

F. No. VIII/10-86/ DRI-AZU /O&A/HQ/2024-25
OIO No. 215/ADC/SRV/O&A/2024-25



प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

“सीमाशुल्क भवन ,”पहली मंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद – 380 009.

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PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-86/ DRI-AZU /O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-86/ DRI-AZU /O&A/HQ/2024-25 Dated 04.06.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	215/ADC/SRV/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	:	31.12.2024
E	जारी करनेकी तारीख/ Date of Issue	:	31.12.2024
F	द्वारापारित/ Passed By	:	SHREE RAM VISHNOI, ADDITIONAL COMMISSIONER, CUSTOMS AHMEDABAD.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	1)M/S. DEDHIA JEWELLERS, 19, SANGIT SAGAR BUILDING, SHOP NO. 3&4, LAXMINARAYAN LANE, MATUNGA (C.R.), MUMBAI 2)SHRI KUNAL DEDHIA, C/O OF M/S. DEDHIA JEWELLERS 19, SANGIT SAGAR BUILDING, SHOP NO. 3&4, LAXMINARAYAN LANE, MATUNGA (C.R.), MUMBAI 3)M/S. TRIVENI JEWELLERS, 21/5, JADHAVJI MANSION, 3RD FOFAL WADI, BHULESHWAR ROAD, MUMBAI- 400002 4)M/S. PATEL RAJESHKUMAR RAMESHKUMAR & COMPANY, 20, ZAVERI CHAMBER, RATANPOL, AHMEDABAD, GUJARAT 5)SHRI KARAMSHIBHAI B. DESAI C/O M/S. PATEL RAJESHKUMAR RAMESHKUMAR & COMPANY, 20, ZAVERI CHAMBER, RATANPOL, AHMEDABAD, GUJARAT
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क)अपील(, चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		

(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच) 5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।

BRIEF FACTS OF THE CASE

An intelligence was gathered by Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (herein after referred as ‘DRI’) that persons belonging to few Angadia firms coming from Mumbai, on board Saurashtra Mail train (No. 22945) may carry smuggled gold and other contraband/ high valued goods through Ahmedabad Kalupur Railway Station. Further, these persons would board the cars/vehicles in the “Pick-up’ cars outside the railway station.

2. Acting on the said intelligence, the officers from DRI, Ahmedabad intercepted 15 passengers who were approaching the vehicles at around 04:50 hrs on 07.06.2023. The said passengers were carrying different bags and they informed that they were working for different Angadiya firms. Thereafter, taking into consideration the quantum of baggages and due to reasons of safety, the officers with the consent of the passengers took them to the DRI, Ahmedabad Zonal Unit office situated at Unit No. 15, Magnet Corporate Park, Near Sola Flyover, Behind Intas Corporate Building, Thaltej, Ahmedabad, for the examination of the baggage. The proceedings were recorded in the presence of the independent panchas under Panchnama dated 07.06.2023.

3. Accordingly, the examination of the baggage of the passengers was done in separate rooms of the DRI, Ahmedabad office under respective Panchnamas dated 07/08.06.2023. During examination of one passenger, who identified himself as Shri Karamshibhai B Desai, of M/s Patel Rajeshkumar Rameshkumar Company, the officers found that the bags contain various parcels. The officers opened each and every parcel contained in the bags and prepared inventory of all the goods found during the examination of baggages.

4. On completion of the examination of the goods, the officers found that certain parcels contained gold which appeared to be of foreign origin. Further, the passenger could not produce any documents showing legitimate import of the said goods and these goods appears to be of the nature of smuggled goods. The details of said gold, as identified vide the markings on the gold and labels of the parcels are as per Table-1 below:-

Table-1

Sr. No.		Item description	Sender Name	Receiver Name	Quantity	Weight (in grams)	Insurance value (value of goods in Rs.)	Markings on the gold
1.	(i)	Gold bars (foreign origin)	Dedhiya Jewellers/ Ritesh Bhai, Mumbai	Shri Shyamkumar Mandora	2 bars	200	2953742	UBS Switzerland (Melter SAR) S.no. FA0016, ARGOR Switzerland no. YF9362 (scratches on the SL No.)
	(ii)	Gold bars (Indian)			2bars	60		One bar is 50 grams and another is 10 grams
	(iii)	Cut piece of Gold bar			3 pieces + dust	224.22		995Kt gold
2.	(i)	Gold bars (Indian)	Tusharbhai , Surat	Bhakti Gems and Jewellers Ltd., Ahmedabad	2 bars	200	1240000	RTR-100G Fine Gold 9990 Jay Renuka Refinery.
3.	(i)	Gold bars (foreign origin)	Jai Maata ji- BharatBhai , Mumbai	Praphulbhai, Manekchowk, Ahmedabad	3 bars	300	Not specified	No bill (ARG Bar No.XX0032, XX0092, XX0098)
	(ii)	Gold bars (Indian)			2 Bars	200	Not specified	No bill (MMTC PAMP Bar NO. 6262623 and 6136325)

* The Indian origin gold was also detained due to the non-availability of any accompanying document viz. invoice etc. with the passenger.

5. On the reasonable belief that these goods are liable for confiscation under the provisions of the Customs Act, 1962, the officers placed the said goods under detention for further investigation while releasing the remaining goods to Shri Karamshibhai B Desai, of M/s Patel Rajeshkumar Rameshkumar Company under Panchnama dated 20.06.2023.

6. STATEMENT OF SHRI MAHESHKUMAR S PATEL, PARTNER OF M/s. PATEL RAJESHKUMAR RAMESHKUMAR & COMPANY RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 14.06.2023-

6.1 Shri Maheshkumar S. Patel, Partner, M/s. Patel Rajeshkumar Rameshkumar & Company voluntarily presented himself on 14.06.2023 before the Senior Intelligence Officer, DRI, Ahmedabad Zonal Unit to tender statement. His statement was thus recorded on 14.06.2023, wherein *interalia* he stated that:-

- he is partner of the firm M/s. Patel Rajeshkumar Rameshkumar & Compnay, which is engaged in work related to courier of various goods and that they receive goods in the form of parcels at one location and deliver the same to the location as specified by the sender of the parcel. He stated that they pay GST@18% as per the CGST rules and regulations.
- Their firm, M/s Patel Rajeshkumar Rameshkumar & Company is specialized in courier services of precious and valuable goods, documents, Gold and Jewellery etc. He further stated that their company provide the above business services in Ahmedabad, Mumbai, Vadodara, Surat and Rajkot.

- He stated that their company branch at Ahmedabad deals with outbound and inbound courier/forwarding services in respect of precious and valuable goods, documents, Gold and Jewellery etc.
- On further being asked regarding payment of freight for parcels, he stated that in most of the transactions of parcels, the freight is paid by sender to their company where the parcels is booked and in some case the freight is paid by the receiver.
- As regards procedure of booking and dispatch of parcels, he stated that their company's pick up vehicles generally go to the customers' office to collect the goods in majority of cases. Further, in their dealing of precious parcels, while collecting goods, the parcels are sealed by the sender of the parcel and they do not know the exact description of goods. He stated that they believe in the description of goods as mentioned on the parcel by the sender and collect freight on the basis of value declared by the sender of the parcel.
- As regards the documents of KYC collected from the sender and recipient he stated that in most of cases they pick up the parcels from the office or business premises of the customer and also deliver the parcel at the address and details provided by the sender. He further stated that the details like name and contact number are provided by the sender of the parcel and almost in all cases same is mentioned on the parcel. On being asked he further stated that they insist to take copy of invoice or delivery challan from the senders of the parcel to which majority of the customers informs them that the same is attached inside the parcel or sometimes outside the parcel. Further, with regard to insurance of goods, he stated that they book goods on transit insurance basis however, in some of the cases, where customer has got insurance policy for transit, they are liable for losses in case of any damage, theft etc.
- Regarding verification of value of cargo while collection of goods, he stated that they receive goods on said to contain basis and act on the basis of invoice or the description provided by the customers. On being asked about procedure of delivery of the parcels, he stated that the parcels are delivered by us to the customers at their premises and sometimes in case of urgency the customer collects the parcel from our branch.
- As regards, the type of goods they may transport in the parcels he stated that any legitimate goods with proper invoice can be transported but they mainly accepts parcels related to precious and valuable goods, documents, Gold and Jewellery.
- On being specifically asked whether they can accept foreign currency, Foreign origin gold he stated that they cannot accept the parcels related to foreign currency, Foreign origin gold in bars or any other form, but sometimes it may be possible that the customer may mis declare the correct description and nature of goods in the parcel.
- He was shown the panchnama dated 07/08.06.2023 drawn at the premises of Office of Directorate of Revenue Intelligence, Zonal Unit Ahmedabad which recorded the examination of their goods/ parcels. He reviewed the panchnama

and signed the last page, acknowledging that they had seen it and agreed with its contents. Furthermore, the document mentions that Annexure –D, attached to the said panchnama, details of detainment of some of their parcels is also perused and agreed with its contents as the same had been detained under with a reasonable belief that these goods are liable for confiscation under the provisions of the Customs Act, 1962.

- He submitted certain documents in respect of the gold detained vide Panchnama dated 07.06.2023 as per Table-2 below:-

Table-2

Sr. No.		Item Description	Details of Sender	Details of intendent recipient	Documents submitted
1.	(i)	Gold bars (foreign origin) 2 Bars of 200 grams weight	Ritesh Bhai (M/s. Dedhiya Jewellers)	Shri Shyamkumar Mandora, Ahmedabad	Copy of Invoice issued by M/s. Dedhia Jewellers.
	(ii)	2 Gold bars (Indian Origin) of 60 grams			Copy of invoice issued by M/s. South Indian Jewellers to M/s Dedhia Jewellers.
	(iii)	3 pieces plus dust Cut Piece of Gold Bars			Copy of invoice issued by M/s. South Indian Jewellers to M/s Dedhia Jewellers.
2.	(i)	2 Gold bars (Indian origin) of 200 grams	Tushar Bhai(M/s. Kantilal & Bros Jewellers)	M/s. Bhakti Gems and Jewellers Ltd., Ahmedabad	Copy of invoice issued by M/s. Kantilal & Bros Jewellers to M/s Bhakti Gems and Jewellery Ltd.
3.	(i)	3 gold bars (foreign origin) of 300 grams	Bharat Bhai(M/s. Triveni Jewellers)	Praphulbhai, Manekchowk, Ahmedabad (M/s. Virti Impex)	Copy of invoice issued by M/s. Triveni Jewellers to M/s Virti Impex.
	(ii)	2 gold bars of Indian origin of 200 grams			Copy of invoice issued by M/s. Triveni Jewellers to M/s Virti Impex.

6.2 On being asked to produce documents related to import of gold bars as mentioned at Sr. No. 1 and 3 of the above table, Shri Maheshkumar S. Patel, stated that the customers have submitted copy of invoice issued by M/s. Dedhia Jewellers and M/s. Triveni Jewellers and he informed that he is having only these documents in relation to gold bars as mentioned at Sr. No. 1 and 3 of the above table-2.

6.3 On being asked as to what kind of goods can be transported by them, he stated that any legitimate goods with proper invoice can be transported but they mainly accepts parcels related to precious and valuable goods, documents, Gold and Jewellery. He admitted that they cannot accept the parcels related to foreign currency, foreign origin gold in bars or any other form.

RELEASE OF THE INDIAN ORIGIN GOLD

7. M/s. Patel Rajeshkumar Rameshkumar & Company submitted certain documents as detailed at para 6.1 above pertaining to their detained gold indicating the genuine procurement of the gold detained by DRI under Panchnama dated 07/08.06.2023. Accordingly, the representative of the said Aangadiya firm, M/s. Patel Rajeshkumar Rameshkumar & Company was called to the DRI office and the Indian Origin gold, as mentioned at Sr. No. 1(ii), 1(iii), 2(i) and 3(ii) in the table mentioned in the para 6.1 above, was released to the Aangadiya firms while detaining the foreign

origin gold for further investigation as mentioned below. The proceedings thereof were recorded under Panchnama dated 20.06.2023 in the presence of the independent panchas as per Table-3 below:-

Table-3

Sr. No.	Item Description	Details of Sender	Details of intended recipient
1.	Gold bars (foreign origin) 2 Bars of 200 grams weight	Ritesh Bhai (M/s. Dedhiya Jewellers)	Shri Shyamkumar Mandora, Ahmedabad
2.	3 gold bars (foreign origin) of 300 grams	Bharat Bhai (M/s. Triveni Jewellers)	Praphulbhai, Manekchowk, Ahmedabad (M/s. Virti Impex)

8. STATEMENT OF SHRI KUNAL DEDHIA, PROPRIETOR OF M/s. DEDHIA JEWELLERS, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 on 18.07.2023-

8.1 Summons dated 07.07.2023 under issued to M/s. Dedhia Jewellers and accordingly a voluntary statement of Shri Kunal Dedhia, Employee of M/s. Dedhia Jewellers was recorded on 18.07.2023. On being asked about his work profile in the firm, he stated that he is handling all the day to day work, work related to sale and purchase of gold jewellery, accounts etc. He also produced authority letter from Shri Javerilal, Popatlal Dedhia, owner of M/s. Dedhia Jewellers that any act, plead or submission made by Shri Kunal J. Dedhia on behalf of him shall be bound and liable to him as well as to M/s. Dedhia Jewellers.

8.2 He was shown the panchnama dated 07/08.06.2023 and panchnama dated 20.06.2023 drawn at the premises of O/o Directorate of Revenue Intelligence, wherein the parcels belonging to M/s. Dedhia Jewellers was detained by DRI which recorded the examination of their goods/parcels belongingto M/s. Dedhia Jewellers. He perused, reviewed the panchnamas and signed the last page, acknowledging that he had seen it and agreed with its contents. Furthermore, the document mentions that Annexure attached to the said panchnama, details of detainment of their parcels is also perused and agreed with its contents as the same had been detained under with a reasonable belief that these goods are liable for confiscation under the provisions of the Customs Act, 1962.

8.3 Vide said statement, Shri Kunal Dedhia was specifically asked about the detained foreign origin Gold Bar having total weight of 200 grams, he stated that the two gold bars, weighing 200 grams are of foreign origin and the same were purchased by them from one of their customers, Shri Gopi K. Shah. On being asked about the mode of purchase of foreign origin gold, he stated that Shri Gopi K. Shah visited their showroom for the sale of two gold bars having total weight of 200 grams and in exchange bought jewellery from their showroom. The difference in amount was paid by Shri Gopi K. Shah through his credit card. Shri Kunal Dedhia stated that he did not verify whether the gold bars were of foreign origin. On being asked about the import documents for the

said foreign origin gold bars, he stated that they were not given any import documents for the import of the said gold by the customer and also, they are not in possession of any import documents. He further stated that in this matter, their customer Shri Gopi K. Shah is also not having documents related to import, therefore, it will not be possible for them to produce documents related to the import of the said gold bars. The relevant set of invoices in this matter, i.e. purchase URD invoice no. 9/23-24 dated 04.06.2023 issued by Shri Gopi K. Shah in the name of M/s. Dedhia Jewellers for 270 grams gold, along with the invoices issued by M/s. Dedhia Jewellers for the sale of gold jewellery, in exchange, to Shri Gopi K. Shah and credit card payment slip for the balance payment made by Shri Gopi K. Shah.

