vs. Union of India reported in **2018 (359) E.L.T. 367 (Guj.)** wherein the petitioner was called upon to show cause why **DFCE scrips (issued under for Status Holder Scheme of Exim Policy 2002-2007, as amended) issued as per Section 9(2) of the FT(DR) Act, 1992**, should not be ***ab initio* cancelled** under Sections 9(4) and 11(2) of the said Act. Hon'ble High Court has dismissed the appeal. Relevant Para of the order is re-produced as under.:

10.Section 9 of the Act pertains to issue, suspension and cancellation of license, relevant portion of which reads as under :

“9. Issue, suspension and cancellation of license. - (1) The Central Government may levy fees, subject to such exceptions, in respect of such person or class of persons making an application for licence, certificate, scrip or any instrument bestowing financial or fiscal benefits of in respect of any licence, certificate, scrip or any instrument bestowing financial or fiscal

benefits granted or renewed in such manner as may be prescribed.

(2) The Director General or an officer authorised by him may, on an application and after making such inquiry as he may think fit, grant or renew or refuse to grant or renew a licence to import or export such class or classes of goods or services or technology, as may be prescribed and, grant or renew or refuse to grant or renew a certificate, scrip or any instrument bestowing financial or fiscal benefit, after recording in writing his reasons for such refusal.

(3)

(4) The Director General or the officer authorised under sub-section (2) may, subject to such conditions as may be prescribed for good and sufficient reasons, to be recorded in writing, suspend or cancel any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits granted under this Act :

Provided that no such suspension or cancellation shall be made except after giving the holder of the licence, certificate, scrip or any instrument bestowing financial or fiscal benefits a reasonable opportunity of being heard."

14. *From the above provisions, it can be seen that under sub-section (4) of Section 9 of the Act, the Director General or the officer authorized under sub-section (2) would have the power for good and sufficient reasons to suspend, cancel any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits granted under the Act. The powers under sub-section (4) of Section 9 thus, concurrently vest in the Director General as well as the Officer authorized by him. The authorized officer would be exercising powers under the delegated authority. There is no pecuniary limitation in exercising such powers. Nevertheless, as delegator, the Director General would still retain the concurrent authority to exercise such power. On the other hand, the penalty under sub-section (2) of Section 11 of the Act would be imposed by the adjudicating authority, as specified in Section 13. Section 13 refers to the notification which the Central Government may issue authorizing the Director General or other officers. In terms of the said section, under notification dated 13-6-2013 the limit of exercising powers of Joint Director General of Foreign Trade were fixed at Rs. 25 crores where the value of goods or services or technology covered by the authorization issued, registration certificate or permits issued for import or export or in respect of goods or service or technology for which import or export is permitted without any authorization."*

34. Whether, Customs duty short paid/ not paid on the 4400 kg of gold issued by the importer to jewellers for export obligation amounting to Rs 1,11,51,84,447(BCD- 1,08,27,03,347+ Education Cess Rs 2,16,54,067+ SHE Cess Rs 1,08,27,033) as detailed in Annexure A to SCN, should be demanded and recovered under the provisions of Section 28(1) of the Customs Act, 1962 alongwith Interest under Section 28AA of the Customs Act, 1962?

34.1 I find there is no dispute that importer has imported Gold on the strength of 'Nominated Agency Certificate' otherwise the import of Gold is governed by Section 11 of the Customs Act, 1962 according to which it is restricted/prohibited. The importer was availing the benefit of 80:20 Scheme. RBI issued guidelines for import of gold vide circular RBI/2013-14/187, AP (DIR Series) Circular No. 25 dated 14-8-2013, and RBI/2013-14/600, AP (DIR Series) Circular No.133 dated 21.05.2014 according to which it was incumbent on nominated agencies to ensure that at least one fifth i.e. 20%, of every lot of gold imported to the country is exclusively made available for the purpose of exports and balance for domestic use. The importer on the strength of aforesaid RBI Circular imported total 22000 Kgs of Gold, filing Warehousing Bills of Entry during the year 2014-2015 and out of the said 22000 Kgs. of Gold, 17600 Kgs gold were cleared by paying Customs duties for local sale by filing Ex-Bond Bills of Entry and remaining 4400 Kgs of Gold were cleared without payment of customs duties from warehouse to jewellers for the purpose of export, as per said guidelines of RBI. The said entire import was made on the strength of the 'Nominated Agency Certificate' issued by the DGFT as per Policy circular No. 77 (RE-2008)/2004-09 dated 31st March, 2009, as amended from time to time, issued by Director General of Foreign Trade. Since the said 'Nominated Agency Certificate' dated 05.05.2014 (for 2014-2015) was held *ab initio* void and was cancelled *ab initio* by the DGFT vide Order In Original dated 14.01.2015, customs duty on the said 4400 Kgs of gold (20% of total import during the year 2014-15) cleared from the warehouse to jewelers without payment duty, is required to be recovered under Section 28 (1) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962.

34.2 I find that importer has contested there is no provision under the FTDR Act which provides for cancellation of the licence with retrospective effect and therefore, the 'Nominated Agency Certificate' cannot be cancelled *ab initio* and placed reliance on the decision of the Hon'ble Punjab and Haryana High Court in Supreme Castings Ltd. reported in 2016 (342) ELT 176 (P&H). Further, they have contended that assessment has become final, and no proceedings known to law are taken to set aside the said assessment or any order of reassessment was made by the proper officer and therefore there can be no confiscation of goods and imposition of the penalties.

I find that said contention is not tenable as the DGFT have cancelled their 'Nominated Agency Certificate' *ab initio* as Hon'ble Bombay High Court in their own writ petition no. 10001 of 2014 on the same issue have dismissed their writ petition and the said order of Hon'ble Bombay High Court is upheld by the Hon'ble Supreme court. I have already negated this plea at para 33.21 & 33.22 hereinabove. I find that importer was eligible for import of gold subject to beholder of 'Nominated Agency Certificate' at the time of importation. Once the DGFT cancelled their 'Nominated Agency Certificate' *ab initio*, it would tantamount that import was made by the Importer without having valid Nominated 'Agency Certificate' and therefore, Customs duty on 4400 kg of gold issued by the importer to jewellers for export obligation without payment of duty, is required to be recovered alongwith interest. To fortify by

said stand, I rely on the ratio of decision of Hon'ble Mumbai Tribunal rendered in case of Central India Institute of Medical Science v. Commissioner — 2008 (231) E.L.T. 113 (Tri.-Mumbai) upheld by the Hon'ble Supreme Court as reported in 2015 (315) E.L.T. A26 (S.C.) wherein the issue involved was whether the cancellation of Customs Duty Exemption Certificates (CDECs) can apply retrospectively so as to hold that the goods ab initio were imported without any certificate from DGHS and consequently will result in denial of benefit of the notification to the assessee even though such cancellation of CDECs was done subsequently and in some cases was done in breach of principles of natural justice? The Hon'ble Tribunal has inter alia held as under:

“Issue No. (iv)

Whether the cancellation of Customs Duty Exemption Certificates (CDECs) can apply retrospectively so as to hold that the goods ab initio were imported without any certificate from DGHS and consequently will result in denial of benefit of the notification to the assessee even though such cancellation of CDECs was done subsequently and in some cases was done in breach of principles of natural justice?

8.1 It was submitted on behalf of the appellants that the withdrawal of the CDECs can be only prospective and it cannot effect clearances already made prior to the cancellation. Reference in this regard was invited to the Supreme Court decision in the case of East India Commercial Company - 1983 (13) E.L.T. 1342 (S.C.) wherein in para 35 it was held that there is no legal basis for the contending that licence obtained by misrepresentation makes the licence non est, with the result that the goods should be deemed to have been imported without licence in contravention of the order issued under Sec. 3 of the Act so as to bring the case within clause (8) of Sec. 167 of Sea Customs Act. Assuming that the principles of Law of Contract apply to the issue of licence under the Act, a licence obtained by fraud is only voidable. It was accordingly held that since on the date of import the licence was valid, the imports cannot be questioned. Goods imported during pendency of licence cannot be considered as illegal. Reference was also invited to the Supreme Court decision in the case of Jaslok Hospital - 2007 (218) E.L.T. 170 (S.C.) wherein in para 17 while dealing with a communication dated 14-11-2000 issued by the DGHS cancelling the CDEC, the Supreme Court held that the effect of the communication is that the appellant is not entitled to the exemption under any of the clauses of the aforesaid notification on or after 14-11-2000. Similar views were expressed by the Bombay High Court in the case of Bussa Overseas - 1991 (53) E.L.T. 165 (Bom.). Reference was also invited to the decision of the Madras High Court in the case of Apollo Hospital wherein it was held that CDECs cannot be withdrawn after rescission of the notification or for violations subsequent to the rescission of the notification.

