





प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
 “सीमा शुल्क भवन”, पहली मंजिल, पुराने हाई कोर्ट के सामने, नवरंगपुरा, अहमदाबाद -380 009.
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निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.

फा. सं./F. No.: **GEN/ADJ/COMM/342/2023-TECH**
DIN- 20240871MN000000D23C

आदेशकीतारीख/Date of Order : 16.08.2024
 जारीकरनेकीतारीख/Date of Issue : 16.08.2024

द्वारापारित :- **शिवकुमारशर्मा, प्रधानआयुक्त**
Passed by :- Shiv Kumar Sharma, Principal Commissioner

मूलआदेशसंख्या :

Order-In-OriginalNo:AHM-CUSTM-000-PR.COMMR-40-2024-25 Dated 16.08.2024 in the case of M/s. Europea Makeour Jewel Pvt. Limited, Unit No. 401 & 403 on Plot No. 247-248 and 225B, Surat Special Economic Zone, Sachin, Surat – 394230 & Others.

- 1 जिसव्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगतप्र योग केलिए निःशुल्क प्रदान कीजाती है।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इसआदेशसेअसंतुष्टकोईभी व्यक्ति इसआदेश की प्राप्ति से तीनमाह के भीतर सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमाशुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंजिल, बहुमालीभवन, गिरिधर नगर पुलके बाजुमे, गिरिधरनगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.
3. उक्तअपीलप्रारूपसं. सी.ए.3 मेंदाखिलकीजानी चाहिए। उसपरसीमाशुल्क (अपील) नियमावली, 1982 केनियम 3 केउपनियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किएजाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्नकी जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किएजाने चाहिए।
3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by

an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियोंमें दाखिल की जाएगी तथा उसके साथ जिस आदेशके विरुद्ध अपील कीगई हो, उसकी भी उतनी ही प्रतियाँ संलग्न कीजाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्कअथवा विवरण के बिना अपील के कारणों केस्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रिय सीमाशुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठके सहायक रजिस्टार के नाम पर रेखांकित माँग ड्राफ्टके जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपीलके प्रपत्रकेसाथ संलग्न कियाजाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क 7.5%, जहां शुल्क अथवा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां केवल जुर्माना के बारेमें विवाद है, का भुगतान करके अपील कीजा सकतीहै।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किएगाए आदेशकी प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Adjudication of Show Cause Notice No. GEN/ADJ/COMM/342/2023-TECH dated 20.05.2023 and Supplementary Show Cause Notice dated 24.04.2024 issued by the Principal Commissioner/ Commissioner, Customs, Ahmedabad to M/s. Europea Makeour Jewel Pvt. Limited, Unit No. 401 & 403 on Plot No. 247-248 and 225B, Surat Special Economic Zone, Sachin, Surat - 394230 & Others.

Brief facts of the case:-

M/s. Europea Makeour Jewel Pvt. Limited, Unit No. 401 & 403 on Plot No. 247-248 and 225B, Surat Special Economic Zone, Sachin, Surat - 394230 [**herein after referred to as M/s. Europea (SEZ Unit)**], is having Letter of Approval No. SSEZ/II/04/2019-20/143 dated 01.5.2019 for manufacturing of Gold & Silver Plain and Studded Jewellery with Diamond and Precious & Semi Precious Stone and is also having Import Export Code No. AAFCE4412Q.

1.1 An investigation carried out by the Customs Department has revealed that M/s. Europea (SEZ Unit) has imported Cut and Polished Diamonds and Precious Stones (detailed in Annexure-A to the show cause notice under adjudication) amounting to Rs. 2631,46,66,966/- (Rupees Two Thousand Six Hundred Thirty One Crore, Forty Six Lakh, Sixty Six Thousand, Nine Hundred Sixty Six Only) during the period from 2019-20 to 2022-23, wherein total duty (Basic Customs Duty + IGST + Cess) amounting to Rs. 212,27,82,674/- (Rupees Two Hundred Twelve Crore, Twenty Seven Lakh, Eighty Two Thousand, Six Hundred Seventy Four only) had been forgone on these imports as the import had been made in the Special Economic Zone (SEZ), and that M/s. Europea (SEZ Unit) appears to have diverted all these imported Cut and Polished Diamonds and Precious Stones to Domestic Tariff Area (DTA) with intent to evade Customs duty liable to be paid thereon, in contravention of Provisions of Section 46 of the Customs Act, 1962 and Sections 26 and 30 of the Special Economic Zones Act, 2005 (herein after referred to as the "SEZ Act, 2005") read with Rule 25 of the Special Economic Zones Rules, 2006 (herein after referred to as the "SEZ Rules, 2006"), as per the facts stated in the subsequent paragraphs.

2. M/s. Maahi Jewellery Exim Private Limited, (earlier known as M/s Burton Jewellery Exim Pvt Ltd.), Unit No. 407 on Plot No. 248, Surat Special Economic Zone, Sachin, Surat – 394230 [**herein after referred to as M/s. Maahi (SEZ Unit)**], is having Letter of Approval No. SSEZ/II/025/2019-20/1201 dated 18.3.2020 for manufacturing of Gold & Silver Plain and Studded Jewellery with Diamond and Precious & Semi Precious Stone and is also having Import Export Code No. AAHCB4517D.

2.1 An investigation carried out by the Customs Department has revealed that M/s. Maahi (SEZ Unit) has imported Cut and Polished Diamonds and Precious Stones (detailed in Annexure-B to the show cause notice under adjudication) amounting to Rs.1892,60,19,327/- (Rupees One Thousand Eight Hundred Ninety Two Crore, Sixty Lakh, Nineteen Thousand, Three Hundred Twenty Seven Only) during the period from 2020-21 to 2022-23, wherein total duty (Basic Customs Duty + IGST + Cess) amounting to Rs. 148,96,97,902/- (Rupees One Hundred Forty Eight Crore, Ninety Six Lakh, Ninety Seven Thousand, Nine Hundred Two only) had been forgone on these imports as the import had been made in the SEZ, and that M/s. Maahi (SEZ Unit) appears to have diverted all these imported Cut and Polished Diamonds and Precious Stones to DTA with intent to evade Customs duty liable to be paid thereon, in contravention of Provisions of Section 46 of the Customs Act, 1962, Sections 26 and 30 of the SEZ Act, 2005 read with Rule 25 of the SEZ Rules, 2006 as per the facts stated in the subsequent paragraphs.

3. The office of the Commissioner of Customs (Preventive), Jodhpur, Hqrs-Jaipur, received a letter dated 12.10.2021 from the UCO Bank, Vishakhapatnam. The UCO Bank, vide the said letter, informed that M/s Belstar Techno Solutions (OPC) Private Limited, 31A/1, Sai Path, Keshav Vihar, Gopalpura Bypass, Jaipur, having IEC Number AAJCB5667L, have remitted USD 2,40,09,950/- in the name of obtaining the services (Non-Physical Imports) from overseas suppliers located at Hong Kong and UAE, within a short span of six months, during the period from April, 2021 to September, 2021. Whereas, the UCO Bank, Johari Bazar, Jaipur, vide letter dated 09.11.2021, informed that M/s. Visual Birds Technology, 31A/1, Sai Path, Keshav Vihar, Gopalpura Bypass, Jaipur, having IEC Number BJBPK6941D, has remitted the funds of USD 66,27,300/- during the period from 26.03.2021 to 02.09.2021 to their overseas suppliers located at Hong Kong and UAE, in the name of obtaining the services (Non-Physical Import).

4. Whereas, based on the above mentioned information, an investigation was initiated in the matter and initial investigation revealed that the address of both the entities, viz. M/s. Belstar Techno Solutions (OPC) Private Limited Jaipur and M/s Visual Birds Technology Jaipur is the same i.e. 31, A/1, Keshav Vihar, Gopalpura Bypass, Jaipur-302019.

5. M/s Belstar Techno Solutions (OPC) Pvt. Ltd., vide their letter dated 01.11.2021, claimed to be an IT company, dealing in content procurement IT services like Animations, Graphics, Designs, 2D, 3D and Multimedia Audio Visuals, which are published for private subscription channels, educational channels and infomercials on various internet, OTT channels and mobile applications. Shri Om Prakash Vanjani has been shown as the Director and Authorised Signatory of the unit.

6. As per letter of the UCO Bank, Johari Bazar, Jaipur dated 09.11.2021, M/s Visual Birds Technology is shown to be dealing in content procurement IT services like Animations, Graphics, Designs, 2D, 3D and Multimedia Audio Visuals which are published for private subscription channels, education channels and infomercials on various internet, OTT channels and mobile applications. Shri Nitesh Kumar, S/o Shri Shanti Lal Nahar, Resident of A-803, Rameshwar Heights, Althan, Surat-395017 was the proprietor of the firm.

7. Search under proper authorisation was conducted on 24.11.2021 at the said address of both the firms i.e. 31, A/1, Keshav Vihar, Gopalpura Bypass, Jaipur-302019, and both the firms were found non - existent during the search. Statement of Smt. Shalini Singh, owner of the said premises, was recorded under Section 108 of the Customs Act, 1962 on 24.11.2021, wherein she categorically admitted that the basement of the premises was given on rent in November, 2020 and the premises was vacated in 3-4 months.

8. Whereas, it was gathered that M/s Belstar Techno Solutions (OPC) Pvt. Ltd was also registered at Orissa and Andhra Pradesh. The Customs formations at the respective locations were therefore requested to locate and search the premises at Orissa and Andhra Pradesh.

9. The Joint Commissioner, Customs (Preventive) Commissionerate, Vijaywada, vide letter dated 16.12.2021 informed that M/s. Belstar Techno

Solutions (OPC) Pvt. Ltd., was non-operational on the registered address i.e. at Gupta Villa, Door No. 9-29-19/A, Balaji Nagar, Opposite Canara bank, Vishakhapatnam.

10. The Additional Commissioner, Customs (Preventive) Commissionerate, Bhubaneshwar, vide letter dated 16.12.2021 informed that M/s. Belstar Techno Solutions (OPC) Pvt. Ltd., is non-existent at its registered address i.e. Plot No. 7, Sweet House Complex, Phase-1, Ganga Nagar, Unit-6, Khorda, Bhubaneshwar.

11. Whereas, further investigation revealed that in the UCO Bank Accounts of M/s Belstar Techno Solutions (OPC) Pvt. Ltd., (Account Number 01180210003350) and M/s Visual Birds Technology, (Account No. 00110210005224) huge amounts of money had been transferred through RTGS by various firms, which were shown in their GST Registration details, to be engaged in trading of Gold and Diamond.

12. Whereas, during further investigation, it was revealed that M/s. Shreeji Infotech, (Prop. Shri Sunil Pannalal Valmiki) having address at Office 6, Ground Floor, Swadeshi Mill Building, Jagnath Sankarseth Marg, Central Plaza Cinema, Charni Road, Mumbai had transferred amount of Rs. 1,62,27,75,785/- through its Bank Account No. 200001394029 (in Equitas Small Finance Bank, Ghatkopar Mumbai branch) and Bank Account No. 042263300001513 (in Yes Bank, Colaba Mumbai) to the Bank Account of M/s. Belstar Techno Solutions (OPC) Private Limited and also transferred an amount of Rs. 42,78,18,061/- in the bank account of M/s. Visual Birds Technology, Jaipur.

13. Further, it was revealed that two firms were registered with the name M/s. Shreeji Infotech, i.e. (a) M/s. Shreeji Infotech, H-16, Ram Nagar Vistar, Sodala, Jaipur (in the name of Proprietor Shri Kunal Saini). This firm is registered under GST, vide Registration No. 08GCUPS3367G1ZR for trading in Diamonds and Precious Stones; and (b) M/s. Shreeji Infotech, (in the name of Proprietor Shri Sunil Pannalal Valmiki) 6, Ground Floor, Swadeshi Mill Building, Jagnath Sankarseth Marg, Central Plaza Cinema, Charni Road, Mumbai. This firm is not registered under GST. However, the Bank Account No. 200001394029 (in Equitas Small Finance Bank, Ghatkopar, Mumbai branch) was opened in the name of M/s. Shreeji Infotech (in the name of Proprietor Shri Sunil Pannalal Valmiki, who is a driver and lives in slum area at Colaba, Mumbai), through which an amount of Rs. 162,27,75,785/- was transferred in the bank account of M/s. Belstar Techno Solutions (OPC) Private Limited and an amount of Rs. 42,78,18,061/- was transferred in the bank account of M/s Visual Birds Technology, Jaipur.

14. Further, to conduct detailed investigation in the matter, simultaneous searches were conducted at various locations in Rajasthan, Surat, Bhubaneshwar, Vishakhapatnam and Mumbai on 24.11.2021. On the same day, searches were also conducted at both the premises of M/s. Shreeji Infotech i.e. (i) M/s. Shreeji Infotech, H-16, Ram Nagar Vistar, Sodala, Jaipur and (ii) M/s. Shreeji Infotech, 6, Ground Floor, Swadeshi Mill Building, Jagnath Sankarseth Marg, Central Plaza Cinema, Charni Road, Mumbai and no firm was found in existence at the above mentioned two addresses of M/s Shreeji Infotech. Statement of Shri Kunal Saini, Proprietor of Shreeji Infotech, Jaipur, was recorded on 24.11.2021 under Section 108 of the

Customs Act, 1962, wherein he *inter-alia* stated that he never opened such firm and there is no firm registered in his name; that his documents might have been used for creating such fake firm. Statement of Shri Sunil Pannalal Valmiki, owner of Shreeji Infotech, Mumbai, was recorded on 25.11.2021 under Section 108 of the Customs Act, 1962, wherein he also categorically denied having opened a firm or bank account in the name of M/s. Shreeji Infotech. It appeared that documents / IDs of Shri Kunal Saini and Shri Sunil Pannalal Valmiki were used by someone else to open bank accounts and to create fake firms with some ulterior motive.

15. Further, GST Returns of M/s Belstar Techno Solutions (OPC) Pvt. Ltd, M/s Visual Birds Technology and M/s Shreeji Infotech were examined. On perusal of GST Returns, it was revealed that as per GSTR-1 Returns (GST Return showing outwards supplies) of M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. (Orissa & Andhra Pradesh) and M/s Visual Birds Technology, Jaipur, they had shown supplies amounting to Rs. 10 Crore to M/s Shreeji Infotech, Jaipur during the period from May 2021 to September 2021. The supplies were shown to be made at Nil rated / Exempted @ 0% and few supplies were shown to be made @ 18% GST rate. However, as per GST Returns of M/s Shreeji Infotech, Jaipur, they have filed "NIL" Returns and no further supplies have been made by M/s Shreeji Infotech, Jaipur. As M/s Shreeji Infotech, Jaipur, H-16, Ram Nagar Vistar, Sodala, Jaipur was not found in existence at the given address during search operation on 24.11.2021, it appeared that in order to give a legal look, they fraudulently filed GST Returns of the company, without conducting any business.

16. Whereas, M/s Shreeji Infotech had made payment of Rs. 205,05,93,846/- (Rs. 162,27,75,785/- in the account of M/s Belstar Techno Solutions (OPC) Pvt. Ltd. + Rs. 42,78,18,061/- in the account of M/s Visual Birds Technology) in the Bank Accounts of M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology, Jaipur, through their bank account No. 200001394029 (in Equitas Small Finance Bank). The same appeared incongruous as all the three firms involved in the transactions are non-existent firms.