STATEMENT OF SHRI BHARAT VASANTLAL MANDALIA, PROPRIETOR OF M/s. TRIVENI JEWELLERS (SENDER), RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 on 18.07.2023-

9. Summons dated 07.07.2023 was issued to M/s Triveni Jewellers and accordingly statement of Shri Bharat Vasantlal Mandalia, Proprietor of M/s. Triveni Jewellers was recorded under Section 108 of Customs Act, 1962 on 18.07.2023. On being asked about his work profile in the firm, he stated that he is handling all the day to day work, work related to sale and purchase of gold jewellery, accounts etc.

9.1 During the statement, Shri Bharat Vasantlal Mandalia interalia stated that the three gold bars, weighing 300 grams are of foreign origin and the same were purchased by him from various dealers namely M/s. Auric Bullion and Jewellers, M/s. All India Bullion and M/s. Vardhaman Enterprises. On being asked about the import documents for the foreign origin gold, he stated that they are not in possession of any import documents with respect to the detained gold of foreign origin. He admitted his mistake of not verifying the said foreign origin Gold Bars. He admitted that he would not be able to produce the import documents for the import of foreign origin 3 gold bars weighing 300 grams.

9.2 Further, he admitted that an employee of his firm had handed over the parcel to M/s. Patel Rajeshkumar Rameshkumar Compaany on 06.06.2023 to get it delivered to M/s. Virti Impex through them.

9.3 On being asked about the payment received from the intended recipient-M/s. Virti Impex, he stated that M/s. Virti Impex had told them to make payment within 2-3 days and on their request, they were to supply the said gold to M/s. Virti Impex without advance payment.

VALUATION OF DETAINED GOODS-

10. Shri Kartikey Vasantrai Soni, Gold Assayer, examined the detained gold in presence of independent panchas and Shri Maheshkumar S Patel under panchnama dated 11.09.2023 drawn at DRI office situated at Unit No. 15, Magnet Corporate Park, Near Sola Flyover, Behind Intas Corporate Building, Thaltej, Ahmedabad. Shri Kartikey

Vasantrai Soni, Gold Assayer certified the purity of Gold, weight, rate of gold vide his valuation report dated 18.09.2023. As per the valuation report, the details of the detained gold are as per Table-4 below:

Table-4

Sr. No.	Sender Name	Intended Recipient's Name	Weight (g)	Purity	Marking	Indian/ Imported Marking	Rate Per Gram	Value
1	M/s. Dedhiya Jewellers, Mumbai	Shri Shyamkumar Mandora	100.00	999.0	UBS	Imported	6050	6,05,000
			100.00	999.0	Argor	Imported	6050	6,05,000
2	M/s. Triveni Jewellers, Mumbai	M/s. Virti Impex, Ahmedabad	300.00	999.0	Argor Heraeus SA	Imported	6050	18,15,000
From visual inspection of the gold bars, it can be ascertained they are of foreign origin.								

11. STATEMENT OF SHRI PRATIK SHAH, PROPRIETOR OF M/s. VIRTİ IMPEX RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 09.10.2023-

11.1 Summons dated 25.09.2023 was issued to M/s Virti Impex, 2219/2, Manekchowk, Ahmedabad, the intended recipient of the gold bars sent by M/s. Triveni Jewellers, Mumbai and accordingly statement of Shri Pratik Shah, Proprietor of M/s. Virti Impex, 2219/2, Manekchowk, Ahmedabad was recorded under Section 108 of Customs Act, 1962 on 09.10.2023. He was shown following documents:-

- (i) Panchnama dated 07/08.06.2023 and panchnama dated 20.06.2023 drawn at the premises of Office of Directorate of Revenue Intelligence, Zonal Unit Ahmedabda vide which the examination of goods/ parcels intercepted from Angadiya firm- M/s. Patel Rajeshjuar Rameshkumar & Company was recorded. He perused the same along with its Annexures attached to the said panchnama and in token of perusal and agreement with the contents of the said panchnama, he put his dated signature on the last page of the panchnama dated 07/08.06.2023 and 20.06.2023.
- (ii) Panchnama dated 11.09.2023 vide which the examination of the detained gold was done by Govt. Approved Valuer. He perused the said panchnama and in token of perusal of the same, he put his dated signature on the same.
- (iii) Valuation report dated 18.09.2023. He perused the said valuation report dated 18.09.2023 and noticed that 300 grams gold bars pertaining to M/s.Triveni Jewellers and mentioned as Parcel No. 3 are of foreign origin.
- (iv) Statement dated 18.07.2023 of Shri Bharat Vasantlal Mandalia of M/s. Triveni Jewellers, Mumbai. He perusaed the said statement dated 18.07.2023 and in agreement with same, put his dated signature on the last page of the staaement.

11.2 Further on being asked about the detained parcels he stated that he had given order of 500 gm, 999 purity gold to M/s. Triveni Jewellers, Mumbai via telephone. Further, he submitted an invoice no. SG-23019 dated dated 06.06.2023 issued by M/s. Triveni Jewellers, Mumabi to M/s. Virti Impex for the same order. He admitted that the invoice was received by him on 07.08.2023 via whatsapp. On being asked about the mode of deliver, he stated that he was informed over phone on 06.06.2023 by Shri Bharat Mandalia of M/s. Triveni Jewellers that the said gold bars were handed over by M/s. Triveni Jewellers to M/s. Rajeshkumar RAmeshkumar Company –Angadiya firm to be delivered to them.

11.3 He further stated that he had not received the said consignment. He stated that M/s. Triveni Jewellers also issued a credit note No. CG-1 dated 05.09.2023 for 300gm gold to M/s. Virti Impex. On being asked about the ownership of the gold of 300 grams of foreign origin, he stated that they are not owing the ownership of the gold of 300 grams for which the invoice was issued in their firm's name. He further stated that the ownership of the gold is with M/s. Triveni Jewellers and in this transaction, they had not made any payment to them. On being asked about the origin of the gold, he stated that he is not aware of the origin of the gold. He further stated that he is not having any import document pertaining to the said gold bars.

SEIZURE OF FOREIGN ORIGIN GOLD BARS-

12. From the valuation report, as discussed supra at Para No.10, it is determined that the said detained gold is of foreign origin. Further, the sender or the intended recipient of the gold could not produce the relevant documents pertaining to the import of the said gold. In view of the same, the detained goods, detailed as follows, were placed under seizure under the provisions of Section 110 of Customs Act, 1962, under the reasonable belief that the same were liable to confiscation under the provisions of Customs Act, 1962.

(i)Two gold bars of foreign origin, weighing **200 grams** in total, valued at Rs. 12,10,000/- (Twelve Lakhs and Ten Thousand Only) pertaining to M/s. Dedhia Jewellers, Mumbai placed under seizure vide Seizure Memo (DIN- 202310DDZ100008378F8) dated 12.10.2023.

(ii)Three gold bars of foreign origin, weighing **300 grams** in total, valued at Rs. 18,15,000/- (Eighteen Lakhs and Fifteen Thousand Only) pertaining to M/s. Triveni Jewellers placed under seizure vide Seizure Memo (DIN-202310DDZ1000000ECAD) dated 12.10.2023.

STATEMENT OF SHRI ANILKUMAR MANDORA, PROPRIETOR OF M/s. S.K. MANDORA PRIVATE LIMITED RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 ON 19.02.2024-

13. Summons dated 19.02.2024 was issued to M/s. S. K. Mandora Jewellers Private Limited, Ahmedabad, the intended recipient of the gold bars weighing 200 grams sent by M/s. Dedhia Jewellers, Mumbai and accordingly statement of Shri Anilkumar

Mandora, Proprietor of M/s. S.K. Mandora Jewellers Private Limited was recorded under Section 108 of Customs Act, 1962 on 19.02.2024, wherein he *interalia* stated that they do the artisan work of jewellery making and they procure raw gold from various Gold bullion retailers based in Jaipur.

13.1 He was shown the following documents:-

- (i) Panchnama dated 07/08.06.2023 drawn at the premises of Office of Directorate of Revenue Intelligence, Zonal Unit Ahmedabda vide which the examination of goods/ parcels intercepted from Angadiya firem- M/s. Patel Rajeshjumar Rameshkumar & Company was recorded. He perused the same along with its Annexures attached to the said panchnama and in token of perusal and agreement with the contents of the said panchnama, he put his dated signature on the last page of the panchnama dated 07/08.06.2023.
- (ii) Panchnama dated 11.09.2023 vide which the examination of the detained gold was done by Govt. Approved Valuer. He perused the said panchnama and in token of perusal of the same, he put his dated signature on the same.
- (iii) Valuation report dated 18.09.2023. He perused the said valuation report dated 18.09.2023 and noticed that 200 grams gold bars pertaining to M/s. Dedhia Jewellers, Mumbai are having marking 'UBS' & 'ARGOR' and are of foreign origin.

13.2 On being asked about the said gold bars of 200 grams, he admitted that the said gold was meant to be sent to them by M/s. Dedhia Jewellers for making of a necklace. He stated that M/s. Dedhiya Jewellers handed over the said gold to M/s. Patel Rajeshkumar Rameshkumar & Company on 06.06.2023 to be delivered to them(M/s. S.K. Mandora Private Limited). He stated that he was informed by one person of M/s. Patel Rajeshjumar Rameshkumar & Company about the detention of the said parcel on 08.06.2023.

13.3 Further, he stated that he had never seen the said gold and he is also not aware of the origin of the gold bars, whether the same are of Indian or foreign origin. Also, he stated that he has not made any payment to M/s. Dedhia Jewellers in the whole transaction and also the ownership of the said gold lies with M/s. Dedhia Jewellers, Mumbai.

DETAILS SUBMITTED BY M/s. AURIC BULLION AND JEWELLERY, M/s. ALL INDIA BULLION AND M/s. VARDHAMAN ENTERPRISES

14. As per the statement of Shri Bharat Vasantlal Mandalia of M/s. Triveni Jewellers recorded on 18.07.2023, the foreign origin gold seized by DRI in respect of them had been supplied by M/s. Auric Bullion and Jewellery, M/s. All India Bullion and M/s. Vardhaman Enterprises. In view of the same, Summons dated 21.02.2024 under Section 108 of Customs Act, 1962 were issued to M/s. Auric Bullion and Jewellers, M/s. All India Bullion and M/s. Vardhaman Enterprises to tender statements and submit

details of import of gold or purchase of foreign origin gold with reference to the foreign origin gold sold to M/s. Triveni Jewellers, Mumbai.

14.1 M/s. Auric Bullion and Jewellers, Mumbai in response to the said Summons submitted certain documents vide their letter dated 26.02.2024 and also stated in the said letter that they had highlighted the bar number of all the gold bars delivered to M/s. Triveni Jewellers in the documents, viz. purchase invoices submitted by them. As per the purchase invoices submitted by them, there **is no mention** of the detained gold bars bearing ARG Bar no. XX0032, XX0092 and XX0098.

14.2 M/s. All India Bullion in response to the said Summons sent an email dated 29.02.2024 vide which they submitted certain documents including sales & purchase ledgers, party ledger for the period from 1st April'23 to 6th June'23 and also submitted that they did not submit any foreign origin bar to M/s. Triveni Jewellers in the said period.

14.3 Shri Prafulkumar A. Shah of M/s. Vardhman Enterprise (HUF) in response to the said Summons appeared for tendering of statement on 27.02.2024 and also submitted sales and purchase invoice for the gold bars sold to M/s. Triveni Jewellers during the period from April'2023 to June'2023. Shri Prafulkumar A Shah during his statement stated that they have not supplied the gold bars, having serial number as ARG Bar no. XX0032, XX0092 and XX0098, detained by DRI, Ahmedabad under Panchnama dated 08.06.2023, to M/s. Triveni Jewellers.

STATEMENT OF SHRI BHARAT VASANTLAL MANDALIA, PROPRIETOR OF M/s. TRIVENI JEWELLERS, RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 on 19.03.2024-

15. In view of the submissions made by M/s. Auric Bullion and Jewellers, M/s. All India Bullion and M/s. Vardhaman Enterprises as stated above, Summons dated 07.03.2024 under Section 108 of Customs Act, 1962 was again issued to M/s Triveni Jewellers and accordingly statement of Shri Bharat Vasantlal Mandalia, Proprietor of M/s. Triveni Jewellers was recorded on 19.03.2024, wherein, among other things, he was shown the submissions made by M/s. Auric Bullion and Jewellers, M/s. All India Bullion and M/s. Vardhaman Enterprises. On perusal of the same, Shri Bharat Vasantlal Mandalia stated that he is not able to establish as to from whom he had purchased the said gold bars. On being asked about the origin of the Seized gold bars of 300 grams, he stated that he is aware that the said gold bars are of foreign origin but he was not sure at the time of purchasing the said gold that whether the said gold bars were genuinely imported in India or smuggled. He stated that he did not inquire much into it as he is not aware of the legal provisions of the Customs Act or Rules. Also, he stated that he is not having import documents pertaining to the said gold bars and he would not be able to produce the import documents for the import of the seized foreign origin gold bars of 300 grams.

16. It appeared that the burden of proof in case of 'Gold' in terms of Section 123(1) of Customs Act, 1962 that they are not smuggled goods shall be laid on M/s. Dedhia Jewellers and M/s. Triveni Jewellers respectively. It appeared that both the persons i.e. Shri Kunal Dedhia, authorised signatory of M/s Dedhia Jewellers and Shri Bharat Vasantlal Mandaliya, proprietor of M/s. Triveni Jewellers accepted in their respective statements recorded u/s 108 of Customs Act, 1962 that they did not possess any documents relating to genuine import of these gold bars.

17. The investigation could not be completed in the stipulated time period of six months from the date of the detention of goods. The competent authority vide letter dated 01.12.2023 granted the extension by a further period of six months for issuance of Show Cause Notice in respect of seized goods in terms of the first proviso of Section 110(2) of the Customs Act, 1962 as amended by the Finance Act, 2018.