8.2 The ld. Jt. CDR Shri B.K. Singh submitted that a certificate issued by DGHS cannot be treated at par with a licence issued by DGFT. The facts in the East India case and others are different as in those cases the conditions for the import were to be satisfied at the time of import and not post-import. On the other hand, the certificates

were issued subject to fulfilment of the conditions after clearance of the goods as has been clearly brought out in the Larger Bench decision of the Tribunal in the case of Lady Amphthil Nurses Institution. Besides in the East India and other case the goods were sought to be confiscated under Sec. 111(d) for import without licence, even though the licence was valid on date of import but was subsequently cancelled and the Hon'ble Supreme Court held that since on the date of import the licence was existing, the import has to be considered as valid on that date. However, if the conditions under which import is allowed is violated, subsequent to the date of import then the goods can still be confiscated under Sec. 111(o) as has been held by the Supreme Court in the case of UOI v. Sampath Raj - 1992 (58) E.L.T. 163 (S.C.) which in turn has referred to the decision of the Supreme Court in the case of East India. The Karnataka High Court also in the case of Yellama Dasappa v. Commissioner - 2000 (120) E.L.T. 67 (Kar.) has held that once the certificate is cancelled the goods can be ceased for violation of conditions of notification. The Supreme Court decision in the case of Jaslok Hospital refers only to change in categorization and it was never an issue before it as to whether the cancellation of certificate will have effect of denial of exemption ab initio. The fact that the Supreme Court has said that the exemption will cease to be available from the date of withdrawal has to be interpreted in only one manner that the exemption will cease to be available from date of import as otherwise it will be meaningless in view of the fact that the exemption certificate is linked to a particular equipment which has already been imported free of duty and no further duty is payable on it. Even the Supreme Court has in the case of Jagdish Cancer stated that the liability is a continuous one and once the conditions are violated, then the appellants are liable to pay duty meaning thereby that exemption becomes inoperative. Since procurement of a certificate from DGHS is a requirement of notification, its withdrawal amounts to violation of conditions of notification and therefore will result in denial of exemption ab initio. In the case of Bharat Diagnostics Larger Bench has also held that if the violation of notification is noticed even after rescission of notification, action can be taken against appellant and benefit of exemption can be denied. A similar view was taken in the case of Down Town Hospital - 2003 (159) E.L.T. 198.

8.4 We have considered the submission. We find that procurement of a certificate from DGHS is a requirement of the notification and the certificate certifies that the hospitals continue to carryout their obligations and it was under the directions of the Delhi High Court and others that the certificates were cancelled with a direction to deny duty exemption. We find that the appellants do admit that prior to the rescission of notification, if the conditions of the notification are violated, then duty can be demanded as unanimously held by the Madras High Court, Bombay High Court and Supreme Court in Jagdish Cancer etc. and since possession of a certificate from DGHS is one of the conditions of notification which stands violated, after it is withdrawn, the analogy has to be equally applied to the cancellation of certificates done after the rescission of notification as different views cannot be taken in respect of certificates cancelled during the pendency of notification and those cancelled after the rescission of the notification. In the case of Jaslok Hospital since the Apex Court dealt with a matter pertaining to year

2000 it has to be presumed that it was aware of the rescission of notification and therefore if it has upheld cancellation of CDECs with effect from 2000 it means that the CDECs can be cancelled even after the date of rescission as otherwise cancellation done in the year 2000 would not have been upheld. As regards denial of principles of natural justice we agree with the ld. DR that as long as the CDECs have not been restored, the Customs authority have no jurisdiction to look into the aspect as to whether the CDECs were cancelled in breach of principles of natural justice or not. This is also supported by the Tribunal's decision in the case of *Down Town Hospital - 2003 (159) E.L.T. 198*.

8. *Appeal No. C/662/03 - Bombay Hospital v. CC, Mumbai :*

16.1 It was submitted that the show cause notice nowhere demands the duty but only propose confiscation under Sec. 111(o). The duty nevertheless has been confirmed by Commissioner without citing any provision under which it has been confirmed and therefore it has resulted in denial of principles of natural justice and accordingly order needs to be set aside on this ground alone. It was further submitted that though they have been charging a token registration fee, they were under bona fide belief that this will not come in way of considering their treatment as not free. It was also admitted that they were charging for medicines but this was also under the impression that free treatment does not mean that medicines are not to be charged for.

16.2 The ld. DR submitted that since they were charging for registration and medicines, the decision of Karnataka High Court in *Medical Relief* case and Kerala High Court in *Maulana Hospital* are against them and therefore exemption has rightly been denied. They were also not properly maintaining records during 1988-93 which was mandatory as per Larger Bench Tribunal decision in *Lady Amphthil Nurses Institution* case cited supra and therefore violations of conditions of notification are established. As regards non-demand of duty in show cause notice, the *Wockhardt Hospital* decision fully covers the case.

16.3 We have considered the submissions. We find that the facts of the case are fully covered by the Kerala High Court decision in *Maulana Hospital* case and Karnataka High Court in *Medical Relief Society* case and Bombay High Court decision in *Wockhardt Hospital* case. We also note that the CDECs were withdrawn on 26-3-01 and therefore as per our earlier findings the exemptions has to be denied *ab initio*. In view of this we find nothing wrong in the Commissioner's order and accordingly uphold the same and dismiss the appeal."

34.3 Further, I rely on the ratio of decision of Hon'ble Mumbai Tribunal rendered in case of *Gateway Terminals India P. Ltd Vs. C.C. (Nhava Sheva-II)*, Mumbai reported in 2019 (369) ELT 1791 (Tri. Mumbai) wherein issue was consequent to *ab initio* cancellation of EOD status by BoA, EOD registration and Customs bonding licence issued to importer become null and void and stand cancelled *ab initio*, Appellants held to be not eligible to benefit of exemption under Notification No. 52/2003-Cus. &-Foreign Trade Policy and demanded duty along with interest. Relevant Paras of the order is reproduced as under:

“ 4.2 Commissioner has in Paras 27 to 31 of the impugned order recorded as follows

:

“27. The contentions being raised by the importer are examined point-wise as follows

:

(i) In the instant case as there was a dispute related to the provisions of Foreign Trade Policy and scope of the Notification No. 52/2003-Cus., dated 31-3-2003 read with para 11 thereof, three SCN's dated 2-11-2006, 22-1-2007 and 29-1-2007 were issued to the importer. In light of the BoA order dated 13-11-2007 cancelling the EOU status *ab initio*, interim order of the Hon'ble Bombay High Court and the EPCG Committee's decision dated 19-9-2014, the said SCN's are now being taken up for adjudication.

(ii) The EPCG Committee's decision dated 19-9-2014 issued with the approval of DGFT under para 2.5 of FTP and providing for relaxation of provision of FTP : vis-a-vis permitting EPCG benefit for the clearances made under EOU and waiver of interest as a special case needs to be given effect subject to the statutory provisions regarding duty and interest contained in the Customs Act, 1962.

(iii) The EPCG Committee's decision dated 19-9-2014 provides for EPCG benefit to the goods already cleared under EOU scheme and also holds the EPCG licences issued to the importer in 2005 as valid. However, the issues related to the current status of warehouse registration needs to be examined.

(iv) Vide para 11 of the Notification No. 52/2003-Cus., the benefit of EOU scheme itself is being excluded. Further, the said issue stands finalized in light of the BoA order dated 13-11-2007 cancelling the EOU status *ab initio* and the amendments brought in the Policy for 2008-2009 and notified on 11-4-2008 wherein Para 6.9(f) of the FTP itself was omitted.

(v) The EPCG Committee's decision dated 19-9-2014 does not specifically call for giving effect to its decision prior to the initiation of adjudication proceedings pertaining to the subject SCNs.

(vi) The issue stands finalized in light of the BoA order dated 13-11-2007 cancelling the EOU status *ab initio*.