17. Whereas, on further perusal of Bank Statements, it was revealed that a firm named M/s. DNB Trading, H-16, Ramnagar Vistar, Sodala, Jaipur, having GST Registration No. 08COCPR7500G2ZX, had transferred Rs. 60,00,000/- to M/s. Belstar Techno Solutions (OPC) Pvt. Limited on 07.09.2021 & Rs. 49,30,000/- in the bank account of M/s Visual Birds Technology, but had filed NIL GST Returns. M/s. DNB Trading was also a non-existent firm as per Panchnama dated 24.11.2021 and as per GST registration detail, M/s. DNB Trading is engaged in supply of Diamonds.

18. Investigation revealed that both the firms *viz.* M/s. Shreeji Infotech, Jaipur and M/s. DNB Trading, Sodala, Jaipur were registered at the same address, H-16, Ramnagar Vistar, Sodala, Jaipur, and both were not found in existence at the given address during search on 24.11.2021. Thus, it appeared that these firms were being operated only on paper with the motive to raise invoices and transfer / receive payments in their bank accounts for remitting the amount further in foreign countries.

19. Whereas, further perusal of Bank Accounts of M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology, Jaipur revealed

that along with above mentioned firms, various other firms have also deposited huge amounts in accounts of M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology, Jaipur. The details are as following-

19.1 M/s. Spenta Trading, (Prop. Virendra Pratap Singh), G-18, Ground Floor, Pearl Plaza, Tata Road No. 2, Roxy Cinema, Opera House, Girgaon, Mumbai, having GST Registration No. 27HZLPS8692P1ZR has transferred Rs. 1,23,00,000/- to M/s. Visual Bird Technology during March, 2021 to April, 2021; M/s Spenta Trading was not found in existence at the given address during search operation on 24.11.2021.

19.2 M/s. Beetel Shine Multimedia, (a Proprietorship concern of Shri Rahul Khatik S/o Shri Jagdish Bhai Khatik, Air Conditioner repairing Mechanic at Surat) Shop No. 01, Dayasagar Cooperative Housing Society, Virat Nagar, Virar West, Mumbai, not registered under GST), have also transferred amount of Rs. 7,05,42,680/- in the Bank Account of M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and Rs. 1,23,00,000/- in the bank account of M/s Visual Birds Technology. M/s. Beetel Shine Multimedia was not found in existence at the given address during search operation on 24.11.2021.

20. Whereas, it was evident from the preliminary investigation that M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology, are non - existent company / firm which had been created only on papers and they factually never made any import of services. From the investigation, it was also revealed that M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology had received payments in their respective Bank Accounts from the firms which were dealing in Diamond and Gold, though they never purchased any services from the said firm / company.

21. Searches were also conducted at the residential addresses of Shri Om Prakash Vanjani (Director of M/s. Belstar Techno Solutions (OPC) Pvt. Ltd.) on 24.11.2021. During search on 24.11.2021 at the residential address of Shri Om Prakash Vanjani at Teja Chowk, Bijaynagar, Ajmer, it was revealed that Shri Om Prakash Vanjani had left the premises years back. Proceedings of search were recorded under Panchnama dated 24.11.2021. Another residential address of Shri Om Prakash Vanjani at C/o Bhupendra Rana, Behind Vishwakarma Mandir, Bus Stand, Bijaynagar, Ajmer -305624 was searched under Panchnama dated 24.11.2021.

22. Statement of Shri Om Prakash Vanjani was recorded under Section 108 of the Customs Act, 1962, on 24.11.2021, wherein, he, *inter-alia*, admitted that he is the sole Director of the Company M/s Belstar Techno Solutions (OPC) Pvt. Limited which is a One Person Company (OPC) registered at Jaipur, Vishakhapatnam and Bhubaneshwar; that the Company is having Bank Accounts in Central Bank, Dhan Laxmi Bank, Axis Bank, PNB and UCO Bank, Vishakhapatnam.

23. Further, in his voluntary Statement dated 25.11.2021, recorded under Section 108 of the Customs Act, 1962, Shri Om Prakash Vanjani, *inter-alia*, stated that he is having three personal Bank Accounts in (i) AU Bank (Saving) (2011222227250972), (ii) AU Small Finance Bank (Current) (721222212521459) and (iii) IDFC Bank (Saving) (10079364076); that he

has received payment of Rs. 2,12,800/- on 09.03.2021 from Shreeji Impex; Rs. 4,00,000/- on 9.06.2021, Rs. 2,00,000/- on 23.06.2021, Rs. 1,00,000/- on 03.08.2021 and Rs. 2,00,000/- on 11.08.2021 from M/s. Shreeji Infotech; that he categorically and specifically admitted that one Shri Himanshu informed him that the firms, which are dealing in Gold, finance these firms and the amounts received from these kinds of firms are being remitted abroad; that one Shri Himanshu informed him that against the Gold, Diamond and other Precious Metals smuggled by these Gold traders, the amount is remitted outside country by his company.

24. Further, in his voluntary statement dated 25.11.2021 recorded under Section 108 of the Customs Act, 1962, Shri Om Prakash Vanjani, *inter-alia*, stated that in his bank accounts with AU Small Finance Bank Current Account No. 172122221251459 and AU Small Finance Bank saving Account No. 201122227250972, he has received payments amounting to Rs. 18,00,000/- (12.09.2021 - Rs. 1,00,000/-, 18.09.2021 - Rs. 1,00,000/-, 06.10.2021 - Rs. 1,00,000/-, 06.10.2021 - Rs. 3,00,000/-, 12.10.2021 - Rs. 3,00,000/-, 18.10.2021 - Rs. 1,00,000/-, 22.10.2021 - Rs. 1,00,000/-, 27.10.2021 - Rs. 1,00,000/-, 29.10.2021 - Rs. 1,00,000/-, 07.11.2021 - Rs. 2,00,000/-, 12.11.2021 - Rs. 1,00,000/- and 18.11.2021 - Rs. 2,00,000/-) from M/s DNB Trading, Jaipur and the said firm is dealing in Diamond; that some other firms in the money supply chain have also been used for transfer of funds in the bank accounts of Shri Om Prakash Vanjani; that such firms are M/s. Spice Enterprises (Rs. 2,00,000/- on 04.10.2021), M/s. Kwik Creation (Rs. 7,00,000/- on 04.07.2021 in AU Small Finance Bank account); that all the amounts received by him is his consideration for overseas remittances made by him through his company.

25. Further, in his voluntary statement dated 26.11.2021 recorded under Section 108 of the Customs Act, 1962, Shri Om Prakash Vanjani, *inter alia*, stated that Shri Surendra Mali, resident of Nadi Mohalla, Bijaynagar has been living in Mumbai since last 10 years and used to introduce himself as Shri Lakshman, whenever he used to go to banks. He further stated that among them, Shri Surendra Mali is their head; that second to Shri Surendra Mali was Shri Rajendra Jangid, who is resident of Rajeev Colony (Kailash Tailors), Near Vishwakarma Farm House, Bijaynagar and he has been working in Mumbai for last 5 years; that Shri Rajendra Jangid introduced himself as Shri Narayan, whenever he visited the banks with Shri Om Prakash Vanjani; that Shri Surendra Mali looked after the work of unit of M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. situated at Visakhapatnam and Shri Rajendra Jangid looked after the work of unit of M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. situated at Bhubaneshwar; that the profit earned from the so called business was distributed equally among Shri Surendra Mali, Shri Rajendra Jangid and one other person Shri Kamal *alias* Himanshu *alias* Kapil.

26. Whereas, investigation conducted revealed that Shri Om Prakash Vanjani opened a fake company in the name of M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. in which he was Director and from that company a huge amount of USD 2,40,09,950 @ Rs. 75.55/- i.e. amount of Rs. 181,39,51,723/- (Rupees One Hundred Eighty One Crore, Thirty Nine Lakh, Fifty One Thousand, Seven Hundred Twenty Three) had been remitted for the period from April, 2021 to September, 2021 to the firms based at Hong Kong and UAE. In order to give a legal look to the fraudulent remittances sent abroad, the company was fraudulently registered in GST for receipt of

services like Animations, Graphics, Designs etc. However, investigation revealed that no such services have ever been supplied / received. Shri Om Prakash Vanjani was consciously aware of the fact that the company M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. is fake and is operational only on papers. Thus, Shri Om Prakash Vanjani, in collusion with other accomplices, was instrumental in remittance of amount of Rs. 181,39,51,723/- to Hong Kong and UAE which was shown to be remitted against supply of services, whereas no such supplies were made. Shri Om Prakash Vanjani was aware that his company was being actually used to remit amount against the Gold, Diamond and other Precious Metals illegally imported by various traders.

27. During further investigation, it was also revealed that apart from the Bank account of M/s Belstar Techno Solutions (OPC) Pvt Ltd. held in UCO bank Vishakhapatnam from which an amount of Rs. 181,39,51,723/- (USD 2,40,09,950 @ 75.55) was remitted to Hong Kong and UAE based firms against illegal imports of Gold and Diamond, some other bank accounts have been found, from which substantial amount has been remitted to Hong Kong and UAE based firms. The details of Bank Accounts of M/s. Belstar Techno Solutions (OPC) Private Limited from which remittances to foreign based firms were made are as under:-

Sr. No.	Name of Bank and Branch	Account Number	Foreign Remittance (in Rs.)
1.	UCO bank Vishakhapatnam	01180210003350	181,39,51,723
2.	Axis Bank Bhubaneshwar	921020018125234	16,09,88,796
3.	IDBI Bank Bhubaneshwar	1112102000010733	26,61,27,371
4.	Central Bank of India, Jaipur	3890940572	1,01,97,66,518
5.	PNB, Bhubaneshwar	553002100032869	1,78,41,386
6.	Bank of India, Jaipur	660520110000825	6,92,28,926
Total			334,79,04,720

28. It appeared that Shri Om Prakash Vanjani was actively involved in fraudulently remitting amount of Rs. 334,79,04,720/- (Rupees Three Hundred Thirty Four Crore, Seventy Nine Lakh, Four Thousand, Seven Hundred Twenty) against the illegal import of Gold, Diamond and other Precious Metals.

29. Similarly, M/s Visual Birds Technology has also made foreign remittances through two bank accounts as under:-

Sr. No.	Name of Bank and Branch	Account Number	Foreign Remittance
1	UCO Bank Johari Bazar Jaipur	110210005224	58,72,41,404
2	CITI Bank MI Road, Jaipur	0-012519-141	7,06,45,052

Total	65,78,86,456

From the investigation conducted, it was evident that total amount of Rs. 400,57,91,176/- (Rs. 334,79,04,720/- + Rs. 65,78,86,456/-) had been remitted by M/s. Belstar Techno Solutions (OPC) Private Limited and M/s. Visual Birds Technology, Jaipur against the illegal import of Gold, Diamond & other Precious Metals.

30. During investigation, it was revealed that a person named Shri Ravindra Kumar, who is a Chartered Accountant, had issued certificates to the banks regarding confirmation of receipt of Animation and Graphical Services by M/s. Belstar Techno Solutions (OPC) Pvt. Limited. Accordingly, the office premises of Shri Ravindra Kumar, Chartered Accountant, at M/s. Kumar Ravindra & Co., Near BSNL Office, RIICO Industrial, Jhunjhunu, was searched under Panchnama dated 24.11.2021 was drawn wherein certain incriminating documents were recovered. Statement dated 24.11.2021 of Shri Ravindra Kumar was recorded under Section 108 of the Customs Act, 1962, wherein he *inter-alia* stated that he is a Chartered Accountant and Proprietor of M/s. Kumar Ravindra & Co., Near BSNL Office, RIICO Industrial Area, Jhunjhunu. In his Statement dated 24.11.2021, he further stated that the officers of Customs (Preventive) of Jaipur visited his office premises and conducted search under Panchanama dated 24.11.2021; that he was fully satisfied with the manner of search; that during Panchanama proceedings, he was shown a Certificate dated 27.09.2021 issued by him to the Branch Manager, UCO Bank, Dwarkanagar, Visakhapatnam, regarding confirmation of receipt of Animation and Graphical Services by Belstar Techno Solutions (OPC) Pvt. Ltd; that after having seen the Certificate, he put his dated signature on the same.

30.1 In his Statement dated 24.11.2021, Shri Ravindra Kumar admitted that he had issued Certificates regarding confirmation of receipts of Animation and Graphical Services by M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. to the following banks:-

Sr. No.	Name of Bank
1	IDBI Ltd. Bhubaneshwar
2	Central Bank of India, Sansar Chandra Road, Jaipur
3	Central Bank of India, Mumbai
4	UCO Bank Visakhapatnam
5	Axis Bank, Jaipur
6	Axis Bank, CRPF Square
7	IndusInd Bank Ltd., Andheri
8	Citi Bank, MI Road, Jaipur

30.2 Shri Ravindra Kumar admitted that he issued similar Certificates in respect of other firms / Companies also, details of which are as under:-

Sr. No.	Name of Party	PAN	Name of Bank
1	Bluefield Technology Pvt. Ltd.	AAJCB9964A	UCO Bank, Visakhapatnam
			Axis Bank, Jaipur
2	Visual Birds	BJBPK6941D	INDUSIND Bank Ltd.

	Technology		Andheri
			CITI Bank, MI Road, Jaipur
			UCO Bank, Johari Bazar, Jaipur

30.3 Shri Ravindra Kumar, in his Statement dated 24.11.2021 admitted that he also issued Form 15CB in respect of above firms / Companies as required under Income Tax Law.

31. Further statement of Shri Ravindra Kumar was recorded on 25.11.2021 under section 108 of the Customs Act, 1962, wherein, he stated that he met Shri Himanshu and Kapil at the office of M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. at Shipra Path, Mansarovar and discussed about bills and Section 37BB of the Income Tax Act; that whenever a certificate was to be issued, Shri Himanshu used to send the invoice details over phone and he issued the 15CB Certificates accordingly.

31.1 On being asked about the payment for issuance of 15CB Certificates, Shri Ravindra Kumar stated that he got Rs. 500/- per Certificate and got the payment in his IDBI bank Current Account. He further stated that for issuing the Certificates, he received the payment from M/s DNB Trading and M/s Shreeji Infotech. He also stated that he did not issue any bill of fees to M/s Belstar Techno Solution (OPC) Pvt Ltd., M/s Visual Birds Technology and M/s Bluefield Technology Pvt. Ltd.

31.2 On being asked about Form 15CA and Form 15CB, Shri Ravindra Kumar stated that Form 15CA is a declaration in which the party provides details of foreign remittances. Form 15CB is a certificate which is issued by him, in which he certifies that the foreign remittances made by the party are not taxable under Income Tax Act.

31.3 Shri Ravindra Kumar further stated that he issued 310 Form 15CB, valued at Rs. 348,70,33,669/- till date but has not verified any Agreement, other relevant documents or Books of Accounts and has issued Form 15CB for greed of money.

31.4 Shri Ravindra Kumar further admitted that actually no service had been imported by M/s. Belstar Techno Solutions (OPC) Pvt. Ltd., M/s Bluefield Technology Pvt. Ltd. and M/s Visual Birds Technology. On being asked as to why the remittance was made when no services have been received by these firms, he stated that he once asked Shri Himanshu and Shri Kapil Joshi about this, upon which they informed him that some parties based in Gujarat and Mumbai imported Gold and such remittance was made against payment for the same.

31.5 Shri Ravindra Kumar also submitted that he has received the consideration from M/s. DNB Trading Co. and M/s. Shreeji Infotech; although he has not issued any Certificates for these firms, however, he has received payment from these firms for providing Certificates to M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology because these firms are a part of the whole chain which is engaged in illegal remittances in bank accounts of various firms, which ultimately reaches the bank accounts of M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds

Technology; that he was aware that the firms from which he has received the payment belong to the same persons who are operating M/s Belstar Techno solutions (OPC) Pvt. Ltd.