18. LEGAL PROVISIONS:-

18.1 The provisions of law, relevant to import of goods in general, the Policy and Rules relating to the import of gold, the liability of the goods to confiscation and liability of the persons concerned to penalty for improper/illegal imports under the provisions of the Customs Act, 1962 and other laws for the time being in force, are summarized as follows:-

a) Para 2.26 of Chapter 2 of Foreign Trade Policy 2015-20:

"Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance."

b) Para 2.1 of the Foreign Trade Policy 2015-20:

The item wise export and import policy shall be specified in ITC (HS) notified by DGFT from time to time.

c) Under ITC (HS) heading sub code 98030000, import of all dutiable articles, imported by a passenger or a member of a crew in his baggage is restricted and their import is allowed only in accordance with the provisions of the Customs Baggage Rules by saving clause 3(1)(h) of the Foreign Trade (Exemption from Application of Rules in Certain Case) Order, 1993.

d) Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992:

"The Central Government may by Order make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology."

e) Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992:

“All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.”

f) Section 7 of the Foreign Trade (Development and Regulation) Act, 1992:

“No import can take place without a valid Import Export Code Number unless otherwise exempted”

g) Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992:

“No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.”

h) Rule 11 of the Foreign Trade (Regulation) Rules, 1993- Declaration as to value and quality of imported goods:

“On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.”

i) Rule 14 of the Foreign Trade (Regulation) Rules, 1993:

“Prohibition regarding making, signing of any declaration, statement or documents,

- 1. No person shall employ any corrupt or fraudulent practice for the purposes of importing or exporting any goods.”*

j) Section 2 of the Customs Act, 1962: Definitions -

“In this Act, unless the context otherwise requires,

...

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

(3A) "beneficial owner" means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported;

...

(14) "dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid;

...

(22) "goods" includes-

- 1. vessels, aircrafts and vehicles;*
- 2. stores;*
- 3. baggage;*
- 4. currency and negotiable instruments; and*
- 5. any other kind of movable property;*

(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

...

(26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes ²² [any owner, beneficial owner] or any person holding himself out to be the importer;

...

(33) 'Prohibited goods' means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force;

...

(39) 'smuggling' in relation to any goods, means any act or omission, which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act 1962."

k) Section 11(3) of the Customs Act, 1962:

"Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit."

l) Section 11A (a) of the Customs Act, 1962;

"(a) 'illegal import' means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force."

m) Section 77 of the Customs Act 1962:

"The owner of baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."

n) Section 110 of Customs Act, 1962:

“If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.”

o) Section 111 of Customs Act, 1962: 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;

.....

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

.....

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;”

p) Section 112. Penalty for improper importation of goods, etc.-

Any person,-

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act,

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty

not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.”

q) Section 117- Penalties for contravention, etc., not expressly mentioned

“Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [one lakh rupees] [Substituted by Act 18 of 2008, Section 70, for " ten thousand rupees"].”

r) Section 119. Confiscation of goods used for concealing smuggled goods.

Any goods used for concealing smuggled goods shall also be liable to confiscation.

s) Section 123. Burden of proof in certain cases. -

“(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be -

(a) in a case where such seizure is made from the possession of any person,

-

(i) on the person from whose possession the goods were seized; and
(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.
(2) This section shall apply to gold, and manufactures thereof, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.”

- t)** As per Customs Baggage Declaration Regulations, 2013, all passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.
- u)** Customs Notification No. 50 /2017 –Customs dated 30.06.2017, as amended, issued by the Central Government; and RBI Circular No. 25 dated 14.08.2013 [RBI/2013-14/187, AP (DIR Series)] permit the import of gold into India by eligible passenger/specified entities, subject to certain conditions.
- v)** In terms of the Circular No. 34/2013-Cus. issued by the Directorate General of Export Promotion vide F. No. DGEP/EOU/G & J/16/2009 dated 04.09.2013, import of gold is restricted and gold is permitted to be imported only by the agencies notified by DGFT which are as follows:
- a)** *Metals and Minerals Trading Corporation Limited (MMTC);*
 - b)** *Handicraft and Handloom Export Corporation (HHEC);*
 - c)** *State Trading Corporation (STC);*
 - d)** *Project and Equipment Corporation of India Ltd. (PEC);*
 - e)** *STC Ltd.;*
 - f)** *MSTC Ltd.;*
 - g)** *Diamond India Ltd. (DIL);*
 - h)** *Gems and Jewellery Export Promotion Council (G & J EPC);*
 - i)** *A star Trading House or a Premier Trading House under Paragraph 3.10.2 of the Foreign Trade Policy and*
 - j)** *Any other authorized by Reserve Bank of India (RBI).*

Hence, the import of gold by any other persons/agencies other than the above mentioned is restricted in terms of the Circular No. 34/2013-Customs issued by the Directorate General of Export Promotion and the same appeared to be liable for confiscation under the Customs Act, 1962. Further, CBIC's instructions issued vide F. No. 495/6/97-Cus. VI dated 06.05.1996 and reiterated in letter F. No. 495/19/99-Cus VI dated 11.04.2000 clearly states that the import of goods in commercial quantity would not be permissible within the scope of the Baggage Rules, even on payment of duty.

18.2 A combined reading of the above mentioned legal provisions under the Foreign Trade (Development and Regulation) Act, 1992 and the Customs Act, 1962, read with the notification and orders issued there under, it appeared that certain conditions have been imposed on the import of gold into India as a baggage by a passenger, in as much as, only passengers complying with certain conditions such as he/she should be of Indian origin or an Indian passport holder with minimum six months of stay abroad etc. can only import gold in any form and the same has to be declared to the Customs at the time of their arrival and applicable duty has to be paid in foreign currency. These conditions are nothing but restrictions imposed on the import of gold or gold jewellery through passenger baggage. The Hon'ble Supreme Court of India in the case of ***SHEIKH MOHD. OMER VS. COLLECTOR OF CUSTOMS, CALCUTTA, REPORTED IN 1983 (13) ELT 1439***, clearly laid down that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import is to an extent, a prohibition. Hence, the restriction imposed on import of gold through passenger baggage is to an extent, a prohibition.

19. SUMMARY OF THE INVESTIGATION

From the investigation conducted it appeared that:

- a) During the search of the baggage of the passengers intercepted outside Kalupur Railway Station on 07.06.2023, one passenger working for Aangadiya firm - M/s. Patel Rajeshkumar Rameshkumar & Company was found in possession of certain amount of foreign origin gold. The said gold was subsequently detained on the reasonable belief that the same are liable for confiscation under the provisions of the Customs Act, 1962.
- b) As per the labels present on the parcels of the gold detained on 07.06.2023 and documents submitted by Shri Maheshkumar S. Patel, Partner, M/s. Patel Rajeshkumar Rameshkumar & Company during his statement dated 14.06.2023, it was held that: (i) 02 gold bars having total weight 200 grams having markings UBS Switzerland (Melter SAR) S.no. FA0016, ARGOR Switzerland no. YF9362 (scratches on the Sl. No.) were being sent by M/s. Dedhia Jewellers, Mumbai to M/s. Shyamkumar Mandora Private Limited, Ahmedabad. (ii) 03 gold bars having total weight 300 grams having markings ARG Bar No.XX0032, XX0092, XX0098 were being sent by M/s. Triveni Jewellers, Mumbai to M/s. Virti Impex, Ahmedabad.
- c) Shri Kartikey Vasantray Soni, Gold Assayer, examined the said gold in presence of independent panchas and the Aangadiya person and certified the purity of Gold, weight, rate of gold vide his valuation report dated 18.09.2023 ascertained that the said gold bars of 200 grams pertaining to M/s. Dedhia Jewellers and 300 grams pertaining to M/s. Triveni Jewellers are of foreign origin and their fair value as per market rate are Rs. 12,10,000/- and Rs.18,15,000/-respectively.

- d) The said foreign origin gold, i.e. 200 grams pertaining to M/s. Dedhia Jewellers and 300 grams pertaining to M/s. Triveni Jewellers appear to be smuggled goods as Shri Kunal Dedhia and Shri Bharat Vasantlal Mandalia informed that they do not possess any documents relating to import of the said gold. Therefore, the said gold pertaining to M/s. Dedhia Jewellers and M/s. Triveni Jewellers were placed under seizure vide Seizure Memo dated 12.10.2023 under the provisions of Section 110 of Customs Act, 1962, on the reasonable belief that the same were liable to confiscation under the provisions of Customs Act, 1962.
- e) Statement of the authorised signatory of M/s. Dedhia Jewellers, Shri Kunal Dedhia was recorded u/s 108 of the Customs Act, 1962 in which he admitted that neither they nor the customer from whom they had purchased the said gold have any import documents pertaining to the said foreign origin gold.
- f) Statement of the proprietor of M/s. Triveni Jewellers, Shri Bharat Vasantlal Mandaliya was recorded u/s 108 of the Customs Act, 1962 in which he named three suppliers from whom he had procured the said foreign origin gold. The sale and purchase documents were submitted by the three suppliers for the period from April'2023 to 06 June'2023 in which there was no mention of the seized gold bars with ARG Bar Nos. XX0032, XX0092, XX0098. In view of the same, M/s. Triveni Jewellers was summoned again during which the proprietor of M/s. Triveni Jewellers, Shri Bharat Vasantlal Mandaliya stated that he is not able to gather as from whom he had purchased the said foreign origin gold and he also could produce import documents pertaining to the said gold.
- g) Statements of the intended recipients of the gold, i.e. Shri Pratik Shah of M/s. Virti Impex (intended recipient for the gold sent by M/s. Dedhia Jewellers) and Shri Anilkumar Mandora of M/s. Shyamkumar Mandora Private Limited were recorded u/s 108 of the Customs Act, 1962 during which they stated that they were not aware of the origin of the said gold and they had also not made any payment in respect of the said gold. They also stated that the ownership of the said gold lies with M/s. Dedhia Jewellers and M/s. Triveni Jewellers respectively.
- h) From the above, it appeared that the 05 bars of foreign origin gold, i.e. 2 gold bars of 200 grams of M/s. Dedhia Jewellers and 3 gold bars of 300 grams of M/s. Triveni Jewellers are smuggled goods in terms of Section 2(39) of Customs Act, 1962.
- i) The burden of proving that the Gold seized from the Aangadiya- M/s. Patel Rajeshkumar Rameshkumar & Company under Panchnama dated 07.06.2023 are not smuggled goods, lies on M/s. Dedhia Jewellers and M/s. Triveni Jewellers. It appears that during the investigation, both have failed to provide documents indicating any legitimate import of the said Gold Bars or any proof that the said foreign origin gold bars, i.e. 200 grams pertaining to M/s. Dedhia Jewellers and 300 grams pertaining to M/s. Triveni Jewellers are not smuggled goods. Thus, it

appeared that the said foreign origin gold weighing 500 grams in total valued at Rs. 30,25,000/- (Thirty Lakhs Twenty-Five Thousand only) are liable for confiscation under the provisions of Section 111 (d), (j), (l) & (m) of Customs Act, 1962.

- j) Shri Kunal Dedhia, Authorised Signatory of M/s. Dedhia Jewellers in his statement admitted that they had purchased the said foreign origin gold of 200 grams from a customer Shri Gopi K. Shah without verification if the said gold was of foreign origin, which appeared to be unsubstantiated. Further, as per Section 123(1) of the Customs Act, the burden of proof lies on M/s. Dedhia Jewellers that the said gold bars are not smuggled goods, which they have failed to provide. It appeared that M/s. Dedhia Jewellers are culpable and the act of omission and commission made on their part for the smuggling of gold which are liable for confiscation under section 111(d), 111(j), 111(l) & 111(m) have rendered themselves liable for penalty under Section 112 (a) & (b) of the Customs Act, 1962.
- k) Shri Bharat Vasantlal Mandaliya, the proprietor of M/s. Triveni Jewellers stated that he cannot establish as from whom he had purchased the said foreign origin gold bars and he also cannot provide import documents in respect of the said gold. As per Section 123(1) of the Customs Act, the burden of proof lies on M/s. Triveni Jewellers that the said gold bars are not smuggled goods, which they have failed to provide. It appeared that M/s. Triveni Jewellers are culpable and the act of omission and commission made on their part for the smuggling of gold which are liable for confiscation under section 111(d), 111(j), 111(l) & 111(m) have rendered themselves liable for penalty under Section 112 (a) & (b) of the Customs Act, 1962.
- l) M/s. Patel Rajeshkumar Rameshkumar & Company had concerned them by dealing with carriage/ transport of 02 bars of foreign origin gold weighing 200 grams of M/s.Dedhia Jewellers and 03 bars of foreign origin gold weighing 300 grams of M/s.Triveni Jewellers and valued at Rs.12,10,000/- and Rs.18,15,000/- respectively, through their employee Shri Karamshibhai B. Desai on board Saurashtra Mail Train No. 22945, without verifying the legitimate documents of import of such foreign origin gold from respective senders. As per their own admission that they cannot accept the parcels containing foreign origin gold for transport, they failed to verify the legitimate documents for carrying foreign origin gold. As per Section 123(1) of the Customs Act, the burden of proof lies on M/s. Patel Rajeshkumar Rameshkumar & Company. It appeared that they failed in their obligation to report the possession of foreign origin gold which are liable for confiscation under Section 111(d), 112(j), 112(l) & 112(m) of the Customs Act, to respective revenue authorities. By indulging themselves in such acts of omission and commission, they rendered them liable for penal action under Section 112(a), 112(b) & 117 of the Customs Act, 1962.