(vii-ix) The Customs Bonded Warehousing Licence No. PN-1/CUSTOMS-01/2006, dated 26-5-2006 was issued to M/s. GTIL under Section 58 of the Customs Act, 1962 as per the Condition No. 1 of the Letter of Permission (LOP) issued by the Development Commissioner, SEEPZ Special Economic Zone, Mumbai vide Letter No. PER : 37(2005) : SEEPZ : EOU : 82/05-06/2245, dated 29-3-2006 and the agreement dated 13-4-2006 entered into by M/s. GTIL with the Development Commissioner, SEEPZ SEZ, Mumbai for setting up of the 100% EOU. Thus, it is evident that the customs bonding

licence was issued to M/s. GTIL only for the purpose of permitting the in-bond port handling services under EOU scheme and therefore the EOU registration dated 9-6-2006 and customs bonding licence dated 26-5-2006 issued to M/s. GTIL needs to be seen as inter-linked for giving effect to the 100% EOD scheme. Thus the customs bonding licence issued to M/s. GTIL does not have independent existence. Consequent to the *ab initio* cancellation of EOD status by the BoA vide order dated 13-11-2007, the EOD registration dated 9-6-2006 and the customs bonding licence dated 26-5-2006 issued to the importer become null and void and stand cancelled *ab initio*. The *post facto* application dated 15-2-2013 of the importer for renewal of the customs bonding licence therefore does not merit consideration. Accordingly, the imported goods are not eligible for duty exemption under the Notification No. 52/2003-Cus., dated 1-3-2003 and the domestically procured goods are **not eligible for the benefit of Notification No. 20/2003-C.E., dated 31-3-2003 and the goods cease to be warehoused goods and are deemed to be have been cleared for home consumption under Section 47 of Customs Act, 1962 on the date of bonding itself**. Thus, the importer is liable to pay the duty on the imported goods at the rate applicable on the date of filing of the warehouse bill of entry and the same becomes payable on the date of assessment of the warehouse bill of entry and is recoverable under Section 28 of the Customs Act, 1962 along with the applicable interest under Section 28AB of the Customs Act, 1962 (Section 28AA w.e.f. 8-4-2011). In respect of the duty free procurement effected against the CT 3/Procurement Certificate No. 01/2006, dated 22-9-2006 issued by the EOD Section, JNCR, the importer is liable to pay the duty of Rs. 1,28,025/- which was forgone on account of CVD and Education Cess at the time of bonding and the same is recoverable under Section 28 of the Customs Act, 1962 along with the applicable interest under Section 28AB of the Customs Act, 1962 (Section 28AA w.e.f. 8-4-2011). Thus the SCNs issued under Section 28 are not premature.

(x) The EPCG Committee's decision dated 19-9-2014 issued with the approval of DGFT under para 2.5 of the Foreign Trade Policy and providing for relaxation of provision of FTP vis-a-vis permitting EPCG benefit for the clearances made under EO does not render the SCN redundant and irrelevant inasmuch as the issues of interest related to the chargeability of customs duty and the date on which the duty becomes due are to be determined as per the statutory provisions contained in the Customs Act, 1962. The BoA order revoking the EOD status *ab initio* and the EPCG Committee's decision dated 19-9-2014 does not call for fresh assessment under the EPCG licence but recommends leniency in respect of fine, penalty and interest. In light of the EPCG Committee's decision dated 19-9-2014, the duty liability can be adjusted against the 2005 year EPCG licences and the new EPCG licences. As the instant case pertains to the imports effected during the period 2006-2007, the same are to be governed as per the FTP 2004-2009 in respect of availing the benefit of EPCG scheme. Therefore, it appears that the importer is not eligible for the Zero Duty EPCG scheme as the said scheme was introduced only vide para 5.1 of the FTP 2009-14.

(xi) The instant case does not warrant any academic discussion about the differentiation between levy and assessment. The liability to pay the duty and applicable interest stands finalized as already discussed in the para vii-ix above.

(xii) Though the customs bonded warehousing licence was valid for 3 years but the EOU ceased to exist *ab initio* and consequently the imported goods and the duty free domestically procured goods become liable to interest as already discussed in the para vii-ix above.

(xiii) Though the EPCG Committee vide the minutes of the meeting dated 19-9-2014 had recommended for waiver of interest as a special case, the same was contested by the CBEC vide Letter F. No. 605/53/2014-DBK, dated 5-11-2014 stating that the same had been done without the concurrence from the Department of Revenue and it was requested that the same be expunged from the minutes of the meeting dated 19-9-2014 as it would not be proper to decide on the issue of interest beforehand under the para 2.5 of the FTP as the issues of interest related to the chargeability of customs duty and the date on which the duty becomes due were to be decided by the jurisdictional Customs Authority. Further, as per the provisions of Section 61 of the Customs Act, 1962 waiver of interest can only be ordered by the CBEC if the same serves the public interest. The provisions of Section 28AA(3) and Section 151A of the Customs Act, 1962 are not applicable in the instant case as the duty has become payable consequent to the order of BoA and not that of CBEC.

(xiv) As the instant case pertains to the imports effected during the period 2006-2007, the same are to be governed as per the FTP 2004-2009. The para 4.29 of HBP Vol. I of FTP 2004-2009 does not provide for payment of customs duty component through the valid duty credit scrips issued under Chapter 3 of FTP and the said provision was introduced only vide the FTP 2009-14. Thus, the request of the importer to allow the duty debit through SFIS licences appears to be legally untenable and the same is rejected.

28. As regards the case law *Bharat Warehousing Corporation and Others v. Collector of Customs, Calcutta* [1988 (34) E.L.T. 423 (Cal.)] relied upon by the importer, the same is not applicable as the instant case involves *ab initio* rejection of the EOU status by BoA and therefore merits *ab initio* cancellation of the EOU registration and the customs bonding licence which was issued as per the LOP issued by the Development Commissioner, SEEPZ Special Economic Zone, Mumbai.

29. As regards the case law *Pratibha Processors v. Union of India* [1996 (88) E.L.T. 12 (S.C.)] relied upon by the importer, the same is not applicable as the goods are liable to payment of duty and the goods cease to be warehoused goods.

31. As regards the case laws viz. *Commissioner of Customs v. Acalmar Oils & Fats Ltd.* [2009 (240) E.L.T. 440 (Tri. - Bang.)], *Dinesh Oils Ltd. v. Commissioner of Customs* [2007 (220) E.L.T. 246 (Tri. - Ahmd.)], *Govind Ram Agarwal v. Collector of Customs* [2002 (149) E.L.T. 1209 (Tri. - Kolkata)],

Krishna Filaments Ltd. v. Commissioner of C. Ex. [2002 (143) E.L.T. 100 (Tri. - Mumbai)] and Essar Oil Ltd. v. Commissioner of Customs [2006 (197) E.L.T. 450 (Tri. - Mumbai)] relied upon by the importer, the same are not applicable as the instant case merits ab initio cancellation of the EOU registration and the customs bonding licence which was issued as per the LOP issued by the Development Commissioner, SEEPZ Special Economic Zone, Mumbai which renders the goods as deemed cleared for home consumption under Section 47 of the Customs Act, 1962 on the date of bonding itself."

4.3 *It is admitted fact that appellants had imported the goods covered by thirty three Bill of entries as detailed below, claiming the benefit of exemption under Notification No. 52/2003-Cus. Subsequently it was determined that the appellants were not eligible to benefit of exemption under the said notification accordingly the proceedings to demand the duty short/not paid by the appellants were initiated under Section 28 of the Customs Act, 1962. The demands in respect of the duty short/not paid by the appellant have been confirmed by the Commissioner along with the interest in respect of the duty short/not paid.*

26. Under Section 28AB of the Customs Act, interest becomes payable on duty becoming payable in the set of cases as set out under the said Section, which duty has not been levied or paid or has been short levied or short-paid or erroneously refunded by reasons of collusion or any wilful misstatement or suppression of facts. In Nirlon Ltd. v. Union of India, 2007 (209) E.L.T. 12 (Bom.) the issue was charging interest under the provisions of the Central Excise Act. This Court there held that it was requirement of law including natural justice that notice will be issued to the Petitioner or party aggrieved as to why interest amount should not be claimed from it and after affording a hearing that liability ought to be decided. Under the Customs Act if there is short levy of duty or non-payment thereof the requirement of serving a notice under Section 28 arises. The decision, therefore, would be as held by us in M/s. Kamat Printers Pvt. Ltd. (supra) that once duty is ascertained then by operation of law, such person in addition shall be liable to pay interest at such rate as fixed by the Board. The Proper Officer, therefore, in the ordinary course would be bound once the duty is held to be liable to call on the party to pay interest as fixed by the Board.

4.5 *Appellants have sought to contest the demand of interest by invoking the provisions of promissory estoppel. It was there submission that once they had been allowed registration as EOU, and clearance of the goods by allowing the exemption under Notification No. 52/2003-Cus., the demand made under Section 28 and demand of interest under Section 28AA/28AB will be hit by the principles of promissory estoppel. Hon'ble Supreme Court has constantly held that there is no estoppel against the operation of law :*

Elson Machines Pvt. Ltd. [1988 (38) E.L.T. 571 (S.C.)]