32. From the investigation conducted, it appeared that, to defraud the exchequer, a racket / gang was formed, which adopted a novel *modus operandi* under which several bogus / fake companies / firms were created and several bank accounts were opened to fraudulently remit amounts of high magnitude to Hong Kong and UAE based firms by showing the same to be payments against import of services (which were never actually imported and were mere paper transactions without any actual supply of service) with the ulterior motive of using the fraudulent remittances for funding illegal imports of Gold, Diamonds and other Precious Stones / Metals.

33. In view of the above, it was evident that Shri Om Prakash Vanjani and Shri Ravindra Kumar have committed offences under Section 132 and 135 of the Customs Act, 1962, which are punishable under the provisions of the Customs Act, 1962. The offence committed by Shri Om Prakash Vanjani and Shri Ravindra Kumar was cognizable and non-bailable under the Customs Act, 1962. Therefore, Shri Om Prakash Vanjani and Shri Ravindra Kumar were arrested on 26.11.2021 under Section 104 of the Customs Act, 1962 for committing offences under Section 132 and 135 of the Customs Act, 1962 read with Section 104 of the Customs Act, 1962, after approval from the competent authority. They were produced before the Hon'ble CMM (Economic Offence) Court on 26.11.2021, who ordered for their judicial custody. They were subsequently released on bail on 08.02.2023.

34. On further examination of the trails of entries in various Bank Accounts and documents, more suspected persons and firms / premises came to light. In order to further investigate the matter, searches under section 105 of the Customs Act, 1962 were conducted at the following premises:-

34.1 Residence of Shri Vikram Singh Kachchawa, 2 KH 3 Machla Magra Plan, Near Shiv Mandir, Sector 11, Girwa Udaipur-

During search at the said premises, Shri Ramesh Singh Kachchawa, father of Shri Vikram Singh Kachchawa, and his son Shri Nitesh Singh Kachchawa were present. Panchanama dated 13.01.2022 was drawn at the spot.

34.2 Hotel Vatika Inn, Gulab Bag Road, Old City Brahmpuri, Udaipur, Rajasthan:-

During search at the said premises, Shri Vikram Singh Kachchawa and Shri Kamlesh Nagda were present. During the search proceedings, incriminating documents, Mobiles, Laptops, Stamps of various firms, Hard Disc, Name-plates of various firms, SIM cards, Passbooks, Passport-size Photographs, Cheque Books, Debit / Credit Cards of various banks and notepads as detailed in Panchnama dated 13/14.01.2022 and its Annexures 1, 2, 3 & 4 have been recovered and seized. On being asked about his business activities, Shri Vikram Singh Kachchawa told that his business is mainly related to money transfer. On checking the Whatsapp chat of Shri Vikram Singh Kachchawa with 'K. Bhai' and 'Me', many incriminating chats were found. On being asked, Shri Vikram Singh Kachchawa admitted that, he

arranges money through hawala and the same is transferred overseas in the guise of payment for import of services for funding Gold and Diamonds imported illegally from Hong Kong and Dubai by by-passing the legal channel. He also stated the names of his associates namely, Shri Surendra Mali *alias* Shankar Mali, S/o Shri Jagdish Mali; Shri Narendra Mali, *alias* Nandu; Shri Rajendra Jangid and Shri Om Prakash Vanjani, all from Bijaynagar, Ajmer.

34.3 Premises of Shri Rajendra Jangid, S/o Shri Kailash Chandra, Vishwakarma Colony, Near Bus Stand, Bijaynagar, Ajmer (Rajasthan)-

During search at the said premises, Shri Kailash Chandra Khatri, father of Shri Rajendra Jangid, was present. Panchanama dated 13.01.2022 was drawn on the spot.

34.4 Residence of Shri Surendra Mali (*alias* Shankar Mali) S/o Shri Jagdish Prasad Mali, No. 5, Nadi Mohala, Bijaynagar, Tehsil Masuda, Ajmer, Rajasthan-

During search at the said premises, Shri Jagdish Prasad Mali, father of Shri Surendra Mali was present. Panchanama dated 13.01.2022 was drawn on the spot.

35. During investigation, statement dated 14.01.2022 of Shri Vikram Singh Kachchawa was recorded under Section 108 of the Customs Act, 1962.

35.1 In his statement, Shri Vikram Singh Kachchawa stated that he went to Mumbai in 2016 and opened a firm viz. M/s. Dilwara Exim Pvt. Ltd. in which there were two directors namely, Shri Kamlesh Nagda and he himself; that in this company, he did work of import of Diamonds from Hong Kong till 2018-19; that in the company M/s. Dilwara Exim Pvt. Ltd., he did work of almost Rs. One Thousand Crore; that during this period, he opened 2 more companies in the name of M/s. Perfect Square Multimedia and M/s. Shantinath Trading Pvt. Ltd., in which no business was conducted; that in the year 2019-20, he opened a proprietorship firm, M/s Shriji Impex, having official address as 222, Amrit Diamond, Opera House, Mumbai.

35.2 Shri Vikram Singh Kachchawa further stated that presently he purchases dummy companies from market and does the business of transaction / rotation of money for which he receives commission @ .02 % on the turnover value and he earns about 1-1.5 lakh (per month), which varies on the basis of turnover. He stated that there are agents in market, who, after opening the company and its bank account, provide all the documents and information related to net banking, phone no., SIM etc. to him by which he can easily transfer funds from one company to another company through RTGS. Shri Vikram Singh Kachchawa stated that he has also created such type of firms / companies namely M/s. Spenta Trading, M/s. Samarth Trading (Enterprises), M/s. Beau Pride Logistics Pvt. Ltd., which are functioning at present also; that earlier, he had created firms namely, M/s. Spice Trading; M/s. Sangam Trading; M/s. Aryan International; M/s Sai Trading, M/s Raj Trading; M/s. Ganesh Impex etc.

35.3 Shri Vikram Singh Kachchawa further stated that the firms that he has purchased from market are M/s Sakpal Trading, M/s Surya Infotech, **M/s**

Shreeji Infotech and M/s Dofi Trading; that there might be some more companies, names of which he did not remember.

35.4 Shri Vikram Singh Kachchawa stated that for opening of a new Company, first of all, they used to take rent agreement of the premises, then obtained Aadhar and PAN Card of some person, then Bank Account of such person was opened, thereafter transaction in that bank account was started; that they would receive amount in the name of some company through RTGS in the bank account opened by them and further transferred that amount into another Bank account, as per the direction of sender of amount through RTGS; that for this work of transfer, they get .02%; that they give Rs. 10000/- to 15000/- to the person on whose name the Company and bank account was opened; that he himself operated the bank accounts of such firms; that he kept the phone / SIM for receipt of OTP for transaction in internet banking; that he had also deputed staff to carry out this work.

35.5 Shri Vikram Singh Kachchawa stated that from the Companies opened by him and from the Companies purchased by him, the total transaction done by him through internet banking ranges from Rs. 2000 Crore to Rs. 2500 Crore.

36. Further Statement dated 15.01.2022 of Shri Vikram Singh Kachchawa was recorded under Section 108 of the Customs Act, 1962.

36.1 In his Statement dated 15.01.2022, Shri Vikram Singh Kachchawa, agreed with his statement dated 14.01.2022 and was also satisfied with the Panchanama proceedings dated 13/14.01.2022. On being asked regarding various Debit Cards, SIM Cards, Mobiles, Laptops, Bank Passbooks and Bank Checkbooks recovered during Panchanama proceedings dated 13/14.01.2022, he stated that he has opened about 200 Bank accounts in the name of various companies and persons; that in order to open the bank accounts, PAN Card and Aadhar Card are obtained from the persons, who were either known to him or were in need of money; that he received photos of those documents on his Whatsapp; that on the basis of these documents, accounts are opened in the bank; that he also opened accounts in the name of companies for which he obtained documents like PAN card, Aadhar card from the persons known to him and from persons who are in need of money; that he used 51 mobile phones (resumed under Panchanama) for receiving OTP for the bank accounts opened by him; that for each bank account, 2 OTPs are generated, one for entry and another for authority which comes from two different mobiles; that all the 9 laptops (resumed under Panchanama) were used for operating bank accounts, transactions and keeping accounts; that Debit Cards were used for Net Banking of various Bank Accounts maintained by him.

36.2 On being asked about 200 Bank Accounts maintained by him, Shri Vikram Singh Kachchawa stated that he was in contact with 2 persons namely **Shri Navratan Jain, resident of Beawar Road, Kekri, Ajmer and Surendra Mali alias Shankar Mali, resident of Nadi Mohalla, Bijaynagar who are involved in illegal import of Gold; that as against the illegal imported Gold, huge amount of money is to be sent abroad, which cannot be remitted through legal means; hence, the money is arranged by him through Hawala by rotating in various business accounts so that the transactions look fair and legal; that**

amount was finally transferred in the bank accounts of firms like M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology; that from the bank accounts of M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology, amount is remitted to foreign based firms; that to show the transactions as legal, import of services is shown and it is shown that the remittances have been made as payments for import of services and to show the transaction genuine, certificates from Chartered Accountant are obtained; that in order to route the Hawala transactions many accounts are required, therefore, he has opened so many accounts.

36.3 In his Statement dated 15.01.2022, Shri Vikram Singh Kachchawa stated that Shri Om Prakash Vanjani and Shri Nitesh Kumar were Director / Proprietor of M/s. Belstar Techno Solution (OPC) Pvt. Ltd. and M/s. Visual Birds Technology, respectively; that he was in contact with Shri Surendra Mali *alias* Shankar Mali, resident of Bijaynagar, Ajmer and he further stated that he was associated with Surendra Mali *alias* Shankar Mali since 2019 in remitting the funds through hawala in lieu of smuggled Gold; **that Shri Navratan Jain and Surendra Mali alias Shankar Mali are engaged in illegal import of Gold from abroad and delivery of Gold locally; that collection of funds from various persons / firms in lieu of such Gold was also done by Navratan Jain, and Surendra Mali alias Shankar Mali; that when this fund is received in various bank accounts maintained by him, he thereafter rotates that amount in various bank accounts.**

36.4 On being further asked, Shri Vikram Singh Kachchawa stated that he operates bank accounts of firms / companies namely, Shreeji Impex, Spenta Trading, Samarth Trading, Shreeji Infotech, Shurya Infotech, Beau Pride Logistics Pvt. Ltd., Dilwara Exim Pvt. Ltd., Perfect Square Multitrade Pvt. Ltd., Shanti Nath Trading Pvt. Ltd., Spice Trading, Spice Enterprises, Spice Thunder Motion Pictures, Solution Infotech; that these firms are opened / operated by him.

36.5 On being shown the statement dated 26.11.2021 of Shri Om Prakash Vanjani, Director, M/s. Belstar Techno Solution (OPC) Pvt. Ltd., wherein Shri Om Prakash Vanjani had admitted receiving amount of Rs. Two lakh from a firm M/s. Spice Enterprises, and being asked whether it was the same M/s. Spice Enterprises, he was operating, Shri Vikram Singh Kachchawa affirmed that it was the same M/s. Spice Enterprises which he was operating and as per the directions of Surendra Mali *alias* Shankar Mali, he had transferred the said two lakh rupees in the bank account of Shri Om Prakash Vanjani in lieu of operating M/s. Belstar Techno Solution (OPC) Pvt. Ltd.

36.6 On being shown copy of IDBI Bank Account statement and the statement dated 25.11.2021 of Shri Ravindra Kumar, Chartered Accountant, wherein, Shri Ravindra Kumar had admitted receiving amount of Rs. 26000/- from M/s. Shreeji Infotech, and being asked whether it was the same M/s. Shreeji Infotech, he was operating, Shri Vikram Singh Kachchawa affirmed that it was the same M/s. Shreeji Infotech which he was operating and as per the directions of Surendra Mali *alias* Shankar Mali, he had transferred the said amount of Rs. 26000/- in the bank account of Shri Ravindra Kumar, CA.

36.7 Shri Vikram Singh Kachchawa was shown the print out of Ledger Accounts and Invoices containing the details of sale of Gold Bar 995, HSN 7108 to different parties, which were taken from the Laptop No. 9 resumed on 13/14.01.2022 during search at Hotel Vatika Inn, Udaipur. Shri Vikram Singh Kachchawa was asked as to why these details were found in his Laptop, he stated that the Gold mentioned in invoices / ledger account was the **Gold smuggled by Shri Navratan Jain and Shri Surendra Mali alias Shankar Mali; that since, the buyer of such smuggled Gold requires bill / invoice to maintain his books of accounts, he (Vikram Singh Kachchawa) had prepared bill / invoices; that when buyer makes payment against purchase of such smuggled Gold, such amount, after being routed through various bank accounts operated by him, was transferred in the bank accounts of M/s. Belstar Techno Solution (OPC) Pvt. Ltd. and M/s. Visual Birds Technology and thereafter remitted in the overseas bank accounts.**

36.8 Shri Vikram Singh Kachchawa was further asked that the GST Registration of the firms, who are shown as suppliers of Gold in Invoices and ledgers as mentioned above, had already been cancelled, then why the GST Registration number was mentioned on the invoices issued by them and what was the motive behind issuing such bogus invoices, Shri Vikram Singh Kachchawa replied that the GST Number on the invoice was mentioned to show the Invoice / Bill as genuine; that by showing supply of Gold from such firm whose GST Registration has been cancelled, the illegal trading of Gold escapes from the eyes of GST department since there is no online data computing of such firm and also the buyers are able to maintain their books of accounts; **that the main objective is to anyhow supply the smuggled Gold to buyers without any hurdles, so that the said Gold seems to be purchased from local market.**

37. From the investigation conducted, it was revealed that large number of fake firms, including M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology, have been opened for fraudulently rotating and remitting amounts to foreign based firms in lieu of illegal import of Gold, Diamond and Precious Stones.

38. During search proceedings dated 13/14.01.2022 at Hotel Vatika Inn Udaipur, 9 Laptops, 51 Mobile Phones, 211 SIM cards and various Bank Cheque Books / Passbooks and Debit Cards, which were used for illegal transactions, were also recovered.

39. Whereas, statements of Shri Vikram Singh Kachchawa were recorded under Section 108 of the Customs Act, 1962 on 14.01.2022 and 15.01.2022, wherein, he categorically admitted that all the fake / bogus firms, including M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology are being used for rotating and fraudulently remitting amount to foreign based firms in lieu of illegal import of Gold and Diamond. He also categorically admitted that many of these fake / bogus firms are being used for supplying illegally imported Gold and Diamond at Mumbai and Surat.

40. In view of the above, it was evident that Shri Vikram Singh Kachchawa and Shri Kamlesh Nagda had committed offences under Section 132 and 135 of the Customs Act, 1962 which are punishable under the provisions of the Customs Act, 1962. Thus, there was reasonable belief for arrest of Shri

Vikram Singh Kachchawa and Shri Kamlesh Nagda, who were instrumental in facilitating the transfer of fraudulent remittances abroad through bogus / fake Company / firm, namely M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology, who have remitted an amount of Rs. 400,57,91,176/- (as per the investigation conducted so far) to firms based at Hong Kong and UAE against illegally imported Gold, Diamond & other Precious Metals. Therefore, Shri Vikram Singh Kachchawa and Shri Kamlesh Nagda were arrested on 15.01.2022 under Section 104 of the Customs Act, 1962 for committing offences under Section 132 and 135 of the Customs Act, 1962 read with Section 104 of the Customs Act, 1962, after approval from the competent authority. They were produced before the Hon'ble ACMM (Economic Offence) Court on 15.01.2022, who ordered for their judicial custody. They were subsequently released on bail on 08.02.2023.