20. Thereafter, the Show Cause Notice was issued vide F. No. VIII/10-86/DRI-AZU/O&A/HQ/2024-25 dated 04.06.2024 to - (1) M/s. Dedhia Jewellers, (2) Shri Kunal Dedhia, authorised signatory of M/s. Dedhia Jewellers and (3) M/s. Triveni Jewellers, (4) M/s. Patel Rajeshkumar Rameshkumar & Company and (5) Shri Karamshibhai B. Desai by the Additional Commissioner of Customs, Ahmedabad to show cause as to why:-

- a)** Absolute Confiscation should not be made of the 500 grams of foreign origin gold bars, under Section 111(d), 111(j), 111(l) & 111(m) of Customs Act, 1962 i.e. for
- Two gold bars of foreign origin, weighing 200 grams in total, valued at Rs. 12,10,000/- (Twelve Lakhs and Ten Thousand Only) pertaining to M/s. Dedhia Jewellers, Mumbai placed under seizure vide Seizure Memo (DIN- 202310DDZ100008378F8) dated 12.10.2023;
 - Three gold bars of foreign origin, weighing 300 grams in total, valued at Rs. 18,15,000/- (Eighteen Lakhs and Fifteen Thousand Only) pertaining to M/s. Triveni Jewellers placed under seizure vide Seizure Memo (DIN-202310DDZ1000000ECAD) dated 12.10.2023;
- b)** Penalty should not be imposed under section 112(a) and 112(b) of the Customs Act, 1962 on M/s. Dedhia Jewellers i.r.o. seizure of Two gold bars of foreign origin, weighing 200 grams in total, valued at Rs. 12,10,000/- (Twelve Lakhs and Ten Thousand Only) pertaining to M/s. Dedhia Jewellers, Mumbai placed under seizure vide Seizure Memo (DIN- 202310DDZ100008378F8) dated 12.10.2023;
- c)** Penalty should not be imposed under section 117 of the Customs Act, 1962 on M/s. Dedhia Jewellers i.r.o. seizure of Two gold bars of foreign origin, weighing 200 grams in total, valued at Rs. 12,10,000/- (Twelve Lakhs and Ten Thousand Only) pertaining to M/s. Dedhia Jewellers, Mumbai placed under seizure vide Seizure Memo (DIN- 202310DDZ100008378F8) dated 12.10.2023;
- d)** Penalty should not be imposed under section 112(a) and 112(b) of the Customs Act, 1962 on Shri Kunal Dedhia, Authroised Signatory, M/s. Dedhia Jewellers i.r.o. seizure of Two gold bars of foreign origin, weighing 200 grams in total, valued at Rs. 12,10,000/- (Twelve Lakhs and Ten Thousand Only) pertaining to M/s. Dedhia Jewellers, Mumbai placed under seizure vide Seizure Memo (DIN- 202310DDZ100008378F8) dated 12.10.2023;
- e)** Penalty should not be imposed under section 117 of the Customs Act, 1962 on Shri Kunal Dedhia, Authroised Signatory, M/s. Dedhia Jewellers i.r.o. seizure of Two gold bars of foreign origin, weighing 200 grams in total, valued at Rs. 12,10,000/- (Twelve Lakhs and Ten Thousand Only)

pertaining to M/s. Dedhia Jewellers, Mumbai placed under seizure vide Seizure Memo (DIN- 202310DDZ100008378F8) dated 12.10.2023;

- f)** Penalty should not be imposed under section 112(a) and 112(b) of the Customs Act, 1962 on Shri Bharat Vasantlal Mandaliya, Proprietor, M/s. Triveni Jewellers i.r.o. seizure of Three gold bars of foreign origin, weighing 300 grams in total, valued at Rs. 18,15,000/- (Eighteen Lakhs and Fifteen Thousand Only) pertaining to M/s. Triveni Jewellers placed under seizure vide Seizure Memo (DIN-202310DDZ1000000ECAD) dated 12.10.2023;
- g)** Penalty should not be imposed under section 117 of the Customs Act, 1962 on Shri Bharat Vasantlal Mandaliya, Proprietor, M/s. Triveni Jewellers i.r.o. seizure of Three gold bars of foreign origin, weighing 300 grams in total, valued at Rs. 18,15,000/- (Eighteen Lakhs and Fifteen Thousand Only) pertaining to M/s. Triveni Jewellers placed under seizure vide Seizure Memo (DIN-202310DDZ1000000ECAD) dated 12.10.2023;
- h)** Penalty should not be imposed under section 112(a) and 112(b) of the Customs Act, 1962 on M/s. Patel Rajeshkumar Rameshkumar Company i.r.o. seizure of 500 grams gold i.e, 200 grams foreign origin gold valued at Rs. 12,10,000/- (Rupees Twelve Lakhs and Ten Thousands only) and 300 grams foreign origin gold valued at Rs.18,15,000/- (Rupees Eighteen Lakhs and Fifteen Thousand Only) pertaining to M/s. Dedhia Jewellers and M/s. Triveni Jewellers seized vide seizure memo dated 12.10.2023 vide DIN: 202310DDZ100008378F8 and DIN: 202310DDZ1000000ECAD;
- i)** Penalty should not be imposed under section 117 of the Customs Act, 1962 on M/s. Patel Rajeshkumar Rameshkumar Company i.r.o. seizure of 500 grams gold i.e, 200 grams foreign origin gold valued at Rs. 12,10,000/- (Rupees Twelve Lakhs and Ten Thousands only) and 300 grams foreign origin gold valued at Rs.18,15,000/- (Rupees Eighteen Lakhs and Fifteen Thousand Only) pertaining to M/s. Dedhia Jewellers and M/s. Triveni Jewellers seized vide seizure memo dated 12.10.2023 vide DIN: 202310DDZ100008378F8 and DIN: 202310DDZ1000000ECAD;
- j)** Penalty should not be imposed under section 112(a) and 112(b) of the Customs Act, 1962 on Shri Karamshibhai B Desai, Employee of M/s Patel Rajeshkumar Rameshkumar Company i.r.o. seizure of 500 grams gold i.e, 200 grams foreign origin gold valued at Rs. 12,10,000/- (Rupees Twelve Lakhs and Ten Thousands only) and 300 grams foreign origin gold valued at Rs.18,15,000/- (Rupees Eighteen Lakhs and Fifteen Thousand Only) pertaining to M/s. Dedhia Jewellers and M/s. Triveni Jewellers

seized vide seizure memo dated 12.10.2023 vide DIN:
202310DDZ100008378F8 and DIN: 202310DDZ1000000ECAD;

- k)** Penalty should not be imposed under section 117 of the Customs Act, 1962 on Shri Karamshibhai B Desai, Employee of M/s Patel Rajeshkumar Rameshkumar Company i.r.o. seizure of 500 grams gold i.e, 200 grams foreign origin gold valued at Rs. 12,10,000/- (Rupees Twelve Lakhs and Ten Thousands only) and 300 grams foreign origin gold valued at Rs.18,15,000/- (Rupees Eighteen Lakhs and Fifteen Thousand Only) pertaining to M/s. Dedhia Jewellers and M/s. Triveni Jewellers seized vide seizure memo dated 12.10.2023 vide DIN: 202310DDZ100008378F8 and DIN: 202310DDZ1000000ECAD.

21. WRITTEN SUBMISSIONS:-

21.1 In response to the show cause notice, M/s. Dedhia Jewellers and Shri Kunal Dedhia, Authorised Signatory, M/s. Dedhia Jewellers (hereinafter referred to as “noticees”) submitted replies through their authorised representative M/s. Thakkar & Company on 14.08.2024 and 03.09.2024 as under:-

1. The mode of service of notice was not as per legal requirements and did not follow the procedure as laid by Section 153 of the Customs Act. Section 153 of the Customs Act, 1962 details the correct procedures for serving official notices and documents, the notice in question does not adhere to these prescribed procedures, which could affect its validity.
2. The relied upon documents were not received by them along with the show cause notice.

21.2 M/s. Dedhia Jewellers and Shri Kunal Dedhia, Authorised Signatory, M/s. Dedhia Jewellers (hereinafter referred to as “noticees”) submitted further reply through their authorised representative M/s. Thakkar & Company on 04.10.2024 as under:-

1. The mode of service of notice was not as per legal requirements and did not follow the procedure as laid by Section 153 of the Customs Act. The noticee relied upon the following judgment:-
 - TMI 349 – Delhi High Court M/s. Sun Aviation Pvt. Ltd. vs. Commissioner of Customs (Export) W.P. (C) 17189/2022 Dated:- 07th February 2023 and 2021 (4)
 - TMI 350 – CESTAT New Delhi Baldeep Singh vs. Commissioner of Customs New Delhi Customs Appeal No. 51112 of 2020-SM Order No. – Final Order No. 51224/2021 Dated: 7th April 2021
2. The SCN was received without relied upon documents, making it non-compliant. They relied upon the judgment of Hon’ble Madras High Court in the case of R Ramdas vs. Joint Commissioner of Central Excise.
3. Shri Kunal Dedhia gave the complete sequence of events during his statement dated 18.07.2023. He manages all day-to-day operations, including the sale and

purchase of gold jewellery and accounts. His act, plea, or submissions are binding on both Shri Kunal Dedhia and M/s. Dedhia Jewellers.

4. The noticees purchased a total 200 gms of Gold Bars from Smt. Gopi K. Shah and the same were indeed of foreign origin. Smt. Gopi K Shah bought jewellery in exchange of the said Gold bars and difference was paid through credit card by Smt Gopi K. shah.
5. The noticee did not verify whether the Gold bars of foreign origin and they are not in possession of any import documents as the same were not provided by the Customer.
6. The noticee informed about the same to the designated officer during the proceedings. They also submitted a copy of the invoice, payment slip, PAN card of him. However, the designated officer issued the show cause notice without verifying the information.
7. The noticee kept the said gold bars in their inventory as reflected in their stock register and then issued the same to M/s. S K Mandora Private Limited for job work vide an issue voucher. The noticee submitted the said documents to investigating officers, thus per Section 123 of the Customs Act, 1962, the burden of proof regarding the smuggled nature of the Gold bars rests with the investigating authority.
8. The noticee has purchased the Gold within territory of India with purchase invoice and payment was made through proper banking channel within India. The onus of proof as per Section 123 has been transferred to the DRI AZU. The noticee relied upon the following judgments:
 - UoI vs. Imtiaz Iqbal Pothiwala and ors. 2019 (365) ELT 167 (Bom.)
 - CESTAT Ahmedabad in the case of Amglo Resources Pvt. Ltd. and ors. vs. Commissioner of Customs Ahmedabad 2023
 - TMI 940 – CESTAT Kolkata Shri Bablwant Raj Soni vs. Commissioner of Customs (Prev.), Patna, Shrianurag Jalan vs. Commissioner of Customs (Prev.), Patna, Shri manojkumar Seth vs. Commissioner of Customs (Prev.), Patna
9. The notice was issued technically after the Six months. The notice was issued on 7th Dec, 2023, but delivered on 5th Jun, 2024 from unknown person. The noticee relied on following judgments:-
 - Jatinder kumar Sachdeva vs. The Union of India and ors. 2017 (347) ELT 436 (Del.)
 - Jayant Hansraj Shah vs. Union of India 2008 (229) ELT 339 (Bom.)
10. The noticee challenge the SCN issued by DRI AZU on 04.06.2024.

21.3 M/s. Triveni Jewellers (hereinafter referred to as “noticee”) submitted further reply through their authorised representative M/s. Thakkar & Company on 18.11.2024 as under:-

1. The mode of service of notice was not as per legal requirements and did not follow the procedure as laid by Section 153 of the Customs Act. The noticee relied upon the following judgment:-

- TMI 349 – Delhi High Court M/s. Sun Aviation Pvt. Ltd. vs. Commissioner of Customs (Export) W.P. (C) 17189/2022 Dated:- 07th February 2023 and 2021 (4)
 - TMI 350 – CESTAT New Delhi Baldeep Singh vs. Commissioner of Customs New Delhi Customs Appeal No. 51112 of 2020-SM Order No. – Final Order No. 51224/2021 Dated: 7th April 2021
2. The SCN was received without relied upon documents, making it non-compliant. They relied upon the judgments
 - Hon'ble Madras High Court in the case of R Ramdas vs. Joint Commissioner of Central Excise.
 - J Sheikh Parith vs. Commissioner of Customs, ADG 2020 (371) ELT 716 (Mad.)
 - Zakir Kahn and Sanjeev Kumar vs. Union of India through its Secretary and ors. 2022 (5) TMI 89 – Delhi High Court
 3. Shri Bharat Vasantlal Mandalia Mehta gave the complete sequence of events during his statement dated 18.07.2023. He manages all day-to-day operations, including the sale and purchase of gold jewellery and accounts. His act, plea, or submissions are binding on M/s. Triveni Jewellers.
 4. Shri Bharat Vasantlal Mandalia Mehta stated that three Gold Bars weighing 300 gms are of foreign origin and the same was purchased from various dealers namely, M/s. Auric Bullion and Jewellers, M/s. All India Bullion and M/s Vardhman Enterprises.
 5. Shri Bharat Vasantlal Mandalia Mehta admitted his mistake of not verifying whether the Gold bars of foreign origin and they are not in possession of any import documents as the same were not provided by the Customer.
 6. The noticee sent the same gold bars to M/s. Virti Impex to be delivered through Ms. Patel Rajeshkumar Rameshkumar & Company. The noticee submitted the purchase documents to investigating officers, thus per Section 123 of the Customs Act, 1962, the burden of proof regarding the smuggled nature of the Gold bars rests with the investigating authority.
 7. The noticee has purchased the Gold within territory of India with purchase invoice and payment was made through proper banking channel within India. The onus of proof as per Section 123 has been transferred to the DRI AZU. The noticee relied upon the following judgments:
 - UoI vs. Imtiaz Iqbal Pothiwala and ors. 2019 (365) ELT 167 (Bom.)
 - CESTAT Ahmedabad in the case of Amglo Resources Pvt. Ltd. and ors. vs. Commissioner of Customs Ahmedabad 2023
 - TMI 940 – CESTAT Kolkata Shri Bablwant Raj Soni vs. Commissioner of Customs (Prev.), Patna, Shrianurag Jalan vs. Commissioner of Customs (Prev.), Patna, Shri manojkumar Seth vs. Commissioner of Customs (Prev.), Patna
 8. The notice was issued technically after the Six months. The notice was issued on 7th Dec, 2023, but delivered on 5th Jun, 2024 from unknown person. The noticee relied on following judgments:-

- Jatinder kumar Sachdeva vs. The Union of India and ors. 2017 (347) ELT 436 (Del.)
- Jayant Hansraj Shah vs. Union of India 2008 (229) ELT 339 (Bom.)

9. The noticee challenge the SCN issued by DRI AZU on 04.06.2024.

21.4 Shri Rohan Thakkar, CA submitted written submission on behalf of M/s. Patel Rajeshkumar Rameshkumar & Co on 27.11.2024 as under:-

1. The Noticee reject all the allegations casted upon him under the said SCN. In the present case, the Noticee is into the business of the Angadiya, and he has not imported the goods, rather he was transporting the goods, from one place to another place. Further Noticee is also in possession of the legitimate invoice of goods transported by him.
2. From the statements given by the partner of the Noticee and also the supplier of the goods and recipients of the goods, it is nowhere going to established that the Noticee was aware that the goods are that transported are smuggled goods, hence, it is spick and span that the noticee has no idea that the Gold Bars, which has been detained by the DRI officer, are Foreign origins and the same are smuggled goods. Further, they receive the goods in the packed seal hence, they are not in position to check whether the Gold bars that has been transported by the Noticee are the Foreign Origin or not. Noticee is simply doing the business of the transport of the goods which he has been asked to it, he has no authority to check the legality of the goods, Noticee has to rely on the documents given by the supplier and information provided by the Supplier. It is the supplier who has to check the goods and the onus remain on the supplier only.
3. Your department of the goodself has stated that the burden of the proof lies on the suppliers of the goods that the goods which are being detained are not smuggled goods. As stated above the Noticee is not in the position to verify the goods which are being transported are smuggled goods. Additionally, it is submitted that the goods which has been carried by the Noticee have the proper legitimate documents issued from the Suppliers. Hence, the Noticee has to rely on the invoices issued by the suppliers. Noticee has no jurisdiction neither he has authority to unearth that from where the supplier has procured the impugned Goods.
4. The Noticee is not only carrying the goods which department has believed to be the foreign goods, they are also transporting other goods like Ornaments, jewellery, Indian origin Bars, etc. which has the legitimate documents and the same has also been verified by the DRI officer, if the Noticee has the illicit intention then they will be transporting only goods of the smuggled goods and the Noticee is into the business since 2002 and he is genuinely doing his business. Which clearly indicates that the noticee was completely unaware about the origin of the impugned Goods.
5. The noticee is not aware of the fact the goods that are being transported by noticee is the foreign origin gold. They believed that it is a gold which they are transporting in the business of courier in the normal course of business.
6. The opening para of the Section 123(1) which clearly states that; "Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods". The words "in the reasonable belief" means the

person who is in the possession of the goods is knowing that the goods which he is possessing are the smuggled goods. In the present case the goods which has been transported are smuggled or not that has been not known to the Noticee this can also be established from the Statements given by the supplier recipients and the Noticee. Hence, burden of casting onus in terms of section 123 of the Customs Act, should not be casted on the Noticee, rather it is encumbrance of the suppliers.