8. The next submission on behalf of the appellant is that the Classification Lists had been approved earlier and the Excise authority was estopped from taking a different view. Plainly there can be no estoppel against the law. The claim raised before us is a claim based on the legal effect of a provision of law and, therefore, this contention must be rejected.

Plasmac Machine Mfg. Co. Pvt. Ltd. [1991 (51) E.L.T. 161 (S.C.)]

6. The appellants contention that the department having earlier approved the classification of Tie Bar Nuts under Tariff Item 68 has no justification for its revision is, to our mind, not tenable inasmuch as there could be no estoppel against a statute. If according to law Tie Bar Nuts fall within Tariff Item 52 the fact that the department earlier approved their classification under Tariff Item 68 will not estop it from revising that classification to one under Tariff Item 52. See *M/s. Elson Machines Pvt. Ltd. v. Collector of Central Excise - 1988 (38) E.L.T. 571 (S.C.) = 1989 Suppl. (1) SCC 671, Para 10 at 675.*

Indian Rayon and Industries [2008 (229) E.L.T. 3 (S.C.)]

13. We do not find any substance in this submission advanced on behalf of the assessee. The only notification which was available to the assessee at the time of import which granted the assessee the right to import duty free goods was Notification No. 158/95-Cus. Having availed of the benefit of notification, the assessee has necessarily to comply with the conditions of the notification. It goes without saying that the assessee cannot approbate and reprobate. In *Tractors and Farm Equipment Ltd. v. Collector of Customs, Madras, 1997 (91) E.L.T. 254 (S.C.) = 1998 (9) SCC 665*, it was pointed out by this Court that once the assessee's case was that what it had imported do not constitute internal combustion piston engines but only certain components, the importer cannot turn around and say that what was imported constitutes piston engines. Of course, there is no estoppel against the law but having sought for and taken the benefit of the notification to import goods without payment of duty, it is not open to the assessee to contend that the conditions in the said notification need not be fulfilled, be it on the ground that the benefit under another notification is available to him or otherwise.

4.6 In view of the specific provisions Section 28 of Customs Act, 1962, providing for the demand of duty short/not paid at the time when the same was due, we are not in agreement with the submissions made by the appellant by invoking the principle of promissory estoppel. It is also settled law that in case of exemption, it is responsibility of the person claiming the exemption to satisfy that the said exemption is available to him. Hon'ble Supreme Court has in case of *Dilip Kumar & Co. [2018 (361) E.L.T. 577 (S.C.)]* held as follows :

"52. To sum up, we answer the reference holding as under -

- (1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case

comes within the parameters of the exemption clause or exemption notification.

(2)

4.7 In view of the discussions as above we are not inclined to agree with the submissions made by the appellant [in] respect of the interest. We are also not inclined to agree that demand of interest should be limited to the amounts demanded in cash and not in respect of the amounts allowed to be debited from the EPCG licenses. In our view when short/non-payment is adjudged under Section 28, Section 28AA mandates the interest to appropriate rate on the quantum of short/non-payment adjudged independent of the fact that how the said amount is paid.

34.4 Further, I find that importer has contended that without challenging the assessment, demand cannot be raised. To negate this plea, I rely on the ratio of decision of Hon'ble Mumbai Tribunal rendered in the case of Dow Agro Sciences India Pvt. Ltd. Vs. Commissioner of Customs, Mumai reported in 2012 (283) ELT 524 (Tri.Mumbai) wherein among other issue, in DEPB cancelled ab initio by licensing authority , department could demand duty under Section 28 of Customs Act, 1962 without challenging assessment under Section 129D(2) was involved. Relevant paras of said Order to case on hand is reproduced as under:

9.15 In the case of *Munjal Showa Ltd. (supra)*, the High Court had dismissed the assessee's appeal filed against the Tribunal's order upholding the order of the Commissioner of Customs demanding duty with interest from the assessee. The Commissioner had held that the DEPB scrips used by the assessee (transferee of the scrips) for duty-free clearance of the goods imported by them were forged and hence ab initio void. The connected Transfer Release Advices (TRAs) were also found to be forged. The Commissioner had also held that the importer who claimed benefit on the basis of the forged DEPB scrips stood at par with the transferor and hence could not get the benefit.

The Hon'ble High Court dismissing the importer's appeal observed, inter alia, thus : "It is settled principle of common law that a purchaser steps into the shoes of the seller and does not acquire better title than the seller. This principle has also been recognized under Section 27 of the Sale of Goods Act, 1932".

9.16 In the case of *Golden Tools International v. Joint DGFT [2006 (199) E.L.T. 213 (P & H)]*, the Hon'ble High Court dismissed two writ petitions filed against the order passed by the Additional Director- General of Foreign Trade [appellate authority under the Foreign Trade (Development & Regulation) Act, 1992] upholding the order passed by the Assistant DGFT cancelling a DEPB ab initio under Section 9(4) and levying penalty under Section 11(2) of the said Act. The DEPB was cancelled on the ground that it had been obtained by the petitioner by producing forged documents (BCERs). The Hon'ble High Court rejected the contention that "cancellation of DEPB ab initio was not contemplated under Section 9(4) of the Act particularly when the period of its validity was over." SLP No. 5472/2006 filed against the High Court's judgment was dismissed

by the Apex Court by order dated 3-4-2006.

9.27 *In the present case, the DEPBs were cancelled ab initio by the licensing authority after the appellant utilized them for duty-free clearance of the imported goods in terms of Notification No. 34/97-Cus. In the case of Golden Tools International, the Hon'ble Punjab & Haryana High Court examined the scope of the power conferred on the licensing authority under Section 9(4) of the FT (D&R) Act, and held that the authority had power to cancel a licence whether unutilized or utilized. The Court held as under:*

"13. There is no substance in the plea that a DEPb cannot be cancelled after it had outlived its life. Sub-section (4) of Section 9 of the Act, confers upon the Director General or the authorized officer power to suspend or cancel any licence granted under the Act. Suspension is an interim measure, pending passing of a final order, but cancellation envisages annulment, a complete abolition of the right for the exercise of which a licence is granted. The power to suspend or cancel the licence vested in the Director General is determined by reference to the language used in the Statute and not by reference to any predictions about the legislative intent. We are unable to read into Section 9(4) of the Act anything which could indicate that expression "cancel" means only revocation of a licence which is otherwise valid and operative and that too retrospectively. In our opinion, the power to cancel a licence includes cancellation of both, whether unutilized or utilized."

[underlining supplied]

The Assistant DGFT's order cancelling a DEPb ab initio under Section 9(4) *ibid* was upheld by the Hon'ble High Court. Of late, we have also come across a recent judgment of the Hon'ble Bombay High Court [Bhilwara Spinners Ltd. v. Union of India - 2011 (267) E.L.T. 49 (Bom.)] holding that the DGFT has power to amend a licence retrospectively. One case cited by the learned counsel viz. Vikrant Overseas v. Union of India - 2000 (123) E.L.T. 486 (P&H), wherein *contra* view had been taken, has been distinguished in Bhilwara Spinners case. Therefore, in our view, the power of the licensing authority under Section 9(4) of the FT (D&R) Act to cancel a DEPb whether utilized or unutilized (i.e., *ab initio*) is indisputable. If that be so, the orders of the licensing authority (Deputy DGFT, Mumbai) cancelling *ab initio* the DEPbs which were utilized by De-Nocil for duty-free clearance of the goods imported by them had full effect in law with the result that customs duty equal to the DEPb credit which was utilized by them and cancelled by the licensing authority with retrospective effect became leviable on the said goods. As we have already indicated, the cancellation orders had attained finality *vis-a-vis* the appellant who did not choose to challenge those orders under the appellate provisions of the FT (D & R) Act.