41. During further investigation in the matter, it came to the notice that two Individuals i.e. (i) Shri Deepak Kumar S/o Shri Jagdish Prasad Sharma, resident of Rajeev Colony, Nakoda Nagar, Ward No. 2, Bijaynagar, Ajmer, who is Proprietor of M/s. Shubhang Trading Company, MB9, First Floor, Flox Chamber, TATA Road No.1, Opera House, Mumbai and also one of the Directors of M/s. Shubhang Enterprises Private Limited, 136, 1st Floor, Amrut Diamond House, TATA Road No.1, Opera House, Mumbai, and (ii) Shri Pradeep Kumar Sharma S/o Shri Durga Prasad Sharma, resident of Subhash Nagar, Gopal Bari, Bijaynagar, Ajmer, who is the other director of M/s. Shubhang Enterprises Private Limited, Mumbai, are also key persons in this chain of fraudsters, who are causing loss to the exchequer. Therefore, in order to further investigate the matter, searches at the said business premises of both the units / firms were conducted on 29.04.2022, wherein, both the firms were not found working at the given addresses.

42. Whereas, information was received that both these persons had come to Bijaynagar, Distt: Ajmer (Rajasthan). Accordingly, searches at their residential premises at Bijaynagar were conducted on 05.05.2022 under Panchanama dated 05.05.2022.

43. For further investigation in the matter, statement of Shri Deepak Kumar was recorded on 05.05.2022 under Section 108 of the Customs Act, 1962, wherein he, *inter-alia* stated that presently he is having one trading firm namely Shubhang Trading Company, MB9, First Floor, Flox Chamber, Tata Road No. 1, Opera House, Mumbai which is engaged in sale and purchase of Gold and Diamond; that there is one more company in the name of M/s. Shubhang Enterprises Private Limited, 136, 1st Floor, Amrut Diamond House, Tata Road No.1, Opera House, Mumbai in which he is one of the Directors and other Director of that firm is Shri Pradeep Sharma; that the company is functioning since 2018.

44. Statement of Shri Deepak Kumar was also recorded on 07.05.2022 under Section 108 of the Customs Act, 1962. Shri Deepak Kumar, in his statement dated 07.05.2022, stated that:-

- a)** In compliance to summons dated 05.05.2022, he presented himself in the Customs Office, NCRB, Jaipur on 06.05.2022 and from 06.05.2022 at 10.20 AM to 07.05.2022 at 00.15 AM, the electronic devices resumed from his residential premises were examined under Panchnama dated 06/07.05.2022.

- b)** On being shown and asked that as per GSTR 2A Returns (GST return depicting inward supplies) of August, 2018 to March, 2022, first purchase was on 29.08.2020 vide Bill No. NMJ/G/AUG/29/01 @ 3 %, he stated that said purchase was of a Gold Bar valued at Rs. 1,02,80,000/- from M/s. Paresh Tiwari;
- c)** On being shown GSTR-1 Returns (GST Return depicting outward supplies) for the month of August, 2018 to March, 2022 and asked about what goods valued at Rs. 1,02,81,560/- @ 3% GST was sold vide Bill No. SE/G/AUG/07 to M/s. MAXIS Bullion, Mumbai on 01.08.2020, he stated that Gold Bar was sold and "G" stands for Gold;
- d)** He stated that the said Gold Bar was brought to him by Shri Ram Raj Choudhary and Shri Vikram Singh Kachchawa and told him that the Gold Bar is to be sold to M/s. MAXIS Bullion and therefore, he issued Bill No. SE/G/AUG/07 dated 01.08.2020; that the Gold Bar valued at Rs. 1,02,81,560/- was delivered to M/s. Maxis Bullion, Mumbai by them (Shri Ram Raj Choudhary and Shri Vikram Singh Kachchawa) on 01.08.2020 itself; that the real transaction took place on 01.08.2020, the entry dated 29.08.2020 in the GSTR-2A Return is mere adjustment entry;
- e)** On being asked about as to from where the Gold Bar was procured by Shri Ram Raj Choudhary and Shri Vikram Singh Kachchawa, Shri Deepak Kumar stated that the Gold was procured through smuggling from abroad; the firms like M/s. Maxis Bullion, Mumbai purchased smuggled Gold and for book adjustment they require Bills, so, Bill was issued for the smuggled Gold from his firm M/s. Shubhang Enterprises Private Limited; that in the same manner, for the Gold smuggled by Shri Ram Raj Choudhary, Shri Vikram Singh Kachchawa, Shri Navratan Jain and Shri Tonu Bhai, Bill Nos. SE/G/SEP/02-02 dated 02.09.2020 valued at Rs. 84,40,900/-, SE/G/SEP/02-01 dated 02.09.2020 valued at Rs. 97,39,500/-, SE/G/SEP/02-04 valued at Rs. 50,70,000/-; SE/G/SEP/02-02 dated 02.09.2020 valued at Rs. 77,91,600/- were issued to M/s. Shilpit Enterprises, Mumbai;
- f)** On being asked, he stated that for selling the smuggled GOLD BAR through his firm, he used to get certain percentage of the Bill amount and he received the amount through cash;
- g)** On being asked, he stated that the amount received in the bank account of M/s. Subhang Enterprises Pvt. Ltd. was transferred to the Bank Accounts of fake firms created by Shri Ram Raj Choudhary, Shri Vikram Singh Kachchawa, Shri Navratan Jain and Shri Tonu Bhai; that from these fake firms, fake purchase bills for his firm were obtained, and in this way, book adjustment for his firm was done.
- h)** He stated that Shri Navratan Jain and Shri Tonu Bhai have fled to Dubai due to fear of enquiry by the Customs Department; that Shri Navratan Jain and Shri Tonu Bhai both are resident of Kekri in Ajmer District; that Shri Vikram Singh Kachchawa is resident of Udaipur and his in-laws are from Bijaynagar, therefore, he came into contact with Vikram Singh Kachchawa; that the Mobile Numbers of Vikram Singh

Kachchawa are 9082750080 and 9982566677; that Shri Ram Raj Choudhary is resident of Baral Village near Bijaynagar which is in Ajmer District. His Mobile No. is 9983997501 and his work is also looked after by his brother Shri Kailash Chand.

- i) On being asked about M/s. Samarth Enterprises in the Whatsapp chat available in his Mobile No. 7976029400 for the period from 08.12.2021 to 28.12.2021 with Shri Vikram Singh Kachchawa, he stated that M/s. Samarth Enterprises is fake firm created by Shri Vikram Singh Kachchawa; that in this firm, money got deposited from other firms which was further rotated by Shri Vikram Singh Kachchawa in bank accounts of his fake firms; that on being asked by him, Shri Vikram Singh Kachchawa had told him that this amount was to be sent abroad;
- j) On being shown the printouts of Whatsapp chats between his Mobile No. 7976029400 and Mobile No. of Shri Vikram Singh Kachchawa from 09.09.2021 to 11.01.2022, he stated that M/s. Spice Enterprises is a fake firm created by Shri Vikram Singh Kachchawa; that in this firm he (Shri Deepak Kumar) got deposited money from other firms which was further rotated by Shri Vikram Singh Kachchawa in bank accounts of his fake firms; that on being asked by him, Shri Vikram Singh Kachchawa had told him that this amount was to be sent to abroad;
- k) On being shown the Bank Statement of Equitas Small Finance Bank Limited Account No. 206378925218 of M/s. Ganesh Impex according to which Rs. 22,00,000/- on 31.08.2020, Rs.1,00,000/- on 01.09.2020, Rs. 8,00,000/- on 02.09.2020, Rs. 3,20,000/- on 10.09.2020, Rs. 5,00,000/- on 10.09.2020 were sent to M/s. Ganesh Impex by M/s. Subhang Enterprises, he stated that the amount was deposited against smuggled Gold and Diamond which were rotated in other accounts and were ultimately remitted abroad;
- l) On being shown GSTR- 2A Returns for the period August, 2018 to March, 2022 and GSTR-1 Returns of M/s. Shubhang Enterprises, Mumbai and asked about the nature of transactions, he stated that firms M/s Dilwara Exim Private Limited, M/s Shailendra Singh Rathore, M/s Yuvika Impex Pvt. Limited, M/s Arpit Jagetia, M/s Rakesh Kumar Rathod, **M/s Europea Makeour Jewel Pvt. Limited, M/s Maahi Jewellery Exim Pvt Limited**, M/s Roop Rajat Multistar Pvt. Limited and M/s Sunil Mandal etc. sold the Gold and Diamond elsewhere and Bills were raised in the name of M/s. Subhang Enterprises Private Limited; that the Gold and Diamond were sold in cash, which was after rotating in different bank accounts, were deposited in the Bank account of his firm;
- m) **On being asked, he stated that M/s. Europea Makeour Jewels Private Limited is situated in Surat at two places, one at Unit 410, 2nd Floor, Poddar Plaza, Ghod Dod Road, Surat, Gujarat and second one at Unit No. 401, Plot No. 247, Surat Special Economic Zone, Sachin, Surat Gujarat. Its PAN is AAFCE44120; the directors of the company are Shri Suresh Jagetia and Shri Jagdishbhai Vallabhbhai Sutaria; that the Company is actually operated by Shri Ram Raj Choudhary; M/s. Maahi Jewellery**

Exim Private Limited is situated in Surat, Gujarat; its one unit is at No. 104, RT Apartment Co-op. Housing Society, Dalgiya Street, Mahidhar Pura, Surat, Gujarat; second one is at Unit No 407, Plot No. 248, Surat Special Economic Zone, Surat, Gujarat; that its directors are Ram Raj Choudhary and Shri Kailash Choudhary; that this firm is also run by Shri Ram Raj Choudhary; that earlier this firm was known as M/s. Burton Jewellery Exim Pvt. Limited.

- n)** On being asked about the entries in the Balance Sheet, recovered from the Hard-Disc under Panchnama dated 06.05.2022, he stated that the Balance Sheet is for the year 2020-21 and the sundry creditors shown in the Balance Sheet have either given him bills for book adjustment or have given money on loan. They are from various fields like builders and industry and the money is unaccounted for (black-money); that for converting the money to accounted for (legal-money), these firms give money to his firm; that he gives money to such builders and other Industry person as unsecured loan and advances; that in order to escape departmental enquiry, transactions are shown taking and giving of loan on interest:
- o)** On being shown the statement dated 05.05.2022 and 06.05.2022 of Shri Pradeep Kumar, another director of M/s. Shubhang Enterprises Pvt. Ltd., Mumbai, he stated that he agrees with the statements and stated that all the work of M/s. Shubhang Enterprises Private Limited and M/s. Raj Trading Company is being done by him or was done on his direction;
- p)** On being shown the Equitas Small Finance Bank Ltd. (Account No. 200001318203) of M/s. Spenta Trading, Mumbai, as per which M/s. Shubhang Enterprises Private Limited has transferred Rs. 3,00,000/- on 03.03.2021, he stated that the said amount was deposited against smuggled Gold and irregular import of Diamond, which, after rotating to different accounts, were remitted abroad.

45. Whereas, on verification of GSTR-1 Returns of M/s. Shubhang Trading Company, Mumbai and M/s. Shubhang Enterprises Private Limited, Mumbai, it was revealed that both these firms have issued invoices for supply of Diamond and Gold amounting to Rs. 167 Crore (approx.) for the period from April, 2018 to till date.

46. In view of the above, it was evident that Shri Deepak Kumar had been consciously aware that the firms / companies and bank accounts opened / created and operated by him were fake and had been created with sole intent to defraud the exchequer and have been ultimately used to remit amount against the illegally imported Gold and Diamond which is procured by various traders. It was also revealed that Shri Deepak Kumar is part of conspiracy and is instrumental in fraudulent remittances of huge amount to firms based at Hong Kong and UAE against non-existent import of services, for funding of illegal import of Gold and Diamond. He alongwith other conspirators did so in a planned manner with single objective of causing damage to the economy of the nation.

47. Thus, it was evident that Shri Deepak Kumar had conspired to defraud the exchequer and had been instrumental in fraudulent remittances of huge amount to firms based at Hong Kong and UAE against non-existent import of services, for funding of illegal import of Gold and Diamond and involved in supply of smuggled Gold in local market through invoicing by his firm. He is part of the conspiracy wherein fake firms / companies have been created for fraudulent import of services (non-physical imports), he is part of conspiracy wherein without actual receipt of services, huge payments are fraudulently being sent to the foreign recipients. He indulged in the conspiracy whereby registration under IGST Act, 2017 read with CGST Act, 2017 has been taken for the fake / bogus firms. Shri Deepak Kumar being instrumental in supplying the smuggled Gold and Diamond in local market, was arrested on 08.05.2022 and produced before the Hon'ble Economic Offences Court, Jaipur, who ordered for his Judicial Custody. He was subsequently released on bail on 08.02.2023.

48. Whereas, on the basis of the statement of Shri Deepak Kumar, Director of M/s Shubhang Enterprises Private Limited, Mumbai and Proprietor of M/s Shubhang Trading Company, Mumbai and scrutiny of the records, it was revealed that M/s. Europea Makeour Jewel Pvt. Ltd., Unit 410, 2nd Floor, Poddar Plaza, Ghod Dod Road, Surat (herein after referred to as M/s. Europea (DTA Unit)) and M/s. Maahi Jewellery Exim Pvt. Ltd., office No. 104, RT Apartment Co-op. Housing Society, Dalgiya Street, Mahidharpura, Surat [herein after referred to as M/s. Maahi (DTA Unit)], both DTA (Domestic Tariff Area) units, had issued bills / invoices of Diamonds and Precious Stones to M/s Shubhang Enterprises Private Limited, Mumbai without making actual supply of Diamonds and Precious Stones. It was also noticed that both the units with the similar / identical name had their units in Sachin SEZ, Surat also. Detailed investigation was carried out in respect of M/s Europea (DTA Unit) and M/s. Maahi (DTA Unit), which has been described in later part of the SCN under adjudication.

49. Whereas, during the course of investigation in the case, name of Shri Navratan Singh Jain was referred by many accused in their Statements recorded under Section 108 of the Customs Act, 1962, as the person, who, along with other accomplices, was smuggling Gold and Diamonds and supplying the same in the local market through various fake / bogus firms. It has subsequently came to notice that actually the full name of the person Shri Navratan Jain referred by these accused is Shri Navratan Singh Jain, S/o Shri Gautam Singh Jain, R/o Ghosi Mohalla, Sadar Bazar, Kekri, District Ajmer, Rajasthan.

49.1 That, during further investigations in the matter, it was revealed that said Shri Navratan Singh Jain, Shri Suresh Jagetia, Shri Om Prakash Vanjani, Shri Ravindra Kumar, CA, Shri Vikram Singh Kachchawa, Shri Kamlesh Nagda and Shri Deepak Kumar, are all part of racket / gang involved in a deep-rooted conspiracy to defraud the Government Exchequer and in collusion with each other they have been instrumental in remittances of huge amounts to firms based at Hong Kong and UAE in lieu of fraudulent / non-existent imports of services (non-physical imports) for funding illegal import of Gold, Diamonds & other Precious Stones / Metals.

49.2 That, in view of the aforesaid facts and circumstances, recording of statement of Shri Navratan Singh Jain assumed great significance for

completion of the said investigation. Hence, Summons were issued on 10.02.2022, 15.03.2022, 21.06.2022, 01.07.2022, 20.07.2022, 17.08.2022 and 20.09.2022 to Shri Navratan Singh Jain, but Shri Navratan Singh Jain did not comply with the said Summons and instead he filed an Anticipatory Bail Application under Section 438 of Cr.P.C. before the Hon'ble District & Sessions Judge, Jaipur Metropolitan, Jaipur-II which was however rejected.