7. section 111, means that if any person who do or fail to do any act or encourage someone to do or omits to do the things with respect to import of the Goods which render the goods liable to confiscation under section 111 of the Customs Act, 1962. Section 111 of the Act, stipulates about the improper import of the Goods, In the present case the Noticee is not importing the goods neither he is directly or indirectly involved in the import of the goods. The disputed goods in which the Noticee dealing was given produce before him after the import of the goods, further, as stated earlier paras the noticee absolutely unaware of that the goods are seized are detained goods. Therefore, the Section 112(a) cannot be invoked on the Noticee. He relied upon the pronouncement in the case of MSA Shipping Pvt. Ltd v. CC.

8. Noticee was not aware that the gold which was being transported are foreign origin. The noticee herein case acted in the bona fide manner, completing his duty, what he had paid for, he was not aware that the disputed goods are smuggled Goods. Further, appellant is not directly or indirectly involved with suppliers. For attracting the penalty under section conscious knowledge of an offender who is concerned in carrying or removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any offending goods which he knows or has reason to believe that the same is liable to confiscation under Section 111 to be liable to penalty. When a person does not know or has a reason to believe that the goods are liable for confiscation under section 111, penalty under section 112 will not apply. He relied upon:

- i. *Js. Oberoi Versus Commissioner Of Customs, Chandigarh (2014) 308 ELT 526 = (2014) 12 TMI 985 (Tri-Delhi).*
- ii. *M/S. Panjra Road Carriers, M/S. Gill Randhawa Roadlines, M/S. Akal Transport Company, M/S. Dd Khosla Transport Pvt. Limited, M/S. Arisudana Industries Limited And M/S. Karam Freight Movers Versus Commissioner Of Customs, Ludhiana (2017) 10 TMI 1264 (Tri- Chandigarh).*
- iii. *Akbar Badrudin Jiwani vs Collector of Customs 1990 AIR 1579, 1990 SCR (1) 369*
- iv. *CC v. Amin Chandrakant 2010 (258) E.L.T 36 (Guj)*
- v. *Sonam International v. CC, 2012 (279) E.L.T. 572 (Tri. - Del.)*
- vi. *Peico Electronics & Electricals Ltd v. CC*
- vii. *CC v. Pawan Kumar Gupta*

9. The above adjudication clearly portrays that noticee could not be penalized under section 112 (a) and (b) of the act, 1962 as he was merely doing his duty in the capacity of 'Courier'. Further, it is also to be noted that the Noticee has no knowledge that the goods has been carrying by him was foreign origin and/ or smuggled goods, that has not been disclosed by the suppliers as well as the recipients of the goods,

he has relied on the documents and statement produced by the Suppliers which the Noticee do in the normal course of the business, Further, the Noticee has not gained any pecuniary benefits neither he has any intention to gain, single penny from the disputed goods except otherwise the service charge for the service which he supposed to provide in the due course of the business. the '*mens rea*' is not established in the present case, hence section 112 should not be pressed against the noticee,

10. in the present case the noticee is mere a Angadiya service provider and there is no personal gain involved. He also relied on the case of Aramex India Pvt Ltd v. CC.

11. Under Rule 26 of the erstwhile Rule 26 of the Central Excise Rules, 2002, the word 'transportation' is there, which is not so in the Customs Act, 1962. In the present case, what the noticee has done is the transportation of goods based on the documents that has been sent by the sender and not aware of the fact that they are foreign origin gold. Employees only followed the instructions of the employers /superiors. Hence, personal penalty on them is not sustainable. Since the wordings of both the provisions are more or less '*pari materia*', hence, the pronouncements referred under the said law is also relied upon as under:-

- i. Gujarat Borosil v CCE (2007) 217 ELT 367 (CESTAT)
- ii. Suren International Limited v CC 2006 (203) ELT 597 (CESTAT)
- iii. Rammaica (India) Limited v. CCE 2006 (198) ELT 379 (CESTAT)
- iv. O P Agarwal v CC (2005) 185 ELT 387 (CESTAT)
- v. Vinod Kumar v. CCE (2006) 199 ELT 705 (CESTAT)
- vi. Carpenter Classic Exim v CC (2006) 200 ELT 593 (CESTAT)
- vii. Farwood Industries v. CCE (2005) 185 ELT 401 (CESTAT)
- viii. Subhash Gupta v. CCE (2007) 10 STT 411 (CESTAT)
- ix. Commissioner of Central Excise Versus M/s. Goodwill Electricals 2010 - TMI - 202550 - BOMBAY HIGH COURT
- x. Cipla Coated Steel v. CCE 1999 (113) ELT (490) (CEGAT)
- xi. M Hariraju v. CCE1998 (100) ELT (203) (CEGAT);
- xii. Jalmadhu corporation v. CCE 1999 (114) ELT 883 (CEGAT);
- xiii. Bindu S Mehta v. CCE2000 (121) ELT 281 (CEGAT);
- xiv. A K Tantia v. CCE 2003(158)ELT 638 (CESTAT SMB);
- xv. Bellary steel v. CCE 2003(157) ELT 324(CESTAT);
- xvi. Poonam Sparkv v. CCE 2004(164) ELT (282) (CESTAT)
- xvii. HMTD Engineering v. CC 2000(122) ELT 749(CEGAT)
- xviii.SM Zschimmer & Scharwz v. CCE 2000 (126) ELT 729(CEGAT);
- xix. CCE v. New Tobacco Co. 2001(134) ELT 176 (CEGAT);
- xx. Concorde Overseas v. CCE 2003 (156) ELT 287 (CESTAT);
- xxi. Nusli Davar v. CCE 2003 (156) ELT 1022 (CEGAT);
- xxii. L P Desai v. UOI 2004 (165) ELT (151) (Del HC);
- xxiii. Standard Pencils v. CCE 2006 (197) ELT 346 (CESTAT);
- xxiv. P V Malhotra v. CCE 2006 (194) ELT 89 (CESTAT);
- xxv. Hindustan Lever v. CCE(2007) 210 ELT 60 (CESTAT SMB)
- xxvi. Caltron Instruments v. CCE 2004 (165) ELT 174 (CESTAT)

- xxvii. Dayaram Agarwal v. CCE(2007) 218 ELT 33 (CESTAT)
- xxviii. applied electronics v. CCE 2001(130) ELT 500=40RLT 409 (CEGAT)
- xxix. Arebee Star Maritime Agencies v. CCE 2004 (173) ELT 185 (CESTAT)
- xxx. Shrikant Processors v. CCE2006 (203) ELT 98 (CESTAT SMB)
- xxxi. Chowbey Sugandhit v. CCE 2001 (131) ELT 222 (CEGAT)
- xxxii. Metro Appliances v. CCE(2001) 137 ELT 554 (CEGAT);
- xxxiii. Laurel Organics v. CCE 2002(140) ELT 151 (CEGAT);
- xxxiv. Mewar Bottling v. CCE 2002(140) ELT 237 (CEGAT);
- xxxv. Keshav Kumar Tharad v. CCE 2003 (156) ELT 211 (CESTAT SMB);
- xxxvi. Nirmal metal fabricators v. CCE (2004) 169 ELT 168 (CESTAT SMB);
- xxxvii. Mettaco Engineering v. CC2005 (182) ELT 210 (CESTAT);
- xxxviii. S K & Co. v. CCE 2006 (203) ELT 137 (CESTAT).

12. Though the foreign goods is not allowed to be dealt generally in India, however, in India, foreign Origin goods are available and dealt in by the persons having specific approvals. Under Chapter 4 of the Foreign Trade Policy, 2023, the importer is authorized to import the gold of foreign origin for export purpose. What the noticee has done is the transportation of gold, that to, without its knowledge that it is foreign origin. He relied upon pronouncement delivered by Hon Karnataka High Court in the case of CIT v. M/S Ssa's EmeraLd. Meadows (2015) 11 TMI 1620 (Kar HC).

13. The noticee neither has the knowledge of the goods being carried is smuggled Goods nor he has transgressed the in provisions of the Customs Act, 1962 as he was not involved in the importation of the disputed goods. The Noticee was only doing transportation of the goods in the normal course of his business. The Noticee has not imported the disputed goods nor he has any illicit intention to remove the goods. As the Noticee has not violated any of the provisions of the Customs Act, 1962, hence, the penalty under section 117 is not be tenable.

21.5 Shri Rohan Thakkar, CA submitted written submission on behalf of Shri Karamshibhai B. Desai on 27.11.2024 similar to reply as given in Para 21.4 above.

22. PERSONAL HEARINGS:-

22.1 Shri Rajesh Kumar Thakkar and Ms. Prerana Pandya, Advocate, attended the personal hearing on behalf of M/s. Dedhia Jewellers and Shri Kunal Dedhia on 29.11.2024, through video-conferencing. They reiterated their written submission dated 18.11.2024 and submitted following points for arguments:-

- DRI intercepted on 07.06.2023 and the SCN was issued on 04.06.2024, which is beyond the prescribed time limit. Even, while taking extension, the noticee was not informed regarding extension.
- The show-cause notice was received from an unknown person on 05.06.2024 and was not delivered as per Section 153 of the Customs Act.
- The assay was conducted by Shri Kartikey Vasantrai Soni, who is not registered valuer as per Income Tax Department's list of registered valuers.
- The noticee has not received RUDs till date.

- The onus of proof as per Section 123 has been transferred to DRI AZU as per the statements and submissions of noticee.
- The noticee has received a notice under Section 150 of the Customs Act, 1962 for the disposal of seized Gold on 21.11.2024. The noticee has filed a reply on 25.11.2024, stating that the seized Gold should not be melted down or disposed of until the matter has been concluded.
- The noticee prayed that the notice should be dropped and the seized Gold be released.

22.2 Shri Rajesh Kumar Thakkar and Ms. Prerana Pandya, Advocate, attended the personal hearing on behalf of Shri Shri Bharat Vasantlal Mandaliya, proprietor of M/s. Triveni Jewellers on 29.11.2024., through Video-conferencing. They reiterated their written submission dated 18.11.2024 and submitted following points for arguments:-

- DRI intercepted on 07.06.2023 and the SCN was issued on 04.06.2024, which is beyond the prescribed time limit. Even, while taking extension, the noticee was not informed regarding extension.
- The show-cause notice was received from an unknown person on 05.06.2024 and was not delivered as per Section 153 of the Customs Act.
- The assay was conducted by Shri Kartikey Vasantraai Soni, who is not registered valuer as per Income Tax Department's list of registered valuers.
- The onus of proof as per Section 123 has been transferred to DRI AZU as per the statements of noticee dated 18.07.2023 and 19.03.2024.
- The noticee has received a notice under Section 150 of the Customs Act, 1962 for the disposal of seized Gold on 21.11.2024. The noticee has filed a reply on 25.11.2024, stating that the seized Gold should not be melted down or disposed of until the matter has been concluded.
- The noticee prayed that the notice should be dropped and the seized Gold be released.

22.3 Shri Rohan Thakkar, CA attended personal hearings on behalf of M/s. Patel Rajeshkumar Rameshkumar & Co and Shri Karamshibhai B. Desai, on 29.11.2024, through Video-conferencing. Shri Rohan Thakkar reiterated the written submissions and requested to drop the proceedings initiated in the SCN.

23. DISCUSSION AND FINDINGS:-

23.1 I have carefully gone through the records of the case, the Show Cause Notice, the submissions of all the noticees, records of personal hearings and facts of the case before me.

23.2 I find that while acting upon specific intelligence, the officers of DRI intercepted 15 passengers outside Kalupur Railway Station, Ahmedabad at around 04:50 hrs. on 07.06.2023. During the examination of the baggage of the passengers at the office of DRI, Ahmedabad Zonal Unit ("AZU"), bags of a passengers, Shri Karamshibhai B Desai, an employee working for Aangadiya firm- of M/s Patel Rajeshkumar Rameshkumar

Company ("the aangadia firm"), the officers found that certain parcels were containing gold which appeared to be of foreign origin. A detailed investigation revealed that "02 gold bars having total weight 200 grams having markings **UBS Switzerland** (Melter SAR) S.no. FA0016, and **ARGOR Switzerland** no. YF9362" was being sent by M/s. Dedhia Jewellers, Mumbai to M/s. Shyamkumar Mandora Private Limited, Ahmedabad and "03 gold bars having total weight 300 grams having markings **ARG** Bar No.XX0032, XX0092, XX0098" were being sent by M/s. Triveni Jewellers, Mumbai to M/s. Virti Impex, Ahmedabad. Shri Kartikey Vasantray Soni, Gold Assayer, examined and certified that said gold bars are of foreign origin and their fair value as per market rate are Rs. 12,10,000/- and Rs.18,15,000/- respectively. The said Gold bars were placed under seizure vide Seizure Memos dated 12.10.2023 under the provisions of Section 110 of Customs Act, 1962. Statements of all noticees and others were recorded u/s 108 of the Customs Act, 1962 and the aforesaid show cause notice was issued proposing confiscation of said gold bars under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of Customs Act, 1962 and penalties on all the noticees under Section 112(a), 112(b) & 117 of the Customs Act, 1962. Thus, I find that the issue before me to decide as to:

- a. Whether the seized gold bars are of foreign origin and were smuggled into India and the same are liable for confiscation under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of Customs Act, 1962?
- b. Whether the noticees are liable for penalties under Section 112(a), 112(b) & 117 of the Customs Act, 1962.

23.3 Now, I proceed to decide whether the seized gold bars are of foreign origin and were smuggled into India.

02 GOLD BARS HAVING TOTAL WEIGHT 200 GRAMS PERTAINING TO M/S. DEDHIA JEWELLERS

23.3.1 I find that 02 gold bars having total weight 200 grams recovered from the employee of M/s. Patel Rajeshkumar Rameshkumar & Company have markings as **UBS Switzerland** (Melter SAR) S.no. FA0016, and **ARGOR Switzerland** no. YF9362 (scratches on serial nos.). I like to rely on the judgment in the case of **ZAKI ISHRATI vs. COMM. OF CUSTOMS & CENTRAL EXCISE, KANPUR reported at 2013 (291) E.L.T. 161 (All.)** as quoted under:-

"34. The scope of Section 123 of the Customs Act, 1962 was discussed by the Supreme Court in Union of India & Ors. v. Rajendra Prabhu & Anr., (2001) 4 SCC 472 = 2001 (129) E.L.T. 286 (S.C.). It was held that where the authorities on the basis of materials on record, which may be sufficient in the circumstances of the case came to conclusion that gold biscuits have been in possession of the respondents were liable for confiscation and respondents committed offence under Section 112, even without taking option of presumption under Section 123, the Department could have directed confiscation as the burden in such case falls upon the person from

whose possession such gold biscuits of foreign markings were seized. In this case the Supreme Court held that the High Court could not have interfered with the findings of the authorities on the ground that the Department had failed to discharge initial burden of proving that the goods were smuggled.