9.28 *The learned JCDR has argued that, as the SBs referred to in the Annexures to the DEPbs were forged, the DEPbs themselves were liable to be treated as forged. But there was no such allegation in the show-cause notices. The allegation was that the DEPbs were obtained by the original allottees by producing forged SBs and BCERs.*

Therefore, the Revenue cannot be heard to say that the DEPBs per se were forged. Whether a DEPB is forged is not a pure question of law to be allowed to be raised for the first time at this stage. This situation, however, cannot be decisive for the appellant. The learned counsel has contended that a DEPB issued on the basis of forged documents cannot be void ab initio but only voidable at the instance of the affected party and the same is valid till it is cancelled by the authority which issued it. He has also relied on case law on the point. But the question before us is significantly of a different hue and the same is whether any credit of duty can be said to have ever accrued to, or to have been earned by, the allottee of such DEPB which was obtained by producing forged SBs and BCERs. We repeat — there was no export, no f.o.b. value, no realization of proceeds in the present case; hence no credit of any duty had accrued to the allottees of the DEPBs. **Even if it is assumed that the DEPBs, though issued without actual accrual of duty credit to the allottees, vested the benefit in them artificially, the appellant cannot legitimately claim the benefit after its retrospective cancellation by the licensing authority which, as per the High Court's ruling in Golden Tools International, has the power under Section 9(4) of the FT (D&R) Act to cancel DEPB "credit" already "utilized". In our view, the distinction drawn by the learned counsel between a forged DEPB and a DEPB issued on the basis of forged documents is of no significance where the DEPB of the latter category is cancelled with retrospective effect by the authority which issued it. Both are incapable of vesting any credit of duty in the DEPB-holder so as to be used for purposes of Notification No. 34/97-Cus.**

9.29 The contention of the appellant is that, as they had purchased the DEPBs bona fide for valuable consideration without notice of the transferors' fraud, they cannot be denied DEPB credit. Per contra, the Revenue has invoked the caveat emptor principle by pointing out that it was for the appellant to make sure that the original allottees (transferors) had actually earned transferable credits of duty by exporting goods and realizing proceeds, as the Exemption Notification itself clearly indicated that no credit could be earned without exports. We are inclined to accept this plea and hold that the above principle was rightly invoked in this case. In this manner only, fraud on the Revenue can be made actionable. Any different view will only perpetuate the menace of fraud on the Revenue and defeat the public interest. If the appellant's argument is accepted, the results will be catastrophic for the Revenue. In our view, it is to secure the revenue that the licensing authority under the FT (D&R) Act has been empowered to cancel DEPBs (whether utilized or unutilized) retrospectively. The rule of law demands that the orders issued under the said provision of law be given full effect to.

9.30 The facts of the case of Friends Trading Company [vide para (9.14) of this order] are similar to the facts of the present case. In that case, the High Court, following its own decision in the case of Munjal Showa Ltd. [vide para (9.15) of this order], held that the assessee (transferee of DEPB scrips which had been obtained by the original allottee by producing forged BCERs) was not entitled to the benefit of the DEPB scrips which were cancelled ab initio by the licensing authority after "utilization" of the scrips by the assessee for duty-free clearance of the goods imported by them. The assessee was held liable to pay the duty leviable on the goods. The SLP filed by the assessee was

dismissed by the Supreme Court. A Review Petition filed by them was also dismissed by the Court by order dated 20-1-2010 which reads:

“We have gone through the review petition and the relevant documents. There is delay in filing the review petition. In our opinion, no case for review of our order is made out both on the grounds of delay as well as on merits and accordingly the review petition is dismissed”.

[underlining supplied]

Obviously, the above order was passed by the Apex Court after considering the records of the case. It was an order on merits. Therefore, presumably, the SLP had also been dismissed on merits. If that be so, the High Court's decision can be said to have been affirmed on merits by the Supreme Court. Of late, the same High Court has reaffirmed its view in another case of the same party vide *Friends Trading Co. v. Union of India - 2011 (267) E.L.T. 33 (P & H)*. It is also pertinent to note that, in the case of *Munjal Showa Ltd.*, and in both the cases of *Friends Trading Company*, the High Court has considered and distinguished many of the cases [*East India Commercial Company*, *Sneha Sales Corporation*, *Taparia Overseas*, *Leader Valves*, *Vallabh Design Products*, etc.] relied on by the counsel before us.

10. Issue No. II : Whether it was open to the department to demand duty from the appellant under Section 28 of the Customs Act without successfully challenging the assessment by recourse to Section 129D(2) of the Customs Act.

10.1 In the memo of appeal, the appellant has contended that, as the duty liability on the imported raw materials had been discharged under DEPB Scheme on the basis of assessment of the Bills of Entry by the proper officer of Customs, there is no question of non-levy or non-payment of duty and, therefore, the provisions of Section 28 of the Customs Act were not invocable without recourse to the statutory procedure of revision of assessment. This contention is not acceptable as it is contrary to binding case law viz. *UOI v. Jain Shudh Vanaspati Ltd. [1996 (86) E.L.T. 460 (S.C.)]*. Para 5 of the Hon'ble Supreme Court's judgment reads as follows :-

“5. It is patent that a show cause notice under the provisions of Section 28 for payment of Customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance under Section 47 of the concerned goods. Further, Section 28 provides time limits for the issuance of the show cause notice thereunder commencing from the “relevant date”; “relevant date” is defined by sub-section (3) of Section 28 for the purpose of Section 28 to be the date on which the order for clearance of the goods has been made in a case where duty has not been levied; which is to say that the date upon which the permissible period begins to run is the date of the order under Section 47. The High Court was, therefore, in error in coming to the conclusion that no show cause notice under Section 28 could have been issued until and unless the order under Section 47 had been first revised under Section 130”

The above ruling of the Apex Court was followed by the Hon'ble Madras High Court in

the case of *Venus Enterprises v. CC, Chennai* [2006 (199) E.L.T. 405 (Mad.)] wherein the Hon'ble High Court framed the following question of law:-

"2

1) Whether the Tribunal was right in holding that the order of assessment on which no Appeal was preferred, can be reopened by issue of a fresh Show Cause Notice under Section 28(1) of the Customs Act, in the light of the Apex Court's decision reported in *2004 (172) E.L.T. 145 (S.C.)* in the case of *Priya Blue Industries Ltd. v. CC*?"

The Hon'ble High Court answered the above question in the affirmative in favour of the Revenue in para 6 of its judgment, which reads as under :-

"6. With regard to question No. 1, the law is well settled that a show cause notice under the provisions of Section 28 of the Act for payment of customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance of the goods under Section 47 of the Act vide *Union of India v. Jain Shudh Vanaspati Ltd.* [1996 (86) E.L.T. 460 (S.C.)]. Therefore, as rightly held by the Tribunal, if the contention of the appellant's counsel that when the goods were already cleared, no demand notice can be issued under Section 28 of the Act is accepted, we will be rendering the words "where any duty has been short-levied" as found in Section 28(1) of the Act as unworkable and redundant, inasmuch as the jurisdiction of the authorities to issue notice under Section 28 of the Act with respect to the duty, which has been short-levied, would arise only in the case where the goods were already cleared....."

Hence we hold that it was open to the Department to demand duty from the appellant under Section 28 of the Customs Act without recourse to any other procedure of revision of assessment.

11. Issue No. III : Whether, in the facts of this case, the demand of duty is barred by limitation.

11.5 As the demand of duty was raised within the normal period of limitation in this case, issue No. III has to be answered in the negative against the appellant. Ordered accordingly.

12. Issue No. IV : Whether the appellant is liable to pay interest on duty under Section 28AB of the Customs Act.

12.2 We have already held to the effect that, as the appellant did not satisfy condition No. (ii) of Notification No. 34/97-Cus., they ought to have paid duty on the goods imported by them. The duty "not levied" on the goods was demanded under sub-section (1) of Section 28 of the Customs Act by the department by issuing the subject show-cause notices and the same has been determined by the Commissioner under sub-section (2) in adjudication of the said show-cause notices. In this factual situation, the assessee has to pay interest on the duty amount under sub-section (1) of Section 28AB as amended. However, no interest is leviable for any period prior to 11-5-2001 as sub-section (2) of Section 28AB forbids levy for past period. Accordingly, we hold that the appellant is liable to pay interest on duty under Section 28AB from 11-5-2001 to the

date of payment of duty.”

34.5 I find that the importer has contested that assessment has become final, and no proceedings known to law are taken to set aside the said assessment or any order of reassessment was made by the proper officer. The orders of assessment were reviewed by the Commissioner under Section 129D of the Customs Act and therefore there should be no confiscation and penalties.

I find that this argument is not tenable. While examining provisions of Section 28, it can be seen that Section 28 has an exclusive provisions covering the aspect pertaining to non-levy, short levy and erroneous refund. There is no provision or requirement under the Customs Act, 1962 of review of an assessment order before raising demand under Section 28 of the Customs Act, 1962. For raising demand under Section 28 on grounds of short payment/short levy in final assessment etc., no review /appeal against final assessment is required. The demand of non-levy, short-levy and of recovery of erroneous refund under Section 28 of the Act is an independent provision. Provisions of Section 28 satisfy the principles of natural justice by making it mandatory for issuance of show cause notice and to allow the party to have a full hearing on the charges that would be made against them. The proceeding under Section 28 are of exclusive nature, inasmuch as, independent proceedings are held by issue of show cause notice by the Department by which it sets out the reason for claiming non-levy, short-levy relying on evidence. The importer gets full opportunity to know the charges leveled against them as well as the evidence on which the charges are leveled and in turn place their case with supporting evidence in defence.