49.3 Whereas, intelligence / information was received that Shri Navratan Singh Jain was present at his home-town Kekari, Ajmer on 26.10.2022, accordingly search was conducted on 26.10.2022 at house of Shri Navratan Singh Jain, Ghosi Mohalla, Sadar Bazar, Kekri, Ajmer, Rajasthan under proper authorisation. The said Shri Navratan Singh Jain was found present there. Summons dated 26.10.2022 was issued and served to Shri Navratan Singh Jain for tendering his Statement under Section 108 of the Customs Act, 1962 at the office of the Commissioner of Customs, NCRB Statue Circle, Jaipur on 27.10.2022.

50. Whereas, statement of Shri Navratan Singh Jain under Section 108 of the Customs Act, 1962 was recorded on 27.10.2022, wherein he *inter-alia*, stated :-

50.1 That, in 2007, he went to Mumbai and started working as a salesman in a firm i.e. Mohini Jewellers, Mulund, Mumbai, which dealt in Gold and Diamond jewellery; that subsequently, he opened his own firm i.e. Sai Kripa Trading, which traded in Diamonds; that he lives in Mumbai; that currently he is working as a Diamond Broker.

50.2 That, in year 2015-16, he along with Tonu (Dilkhush Babel), opened two companies i.e. Gehna Trading LLP and DNB Multitrade (I) Pvt. Ltd. in which ID of Ashok Kumar Jain and Pankaj Padlecha were used; that in return for allowing to use their IDs, payment of Rs. 1-1.25 Lakh was made in 6-8 months to those two; that GST Registration No. of M/s Gehna Trading LLP is 24AAOFG8618E1ZA and GST Registration No. of M/s DNB Multitrade (I) Pvt. Ltd. is 27AAFCD7290P1ZX; that, in M/s Gehna Trading LLP, his Mobile No. 8080747010 is registered under GST.

50.3 On being shown Panchanama dated 26.05.2022 which was drawn during the search proceedings of the registered address of M/s. Gehna Trading LLP under GST, according to which no firm was found functioning on the said address, he stated that he has perused the Panchnama dated 26.05.2022, according to which his firm M/s Gehna Trading LLP was not found functioning on the registered address and he agreed to the same; **that the said firm is engaged in issuing of Bills of Gold and Diamonds (mere paper transactions), whereas, in reality no sale-purchase of any kind of goods was made.**

50.4 Further, on being asked to peruse and comment on Incident Report dated 29.04.2022 which was based on the search proceedings of the registered address of M/s. DNB Multitrade (I) Pvt. Ltd. according to which the said firm was found non-existent on the registered address i.e. 202-A, 2nd Floor, Panchratna Building, Opera House, Mumbai-400004, he stated that he had perused Incident Report dated 29.04.2022, according to which his firm i.e. M/s. DNB Multitrade (I) Pvt. Ltd. was found non-existent on the registered address; **he further stated that the said firm is engaged in**

merely issuing Bills of Gold and Diamonds (mere paper transactions), whereas, in reality no sale-purchase of any kind of goods has been made.

50.5 Further, he was asked to peruse and comment on GSTR-1 summary of M/s. Gehna Trading LLP (GSTIN-24AAOFG8618E1ZA) and M/s. DNB Multitrade (I) Pvt. Ltd. (GSTIN- 27AAFCD7290P1ZX), according to which sales of Gold and Diamond worth Rupees 400.61 Crore and 622.01 Crore respectively were made by the said two firms. However, both the said firms were found non-functional at the GST Registered address. **In reply, he stated that he has perused the GSTR-1 Summary of both the above-said firms and in token of that he has signed on it. He further stated that he has opened / created the above said both firms for issuance of fake bills and he has issued the bills of Rupees 400.61 Crore and 622.01 Crore, respectively from both the above said firms for supply of Gold and Diamonds to various companies and firms for which he gets commission.**

51. Further statement of Shri Navratan Singh Jain, under Section 108 of the Customs Act, 1962 was recorded on 28.10.2022, wherein he inter-alia, stated that:-

51.1 He has perused his own statement dated 27.10.2022 and agrees with the same.

51.2 He has perused the statement dated 25.11.2021 of Shri Rakesh Indermal Jain and agrees with the same.

51.3 He has perused the statement dated 15.01.2022 of Shri Vikram Singh Kachchawa and agrees with the same.

51.4 He has perused the statement dated 07.05.2022 of Shri Deepak Kumar and agrees with the same.

52. Statement of Shri Navratan Singh Jain was again recorded under Section 108 of the Customs Act, 1962 on 02.11.2022 wherein, on being asked, he *inter-alia* stated that :-

52.1 He, alongwith Tonu (Dilkhush Babel) opened the Companies / firms namely M/s Gehna Trading LLP and M/s DNB Multitrade (I) Pvt Ltd. using the documents of Shri Ashok Kumar Jain and Shri Pankaj Padlecha; that, these companies are being operated by him and Shri Tonu Bhai (Shri Dilkhush Babel); that, these companies are engaged in issuing and receiving bills (mere paper transactions, without actual supply); that they receive commission of 0.05 % on the bill value of diamond and Rs. 3000/- per kg. on bill of Gold; that they have issued bills amounting to Rs. 100 Crore approx. for supply of Gold and also issued bills amounting to Rs. 900 Crore approx. for supply of Diamond.

52.2 On being asked regarding cancelled GST registration of the firms making supplies to his firms / companies namely M/s Gehna Trading LLP and M/s DNB Multitrade (I) Pvt Ltd., Shri Navratan Singh Jain stated that his firms / companies namely M/s. Gehna Trading LLP and M/s DNB Multitrade (I) Pvt. Ltd. procure invoices from fake firms (mere paper transactions,

without actual supply) and purchase the real goods from someone else; that to sell the real goods (Gold & Diamond) to working / active firms, they issue invoices from their firms / companies namely M/s Gehna Trading LLP & M/s DNB Multitrade (I) Pvt Ltd.; that they supply the goods (Gold & Diamond) with the bills of some other bogus / fake firms also.

52.3 On being asked regarding SIM card of his Mobile No. 8080747010, Shri Navratan Singh Jain stated that he has destroyed the same for fear of being traced by the Department.

52.4 On being asked regarding the source of Goods (Gold & Diamond) purchased by them for which they procured fake bills, Shri Navratan Singh Jain stated that they purchased genuine Gold & Diamond from M/s Khushbu Diamond Pvt. Ltd. Mumbai and Surat; M/s. Bhairav Gems Pvt. Ltd., Mumbai and Surat; M/s Antik Diamond Pvt. Ltd., Mumbai and Surat; M/s Tanman Diamond Pvt. Ltd., Mumbai and Surat; M/s Mansi Enterprises, Mumbai; M/s Moti Jewellers, Mumbai; M/s Shriya Creation, Mumbai and Surat; that, there are several persons / firms in the market who sell Gold Bars & Diamonds; that, there are also persons / firms who ask for bills alongwith goods (Gold & Diamond); that, he alongwith Shri Tonu Bhai sell such goods through their fake firms / companies namely M/s Gehna Trading LLP and M/s DNB Multitrade (I) Pvt Ltd.; that, he supplies the goods (Gold & Diamond) with the bills of some other bogus / fake firms also.

53. Further statement of Shri Navratan Singh Jain was recorded under Section 108 of the Customs Act, 1962 on 03.11.2022 wherein he *inter-alia* stated that:-

53.1 That he had switched off his Mobile on 26.01.2022 onwards and replaced the old SIM with a new SIM and had been going to different places in the country because he had received a Summon issued by Customs office, in compliance of which he had been directed to appear for tendering his Statement; that, since he had made fraudulent / fake transactions (of supply of Gold & Diamonds) through his non-existent firms (M/s. DNB Multitrade (I) Pvt. Ltd. and M/s. Gehna Trading LLP), therefore, he was very scared; that, for this reason, he was absconding.

53.2 On being asked about the purpose of transactions worth 1500-1600 Crores INR as per the Bank Statements of PNB and IndusInd Bank of both his firms namely M/s. Gehna Trading LLP and M/s. DNB Multitrade (I) Pvt. Ltd., Shri Navratan Singh Jain stated that he himself runs / operates the referred Bank Accounts of both his firms namely, M/s. Gehna Trading LLP and M/s. DNB Multitrade (I) Pvt. Ltd; that, he had made transactions worth INR 1500-1600 Crores in respect of smuggled Gold and Diamonds through these firms / bank accounts operated by himself.

53.3 That he has transferred money into his wife's Bank Account not only from the PNB Account No. 0067002108006080 and PNB Account No. 0067002108007821 of his firms namely M/s. Gehna Trading LLP and M/s. DNB Multitrade (I) Pvt. Ltd., but also from IndusInd Bank Account Nos. 201000393521 and 201000579246 of M/s. Gehna Trading LLP and M/s. DNB Multitrade (I) Pvt. Ltd., respectively. He gave the reasons for the said money transfers as under: (1) Rs. 10 Lakh for Booking of Flat, (2) Rs. 23 Lakh for

Surat Office; (3) Rs. 7 Lakh for purchase of Land in Kekri; that, he does not know about rest of the money transactions.

53.4 That, apart from issuance of Bills / Invoices related to supply of smuggled Gold and Diamonds to Shri Rakesh Indermal Jain's firm namely M/s. S K Jewels, cash transaction of amounts equivalent to the amounts shown in the Bills / Invoices issued, is also settled through four Bank Accounts (2 PNB Accounts and 2 IndusInd Bank accounts) pertaining to M/s. Gehna Trading LLP and M/s. DNB Multitrade (I) Pvt. Ltd.

53.5 That, he has transferred the profit earned from trading of smuggled Gold / Diamonds to his father's firm, namely M/s. Nakoda Enterprises, using the above-referred 4 Bank Accounts of his firms, namely M/s. Gehna Trading LLP and M/s. DNB Multitrade (I) Pvt. Ltd.

54. Whereas, in view of the above facts that emerged during the course of ongoing investigation in the matter, it was evident that Shri Navratan Singh Jain had been consciously involved in smuggling of Gold and supply of illegally imported / smuggled Gold and Diamonds. As per his statements dated 27.10.2022, 28.10.2022, 02.11.2022 & 03.11.2022, recorded under Section 108 of the Customs Act, 1962, it was evident that he was also involved in creating fake firms for supplying the smuggled Diamonds & smuggled Gold in local market by issuing bogus / fake Bills. The bogus / fake firms / companies and bank accounts created / opened and operated by him have been opened and created with sole intent to defraud the exchequer by issuing bogus / fake Bills through these firms which are non-existent / non-functional and working only on paper. It was also revealed that Shri Navratan Singh Jain is not only engaged in smuggling of Gold into India but also dealing in smuggled Gold and Diamonds and supplying the same in local market through bogus / fake firms.

55. Shri Navratan Singh Jain was consciously aware that the firms / companies created and operated by him were opened and created with the sole intent to defraud the exchequer and have been used to remit amount against the illegally imported Gold, Diamond and other Precious Stones. He engaged himself in smuggling of Gold and also in supply of the smuggled Gold and Diamond in the local market alongwith other conspirators. He was fully aware that he was willfully / knowingly / deliberately contravening the provisions of various laws enacted by the Government.

56. In view of the above, it is evident that Shri Navratan Singh Jain has, *inter-alia*, committed offences under Sections 132 and 135 of the Customs Act, 1962, which are punishable under the provisions of the Customs Act, 1962. Therefore, after approval from the competent authority, Shri Navratan Singh Jain was arrested on 28.10.2022 under Section 104 of the Customs Act, 1962 for committing offences under Sections 132 and 135 of the Customs Act, 1962. He was produced before the Hon'ble ACMM (Economic Offence) Court Jaipur-II. He was ordered for judicial custody after 7 days Customs (Departmental) Custody. He is in judicial custody since then.

57. Whereas, during the search on 14.01.2022 at Hotel Vatika Inn, Gulab Bag Road, Old City Brahmpuri, Udaipur, some Gold Bullion's invoice issued to M/s Swastik Impex had been recovered. Further, on analysis of CDR of

various accused, who were arrested in this case, the calls were found to be made with Shri Vimal Kumar Nahar.

58. In view of the aforesaid facts and circumstances, recording of Statement of Shri Vimal Kumar Nahar assumed great significance for completion of the said investigation. Hence, Summon was issued on 20.09.2022 to Shri Vimal Kumar Nahar, Sole Proprietor of M/s. Swastik Impex, No. 127, Ground Floor, Plot No. 80/84, Amrit Diamond Trade Center Pvt. Ltd., JSS Marg, Central Plaza Cinema, Girgaon, Mumbai, Maharashtra – 400004, and the same was returned undelivered by the Postal authorities.

59. On the basis of specific intelligence / information received that Shri Vimal Kumar Nahar was present at his home town Bijaynagar, Ajmer on 21.02.2023, search was conducted on 21.02.2023 at House of Shri Vimal Kumar Nahar, Plot No. 24, 2nd Street, Muneem Colony, Krishi Mandi Road, Bijaynagar, Ajmer, Rajasthan under proper authorisation. During the search, some documents (sale and purchase Bills), Bank Accounts' statements, Cheque Books and miscellaneous document were recovered and the same were resumed under Panchnama dated 21.02.2023. Shri Vimal Kumar Nahar was found present in his residence and accordingly, summons dated 21.02.2023 was issued under Section 108 of the Customs Act, 1962, to Shri Vimal Kumar Nahar and his preliminary statement dated 21.02.2023 was recorded at his residence at Plot No. 24, 2nd Street, Muneem Colony, Krishi Mandi Road, Bijaynagar, Ajmer, Rajasthan under Section 108 of the Customs Act, 1962. Further Summon bearing DIN No. 20230275NJ000000DFOD dated 21.02.2023 was served to Shri Vimal Kumar Nahar for tendering his Statement under Section 108 of the Customs Act, 1962 at the office of the Commissioner of Customs, NCRB Statue Circle, Jaipur on 21.02.2023 at 04.00 PM.

60. Shri Vimal Kumar Nahar, in his Statement dated 21.02.2023, under Section 108 of the Customs Act, 1962, recorded at his residence, *interalia* stated that:-

60.1 He opened firm *viz.* M/s. Swastik Impex, which is situated at No. 127, Amrit Trade Center, Charni Road, Mumbai and he was the sole proprietor of the said firm, which was engaged in trading of Gold and Diamond; that before opening his own firm, he worked in Mahesh Exim for 11 months, wherein he used to do work related to Bank and delivery of goods. Proprietor of Mahesh Exim was Shri Ankit Jagetia.

60.2 On being asked about major buyers / suppliers of his firm M/s. Swastik Impex, he stated that M/s. S. K. Jewels, M/s. Golden Bullion and M/s. Ibusen Spenta Trading are major buyers and M/s. Reevan Creation, M/s. Shineri Diamonds and M/s. J. D. Enterprise are major suppliers.

61. Shri Vimal Kumar Nahar, in his Statement dated 21.02.2023 recorded at the office of the Commissioner of Customs, NCRB, Statue Circle, C-Scheme, Jaipur, *interalia* stated that:-

- He opened his firm M/s. Swastik Impex on suggestion of Shri Vikram Kachchawa. Shri Kachchawa also helped him to take GST registration and opening of Bank accounts etc. He met Surendra, Rajendra and Navratan Singh Jain at the time of visit to Mumbai. Shri Navratan

Singh Jain was doing business of Gold and Diamond in Zaveri Market. Further, he stated that after some time, he came to know that Shri Navratan Singh is engaged in smuggling of Gold and Diamonds. Further, he stated that after some time, he stopped doing business in M/s. Swastik Impex but some transactions were made by Shri Vikram Singh Kachchawa and later on, he asked Shri Vikram Singh Kachchawa to stop such transaction in his firm. In March 2020 he left Mumbai.