35. *The four gold biscuits recovered from the drawer of the appellant were of foreign origin. The appellant produced receipt no. 170, dated 6-7-1994 from Khairati Ram Desraj Delhi for purchase of five biscuits out of which one was stated to have been melted. The appellant thus proved the valid possession of these four biscuits. Regarding 16 pieces of gold comprising of eight gold biscuits recovered from beneath the grass of the lawn attached to the premises, the suspicion of the authorities cannot be doubted. **The concealment of these gold pieces with foreign markings were sufficient to create reasonable believe that the gold being of foreign origin, in the absence of any evidence of their valid import was smuggled gold.** The burden thus under Section 123(1) was on the appellant to prove that the goods were either non-foreign origin or were validly purchased. Shri Faiyaz Ahmad tried to retract his statement that he had not purchased the gold recorded, on 10-8-1994, which was not accepted by the Adjudicating Officer. Shri Zaki Ishrati, however, did not retract his statement.”*

In above case law, Hon’ble Allahabad High Court held that in the absence of any evidence of their valid import, the Gold Biscuits with foreign markings are sufficient to create reasonable believe that the Gold being of foreign origin and even as smuggled Gold. In the present case, also from the statements of Shri Kunal Dedhia and Shri Maheshkumar S. Patel, Partner, M/s. Patel Rajeshkumar Rameshkumar & Company, I find that no evidence of valid import of the said Gold Bar was produced before the departmental officers.

23.3.2 I further find from the statement of noticee i.e. Shri Kunal Dedhia given under Section 108 of the Customs Act, 1962 on 18.07.2023 that:-

On being asked specifically about the detained two foreign origin Gold bar having total weight of 200 grams I state that the said two Gold bar having total weight of 200 grams is of foreign origin and the same was purchased by us

On being asked about the Import dockets for said foreign origin 2 gold pieces of 200 gms I state that we have not been given any Import dockets for the import of the said foreign origin 2 gold pieces of 200 gms by the customer and neither we are in possession of any import dockets. I also state that in this matter our customer is also not having any documents related to import therefore, it will not be possible for us to produce documents related to import of these two pieces of gold having 200 gms weight.

I find that in both the statements, Shri Kunal Dedhia admitted that the said Gold Bars are of the foreign origin and he did not have any import document in respect of it.

23.3.3 I further find that the Gold Bars was further examined by Shri Kartikey Vasantraai Soni, Govt. Approved Gold Assayer (“Assayer”), in presence of independent panchas and Shri Maheshkumar S. Patel, Partner, M/s. Patel Rajeshkumar

Rameshkumar & Company under panchnama dated 11.09.2023, and certified the purity of Gold, weight, rate of gold and origin of the gold vide his valuation report dated 18.09.2023. I find that the assayer in his valuation report clearly mentioned that the bars are of foreign origin based on visual inspection and his expertise. In this connection, I like to rely on the judgment in the case of **COMMISSIONER OF CUSTOMS, LUCKNOW vs. SANJAY SONI reported at 2022 (381) E.L.T. 509 (Tri. - All.)** wherein the Hon'ble Tribunal uphold the confiscation of one piece of gold bar on the basis of valuation report on foreign marking, as quoted under:-

*“29. So far, the appeal of Revenue against Mr. Sanjay Soni is concerned, I find that admittedly it is a case of town seizure. Out of the 5 gold bars and 1 cut piece seized from Mr. Sanjay Soni, there is foreign marking - ‘rand refinery’ only on one gold bar. There is no such foreign marking admittedly on the other pieces recovered and seized. Thus, I hold that in absence of any evidence brought on record as to the allegation of smuggling, the provisions of Section 123 of the Act are not attracted in the case of other 4 pieces and the cut piece of the gold bar seized. I hold Section 123 is attracted only in the case of one gold bar having foreign marking, as the person - Mr. Sanjay Soni from whom the foreign marked gold was recovered, have not been able to explain the licit source and have also stated that this gold may have arisen by way of smuggling into India through Bangladesh. Accordingly, modifying the order of Commissioner (Appeals), **I uphold the absolute confiscation with respect to one piece of gold having the marking ‘rand refinery’ weighing 998.600 gram valued at Rs. 31,95,520/-, as per the valuation report.**”*

In view of the above, I held that the said Gold Bars, bearing foreign marking ‘**UBS Switzerland**’ and ‘**ARGOR Switzerland**’ and being examined by the Government approved Assayer/Valuer, are of the foreign origin based on the Valuation Report dated 18.09.2023. I find that noticees i.e. Shri Kunal Dedhia and M/s. Dedhia Jewellers have submitted that Shri Kartikey Vasantraai Soni is not registered on Income Tax Website as valuer. In this connection, I reject the contention of the noticees as Shri Kartikey Vasantraai Soni is a registered valuer with Reg. no. CAT-VIII/104/2003-2004 (Approved by Govt. of India) and also empaneled by Commissioner of Customs Ahmedabad vide Public Notice No. 03/2022 dated 24.01.2023.

23.3.4 I find that import of gold is restricted under Foreign Trade (Development and Regulation) Act, 1992 except by authorised banks and nationalised agencies. In terms of the Circular No. 34/2013-Cus. issued by the Directorate General of Export Promotion vide F. No. DGEP/EOU/G & J/16/2009 dated 04.09.2013, import of gold is restricted and gold is permitted to be imported only by the agencies notified by DGFT which are as follows:

- a) Metals and Minerals Trading Corporation Limited (MMTC);
- b) Handicraft and Handloom Export Corporation (HHEC);
- c) State Trading Corporation (STC);

- d) Project and Equipment Corporation of India Ltd. (PEC);*
- e) STC Ltd.;*
- f) MSTC Ltd.;*
- g) Diamond India Ltd. (DIL);*
- h) Gems and Jewellery Export Promotion Council (G & J EPC);*
- i) A star Trading House or a Premier Trading House under Paragraph 3.10.2 of the Foreign Trade Policy and*
- j) Any other authorized by Reserve Bank of India (RBI).*

Hence, the import of gold by any other persons/agencies other than the above, is prohibited as mentioned in terms of the Circular No. 34/2013-Customs issued by the Directorate General of Export Promotion.

23.3.5 I find that the law on the subject relating to import of gold is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), 'dutiable goods' under Section 2(14) and 'smuggling' as defined under Section 2(39) of the Act read with Section 111 providing for various circumstances under which confiscation can be made. In the present case of Gold Bars of 200gms having markings foreign marking '**UBS Switzerland**' and '**ARGOR Switzerland**' were found in the possession of employee of Aangadia firm M/s. Patel Rajeshkumar Rameshkumar & Company. The sender of the said gold bar is Shri Kunal Dedhia and M/s. Dedhia Jewellers, but they could not produce any evidentiary document showing that the gold was imported through legal means. As the import of the said gold bars is prohibited and the burden of proof that "it is not smuggled gold" lies on the noticees under Section 123 of the Customs Act, 1962 which they failed to discharge as they could not produce the documentary evidence of the import of the said Gold bar.

23.3.6 I find that in consequence of the provisions of Section 123, that noticees were owner/sender of the smuggled gold, the circumstances under which the gold was discovered, the manner in which noticees were found owning the gold, the form in which gold was being carried namely Gold bars, all these circumstances establish beyond a shadow of doubt that the noticees i.e. Shri Kunal Dedhia and M/s. Dedhia Jewellers were possessing the gold knowingly and with the intention of evading the prohibition that was in force with respect to the import of gold into the country. As observed by the Madras High Court in **MALABAR DIAMOND GALLERY P. LTD. VS. ADDITIONAL DIRECTOR GENERAL, DIRECTORATE OF REVENUE INTELLIGENCE, CHENNAI - 2016 (341) E.L.T. 65 (MAD.):**-

"The expression, subject to the prohibition under the Customs Act, 1962, or any other law for the time being in force, in Section 2(33) of the Customs Act, has to be read and understood, in the light of what is stated in the entirety of the Act and other laws. Production of legal and valid documents for import along with payment of duty, determined on the goods imported, are certainly conditions to be satisfied by an importer. If the conditions for import are not

complied with, then such goods, cannot be permitted to be imported and thus, to be treated as prohibited from being imported.”

23.3.7 Madras High Court in the case of *Malabar Diamond Gallery P. Ltd.* (supra) *inter alia* observed :

“86. If there is a fraudulent evasion of the restrictions imposed, under the Customs Act, 1962 or any other law for the time being in force, then import of gold, in contravention of the above, is prohibited. For prohibitions and restrictions, Customs Act, 1962, provides for machinery, by means of search, seizure, confiscation and penalties. Act also provides for detection, prevention and punishment for evasion of duty.”

In view of above, I find that the said Gold Bar has been smuggled into India.

03 GOLD BARS HAVING TOTAL WEIGHT 300 GRAMS PERTAINING TO M/S. TRIVENI JEWELLERS, MUMBAI

23.3.8 I find that 03 gold bars having total weight 300 grams recovered from the employees of M/s. Patel Rajeshkumar Rameshkumar & Company having markings **ARG** Bar No.XX0032, XX0092, XX0098. I like to rely on the judgment in the case of ***ZAKI ISHRATI vs. COMMR. OF CUSTOMS & CENTRAL EXCISE, KANPUR reported at 2013 (291) E.L.T. 161 (All.)*** para supra, where, Hon’ble Allahabad High Court held that in the absence of any evidence of their valid import, the Gold Biscuits with foreign markings are sufficient to create reasonable believe that the Gold being of foreign origin and even as smuggled Gold. In the present case, also from the statement of Shri Maheshkumar S. Patel, Partner, M/s. Patel Rajeshkumar Rameshkumar & Company, I find that no evidence of valid import of the said Gold Bars was produced before the departmental officers.

23.3.9 I further find from the statement of Shri Bharat Vasantlal Mandaliya , proprietor of M/s. Triveni Jewellers given under Section 108 of the Customs Act, 1962 on 18.07.2023 that:-

On being asked specifically about the detained three foreign origin Gold bar having total weight of 300 grams I state that the said three Gold bar having total weight of 300 grams is of foreign origin and the same was purchased by us from various dealers namely M/s Auric Bullion and Jewellery, M/s All India Bullion, M/s Vardhaman Enterprises.

On being asked about the mode of purchase of foreign origin gold from M/s Auric Bullion and Jewellery, M/s All India Bullion, M/s Vardhaman Enterprises I state that I have contacted them on phone and accordingly we have decided for purchase of these foreign origin Gold Bars.

On being asked the verification of foreign origin gold purchased from M/s Auric Bullion and Jewellery, M/s All India Bullion, M/s Vardhaman Enterprises I state that I did not verified whether the gold was of foreign origin. I further state that it was a mistake that we have not verified the Gold Bars which were of foreign origin. I also state that with regard to foreign origin gold it must be imported or purchased through authorised banks.

F. No. VIII/10-86/ DRI-AZU /O&A/HQ/2024-25
OIO No. 215/ADC/SRV/O&A/2024-25

On being asked about the Import dockets for said foreign origin 3 gold bars of 300 gms I state that we have not been supplied any Import dockets for the import of the said foreign origin 3 gold bars of 300 gms by the supplier and neither we are in possession of any import dockets. Further, I state that I would not be able to produce the import documents for the import of foreign origin 3 gold bars of 300 gms.

I find that in his statement, Shri Bharat Vasantlal Mandaliya admitted that the said Gold Bars are of foreign origin and he did not have any import document in respect of it.

23.3.10 I further find that the Gold Bars was further examined by Shri Kartikey Vasantraai Soni, Govt. Approved Gold Assayer ("Assayer"), in presence of independent panchas and Shri Amrutbhai Harjivandas Patel under panchnama dated 11.09.2023, and certified the purity of Gold, weight, rate of gold and origin of the gold vide his valuation report dated 18.09.2023. I find that the assayer in his valuation report clearly mentioned that the bars are of foreign origin based on visual inspection and his expertise. In this connection, I like to rely on the judgment in the case of **COMMISSIONER OF CUSTOMS, LUCKNOW vs. SANJAY SONI reported at 2022 (381) E.L.T. 509 (Tri. - All.)** para supra, where, Hon'ble Tribunal uphold the confiscation of one piece of gold bar on the basis of valuation report on foreign marking. Therefore, I held that the said Gold Bars, bearing foreign marking "**ARG**" and being examined by the Government approved Assayer or Valuer, are of the foreign origin based on the Valuation Report dated 18.09.2023.

23.3.11 I find that import of gold is restricted under Foreign Trade (Development and Regulation) Act, 1992 except by authorised banks and nationalised agencies. In terms of the Circular No. 34/2013-Cus issued by the Directorate General of Export Promotion vide F. No. DGEP/EOU/G & J/16/2009 dated 04.09.2013, import of gold is restricted and gold is permitted to be imported only by the agencies notified by DGFT (supra). Hence, the import of gold by any other persons/agencies other than the above, is prohibited as mentioned in terms of the Circular No. 34/2013-Customs issued by the Directorate General of Export Promotion.

23.3.12 I find that the law on the subject relating to import of gold is well settled by catena of decisions interpreting the statutory provisions, particularly the definition of 'prohibited goods' under Section 2(33), 'dutiable goods' under Section 2(14) and 'smuggling' as defined under Section 2(39) of the Act read with Section 111 providing for various circumstances under which confiscation can be made. In the present case of 03 Gold Bar of 300 gms having markings "**ARG**" were found in the possession of employees of Aangadia firm M/s. Patel Rajeshkumar Rameshkumar & Company. The sender of the said gold bar is M/s. Triveni Jewellers, but they could not produce any evidentiary document showing that the gold was imported through legal means. As the import of the said gold bar is prohibited and the burden of proof that "it is not smuggled gold" lies on the noticee under Section 123 of the Customs Act, 1962 which he failed to discharge as he could not produce the documentary evidence of the import of the said Gold bar. In his statement dated 19.03.2024, Shri Bharat Vasantlal Mandaliya stated that:

F. No. VIII/10-86/ DRI-AZU /O&A/HQ/2024-25
OIO No. 215/ADC/SRV/O&A/2024-25

Now on being once again asked about seized gold bars having total weight of 300 grams of 999 purity I state that the said Gold bars, having total weight of 300 grams of 999 purity are of foreign origin and we are not remembering exactly from whom we have purchased this gold bar and from the documents available with us we are not able to establish from whom we have purchased the said gold bars.