34.6 The aforesaid issue is well settled by the higher judicial fora wherein it is held that Section 28 can be invoked for short levy or non levy of customs duty even if assessment order is not appealed under Section 129 of the Act. The Hon'ble High Court of Madras in the case of M/s. Venus Enterprise Vs CC, Chennai, reported as 2006 (199) ELT 405 (Mad.) and affirmed by the Hon'ble Supreme Court [2007 (209) ELT A61 (S.C.)], after considering the Apex Court's earlier judgment in the case of M/s. Priya Blue Ind [2004 (172) E.L.T. 145 (S.C.)] has held that in case of short levy, there is no lack of jurisdiction on the part of the adjudicating authority to issue show cause notice under Section 28 of the Act after clearance of the goods. Relevant Para 6 of the judgment reads as under:-

“6. With regard to question No. 1, the law is well settled that a show cause notice under the provisions of Section 28 of the Act for payment of customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance of the goods under Section 47 of the Act vide Union of India v. Jain Shudh Vanaspati Ltd. [1996 (86) E.L.T. 460 (S.C.)]. Therefore, as rightly held by the Tribunal, if the contention of the appellant's counsel that when the goods were already cleared, no demand notice can be issued under Section 28 of the Act is accepted, we will be rendering the words “where any duty has been short-levied” as found in Section 28(1) of the Act as unworkable and redundant, inasmuch as the jurisdiction of the authorities to issue

notice under Section 28 of the Act with respect to the duty, which has been short levied, would arise only in the case where the goods were already cleared. In view of the clear finding with regard to the mis-declaration and suppression of value, which led to the under-valuation and proposed short levy of duty, we do not see any lack of jurisdiction on the part of the adjudicating authority to issue notice under Section 28(1) of the Act.”

34.7 The Hon’ble CESTAT in the case of Rajesh Gandhi Vs CC(Import), Mumbai reported as 2019(366) ELT 529 (Tri-Mumbai), has held that demand can be raised without challenging the assessment under Section 17 of the Customs Act, 1962. The relevant Part of the order is reproduced below:-

6. Before we proceed to adjudge the legality and propriety of the confirmation of differential duty, the confiscation and the imposition of penalties, the preliminaries must be dealt with. These pertain to the permissibility for invoking proviso to Section 28 of Customs Act, 1962 without challenge to the assessment effected under Section 17 of Customs Act, 1962 before the goods were cleared from control of Customs Authorities and the extent of applicability of judicial precedent from the decisions cited by Learned Authorised Representative.

7. The Tribunal, in re Rahul Ramanbhai Patel, as pointed out by Learned Authorised Representative, besides examining the relevancy of statements to fasten the consequences of undervaluation, did also consider the first supra and followed earlier decisions to render the finding that -

‘6..... One of the questions of law framed by the Hon’ble High Court reads thus :-

‘Whether the Tribunal was right in holding that the order of assessment on which no appeal was preferred, can be reopened by issue of fresh show cause notice under Section 28A of Customs Act, in the light of the apex court’s decision reported in 2004 (172) E.L.T. 145 (S.C.) in the case of Priya Blue Industries Ltd. v. Commissioner of Customs?’

The Hon’ble High Court answered the above question in favour of the Revenue in paragraph 6 of its judgment, which is reproduced below :-

‘6. With regard to question No. 1, the law is well-settled that show cause notice under the provisions of Section 28 of the Act for payment of customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance of goods under Section 47 of the Act vide Union of India v. Jain Shudh Vanaspati Ltd. [1996 (86) E.L.T. 460 (S.C.)]. Therefore, as rightly held by the Tribunal, if the contention of the appellant’s counsel that when the goods were already cleared, no demand notice can be issued under Section 28(1) of the Act is accepted, we will be rendering the words “whether any duty has been short-levied” as found in Section 28(1) of the Act as unworkable and redundant, inasmuch as the jurisdiction of the authorities to issue notice under Section 28 of the Act with respect to the duty, which has been short-levied,

would arise only in the case where the goods were already cleared. In view of the clear finding with regard to the misdeclaration and suppression of value, which led to the evaluation and proposed short-levy of duty, we do not see any lack of jurisdiction on the part of the adjudicating authority to issue notice under Section 28(1) of the Act.'

7. We are told that the SLP filed against the above decision of the High Court was dismissed by the Apex Court [*Venus Enterprises v. Commissioner* - 2007 (209) E.L.T. A61 (S.C.)].

8. We also note that this Tribunal followed *Jain Shudh Vanaspati Ltd. (supra)* and *Venus Enterprises (supra)* in *Ford India Private Limited v. Commr. of Customs, Chennai* [2008 (228) E.L.T. 71 (Tri.-Chennai)]. On the other hand, in the cases of *Hitaishi Fine Kraft Indus Pvt. Ltd. (supra)* and *Shimnit Machine Tools & Equipment Ltd. (supra)*, the decision of the Supreme Court in *Jain Shudh Vanaspati (supra)* was not considered.

9. In the result, we reject the plea made by the Ld. Counsel that it was not open to the Department to reopen the assessment under Sec. 28 of the Customs Act.'

8. Though in a different context, the ratio of the decision of the Tribunal in disposing of the appeal of *Knowledge Infrastructure Systems Private Ltd. & Others v. Additional Director General, Directorate of Revenue Intelligence, Mumbai* [Final Order Nos. A/86617-86619/2018, dated 31st May, 2018] is that after the clearances of imported goods effected under Section 47 of Customs Act, 1962, subject as it is to satisfaction of the proper officer that the goods had discharged the appropriate duty liability and were not prohibited for import, subsequent discovery of non-eligibility for such clearance, on either of these two counts, deems such clearances to have been tentative, and rectifiable, under proceedings that invoke Section 28 and/or specific provisions of Section 111 of Customs Act, 1962, is unequivocally applicable here.

9. In the light of this consistent stand, demonstrated in judicial precedent reiterated across time and space, the claim of the appellant that the assessment of the impugned goods at the time of clearance precludes any remedy other than appeal is not acceptable.

34.8 I find that importer has contested that show cause notice was issued on 07.08.2017 demanding duty under Section 28 (1) of the Customs Act, 1962 for the import made on 23.07.2013 and 01.04.2014 to 31.03.2015 and prior to 14.05.2016, Section 28(1) of the Act prescribed time limit of one year from the relevant date viz. date on which goods were allowed to be cleared for home consumption and therefore demand is time barred.

I find that said argument is not true as the show cause notice was issued on 07.08.2017. As per Section 28 (7), in computing the period of two year referred to in clause (a) of sub section (1) or five years referred to in sub-section (4), the period during which there was any stay by an order of a Court or Tribunal in respect of payment of such duty or interest shall be excluded. Accordingly, the period up to

16/02/2016 was excluded from the period for computation of two years. I find that the DGFT on 31.10.2014 had suspended the 'Nominated Agency Certificate dated 05.05.2014 for the period 2014-2015. The importer had filed Writ Petition No. 9873 of 2014 before the Hon'ble Bombay High Court challenging that said suspension of Nominated Agency Certificate dated 05.05.2014. Hon'ble High Court vide Order dated 03.11.2014 had ordered that the *Petitioner's authorization and which is valid upto 2014-15 shall continue to be effective and operative till that date, but subject to the pending proceedings for cancellation initiated by the authority vide the show cause notice dated 14th October, 2014 and subject to the outcome thereof, the authorization or the nominated agency certificate to remain valid till the date stipulated therein.* Further, the said importer had filed another Writ Petition 10001 of 2014 seeking relief from the probable cancellation of Nominated Agency Certificate. The Hon'ble Court vide order dated 10.11.2014 without expressing any opinion ordered that *"in the event Respondent No. 3 (DGFT) passes an order adverse to the Petitioners, then the same shall not to be acted upon for a period of four weeks from the date of its communication to the Petitioners, so as to enable them to either pursue this Writ Petition or to adopt appropriate proceedings."* The said Show Cause Notice dated 14/10/2014 was adjudicated by Additional Director General of Foreign Trade vide Order-in-Original dated 14/01/2015. Further, in Writ Petition 10001 of 2014 filed by the Importer before the Hon'ble Bombay High Court, they contested that 'earlier protection granted by the court was not adhered to and **the Customs Authorities** were confused as to **whether the adverse order of the Additional Director General of Foreign Trade should be acted upon or they must abide Courts' protective order'**. The Relevant Para of Hon'ble High Court Order dated 09.02.2015 is re-produced as under:

5. ***In view thereof pending admission of this Writ Petition, we direct that the order passed styled as Order in Original, Annexure-UU of the paper book 14th January, 2015 and duly communicated to the petitioner, shall not be acted upon by the contesting respondent Nos. 1 and 3 – which include Union of India. The Customs Authorities, therefore, shall abide by this order and the stay granted in favour of the petitioners pending admissions. However, it is clarified that this order and protection is without prejudice to the right and contentions of both sides.***

Hon'ble Bombay High Court vide Order dated 23.12.2015 dismissed the Writ Petition No. 10001/2014 filed by the importer. However, the order was stayed for the eight weeks. Relevant Para of said Order dated 23.12.2015 is re-produced as under:

"106. At this stage, Mr. Shah appearing for the petitioners makes a request that the ad-interim relief granted on 10.11.2014, be continued for a period of two months so as to enable the petitioners to challenge this order in a higher court. This request is opposed by Mr. Jetly appearing for the respondents.