- Further, on being asked, he stated that only one firm M/s. Swastik Impex is registered under GST in his name and GST No. of the same is 27APEPN7660J1ZG which is engaged in trading activity of Gold, Bullion and Diamond. The said firm was registered in September, 2019 and he stopped doing business in the said firm after May / June 2020 and he stated that he never made any import-export from his said firm. He stated that he did not have any other documents related to M/s. Swastik Impex, except document resumed from his residence during the search proceedings on 21.02.2023. Further, on being asked, he stated that three bank accounts are related with his firm M/s. Swastik Impex i.e. (i) Kotak Mahindara Bank (A/c No. 6113247707), (ii) Equitas Small Finance Bank Ltd. (A/c No. 200001124484) and (iii) AU Small Finance Bank (A/c No. not known) and all are still active. However, he has not done any transaction after June 2020. Further, he stated that online net banking was being maintained by Shri Vikram Singh Kachchawa on the basis of OTP received on email id which was logged in Shri Kachchawa's laptop.
- Further, on being asked, he stated that last time in November, 2021 he met with Surendra and Rajendra and after November, 2021, he is not in contact with both of them.

62. In his Statement dated 22.02.2023 recorded under section 108 of the Customs Act, 1962 at the office of the Commissioner of Customs, NCRB, Statue Circle, C-Scheme, Jaipur, Shri Vimal Kumar Nahar, *inter-alia*, stated that:-

- Shri Vimal Kumar Nahar stated that online access of bank account was maintained by Shri Vikram Singh Kachchawa in respect of Equitas Small Finance Bank Ltd. and all the transactions were done by Shri Kachchawa. Some transactions in respect of Kotak Mahindra Bank were made by Shri Navratan Singh Jain.
- The said transactions made in M/s. Swastik Impex have only been done by Shri Navratan Singh Jain and Shri Vikram Singh Kachchawa. He had blind faith on them. Initially, he was not aware about the nature of work, but after some time, he understood the nature of work and he decided not to do any said type of business. Shri Vimal Nahar told them not to do further work and also asked to file the return of the transactions done till March, 2020.
- Shri Vimal Nahar stated that after perusal of Bank statements, he came to know that some transactions have also been done by Shri Vikram Singh Kachchawa without his knowledge.

- Shri Nahar returned to Bijaynagar but they were still doing transaction in the said firm as they had log-in ID and Password. Further, he stated that Shri Vikaram Singh Kachchawa was having all control of the firm i.e. M/s Swastik Impex.
- Further, on being asked, he stated that he started M/s. Swastik Impex with the help of Shri Vikaram Singh Kachchawa; that, when he started working with Shri Kachchawa, it was decided in the beginning itself that he (Shri Kachchawa) would look after sale and purchase of goods and he himself (Shri Vimal) would have to take printout of invoice (in the name of the firm) on the basis of PDF of the invoice shared by Shri Vikaram Singh Kachchawa. He was also required to do all works related to Bank and market, as directed by Shri Kachchawa. Shri Kachchawa used to give him bill of goods, which had already been purchased in the name of his firm and he (Shri Vimal) used to get the PDF of the sale bill of same goods which he used to print in the name of some other firm, sign and give it to Shri Kachchawa.
- Further, on being asked to peruse and comment on GSTR1 and GSTR-2A summary of M/s. Swastik Impex (GSTIN-27APEPN7660J1ZG), he stated that he had perused the GSTR1 and GSTR-2A Summary of the above said firm and in token of that, he had signed on it.
- Shri Vimal Nahar explained the procedure of sale-purchase of goods. He stated that first of all, Navratan used to call and send the bill of fake firm to him like Shyam Exports, Relay Stones, Aabhaar Multitrade Pvt. Ltd. (which issues bills of Gold / Bullion and does not deal in goods in actual), accordingly, he maintained the stock. After that, Navratan Singh Jain gave directions to him to issue a bill of Gold of the same quantity on his firm's letterhead in the name of various firms like S. K. Jewels, Choksi-Arvind Jewellers, Golden Bullion etc. and by using said bills, Navratan used to sell the gold / bullion arranged by him. By that time, he had understood that the said gold / bullion was arranged by smuggling or illegal means and his firm's fake bills were being used for further supply of the said gold/ bullion. In return, the payment used to be credited in the bank account of his firm M/s. Swastik Impex which instead of being transferred in the bank account of that firm (from which the bill for the purchase of gold / bullion was taken in his firm) was actually transferred on the directions of Shri Navratan in another firm's bank account with which his firm M/s Swastik Impex had not made any purchase / bill of goods in any way. Further, he stated that he was given diamond's bills in lieu of transfer of amount in fake firms such as Spenta Trading, Shree Ganesh Impex, Shreeji Impex, Shantinath Trading Pvt. Ltd. etc. and the same was arranged by Shri Navratan. In this manner, Book Adjustment / Set off was done by Shri Navratan, giving fake bills of sale of diamonds to those firms which gave bills of supply of Gold to his firm M/s Swastik Impex. In this way, from the stage of buying Gold Bullion through fake bills, till selling smuggled Gold bullion and rotating the money from such sales through other third party / firms, money was diverted to foreign countries for funding payment for the goods ordered by illegal methods / smuggling. Further, he stated that above all activities were done by Shri Vikaram Singh Kachchawa and Shri Navratan Singh Jain.

63. In his Statement dated 23.02.2023 recorded under section 108 of the Customs Act, 1962, Shri Vimal Kumar Nahar, *inter-alia*, stated that:-

- He opened his firm M/s Swastik Impex in 2019 with the help of Shri Vikram Ji, who played significant role in renting of his office premises, obtaining GST registration and opening of bank account. The expenses incurred by him were decided to be adjusted from the commission payable to him (Vimal). It was decided that Shri Vimal would be paid commission @ 0.04 percent of the total sale turnover. He initially worked / managed his firm as per the directions given by Shri Vikram and Shri Navratan, but when he came to know about the actual nature of transactions, he, around March 2020, told them that he would not continue work and asked them to settle his accounts. Till then, Shri Navratan had paid him Rs. 1.10 Lakh as commission, whereas Shri Vikram Ji had paid him approximately Rs. 2.50 lakh out of 3.20 lakh due as commission.
- As per his knowledge and understanding, the firms which actually sell and purchase gold, bullion and diamond are at the top most level of chain of smuggling system. The said firms purchase the goods in two ways, either legally i.e. with proper invoice or illegally i.e. smuggled goods. At the second level are many such firms which provide fake invoice against smuggled goods i.e. Gold, Diamonds. Most of the said firms are being operated by the Bijaynagar, Kekari and Bhilwara based persons operating / managing fake firms at Opera House, Charni Road, Mumbai. Shri Navratan Singh Jain (from Kekari) and Shri Vikram Singh Kachchawa (Udaipur) are also among them. The second level firms play the main role in providing fake Bills, rotation of illegal money (Cash in lieu of RTGS and RTGS in lieu of cash) as well as Hawala transactions. On third level are many sole proprietorship firms which are registered under GST only for issuance of fake bills. These firms rotate the money in illegal way and they do not actually make any sale or purchase and they gets commission for the same.
- Shri Vimal Kumar Nahar, in his statement dated 23.02.2023, explained the whole process through a chart.

64. In view of the above, it was evident that Shri Vimal Kumar Nahar had, *inter-alia*, committed offences under Section 132 and 135 of the Customs Act, 1962, which are punishable under the provisions of the Customs Act, 1962. Therefore, after approval from the competent authority, Shri Vimal Kumar Nahar was arrested on 23.02.2023 under Section 104 of the Customs Act, 1962 for committing offences under Section 132 and 135 of the Customs Act, 1962. He was produced before the Hon'ble ACMM (Economic Offence) Court Jaipur-II. He was ordered for judicial custody. He is in judicial custody since then.

65. Detailed Discussion of Investigation in respect of M/s Europea Makeour Jewel Pvt. Ltd and M/s Maahi Jewellery Exim Private Limited:-

65.1 Preliminary Investigation-

The name of M/s Europea Makeover Jewel Pvt. Ltd. first appeared during the search conducted by the officers of Customs, Jaipur on 13/14.01.2022 at the premises located at Hotel Vatika Inn, Gulab Bag Road, Old City, Brahmpuri, Udaipur, Rajasthan. The said premises belonged to Shri Vikram Singh Kachchawa, who was also present during the search. Statements of Shri Vikram Singh Kachchawa were recorded under Section 108 of the Customs Act, 1962 on 14.01.2022 and 15.01.2022, wherein, he categorically admitted that all the fake / bogus firms including M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology are being used for rotating and fraudulently remitting amount to foreign based firms in lieu of illegal import of Gold and Diamond. He also categorically admitted that many of these fake / bogus firms are being used for supplying illegally imported Gold and Diamond at Mumbai and Surat. During the search proceedings, incriminating documents, Mobiles, Laptops, Stamps of various firms, Hard Disc, Name-plates of various firms, SIM cards, Passbooks, Passport-size photographs, Cheque Books, Debit / Credit Cards of various banks and notepads as detailed in Panchnama dated 13/14.01.2022 and its Annexures 1, 2, 3 & 4 were recovered and seized. In these seized documents, total 28 invoices pertaining to **M/s Europea Makeour Jewel Pvt. Ltd. were also recovered. These Invoices were showing sale of Diamond by M/s Europea Makeover Jewel Pvt. Ltd. to M/s Subhang Enterprise Private Limited, Mumbai and to M/s Swastik Impex, Mumbai Both these firms / companies to whom sales were shown were found non-existent during searches at their premise and the Directors of these units have stated in their statements that M/s Europea Makeour Jewel Pvt. Ltd. and M/s Maahi Jewellery Exim Private Limited have sold diamond to some other buyers and have only issued invoices to their units.**

65.2 Statements under Section 108 of the Customs Act, 1962 of Shri Deepak Kumar, Director, M/s. Shubhang Enterprises Private Limited, 136, 1st Floor, Amrut Diamond House, Tata Road No. 1, Opera House, Mumbai and also Director, M/s Shubhang Trading Company, MB9, First Floor, Flox Chamber, Tata Road No. 1, Opera House, Mumbai, were recorded on 05.05.2022 and 07.05.2022, Wherein he, inter alia, stated that:-

- a) On being shown GSTR- 2A (GST return depicting inward supplies) for the period from August, 2018 to March, 2022 and GSTR-1 of M/s. Shubhang Enterprises, Mumbai and asked about the nature of transactions, he stated that firms M/s Dilwara Exim Private Limited, M/s Shailendra Singh Rathore, M/s Yuvika Impex Pvt. Limited, M/s Arpit Jagetia, M/s Rakesh Kumar Rathod, **M/s Europea Makeour Jewel Pvt. Limited, M/s Maahi Jewellery Exim Pvt Limited**, M/s Roop Rajat Multistar Pvt. Limited and M/s Sunil Mandal etc. sold the Gold and Diamond elsewhere and Bills were raised in the name of M/s. Subhang Enterprises Private Limited; that the Gold and Diamond were sold in cash, which after rotating in different bank accounts, was deposited in the Bank account of his firm;
- b) On being asked, he stated that M/s. Europea Makeour Jewels Private Limited is situated in Surat at two places, one at Unit 410, 2nd Floor, Poddar Plaza, Ghod Dod Road, Surat, Gujarat and second one at Plot No. 247, Unit No. 401, Surat Special Economic Zone, Sachin, Surat,

Gujarat. Its PAN is AAFCE44120; the directors of the company are Shri Suresh Jagetia and Shri Jagdishbhai Vallbhbhai Sutaria;

- c) That M/s Maahi Jewellery Exim Private Limited is situated in Surat, Gujarat; its one unit is at No. 104, RT Apartment Co-op. Housing Society, Dalgiya Street, Mahidhar Pura, Surat, Gujarat and second one is at Plot No. 248, Unit No. 407, Surat Special Economic Zone, Surat, Gujarat; that its directors are Shri Ram Raj Choudhary and Shri Kailash Choudhary; that this firm is run by Shri Ram Raj Choudhary; that earlier, this firm was known as M/s. Burton Jewellery Exim Pvt. Limited.

65.3 Searches at the premises of M/s Europea Makeour Jewel Pvt. Ltd. (SEZ Unit and DTA Unit) and M/s Maahi Jewellery Exim Private Limited (SEZ Unit and DTA Unit) and Seizure of Diamond and Precious Stones therein-

65.3.1 The complete *modus operandi* was revealed at the time of searches conducted under Section 105 of the Customs Act, 1962 at M/s. Europea (SEZ Unit) and M/s Maahi (SEZ Unit) during the period from 25.05.2022 to 27.05.2022 and recording of statements under Section 108 of Shri Suresh Ratanlal Jagetia, Director of M/s Europea Makeour Jewel Pvt. Ltd.

65.3.2 Searches on 25.05.2022 to 27.05.2022, with the assistance of SIIB Surat (Surat Customs) were conducted in Surat where most of the firms were found non-existent. Brief of these searches are as follows –

- A. M/s. Gehna Trading LLP, No. 110, 1st Floor, Tulsi Building, Somnath Mahadev Ni Sheri, Mahidharpura, Surat, Gujarat – 395003 on 26.05.2022 - The premises was found locked. Further, on being enquired about the premise of M/s. Gehna Trading LLP to security guard, he informed that M/s. Gehna Trading LLP had left the said premises almost 2 years ago. Further, on being asked about owner of the premises No. 110, 1st Floor, Tulsi Building, he informed that Shri Dharmendrabhai Bafna, resident of Rajasthan is the owner of the premises. On being contacted to owner of the said premises, he informed the same thing. Accordingly, a Panchnama dated 26.05.2022 was drawn at the spot.
- B. M/s. Maahi Jewellery Exim Pvt. Ltd. (Previously, Burton Jewellery Exim Pvt. Ltd.), M/s. Nehal Diamonds and M/s. Komal Exim Private Limited, office No. 104, RT Apartment Co-op. Housing Society, Dalgiya Street, Mahidharpura, Surat on 25.05.2022 - The office premises No. 104, RT Apartment Co-op. Housing Society, Dalgiya Street, Mahidharpura, Surat was found locked. Mobile No. of owner namely Shri Shrenik D. Shah was taken from the neighbourhood office. On being called upon, Shri Shah came at the said premise and opened the gate of the said office. Shri Shah informed that he is not the owner of the above said firms. He had leased the office premise No. 104, RT Apartment to Shri Ram Raj Choudhary, 70, Jatoka Chowk, Mataji Ki Gali, Baral-2, Ajmer, Bijaynagar, Rajasthan during the period 01.02.2019 to 31.12.2019 and further extended lease agreement of the said premises for next 11 months upto 30.11.2020 in the name of same person. Further, he informed that after 30.11.2020, Shri Ram Raj Choudhary left the said

premises. He further informed that he has been doing brokerage business / establishment as Marquise Diam at office premise No. 104, RT Apartment since December, 2020. During the search of the said premise, no documents related to M/s. Maahi Jewellery Exim Pvt. Ltd. (Previously Burton Jewellery Exim Pvt. Ltd.), M/s. Nehal Diamonds and M/s. Komal Exim Private Limited were found. Accordingly, a Panchnama dated 25.05.2022 was drawn on the spot.