23.3.13 I find that in consequence of the provisions of Section 123, that noticee were owner/sender of the smuggled gold, the circumstances under which the gold was discovered, the manner in which noticee were found owning the gold, the form in which gold was being carried namely Gold bars, all these circumstances establish beyond a shadow of doubt that the noticee M/s. Triveni Jewellers were possessing the gold knowingly and with the intention of evading the prohibition that was in force with respect to the import of gold into the country. As observations of Madras High Court in **MALABAR DIAMOND GALLERY P. LTD. (supra)**, *"If there is a fraudulent evasion of the restrictions imposed, under the Customs Act, 1962 or any other law for the time being in force, then import of gold, in contravention of the above, is prohibited."*

23.3.14 I further find from the statement of Shri Bharat Vasantlal Mandaliya dated 19.03.2024 that he stated that he was not sure whether the Gold might have been imported legally into India or smuggled. The relevant portion is quoted under:-

On being asked about the origin of the Seized gold bars of 300 grams, I state that I am aware that the said gold bars are of foreign origin but I was not sure at the time of purchasing the said gold that whether the said gold bars were genuinely imported in India or smuggled. I state that I did not inquire much into it as I am not aware of the legal provisions of the Customs Act or Rules.

Quoted
19/3/2024

B.V. Mandaliya
19/3/24

23.3.15 In view of no discharge of burden of proof as required under Section 123 of the Customs Act, 1962, I find that the Gold Bar has been smuggled into India. I find in present case, the Gold Bars were seized on the reasonable belief of the bars being smuggled due to foreign markings and absence of any valid import documents. Further, detailed investigation was carried out including recording of statements of the noticees under Section 108 of the Customs Act, 1962 and examination of the Gold Bars by the Government approved Assayer. I also find that the noticees could not provide any evidence of legal purchase of the said Gold Bars.

23.4 Now I proceed to decide whether the seized gold bars are liable for confiscation under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of Customs Act, 1962.

23.4.1 I find that that the Show Cause Notice proposed absolute confiscation under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of Customs Act, 1962 of above said Gold Bars i.e. "02 gold bars having total weight 200 grams having markings **UBS Switzerland** (Melter SAR) S.no. FA0016, and **ARGOR Switzerland** no. YF9362" pertaining to M/s. Dedhia Jewellers, Mumbai and "03 gold bars having total

weight 300 grams having markings **ARG** Bar No.XX0032, XX0092, XX0098” pertaining to M/s. Triveni Jewellers, Mumbai.

23.4.2 Section 111 of Customs Act, 1962: 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;

.....

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

.....

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;”

23.4.3 From the discussion in foregoing paras, I find that said Gold Bars i.e. “02 gold bars having total weight 200 grams having markings **UBS Switzerland** (Melter SAR) S.no. FA0016, and **ARGOR Switzerland** no. YF9362” pertaining to M/s. Dedhia Jewellers, Mumbai and “03 gold bars having total weight 300 grams having markings **ARG** Bar No.XX0032, XX0092, XX0098” pertaining to M/s. Triveni Jewellers, Mumbai, recovered from Shri Karmashibhai B. Desai, employee working for Aangadiya firm- M/s. Rajeshkumar Rameshkumar & Company, were seized vide Seizure Memos dated 12.10.2023 under the provisions of Section 110 of Customs Act, 1962, on the reasonable belief that the said gold bar were smuggled into India with an intention to evade payment of Customs duty. From the Valuation Report and admissions of the noticees i.e. Shri Kunal Dedhia of M/s. Dedhia Jewellers and Shri Bharat Vasantlal Mandaliya of M/s. Triveni Jewellers, it was found that the same were of foreign origin and had been brought into India without any valid import documents which made them smuggled Gold as defined under Section 2(39) of the Customs Act, 1962.

23.4.4 I also find that the noticees did not controvert the facts detailed in the Panchnama during the course of recording their statements recorded under section 108 of the Customs Act, 1962 except that they stated that they are not aware of the Customs Laws and Rules. since ignorance of law is no excuse as held by **HON'BLE HIGH COURT OF CALCUTTA IN THE CASE OF PROVASH KUMAR DEY V. INSPECTOR OF CENTRAL EXCISE AND OTHERS REPORTED AT 1987 (31) E.L.T. 13 (CAL.)**, therefore, I find that therefore statement of the noticees may be taken as evidence. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passengers/owner of the Aangadia Firm. The said smuggling of Gold thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

23.4.5 I find that as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized or the person who was taking the ownership of the said Gold bars. In the present case, neither Shri Kunal Dedhia and M/s. Dedhia Jewellers nor M/s. Triveni Jewellers have discharged their burden. Shri Kunal Dedhia in his statement dated 18.07.2023 stated that:-

On being asked the verification of foreign origin gold purchased from Shri Gopi K Shah I state that I did not verified whether the gold was of foreign origin. I further state that it was a mistake not to verify the Gold Bars which were of foreign origin.

On being asked about the Import dockets for said foreign origin 2 gold pieces of 200 gms I state that we have not been given any Import dockets for the import of the said foreign origin 2 gold pieces of 200 gms by the customer and neither we are in possession of any import dockets. I also state that in this matter our customer is also not having any documents related to import therefore, it will not be possible for us to produce documents related to import of these two pieces of gold having 200 gms weight.

In his statement dated 19.03.2024, Shri Bharat Vasantlal Mandaliya stated that:-

On being asked about the origin of the Seized gold bars of 300 grams, I state that I am aware that the said gold bars are of foreign origin but I was not sure at the time of purchasing the said gold that whether the said gold bars were genuinely imported in India or smuggled. I state that I did not inquire much into it as I am not aware of the legal provisions of the Customs Act or Rules.

Bharat
19/3/2024

BV
19/3/24 B.V. Mandaliya

On being asked about the Import dockets for said foreign origin 3 gold bars of 300 gms I state that we have not been supplied any Import dockets for the import of the said foreign origin 3 gold bars of 300 gms by the supplier and neither we are in possession of any import dockets. Further, I state that I would not be able to produce the import documents for the import of foreign origin 3 gold bars of 300 gms.

23.4.6 From the facts discussed above, it is evident that said gold i.e. “02 gold bars having total weight 200 grams having markings **UBS Switzerland** (Melter SAR) S.no. FA0016, and **ARGOR Switzerland** no. YF9362” pertaining to M/s. Dedhia Jewellers, Mumbai and “03 gold bars having total weight 300 grams having markings **ARG** Bar No.XX0032, XX0092, XX0098” pertaining to M/s. Triveni Jewellers, Mumbai are liable for confiscation, under the provisions of Sections 111(d), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By owning the said gold without valid import documents made the impugned goods fall within the ambit of ‘smuggling’ as defined under Section 2(39) of the Act.

23.4.7 I find that as per Section 2(33) “prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the **Hon’ble Supreme Court in the case of Om Prakash Bhatia** however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of ‘prohibited goods’. This makes the gold seized in the present case “prohibited goods” as the Gold Bars were smuggled into India. In view of the above discussions, I hold that the said gold bars are liable for absolute confiscation. I rely on the case decided by the Hon’ble High Court of Madras in respect of **MALABAR DIAMOND GALLERY PVT LTD**, where the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that “restriction” also means prohibition. In Para 89 of the order, it was recorded as under;

89. *While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, “restriction”, also means prohibition, as held by the Hon’ble Apex Court in Om Prakash Bhatia’s case (cited supra).*

23.4.8 Further, I am not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act. I

rely on the judgment of the Hon'ble High Court of Madras in the matter of **COMMISSIONER OF CUSTOMS (AIR), CHENNAI-I VERSUS P. SINNASAMY 2016 (344) E.L.T. 1154 (MAD.)** held as-

“Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified -

Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.”

23.4.9 Given the facts of the present case before me and the judgments and rulings cited above, I hold the said gold bars i.e. “02 gold bars having total weight 200 grams having markings UBS Switzerland (Melter SAR) S.no. FA0016, and ARGOR Switzerland no. YF9362” pertaining to M/s. Dedhia Jewellers, Mumbai and “03 gold bars having total weight 300 grams having markings ARG Bar No.XX0032, XX0092, XX0098” pertaining to M/s. Triveni Jewellers, Mumbai having market value Rs. 12,10,000/- and Rs.18,15,000/- respectively, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(j), 111(l) & 111(m) of the Customs Act, 1962.

23.5 Now, I proceed to decide the roles of all the noticees and whether the noticees are liable for penalties under Section 112(a), 112(b) & 117 of the Customs Act, 1962.

SHRI KUNAL DEDHIA AND M/S. DEDHIA JEWELLERS

23.5.1 I find that Shri Kunal Dedhia, proprietor of M/s. Dedhia Jewellers had in his statement dated 18.07.2023 stated that the two gold bars, weighing 200 grams are of foreign origin and the same were purchased by them from one of their customers, Shri. Gopi K. Shah. On being asked about the mode of purchase of foreign origin gold, he stated that Shri. Gopi K. Shah visited their showroom for the sale of two gold bars having total weight of 200 grams and in exchange bought jewellery from their showroom. However, I find from the purchase invoice that the weight of Gold purchased by M/s. Dedhia Jewellers from Gopi K. Shah is 270 gms and have no mention of markings and serial nos. and therefore cannot be considered true at its face value.

He had handed over the said gold bars of 200 grams to employee of M/s. Rajeshkumar Rameshkumar & Company for delivery to Shri Shyamkumar Mandora, Ahmedabad in the evening of 06.06.2023.

Further, on being asked about as to whether the said gold piece was smuggled in India, he stated that

On being asked the verification of foreign origin gold purchased from Shri Gopi K Shah I state that I did not verified whether the gold was of foreign origin. I further state that it was a mistake not to verify the Gold Bars which were of foreign origin.

On being asked about the Import dockets for said foreign origin 2 gold pieces of 200 gms I state that we have not been given any Import dockets for the import of the said foreign origin 2 gold pieces of 200 gms by the customer and neither we are in possession of any import dockets. I also state that in this matter our customer is also not having any documents related to import therefore, it will not be possible for us to produce documents related to import of these two pieces of gold having 200 gms weight.

From the above, it is evident that he admitted that he was aware that the said gold is of foreign origin and failed to provide proof of valid importation of the said Gold. I find that Shri Kunal Dedhia and M/s. Dedhia Jewellers have knowingly concerned himself in purchase of foreign origin gold bars of 200 grams and (being beneficial owner of the said gold) were not able to produce documents evidencing legitimate import of the said Gold seized. In terms of provisions of Section 123 of the Customs Act, the burden of proof lies on M/s. Dedhia Jewellers to establish that the said gold bars are not smuggled goods, which they failed to provide.

23.5.2 I find that the noticees have contended that he has discharged burden of proof under Section 123 of the Customs Act, 1962. However, I find from his statement that he could not produce the legal import documents and did not tell the departmental officers about the source of the said Gold. I also find that he accepted in his statement dated 18.07.2023 that he had purchased the said foreign origin Gold from person coming to his shop for selling Gold in retail.

23.5.3 As discussed in foregoing paras, it was found that the said Gold is of foreign origin and found to be smuggled into India, therefore, I find that Shri Kunal Dedhia and M/s. Dedhia Jewellers had knowingly indulged/concerned himself in purchase of said foreign origin smuggled gold and acquiring the possession of the same which is liable to confiscation under Section 111 of the Customs Act, 1962. I find as per Section 112 (b) of the Customs Act, 1962, any person who **acquires possession of** or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, **selling or purchasing**, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, will be liable for penalty under Section 112. I find that that Shri Kunal Dedhia and M/s. Dedhia Jewellers are culpable and the act of omission and commission made on his part for purchasing and acquiring possession of the smuggled gold which are liable for

confiscation, has rendered him liable for penalty under Section 112 of the Customs Act, 1962.

23.5.4 I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. In this regard, I would like to refer to the judgment in the case of **ZAKI ISHRATI V. COMMISSIONER OF CUSTOMS & CENTRAL EXCISE, KANPUR [2013 (291) E.L.T. 161 (ALL.)]**, wherein the Hon'ble Allahabad High Court has held that subsequent retraction cannot take away the effect of the statement; if the retraction is not addressed to the officer to whom the statement was given. I would also like to refer to the judgment in the case of **P.B. NAIR C&F PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (TRI. - MUMBAI)]** wherein it was held as under:

“Evidence - Statement - Retraction of - Confessional statement under Section 108 of Customs Act, 1962 - Proceedings under Section 108 ibid is a judicial proceeding and if any retraction of confession to be made, to be made before same authority who originally recorded the statement - Confessional statements never retracted before the authority before whom the statement was recorded, belated retractions of statements after about one and half years cannot take away the evidentiary value of original statement.”

23.5.5 I find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee no. 1 as held in the following cases:-

- *Romesh Chandra Mehta v. State of West Bengal, 1999 (110) E.L.T. 324 (S.C.)*
- *Percy Rustam Ji Basta v. State of Maharashtra, 1983 (13) E.L.T. 1443 (S.C.),*
- *Assistant Collector Central Excise, Rajamundry v. Duncan Agro Industries Ltd & Ors. - 2000 (120) E.L.T. 280 (S.C.)* and
- *Gulam Hussain Shaikh Chougule v. Reynolds Supdt. of Customs Marmgoa - 2001 (134) E.L.T. 3 (S.C.)*

I find that once there is an admission by the noticee himself nothing further is required to be proved to the contrary. The Apex Court in **SURJEET SINGH CHHABRA V. UNION OF INDIA - 1997 (89) E.L.T. 646 (SC)** held that confession made by the appellant binds him. Reliance is placed on **COMMISSIONER OF C. EX., MADRAS V. M/S. SYSTEMS AND COMPONENTS PVT. LTD. - 2004 (165) E.L.T. 136 (S.C.)** where it has been held that it is a basic and settled law that what has been admitted need not be proved.

23.5.6 I find further that Shri Kunal Dedhia and M/s. Dedhia Jewellers are liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act with which it was their duty to comply, as they purchased and possessed the smuggled gold. I also find that they also did not discharge his burden under Section 123 truthfully.

SHRI BHARAT VASANTLAL MANDALIYA, PROPRIETER OF M/S. TRIVENI JEWELLERS

23.5.7 I find that Shri Bharat Vasantlal Mandaliya, the proprietor of M/s. Triveni Jewellers had in his statement dated 18.07.2023 stated that the three gold bars, weighing 300 grams are of foreign origin and the same were purchased by him from various dealers namely M/s. Auric Bullion and Jewellers, M/s. All India Bullion and M/s. Vardhaman Enterprises. Further, in his statement dated 19.03.2024, Shri Bharat Vasantlal Mandaliya stated that he is not able to establish as to from whom he had purchased the said gold bars. On being asked about the origin of the Seized gold bars of 300 grams, he admitted that the said gold bars are of foreign origin, however, he was not sure at the time of purchasing the said gold that whether the said gold bars were genuinely imported in India or smuggled.