107. Having considered his request and hearing the parties on this point we are of the view that interest of justice would be served if the order passed on 10th November, 2014

is continued for a period of eight weeks from today, but without prejudice to the rights and contentions of the parties.”

Thus as the Order of Hon'ble High Court was issued on 23.12.2015 and considering the eight weeks therefrom, period upto 16/02/2016 was excluded by virtue of Section 28 (7) for issuance of Show Cause Notice under Section 28 (1) of the Customs Act, 1962. Further, at the time of issuance of show cause notice, relevant period was two years from the relevant date and accordingly Show Cause Notice issued for recovery of duty for the period from 01.04.2014 to 31.03.2015 on 07.08.2017 under Section 28(1) of the Customs Act, 1962 is well within the time line prescribed by the statute.

In view of the above discussion, I find that that Customs duty short paid/ not paid on the 4400 kg of gold issued by the importer to jewellers for export obligation amounting to Rs 1,11,51,84,447/- (BCD- 1,08,27,03,347+ Education Cess Rs 2,16,54,067+ SHE Cess Rs 1,08,27,033), as detailed in Annexure A to SCN, is required to be recovered under Section 28(1) of the Customs Act, 1962 alongwith interest under Section 28 AA of the Customs Act, 1962.

35 Whether, importer M/s. Riddhi Siddhi Bullion is liable for penalty under Section 112 (a) of the Customs Act, 1962?

35.1 As discussed herein above, that importer has contravened the RBI Guidelines, FTP Provisions and Customs Regulation and thereby rendered the goods liable for confiscation under Section 111 (d) and 111 (o) of the Customs Act, 1962. As discussed above that as per Para No 3 of RBI Circular No. 15 dated 22.07.2023 'Premier and Star Trading Houses' were permitted to import Gold exclusively for the purpose of exports only. However, the said importer, imported 100 Kg of gold valued at Rs 24,81,44,000 and cleared vide Bill of Entry for Home Consumption No 2784490 dated 23.7.2013. Further, on 31.10.2014, the licensing authority had suspended M/s RSBL's Nominated Agency Certificate dated 05.05.2014 for the period 2014-2015. However, the fact of suspension was suppressed from Customs and during the suspension period, M/s RSBL removed a quantity of 600 Kg of Gold by filing ex-bond Bill of Entry No 7243541 dated 01.11.2014 at Air Cargo Complex, Ahmedabad, which was imported vide Warehouse into-Bond Bill of Entry No 7137639 dated 21/10/2014. Consequently, the DGFT had cancelled their Nominated Agency Certificate dated 05.05.2014 for the period 2014-2015 and therefore, entire import made on the strength of 'Nominated Agency Certificate' was void and there was contravention of the Notification No. 57/2000-Customs dated 08.05.2000, as amended vide Notification No. 106/2009-Customs dated 14-9-2009 and Circular No. 34/2013-Customs dated 10.06.2013 for procedure and guidelines for import of Gold and Gold Dore Bars issued by the CBEC and **Policy circular No. 77 (RE-2008)/2004-09 dated 31st March, 2009, as amended from time to time, issued by Director General of Foreign Trade.** In view of the above contravention, the goods is held liable for confiscation

under Section 111 (d) and 111(o) of the Customs Act, 1962 and for such act and omission on the part of importer make them liable for penalty under Section 112 (a) (i) of the Customs Act, 1962.

35.2 Further, I find that there is no need to reiterate that contravention on the part of the importer was upheld by the DGFT and it travelled upto the Hon'ble Supreme Court and it is proved that importer has contravened the said various provision laid down under DGFT, RBI and Customs Act, 1962. Once the contravention is proved and goods held liable for confiscation under Section 111 (d) and 111 (o) of the Customs Act, 1962, no *mens rea* is required for imposition of the penalty. To fortify this stand, I rely on the ratio of decision of Hon'ble Madras High Court in the case of Commissioner of Customs (exports), Chennai-I Vs. Bansal Industries as reported in 2007 (207) E.L.T. 346 (Mad.). Relevant Para is re-produced as under:

"7. It is oft-repeatedly held that mens rea is not an essential ingredient for contravention of the provisions of a civil law. The Apex Court recently in Chairman, SEBI v. Shriram Mutual Fund [(2006) 5 SCC 361] held as under :-

"Mens rea is not an essential ingredient for contravention of the provisions of a civil Act. Unless the language of the statute indicates the need to establish the element of mens rea, it is generally sufficient to prove that a default in complying with the statute has occurred and it is wholly unnecessary to ascertain whether such a violation was intentional or not. The breach of a civil obligation which attracts a penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not."

35.3 Further, Hon'ble Gujarat High Court in the case of Synergy Fertilchem Pvt. Ltd. v. State of Gujarat — 2020 (33) G.S.T.L. 513 (Guj.) has held as under:

"135. *In State of Madhya Pradesh v. Narain Singh and Ors., (1983) 3 SCC 596, the Hon'ble Supreme Court considered as case where two trucks carrying fertilizers were intercepted by the Madhya Pradesh Authorities under the Essential Commodities Act and the accused did not deny the transport of fertilizer bags or interception of its lorries or seizure of fertilizer bags and the only defence taken therein was that they were not aware of the contents of the documents seized from them and they were not engaged in exporting the fertilizer bags from Madhya Pradesh to Maharashtra in conscious violation of provisions of the Fertilizer Movement Control Order, 1973 read with Sections 3 and 7 of the Essential Commodities Act, 1955. The Hon'ble Supreme Court, reversing the order of acquittal, held that mens rea was not at all attracted as the provisions of Section 7(1) of the Essential Commodities Act required to be interpreted in true perspective and it provided that if any person contravenes, whether knowingly, intentionally or otherwise any order made under Section 3, he will be punished under the F.M.C.O. **The Court held that the element of mens rea in export of fertilizer bags without a valid permit was, therefore, not a necessary ingredient for convicting person for contravention of the order made under Section 3 of the F.M.C.O. if the factum of export or attempt to export is proved by the evidence adduced. This judgment***

is an authority to show that mens rea may be an essential ingredient in a case of offence for punishing a person, but legislature is competent to provide for punishment including the imprisonment even in a criminal case, excluding the scope or attraction of mens rea.

143. *Confiscation proceeding is a quasi judicial proceeding and not a criminal proceeding. Ordinarily, proof beyond reasonable doubt and proof of mens rea are foreign to the scope of the confiscation proceeding. However, the language of the statute should be read closely. Sometimes, the language of the statute may indicate the need to establish the element of mens rea. It is true that mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities. However, applying the dictum of the Supreme Court as laid in Tamil Nadu Housing Board (supra), the provisions of Section 130 of the Act is made more stringent by use of the word "intent". When the law requires intention to evade payment of duty, then it is not mere failure to pay duty. It must be something more. This something more should not be construed as obligatory on the part of the Revenue to establish or prove the necessary mens rea for the purpose of confiscation and penalty."*

36. Whether M/s. International Cargo Services, Customs Broker, 403/404/405, "Himadri", Old High Court Lane, Ahmedabad-380009 is liable for penalty under Section 112 (a) of the Customs Act, 1962 and penalty under Regulation 22 of the Custom Brokers Licensing Regulations, 2013?