- C. M/s. Europea (DTA Unit) on 25.05.2022 - On entering the said premises, two persons namely Shri Darshan Chandanlal Sukhadia and Shri Deepak Savani were present at the premises and introduced themselves as workers (salesmen) of M/s. Europea Makeour Jewel Pvt. Ltd. Both the salesmen informed that they were doing the business of sale of "Laboratory Created or Synthetic Diamonds - 71041010" on behalf of owner of the firm. They just deliver the goods / diamonds to the purchasers on behalf of the owner. Further, on being enquired about other business activity in the said premises, they informed that they do not know about the same. During the search, one file containing page No. 1 to 81 (Misc.) was resumed for further investigation. Accordingly, a Panchnama dated 25.05.2022 was drawn on the spot.

65.4 The DTA units viz. M/s. Europea (DTA Unit) and M/s Maahi (DTA Unit) were found non-existent / non-functional during searches conducted on 25.05.2022. However, as per GST records, M/s. Europea (DTA Unit) (non SEZ unit) has made purchase and sale of Rs. 1844.67 Crore and Rs. 1213.47 Crore, respectively. Similarly, M/s Maahi (DTA Unit) (non SEZ unit) has made purchase and sale of Rs. 1060.03 & Rs. 901.03 Crore respectively, since their inception.

65.5 Search at M/s. Europea (SEZ Unit) on 25-27.05.2022.

65.5.1At the premises, Shri Suhash Chanderkant Patel (Production Manager) and Shri Suresh Ratanlal Jagetia (Director of M/s. Europea Makeour Jewel Pvt. Ltd.) were present. On being asked about the firm M/s. Europea Makeour Jewel Pvt. Ltd, Shri Suresh Ratanlal Jagetia informed that the company is functioning at three premises in SEZ Sachin Surat i.e. Plot No. 247, 248 & 225B.

65.5.2During search, Shri Suresh Ratanlal Jagetia informed that the company is engaged in manufacture of studded jewellery which is made of Precious Stones, Diamond and Silver and the company is also engaged in manufacturing of lab grown Rough Diamonds. He further informed that the company imports Precious Stones, Diamonds and Silver and uses them as raw material to manufacture studded jewellery; the company also procures Diamonds Plates (seeds) locally as raw material to manufacture rough / finished lab grown diamonds. The stock was as follows -

Sr. No.	Description of Item	Stock as per Record
1	Precious Stones (Ruby)	57424.90 (CT)
2	Cut & Polished Diamonds	2121.12 (CT)
3	Silver Studded Stones (Ruby)	7246.70 (CT)

65.5.3 On physical verification of the stock, the officers asked to produce the documents. On checking the documents, it *prima facie* appeared that the value of the Cut and Polished Diamonds and Precious Stone Ruby was much higher. So, in order to ascertain the proper valuation, Shri Vikasraj Tilakraj Juneja (Government Approved Valuer) was called upon by the officers, who, after completing the valuation process of stock lying in the premises, submitted the valuation report. As per the valuation report dated 26.05.2022, a huge difference was found between the declared value and the actual value as detailed below:-

**M/s. Europea Makeour Jewel Pvt. Ltd. Plot No. 247, Unit No. 401,
Sachin, Special Economic Zone, Surat.**
(Amount in Crores)

Item as per Invoices/ BE	Qty. (Carat)	Value as per invoice / BE	Value as per valuation report submitted by Govt. approved valuer	Difference in value of goods as per invoice/ BE and valuation report
Cut and polished precious stones (Ruby)	57424.4	148.66	4.01	144.65
Cut and polished precious stones (Ruby) studded	7246.7	15.36	0.56	14.80
Cut and polished Diamonds (SI-PK)	2121.12	32.28	0.53	31.75
Total		196.31	5.11	191.20

65.5.4 The actual value was around only 2.5% of the value declared. Therefore, the Diamonds / Precious Stones (Ruby) appeared liable for confiscation under the Customs Act, 1962 and were seized under Section 110 of the Customs Act, 1962. The seized goods were handed over to Shri Sunil Patil, In-charge / Deputy Custodian of Strong Room, DGDC Ltd., Sachin SEZ, Surat, for safe custody.

65.6 Search at M/s Maahi (SEZ Unit) on 25.05.2022

65.6.1 During the course of search at M/s Maahi (SEZ Unit) on 25.05.2022, Ms. Neha Harikishor Singh, Accountant of the unit was present, who informed that the directors of the company were out of station due to some work. Ms. Neha Harikishor Singh, Accountant of the unit, on being requested by the officers, showed the area where manufacturing activities were being carried out and it was found that certain other labours / staff were working in the premises. It was observed by the officers that some men and women were engaged in day-to-day activities of production and some machines like casting machine, filing machine, and polish machines etc. were installed for manufacturing purpose.

65.6.2 Thereafter, the officers started systemic search of the premises and various records / documents of the firm were examined. Thereafter, at

around 19:30 hrs., Ms Neha Harikishor Singh requested the Customs Officers to continue the search proceedings for next day as it was getting late for her and other female staff. The Customs Officers accepted the request and sealed the premises by putting a paper seal on the main lock of the gate.

65.7 Search at Maahi (SEZ Unit) on 26.05.2022.

65.7.1The officers reached at the said premises to continue the search and one Shri Kailash Chaudhary came forward and introduced himself as the Director of the above company. The entire proceedings of Panchnama dated 25.05.2022 was informed to Shri Kailash Chaudhary. Thereafter, the officers continued the search proceedings and various records / documents of the firm were examined. The stock statement as on 26-05-2022, which was taken from Shri Kailash Choudhary, and physical stock verification of the stock was also taken which was found matched with the books as detailed below.

Sr. No.	Description of Item	Stock as per Record
1	Cut & Polished Precious Stones	32250 (CT) (approx.)
2	Cut & Polished Diamonds	3323.5 (CT) (approx.)
3	Polished diamond/ Cut & Polished precious stones studded in silver jewellery	11797 (CT) with silver (approx.)

65.7.2However, on going through the Bills of Entry of the said goods lying in the factory, the officers felt that the valuation of the said goods (cut and polished Diamonds and Precious Stones) might be improper. So, in order to ascertain the proper valuation, the officers called upon Shri Vikasraj Tilakraj Juneja (Government Approved Valuer), who, after completing the valuation process of stock lying in the premises, submitted the Valuation Report. On going through the valuation report, it was found that the goods imported were highly overvalued. As per the Valuation Report dated 26.05.2022, a huge difference was found between the declared value and the actual value as detailed below.

M/s. Maahi Jewellery Exim Private Limited, Unit No - 407, Plot No. 248, SEZ, Sachin, Surat

(Amount in Crores)

Item as per Invoices/ BE	Qty. (Carat)	Value as per invoice/ BE	Value as per valuation report submitted by Govt. approved valuer	Difference in value of goods as per invoice/ BE and valuation report
Cut and polished Diamonds	3323.82	50.78	0.83	49.95
Precious Stone	44115.42	138.64	3.52	135.11

Total		189.42	4.36	185.06

65.7.3The actual value was only around 2% of the value declared. Therefore, the Diamonds / Precious Stones (Ruby) appeared liable for confiscation under the Customs Act, 1962 and were seized under Section 110 of the Customs Act, 1962. The seized goods were handed over to Shri Sunil Patil, In-charge / Deputy Custodian of Strong Room, DGDC Ltd., Sachin SEZ Surat for safe custody.

66. STATEMENTS –

(A) Statement of Shri Kailash Choudhary-

Whereas, statements dated 26.05.2022, 28.05.2022 and 29.05.2022 of Shri Kailash Choudhary S/o Shri Ratanlal Choudhary, one of the Directors of M/s. Maahi (SEZ Unit) Surat, Gujarat were recorded under section 108 of the Customs Act, 1962. During his statement on 26.05.2022, Shri Kailash Choudhary *inter-alia*, stated that he only looks after the working of manufacturing process of his company; **that he has no say in the Sale and Purchase of his company; that he is just a Dummy Director of his firm, who is paid Rs. 50,000/- per month on the direction of Shri Suresh Jagetia (Director of M/s Europea Jewel Pvt Ltd.) and Shri Ram Raj Choudhary (other Director of M/s Maahi Jewellery Exim Private Limited);** that, he has no idea whether the firm's DTA unit is working or not; that, for all the irregularities in his company, Shri Suresh Jagetia and Shri Ram Raj Choudhary are responsible.

During his statement dated 29.05.2022, Shri Kailash Choudhary stated that although he has signed the Rent Agreement for its DTA unit whose address was Office No 104, RT Apartment Co-op. Housing Society, Dalgiya Street, Mahidharpura, Surat, but the said unit was operative only on paper whereas there was no actual working in the said DTA unit; that the actual delivery of Cut and Polished Diamonds and Stones imported by his firm was taken by him sometimes along with Shri Deepak or sometime with Shri Vivek from the Strong-Room of SEZ, however, every time while taking the delivery from Strong-Room, either Shri Deepak or Shri Vivek used to sign on the Register; that after taking the delivery of the imported Diamonds or Precious Stones, **the said parcel was given to Shri Suresh Jagetia (Director of M/s Europea Jewel Pvt Ltd) or Shri Ram Raj Choudhary (other Director of M/s Maahi Jewellery Exim Private Limited) as directed by them and in return, every time they used to give the other parcel which at first sight always looked of inferior quality; that thereafter the replaced parcel of inferior quality was taken to the manufacturing process of his SEZ unit and then studded jewellery was made out of it and the same was exported;** that being dummy director of the firm, he was directed by Shri Suresh Jagetia and Shri Ram Raj Choudhary to do above said irregularities and in return, he was paid Rs. 50,000/- per month as salary; that other than that, he had no role and no say in the Company.

(B) Statements of Shri Suresh Ratanlal Jagetia-

Whereas, statement under section 108 of the Customs Act, 1962 of Shri Suresh Ratanlal Jagetia S/o Shri Ratanlal Jagetia, Director of M/s.

Europea Makeour Jewel Pvt. Ltd. was recorded on 27.05.2022, wherein, he *inter-alia* stated :-

- a. That in 2019, he alongwith Shri Jagdish Sutaria, started a Company M/s. Europea Makeour Jewel Pvt. Ltd., Plot No. 247, Unit No. 401, SEZ Sachin, Surat, DTA address – 410, Poddar Plaza, Ghod Dod Road, Surat; that, GSTIN of SEZ Unit is 24AAFCE4412Q2ZH, whereas GSTIN of DTA Unit is 24AAFCE4412Q1ZI;
- b. That their DTA unit is engaged in trading of Cut & Polished Diamond, Rough Diamond and Lab-grown Diamond and their SEZ unit imports Cut & Polished Diamond, Precious Stones and Silver; that mounting of Silver was made after polishing and finishing it, Precious Stone and cut & polished Diamond studded on it, the same was exported; that at SEZ unit, Diamond Seed is grown in Lab Grown CVD Machine and then the Rough Lab-grown Diamond is exported;
- c. During his Statement dated 27.05.2022, Shri Suresh Ratanlal Jagetia was shown the purchase Invoices / Bills of Entry and Invoice-wise sheet prepared in this regard in which Precious Stone (Ruby) and Cut & Polished Diamond value was shown Rs. 196,31,68,339/- (One Hundred Ninety Six Crore Thirty One Lakh Sixty Eight Thousand Three Hundred Thirty Nine); **that on being asked about the difference of 38 times (approx.) in the value of goods as per Invoices / Bills of Entry in comparison to value of goods as per Valuation Report of the Government Approved Valuer, Shri Suresh Ratanlal Jagetia replied that at present he was unable to answer this question.**
- d. During his Statement dated 30.05.2022, Shri Suresh Ratanlal Jagetia was shown the Audited Balance Sheet for 2019-2020 and 2020-2021 of M/s. Europea Makeour Jewel Pvt. Ltd., wherein during the year 2019-20 and 2020-21, Diamond and Precious Stones worth Rs.382,34,59,841/- and Rs.781,65,01,404/-, respectively were imported and during the same period Export of Rs.339,26,04,290/- and Rs.735,62,63,102/ of Diamond and Precious stone was made; that on being pointed out to him that they have made payment for the imported goods, whereas funds in lieu of export was either not realized or less realized, therefore, in such situation, how the funds for import of goods was arranged, **Shri Suresh Ratanlal Jagetia replied that they import Superior Quality Diamonds / Precious Stone at their company M/s. Europea Makeour Jewel Pvt. Ltd (SEZ Unit) and the value of the goods is as declared in the Invoices / Bills of Entry; that they divert the imported Diamonds / Precious Stone in the local market and from local market they purchase inferior quality Diamonds / Precious Stones; that these inferior quality Diamonds / Precious Stones are studded in Silver Jewellery at their SEZ unit and thereafter, exported; that the Jewellery is mainly Ring & Pendent and Silver is used in Jewellery; that the value of exported Jewellery (of Diamond / Precious Stones) is very less in comparison to declared value and the export is made to their own companies in foreign countries, therefore, the foreign remittances equal to the declared value in Invoice is not realized; that since, the foreign**

remittance is not received, funds for further import is managed by selling the earlier imported Diamonds / Precious Stones in local market.

- e. During his Statement dated 30.05.2022, as Shri Suresh Ratanlal Jagetia was managing / looking after the activities at M/s. Maahi Jewellery Exim Pvt. Ltd., DTA as well as SEZ unit at Sachin, Surat, he was shown the Balance Sheet for the period 2019-20 & 2020 -21 of the company, wherein during 2020-21, Polished Diamond and Precious Stone valued at Rs.596,61,12,657/- have been imported, whereas, export of Rs.528,31,95,464/- have been made; payment of Import was made immediately, however, payment in lieu of export either have not been received or very less payment is received. Shri Jagetia was questioned, when the Export payment was not received, how the funds are arranged for Import of goods, **Shri Jagetia replied that they import Superior Quality Diamond / Precious Stone at their M/s. Maahi (SEZ Unit) and the value of the goods is declared in the Invoice / Bill of Entry; that, they divert the imported Diamond / Precious Stone in the local market and from local market they purchase inferior quality Diamond / Precious Stones; that, these inferior quality Diamond / Precious Stones are studded in Silver Jewellery at their SEZ unit and thereafter exported; that the Jewellery is mainly Ring & Pendent and Silver is used in Jewellery; that the value of exported Jewellery (of Diamond / Precious Stones) is very less in comparison to the declared value and the export is made to their own companies in foreign countries, therefore, the foreign remittances equal to the declared value in Invoice is not realized; that since, the foreign remittance is not received, funds for further import is managed by selling the earlier imported Diamond / Precious Stones in local market.**
- f. During his statement dated 30.05.2022, Shri Suresh Ratanlal Jagetia was asked how the funds from sale of imported Diamond / Precious Stone, which was diverted in local market from M/s.Maahi (SEZ Unit) and M/s.Europea (SEZ Unit), was transferred to Bank accounts of SEZ units. In reply to this, Shri Suresh Ratanlal Jagetia **stated that the bank accounts of both DTA units and SEZ units are common, hence, the amount received from the sale of diverted imported Diamond and Precious Stones (in local market from SEZ Units) is brought in the common bank account of both the units, M/s. Maahi Jewellery Exim Pvt. and M/s. Europea Makeour Jewel Pvt. Ltd. and after that the SEZ units utilize this fund for Import.**
- g. During his statement dated 30.05.2022, on being asked how the diverted Diamond / Precious Stone, which were imported by SEZ Unit, are sold in local market, Shri Suresh Ratanlal Jagetia replied that the diverted goods are sold to real customers and thereafter GST bills / invoice is raised from domestic units of M/s. Maahi Jewellery Exim Pvt. Ltd. and M/s. Europea Makeour Jewel Pvt. Ltd. Since, the bank accounts of DTA and SEZ units are same, the amount received from customers is utilized for import.