Now on being once again asked about seized gold bars having total weight of 300 grams of 999 purity I state that the said Gold bars, having total weight of 300 grams of 999 purity are of foreign origin and we are not remembering exactly from whom we have purchased this gold bar and from the documents available with us we are not able to establish from whom we have purchased the said gold bars.

23.5.8 The three gold bars were handed over by them to Aangadiya firm- M/s. Rajeshkumar Rameshkumar & Company on 06.06.2023 for delivery to M/s. Virti Impex, Ahmedabad. Further, on being asked about as to whether the said gold piece was smuggled in India, he stated that

On being asked about the origin of the Seized gold bars of 300 grams, I state that I am aware that the said gold bars are of foreign origin but I was not sure at the time of purchasing the said gold that whether the said gold bars were genuinely imported in India or smuggled. I state that I did not inquire much into it as I am not aware of the legal provisions of the Customs Act or Rules.

Bharat
19/3/24

B.V. Mandaliya
19/3/24

He also stated that they do not have any import documents for the gold bars. He admitted that he was aware that the said gold is of foreign origin and failed to provide proof of valid importation of the said Gold.

On being asked about the Import dockets for said foreign origin 3 gold bars of 300 gms I state that we have not been supplied any Import dockets for the import of the said foreign origin 3 gold bars of 300 gms by the supplier and neither we are in possession of any import dockets. Further, I state that I would not be able to produce the import documents for the import of foreign origin 3 gold bars of 300 gms.

I find that Shri Bharat Vasantlal Mandaliya has knowingly concerned himself in purchase of foreign origin gold bars of 300 grams and (being beneficial owner of the said gold) were not able to produce documents evidencing legitimate import of the said Gold seized. In terms of provisions of Section 123 of the Customs Act, the burden of proof lies on Shri Bharat Vasantlal Mandaliya to establish that the said gold bars are not smuggled goods, which they failed to provide.

23.5.9 I find that Shri Bharat Vasantlal Mandaliya have contended that they have discharged burden of proof under Section 123 of the Customs Act, 1962. However, I find from the statement of Shri Bharat Vasantlal Mandaliya that he could not produce the legal import documents and did not tell the departmental officers about the source of the said Gold. In view of the above, I find that Shri Bharat Vasantlal Mandaliya, proprietor of M/s. Triveni Jewellers are the beneficial owner of the smuggled Gold.

23.5.10 As discussed in foregoing paras, it was found that the said Gold is of foreign origin and found to be smuggled into India, therefore, I find that Shri Bharat Vasantlal Mandaliya, Proprietor of M/s. Triveni Jewellers had knowingly indulged/concerned themselves in purchase of said foreign origin smuggled gold and acquiring the possession of the same which is liable to confiscation under Section 111 of the Customs Act, 1962. I find as per Section 112 (b) of the Customs Act, 1962, any person who acquires **possession** of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or **purchasing**, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, will be liable for penalty under Section 112. I hold that that Shri Bharat Vasantlal Mandaliya is culpable and the act of omission and commission made on their part for purchasing and acquiring possession of the smuggled gold which are liable for confiscation, have rendered themselves liable for penalty under Section 112 of the Customs Act, 1962.

23.5.11 I find that every such inquiry under section 108 of the customs Act, 1962 shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required. I find that it is a settled principle of law that the statement recorded under Section 108 of the Act is binding on the noticee as held in the following cases:-

- *Romesh Chandra Mehta v. State of West Bengal*, 1999 (110) E.L.T. 324 (S.C.)
- *Percy Rustam Ji Basta v. State of Maharashtra*, 1983 (13) E.L.T. 1443 (S.C.)
- *Assistant Collector Central Excise, Rajamundry v. Duncan Agro Industries Ltd & Ors.* - 2000 (120) E.L.T. 280 (S.C.) and
- *Gulam Hussain Shaikh Chougule v. Reynolds Supdt. of Customs Marmgoa* - 2001 (134) E.L.T. 3 (S.C.)

I find that once there is an admission by the noticee himself nothing further is required to be proved to the contrary. The Apex Court in **SURJEET SINGH CHHABRA V. UNION OF INDIA - 1997 (89) E.L.T. 646 (SC)** held that confession made by the appellant binds him. Reliance is placed on **COMMISSIONER OF C. EX., MADRAS V. M/S. SYSTEMS AND COMPONENTS PVT. LTD. - 2004 (165) E.L.T. 136 (S.C.)** where it has been held that it is a basic and settled law that what has been admitted need not be proved.

23.5.12 I find further that Shri Bharat Vasantlal Mandaliya , proprietor M/s. Triveni Jewellers are liable for penalty under Section 117 of the Customs Act, 1962 as he has contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act with which it was his duty to comply, as he purchased and possessed the smuggled gold. I also find that he also did not discharge his burden under Section 123 truthfully.

M/S. PATEL RAJESHKUMAR RAMESHKUMAR & COMPANY

23.5.13 I find that in present case, employee namely Shri Karamshibhai B Desai of M/s Patel Rajeshkumar Rameshkumar Company ("Aangadia Firm") were intercepted by the officers of DRI in the 'Pick up' area outside the Kalupur Railway Station, Ahmedabad and on the examination of the baggage of the those two employees, the officers of DRI found that certain parcels containing gold which appeared to be of foreign origin. I find that the employee of the Aangadia Firm could not produce any documents showing legitimate import of the said goods and these goods appeared to be of the nature of smuggled goods. I find from the statement of Shri Maheshkumar S. Patel, Partner, M/s. Patel Rajeshkumar Rameshkumar & Company recorded under section 108 of the Customs Act, 1962 on 14.06.2023, that M/s Patel Amrut Kantilal Angadia is specialized in courier services of Precious and valuable goods, documents, Gems and Jewellery, Diamonds etc. and the said parcels were carried by their employee Shri Karamshibhai B Desai for delivery to concerned recipients. Further, as discussed in foregoing paras, Two Gold bars weighing 200 grams in Total, having marking **"UBS" & "ARGOR"** pertaining to M/s. Dedhia Jewellers, Mumbai and three Gold bars of 300 grams having marking **"ARG"** pertaining to M/s. Triveni Jewellers, were found to be smuggled Gold and found to be liable for confiscation under Section 111 of the Customs Act, 1962.

23.5.14 I find that M/s. Patel Rajeshkumar Rameshkumar & Company had concerned themselves into smuggling of Gold as they had taken up to carry and deliver the said Gold without verifying the legitimate documents of import of such foreign origin gold from respective senders. I find that Shri Maheshkumar S. Patel, Partner, M/s. Patel Rajeshkumar Rameshkumar & Company admitted in his statement dated 14.06.2023 that they cannot accept the parcels containing foreign origin gold for transport. The quoted texted is reproduced below:-

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On being asked that which type of goods we may transport in the parcels I state that any legitimate goods with proper invoice can be transported but we mainly accepts parcels related to precious and valuable goods, documents, Gold and Jewellery. On being specifically asked whether we can accept foreign currency, Foreign origin gold I state that we cannot accept the parcels

[Signature]
14/6/23

[Signature]
14/6/23

related to foreign currency, Foreign origin gold in bars or any other form, but sometimes it may be possible that the customer may mis declare the correct description and nature of goods in the parcel.

23.5.15 I find from the statement of Shri Maheshkumar S. Patel that they failed in their obligation to report the possession of foreign origin gold which are liable for confiscation under Section 111 of the Customs Act, to respective revenue authorities. I find that M/s. Patel Rajeshkumar Rameshkumar & Company has submitted that they are not in position to check whether the Gold bars that has been transported by the Noticee are the Foreign Origin or not. However, I find that noticee had a clear duty to check the accompanying documents for goods being transported/carrying. By indulging themselves in such acts of omission and commission, i.e. *“any way concerned in **carrying**, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,”* M/s. Patel Rajeshkumar Rameshkumar & Company rendered them liable for penal action under Section 112(b) of the Customs Act, 1962.

23.5.16 M/s. Patel Rajeshkumar Rameshkumar & Company also submitted that they were transporting the goods and no penal provision for transportation is provided in provisions of Section 112 of the Customs Act unlike Rule 26 of the Central Excise Rules, 2002. In this regard, I find that the words ‘transport’ and ‘carriage’ are interchangeably used in legal terms and there is clear provisions for ‘carrying’ or ‘in any other manner dealing’ with the goods which are liable for confiscation, and I reject their contentions.

23.5.17 I also find that M/s. Patel Rajeshkumar Rameshkumar & Company are liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act by not reporting to the concerned authorities about the smuggled gold.

SHRI KARAMSHIBHAI B DESAI:

23.5.18 I find that Shri Karamshibhai B Desai had concerned himself into smuggling of Gold as he had taken up to carry and deliver the said Gold without verifying the legitimate documents of import of such foreign origin gold from respective senders. I also find that Shri Karamshibhai B Desai was well aware of their company’s work as well as nature of his own job. He had to deal with delivery of precious and valuable goods, documents, jewellery, diamonds, cash etc. He was supposed to know

the documents required with each type of goods mentioned above and the laws and rules governing their possession, carrying, selling, purchasing etc., ignorance of law is no excuse. I find that merely acting upon the directions of his employer M/s. Patel Rajeshkumar Rameshkumar & Company, was not expected from him however while receiving the parcels containing smuggled Gold, he should have checked the documents of legal purchase/import of the said smuggled Gold.

23.5.19 I further find that Shri Karamshibhai B Desai had concerned himself in carrying of the smuggled goods i.e. said Gold Bars which they know or have reasons to believe were liable to confiscation under Section 111 of Custom Act, 1962 and rendered himself liable for penal action under Section 112(b) of the Customs Act, 1962.

23.5.20 I also find that Shri Karamshibhai B Desai is liable for penalty under Section 117 of the Customs Act, 1962 as they have contravened the provisions of the Customs Act and failed to comply with the provision of the Customs Act by not reporting to the concerned authorities about the smuggled gold.

23.6 I also find that the case laws cited by the noticees in their submissions, having different facts and circumstances, are not squarely applicable in this case.

ORDER

24. Thus, from discussions in para supra, I pass the following order –

- a) I order absolute confiscation of Two gold bars of foreign origin, weighing 200 grams in total, valued at **Rs. 12,10,000/- (Twelve Lakhs and Ten Thousand Only)** pertaining to M/s. Dedhia Jewellers, Mumbai placed under seizure vide Seizure Memo (DIN- 202310DDZ100008378F8) dated 12.10.2023, under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- b) I order absolute confiscation of Three gold bars of foreign origin, weighing 300 grams in total, valued at **Rs. 18,15,000/- (Eighteen Lakhs and Fifteen Thousand Only)** pertaining to M/s. Triveni Jewellers placed under seizure vide Seizure Memo (DIN-202310DDZ1000000ECAD) dated 12.10.2023, under the provisions of Section 111(d), 111(j), 111(l) and 111(m) of the Customs Act, 1962;
- c) I impose a penalty of **Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand Only)** on M/s. Dedhia Jewellers under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on him;

- d) I impose a penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on M/s. Dedhia Jewellers under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- e) I impose a penalty of **Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand Only)** on Shri Kunal Dedhia, Authroised Signatory, M/s. Dedhia Jewellers under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on him;
- f) I impose a penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on Shri Kunal Dedhia, Authroised Signatory, M/s. Dedhia Jewellers under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- g) I impose a penalty of **Rs. 4,50,000/- (Rupees Four Lakh and Fifty Thousand Only)** on Shri Bharat Vasantlal Mandaliya, proprietor of M/s. Triveni Jewellers under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on him;
- h) I impose a penalty of **Rs. 20,000/- (Rupees Twenty Thousand Only)** on Shri Bharat Vasantlal Mandaliya, proprietor of M/s. Triveni Jewellers under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- i) I impose a penalty of **Rs. 4,00,000/- (Rupees Four Lakhs Only)** on M/s. Patel Rajeshkumar Rameshkumar & Company under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on them;
- j) I impose a penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand Only)** on M/s. Patel Rajeshkumar Rameshkumar & Company under section 117 of the Customs Act, 1962 as discussed in foregoing Paras;
- k) I impose a penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand Only)** on Shri Karamshibhai B Desai, employee for M/s. Patel Rajeshkumar Rameshkumar & Company under section 112 (b) of the Customs Act, 1962 as discussed in foregoing Paras. I do not impose any penalty under section 112 (a) of the Customs Act, 1962 on him;
- l) I impose a penalty of **Rs. 10,000/- (Rupees Ten Thousand Only)** on Shri Karamshibhai B Desai, employee for M/s. Patel Rajeshkumar Rameshkumar & Company under section 117 of the Customs Act, 1962 as discussed in foregoing Paras.

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25. The Show-cause notice bearing no. VIII/10-86/DRI-AZU/O&A/HQ/2024-25 dated 04.06.2024 is disposed of in terms of the para above.

**(SHREE RAM VISHNOI)
ADDITIONAL COMMISSIONER**

F. No. VIII/10-86/DRI-AZU/O&A/HQ/2024-25
DIN- 20241271MN000000A351

Dated:**31.12.2024**

BY SPEED POST:

To,

1) M/S. DEDHIA JEWELLERS,
19, SANGIT SAGAR BUILDING,
SHOP NO. 3&4, LAXMINARAYAN LANE,
MATUNGA (C.R), MUMBAI

2) SHRI KUNAL DEDHIA,
C/O OF M/S. DEDHIA JEWELLERS
19, SANGIT SAGAR BUILDING,
SHOP NO. 3&4, LAXMINARAYAN LANE,
MATUNGA (C.R), MUMBAI

3) M/S. TRIVENI JEWELLERS,
21/5, JADHAVJI MANSION,
3RD FOFAL WADI, BHULESHWAR ROAD,
MUMBAI- 400002

4) M/S. PATEL RAJESHKUMAR RAMESHKUMAR & COMPANY,
20, ZAVERI CHAMBER, RATANPOL,
AHMEDABAD, GUJARAT

5) SHRI KARAMSHIBHAI B. DESAI,
C/O M/S. PATEL RAJESHKUMAR RAMESHKUMAR & COMPANY,
20, ZAVERI CHAMBER, RATANPOL,
AHMEDABAD, GUJARAT

Copy to:

- 1)** The Principal Commissioner of Customs, Ahmedabad Commissionerate, for information please.
- 2)** The Additional Director General, Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, Ahmedabad
- 3)** The Superintendent System In-Charge, Customs, HQ, Ahmedabad for uploading on the official web-site.
- 4)** The Superintendent (Task Force), Customs-Ahmedabad.
- 5)** The Deputy Commissioner, SVPIA, Ahmedabad, with request to affix the same at Notice Board at Airport (for any information to any other claimant)
- 6)** Notice Board at Customs House, Ahmedabad (for any information to any other claimant)
- 7)** Guard File.