36.1 I find that said Customs Broker had filed Bill of Entry No 2784490 dated 23.07.2013 for clearance of 100 Kg of Gold valued at Rs 24,81,44,000 for home consumption on behalf of their importer. The RBI had issued Circular No 15 of 2013 dated 22.7.2013 and according to para 3 of the said Circular, importer was *permitted to import Gold exclusively for the purpose of exports only*. There is no dispute that the importer was allowed to import subject to the compliance of RBI Guidelines, FTP Provisions and Customs Regulation. It was the duty of Customs Broker that they should not have filed the Bill of Entry for Home Consumption. The said Customs broker failed to bring to the notice of the Deputy Commissioner regarding non compliance and further when the query in this regard was raised, failed to reply the query and instead of clarifying the correct legal position that the Gold could not be removed for home consumption, they made a remark "reply submitted" in the Indian Customs EDI System (ICES) whereas no such reply was recorded either in the system or in the file.

36.2 I find that Shri Kartik Pancholi, one of the Partner of Customs Broker Firm M/s. International Cargo Services, in his statement dated 08/02/2016 has stated that a similar transaction had also taken place at Air Cargo Complex, Hyderabad but failed to comply as to how their importer was eligible for clearance of gold for consumption by paying duty. Mere mention that as per RBI, no separate instruction issued for operation of the said Circular No 15 of 2013 dated 22.7.2013 by the Customs authorities /DGFT does not make eligible for import. I find it worth to re-produce

what was mentioned in said Circular No. 15 for its operationalization which is reproduced as under:

“5. Government of India will be issuing separate instructions, if any, to the Customs authorities/DGFT to operationalize and monitor these import restrictions.

6. The above instructions will come into force with immediate effect. Authorised dealers may please bring the contents of this Circular to the notice of their constituents and customers concerned.”

I find that wording of both the para 5 & 6 are plain and unambiguous. Para 5 clearly says that *Government of India will be issuing separate instructions, if any.* Thus, the wording ‘if any’ does not permit the importer to not comply with the said Circular. Further, Para 6 clearly says that the instruction will come into force with immediate effect. Therefore, Customs Broker cannot take shelter that Customs Authorities had not issued any separate instruction in this regard. I find that by filing the Bill of Entry No 2784490 dated 23.07.2013 in contravention of the RBI Circular No. 15/22.07.2023 rendered the 100Kgs of Gold imported under the said Bill of Entry dated 23.07.2013 liable for confiscation under Section 111 (d) and (o) of the Customs Act, 1962 and therefore, such act/omission on the part of Customs Broker made them liable for penalty under Section 112 (a) (i) of the Customs Act, 1962.

36.3 I find that the Customs Broker had filed the Bills of Entry during the period 2014-15 and there is no dispute that even after the suspension of the ‘Nominated Agency Certificate’ by the DGFT, the importer continued to import Gold and availed 80:20 Scheme for gold import. It was the obligation on the part of the Customs Broker to check whether the ‘Nominated Agency Certificate’ was valid at the time of importation and filing of Bill of Entry. The said Custom Broker’s failure for due diligence for the same have rendered the goods liable for confiscation under Section 111 (d) & 111 (o) of the Customs Act, 1962. It is settled law that Each Bill of entry being separate assessment, it was the duty of the Broker to check whether the ‘Nominated Agency Certificate’ was valid at the time of importation. Hon’ble Ahmedabad Tribunal in the case of *Stonex India Pvt. Ltd. Vs. Commissioner of Customs, Mundra Kutch* reported in 2025 (391) ELT 652 (Tri.Ahmd) has held that Each Bill of entry is a separate assessment. In view of the said discussion, I find that Customs Broker M/s. International Cargo Services, is liable for penalty under Section 112(a) (i) of the Customs Act, 1962.

36.4 I find that Regulation 11 (d) of Customs Broker Licensing Regulation, 2013 says that "A Customs Broker shall advise his client to comply with the provisions of the Act and in case of noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be". There is no dispute that said customs broker failed to advise their importer as well to bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs' regarding the applicability of RBI Circular No. 15/22.07.2013 and filed the Bill of Entry No 2784490 dated 23.07.2013 for clearance of 100Kgs of Gold in home consumption. Regulation 22 of Customs Broker Licensing Regulation, 2013 says "A Customs Broker, who contravenes any provisions of these regulations or who fails to comply with any provision of these regulations shall be liable to a penalty which may extend to fifty thousand rupees". I find that said Customs Broker contravened the provision of 11(d) of said Regulation, 2013 and thereby rendered itself liable for penalty under Regulation 22 of the Custom Brokers Licensing Regulations, 2013. I find that said Customs Broker has relied on certain decision, the ratio of which are not applicable as set of facts are not identical to present case.

37. In view of my findings in the paras *supra*, I pass the following order:

:: Order::

37.1 I hold 100 Kg of gold valued at Rs. 24,81,44,000/- (Rupees Twenty Four Crore, Eighty One Lakh and Forty-Four Thousand only) imported and cleared vide Bill of Entry for Home Consumption No 2784490 dated 23.7.2013 by M/s Riddhi Siddhi, liable to confiscation under Section 111 (d) & 111(o) of the Customs Act, 1962. However, I give them the option to redeem the goods on payment of Fine of Rs.2,48,00,000/- (Rupees Two Crore and Forty Eight Lakh only) under Section 125 of the Customs Act, 1962.

37.2 I hold 22,000 kg of gold valued at Rs 54,14,56,00,000/- (Rupees Five Thousand Four Hundred Fourteen Crore and Fifty Six Lakh only) and 73217.409 kg of silver valued at Rs 2,48,21,14,391/- (Rupees Two Hundred Forty Eight Crore, Twenty One Lakh, Fourteen Thousand, Three Hundred and Ninety One only) imported for the period from 01.04.2014 to 31.3.2015 by M/s Riddhi Siddhi Bullion, 109, Shaikh Memon Street, O.No 27, 2nd floor, Shahi Galli, Zaveri Bazar, Mumbai – 400002, liable to confiscation under Section 111 (d) & 111(o) of the Customs Act, 1962. However, I give them the option to redeem the goods (Gold & Silver) on payment of Fine of Rs. 541,00,00,000/- (Rupees Five Hundred, Forty One Crore only) under Section 125 of the Customs Act, 1962.

37.3 I confirm the demand of short paid/ not paid amount of Customs duty 1,11,51,84,447 (BCD- Rs.1,08,27,03,347/-+ Education Cess Rs. 2,16,54,067/-+ SHE Cess Rs. 1,08,27,033/-) (Rupees One Hundred-Eleven Crore, Fifty-One Lakh, Eighty –Four Thousand, Four Hundred and Forty-Seven only) (including BCD, Ed. Cess & SHE Cess), short paid/ not paid on the 4400 kg of gold issued by the importer to

jewellers for export obligation as detailed in Annexure-A to the Show Cause Notice and order recovery of the same in terms of the provisions of Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962.

37.4 I impose a penalty of Rs. 100,00,00,000/- (Rupees One Hundred Crore only) on M/s Riddhi Siddhi Bullion, 109, Shaikh Memon Street, O.No 27, 2nd floor, Shahi Galli, Zaveri Bazar, Mumbai – 400002 under Section 112(a)(i) of the Customs Act, 1962.

37.5 I impose a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on M/s International Cargo Services, Customs Broker, having their office at 403/404/405, "Himadri", Old High Court Lane, Ahmedabad-380009 under Section 112(a)(i) of the Customs Act, 1962

37.6 I impose a penalty of Rs.50,000/- (Rupees Fifty Thousand only) on M/s International Cargo Services, Customs Broker, having their office at 403/404/405, "Himadri", Old High Court Lane, Ahmedabad-380009 under Regulation 22 of the Custom Brokers Licensing Regulations, 2013.

38. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India.

39. The Show Cause Notice No. VIII/10-05/Pr. Commr/O & A/2017 dated 07.08.2017 is disposed off in above terms.

SK
13.01.2026

(SHIV KUMAR SHARMA)
PRINCIPAL COMMISSIONER

F. No: VIII/10-05/Pr. Commr/O & A/2017

Date:13.01.2026

DIN: 20260171MN0000315017

BY SPEED POST/E-MAIL

To

1. M/s Riddi Siddi Bullions Ltd having their registered office at 109, Shaikh Memon Street, O.No 27, 2nd floor, Shahi Galli, Zaveri Bazar, Mumbai – 400002.

2. M/s International Cargo Services, Customs Broker, 403/404/405, "Himadri", Old High Court Lane, Ahmedabad-380009.

Copy to:

1. The Chief Commissioner, Customs, Gujarat Zone, Ahmedabad
2. The Additional Commissioner, Customs, TRC, Ahmedabad.
3. The Dy./Asstt. Commr., Customs, Air Cargo Complex, Ahmedabad
4. The System In charge, Customs HQ, Ahmedabad for uploading on official web-site.
5. Guard File.