- h. During his statement dated 30.05.2022, Shri Suresh Ratanlal Jagetia was shown the Balance Sheet of M/s. Maahi Jewellery Exim Pvt. Ltd. (formerly known as Burton Jewellery Exim Pvt. Ltd.) for the Financial Year 2019-20 and 2020-2021, where total purchases of Rs.373.30 Crore has been shown, whereas in the balance sheet of 2020-21 under the head Sundry Creditors amount of Rs.464.84 Crore has been shown, hence there is difference of Rs.91.54 Crore. He was asked to explain the reason of difference. Shri Suresh Ratanlal Jagetia stated that they sell the diverted Diamond and Precious Stone from M/s. Maahi Jewellery Exim Pvt. Ltd. (formerly known as Burton Jewellery Exim Pvt. Ltd.) (domestic unit) as well from some other domestic firms namely M/s. Komal Exim Pvt. Ltd., M/s. Nehal Diamond, M/s. Kavya Impex etc., which are created and operated by him and Shri Ram Raj Choudhary. The amount so received from these units is transferred in the account of M/s. Europea Makeour Jewel Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd. (formerly known as Burton Jewellery Exim Pvt. Ltd.). Generally, for book adjustment, M/s. Maahi Jewellery Exim Pvt. Ltd. (formerly known as Burton Jewellery Exim Pvt. Ltd.) issue bills to these units for such sale but for Rs.91.54 Crore amount, bills could not be issued by M/s. Maahi Jewellery Exim Pvt. Ltd. (formerly known as Burton Jewellery Exim Pvt. Ltd.) as purchase bills for book adjustment could not be arranged by them.
- i. During his statement dated 30.05.2022, Shri Suresh Ratanlal Jagetia was shown the Panchanama dated 25.05.2022 of the search proceeding conducted at the GST registered premises of M/s. Maahi (DTA Unit), M/s. Nehal Diamond and M/s. Komal Exim Pvt. Ltd., wherein it is mentioned that the owner of the premises Shri Shrenik D. Shah stated that he had rented out the said premises to Shri Ram Raj Choudhary for the period 01.02.2019 to 31.12.2019, further for the period 31.12.2019 to 30.11.2020 the premises was rented to M/s. Nehal Diamond a proprietorship concern of Shri Ram Raj Choudhary, further the premises was rented out to another firm, from this it is clear that no rent agreement at the premises 104, RT Apartment Co-op Housing Society, Dalgiya Street, Mahidharpura, Surat, Gujarat was made in respect of M/s. Maahi Jewellery Exim Pvt. Ltd. and M/s. Komal Exim Pvt. Ltd. In reply to **this, Shri Suresh Ratanlal Jagetia replied that these above firms were utilized for sale of Diamond and Precious Stones diverted from SEZ Units of M/s. Europea Makeour Jewel Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd. (formerly known as Burton Jewellery Exim Pvt. Ltd.) otherwise no sale or purchase was made from these units, only bills were issued.**
- j. As from the perusal of Balance Sheets of M/s. Europea Makeour Jewel Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd. for the period 2019-20 and 2020-21, it appeared that the export proceeds / amount was not received and accordingly the export obligation were also not fulfilled, therefore Shri Suresh Ratanlal Jagetia was further asked during his statement dated 30.05.2022 whether the SEZ authorities did not initiate any action for that. Shri Suresh Ratanlal Jagetia replied that the SEZ authorities several times reminded above firms on this account. Hence, they were under pressure to arrange funds to fulfil the export obligation, otherwise the functioning of these firms could have

been stopped, therefore, they started arranging funds to meet the export obligation.

- k. During his statement dated 30.05.2022, Shri Suresh Ratanlal Jagetia was further asked, how the funds to meet out their export obligation was arranged by them. Shri Suresh Ratanlal Jagetia stated that since they had exported goods from SEZ units viz. M/s. Europea Makeour Jewel Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd. to their own companies at Hong Kong and those firms did not have the funds to transfer to them, hence funds from India to Hong Kong was to be sent, therefore, he contacted his known persons namely, **Shri Tonu (Dilkush Babel) and Shri Navratan Jain, who took him to one Shri Vikram Singh Kachchawa, who was expert in sending money abroad through his fake companies. Shri Suresh Ratanlal Jagetia further stated that he provided funds of Rs. 80-90 Crore in cash to Shri Vikram Singh Kachchawa and his persons, thereafter, Shri Vikram Singh Kachchawa, through his fake firms, vide RTGS / Cheque, after rotating in various banks, and in the end through some units, transferred the money to Hong Kong. Shri Suresh Ratanlal Jagetia further stated that some fund was sent by him, by overvaluing the exports made by him. On being asked, Shri Suresh Ratanlal Jagetia informed that Shri Vikram Singh Kachchawa asked him to inform foreign buyers that the money would be transferred through units namely, M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technologies, Jaipur.**
- l. During his statement dated 30.05.2022, Shri Suresh Ratanlal Jagetia was shown the comparison chart of the value in the import invoice / Bill of Entry and the valuation of goods by a Government Approved Valuer at the time of search of the premises of M/s Europea (SEZ Unit) and M/s Maahi (SEZ Unit) and on being asked about the difference between the above values, Shri **Suresh Ratanlal Jagetia stated that the Diamond / Precious Stones imported through the import invoices / Bills of Entry by the above said two SEZ units were diverted into the Domestic Market and Diamond / Precious Stones of inferior quality were purchased from the domestic market for adjustment of the diverted quantity; that the inferior quality Diamonds & Precious Stones were found at the time of search and valuation by the Government Approved Valuer.**
- m. Shri Suresh Ratanlal Jagetia, during his Statement dated 31.05.2022 stated that **both the companies imported Diamond & Precious Stones worth Rs. 3224.60 Crore till now and this import was made from Hong Kong - situated companies, which were also his companies and one Indian and one Chinese are the Directors of Hong Kong based Company; that the imported Diamond & Precious Stones of good quality by M/s Europea (SEZ Unit) & M/s Maahi (SEZ Unit), have been sold in local market and he has issued the bills from his DTA units of M/s Europea Makeour Jewel Pvt. Ltd., M/s Maahi Jewellery Exim Pvt. Ltd. and others;**

- n. On being shown the summary of GSTR-1 of M/s Europea (DTA unit) and M/s Maahi (DTA unit), M/s Komal Exim Pvt. Ltd. and M/s Nehal Diamond, Surat, which shown purchase of Rs. 1801.68 Crore (up to the month of March-2022) of Diamond / Precious Stones have been made and on being asked to explain from where the same goods were purchased, **Shri Suresh Ratanlal Jagetia stated that the purchase was shown from local market but only the bills were taken from local market, whereas goods were actually not purchased; that these bills are fake and issued to adjust the diverted Diamond / Precious Stones from SEZ; that, the diverted Diamond / Precious Stones were sold in the local market in cash and the entry of cheque was taken; that the purchase shown in the GST Return is not the actual purchase.**
- o. On being asked about sale of diverted Diamond & Precious Stones from SEZ units, Shri Suresh Ratanlal Jagetia stated that in market, some groups are active, who operate bogus firms; that they give these persons / firms payment in cash and these firms provide the entry of cheque, without actual sale or purchase of goods; that in market there are some groups who take the IDs of persons and create fake firms; that these persons / firms take cash and give the entry of cheque with fake bills;

Further Shri Suresh Ratanlal Jagetia also submitted a hand written letter dated 30.05.2022 addressed to the Commissioner, Customs, Jaipur wherein it has been submitted that:-

- (i) **he diverted imported Diamond / Precious Stones to evade the Customs Duty and out of the total evaded Customs Duty, he wants to deposit some amount of duty willingly,**
- (ii) **he is submitting a Cheque No. 748444 (SBI, Surat Branch) dated 30.05.2022 for the amount of Rs. 2,00,00,000/- towards payments of Customs Duty for M/s. Europea Makeour Jewel Pvt. Ltd.**
- (iii) **he is submitting a Cheque No. 819910 (SBI, Surat Branch) dated 30.05.2022 for the amount of Rs. 1,00,00,000/- towards payments of Customs Duty for M/s Maahi Jewellery Exim Pvt. Ltd.**
- (iv) **he will submit remaining amount of duty in due course.**

Thereafter, Shri Suresh Ratanlal Jagetia submitted another hand-written letter dated 30.05.2022, wherein he stated that there was insufficient balance in his account of State Bank of India, Surat Branch, from which he had issued Cheques dated 30.05.2022 to deposit Customs Duty.

- (i) **Then again, Shri Suresh Ratanlal Jagetia submitted a Cheque No. 748446 (SBI, Surat Branch) dated 31.05.2022 towards payment of Customs Duty amounting to Rs. 40,00,000/- for M/s. Europea Makeour Jewel Pvt. Ltd. Form TR-6 in respect of said Cheque was generated to deposit the duty in the Government Account and accordingly duty amounting to Rs. 40,00,000/- was deposited in the account of Government Exchequer.**

- (ii) Shri Suresh Ratanlal Jagetia submitted one more Cheque No. 748447 (SBI, Surat Branch) dated 02.06.2022 **towards payment of Customs Duty amounting to Rs. 1,60,00,000/- for M/s. Europea Makeour Jewel Pvt. Ltd. Form TR-6 in respect of said Cheque was generated to deposit the duty in the Government Account but the amount could not be deposited as there was no sufficient balance in the account.**

67. Findings on the basis of the statements of Shri Suresh Ratanlal Jagetia-

- (i) Shri Suresh Ratanlal Jagetia, during his Statement recorded on 28.05.2022, 30.05.2022 and 31.05.2022, admitted that apart from managing his unit M/s. Europea Makeour Jewel Pvt. Ltd., he was also operating M/s Maahi Jewellery Exim Pvt. Ltd., SEZ Unit, alongwith Shri Ram Raj Choudhary; that both the SEZ units have diverted the superior quality imported Diamonds / Precious Stones (Ruby) into the domestic market; that they have arranged inferior quality Diamonds / Precious Stones (Ruby) from the domestic market as replacement and exported the same after studding in the Silver Rings and Pendants.
- (ii) that the money received against supply / sale of the diverted imported Diamonds / Precious Stones (Ruby) was obtained in cash through angadias and such cash was given to certain persons operating fake firms for transferring money into the bank accounts of the DTA units of the firms M/s. Europea Makeour Jewel Pvt. Ltd. and M/s Maahi Jewellery Exim Pvt. Ltd. and they used common bank accounts of the SEZ units and DTA units which was opened with the motive, so that the SEZ units may utilize the amount in the common bank accounts for their import payments;
- (iii) that the DTA units of M/s. Europea Makeour Jewels Pvt. Ltd., (DTA Unit outside SEZ Surat) and M/s Maahi Jewellery Exim Pvt. Ltd Surat (DTA Unit outside SEZ Surat) did not deal in any other business, except selling of diverted Diamonds and Precious Stone from both their SEZ units M/s. Europea (SEZ Unit) and M/s Maahi (SEZ Unit).
- (iv) that foreign remittances for exports are either not received or received in negligible amount; that the complete sale proceeds in lieu of the diverted imported Diamonds / Precious Stones (Ruby) are received by the DTA units in the common bank accounts but the purchase bills of the DTA units of the said two firms are merely book-adjustments and no amount is paid by the DTA units for such purchases; that the firms, which are receiving the exported inferior quality Diamonds / Precious Stones studded Silver Jewellery overseas, are opened by his known persons.
- (v) Shri Suresh Ratanlal Jagetia admitted that since no foreign remittances were received in lieu of exports by his SEZ units and there was pressure from SEZ authorities for fulfilling export obligation, he had to make arrangements for sending money

abroad in Hong Kong for receiving the amount back in the form of export proceeds; that for this purpose, he obtained services of Shri Vikram Singh Kachchawa, an expert in operating fake firms for sending money abroad; that he gave cash of around Rs. 80-90 Crore to Shri Vikram Singh Kachchawa, who, after rotating money through RTGS and Cheques in the bank accounts of his several fake firms, ultimately sent the money abroad through M/s. Belstar Techno Solutions (OPC) Bank Pvt. Ltd. and M/s. Visual Birds Technology.

- (vi) He accepted diversion of goods from SEZ units, to evade the Customs Duty liable to be paid on such goods and he voluntarily deposited Rs. 40,00,000/- towards payment of duty evaded by M/s. Europea Makeour Jewels Pvt. Ltd.

68. Searches at the Buyers / Suppliers of M/s. Europea (DTA Unit) and M/s. Maahi (DTA Unit) –

68.1 During searches at M/s. Europea (DTA Unit) and M/s Maahi (DTA Unit) those were found non-existent /non-functional.

68.2 However, as per GST records, M/s. Europea (DTA Unit) had made purchase and sale of Rs. 1844.67 Crore and Rs. 1213.47 Crore, respectively. Similarly, M/s Maahi (DTA Unit) had made purchase and sale of Rs. 1060.03 Crore and Rs. 901.03 Crore respectively, since their inception.

68.3 Therefore, top buyers and suppliers of M/s. Europea (DTA Unit) and M/s Maahi (DTA Unit) were identified as per their GSTR-1 and GSTR-2A Returns and searches were conducted as detailed in subsequent paragraphs.

69. Searches at units located in Mumbai-

Searches under proper authorization were carried out by a team of officers of the Customs Commissionerate, Jodhpur (Hqrs at Jaipur) at various locations in Mumbai, with the assistance of Officers of Mumbai Customs from 15.03.2023 to 17.03.2023. The outcome of the searches is summarized as under:-

S. No	Premises searched	GSTIN	Address	Remarks
1	Extron Exim LLP & Glow Moon Exim LLP	27AAIFE9711E1ZG & 27AAWFG6265D1ZZ	B5, 1 st Floor, Flox Chamber, Tata Road No 1 Roxy Cinema, Opera House Girgaon, Mumbai, Maharashtra, 400004	Premises found locked. Incident report dated 15.03.2023 prepared on the spot.
2	Sheth Gemstar LLP & M/s Sheth Star LLP	27ADXFS8846A1ZF	208, 2 nd Floor, Shreeji Chamber, Tata Road No. 2, Opera House, Girgaon,, Mumbai, Maharashtra, 400004	Records as per panchnama resumed. Statement dated 15.03.2023 of Shri Paresh U. Sheth was recorded on the spot. A summon to

				further appear to tender statement on 20.03.2023 was issued to him
3	Shradan Trading Private Limited	27ABACS3347J1Z7	Office No.116, 10/21, 1 st Floor, Flox Chamber, Tata Road No.1, Roxy Cinema, Opera House, Girgaon Mumbai, Mumbai, Maharashtra, 400004	Premises found locked. Incident report dated 15.03.2023 prepared on the spot.
4	Lakshita Export	27BQBPV9474P1ZO	35A, Ground Floor-0, Popular Arcade, Tata Road No.1 Roxy Cinema, Opera House, Girgaon, Mumbai, Maharashtra, 400004	Premises found locked. Incident report dated 15.03.2023 prepared on the spot.
5	Office Of Shri Vinod Sharma	---	422B, Panchratna, Opera House, Ballard Estate, Mumbai	Records as per panchnama resumed. Shri Vinod Sharma was not present in the premise. Documents such as Invoices / Seals/ PAN Cards pertaining to various firms were there and same were resumed. Summon was issued to him to be present on 20.03.2023
6	Ronak Jewellery	27DZBPS3325D1ZI	Plot No-3/5, Ground Floor, Seth Lalji Dayal Building, Dadi Seth Agiary Lane, Malharrow Wadi, Kalbadevi, Mumbai, Maharashtra, 400002	Premises found locked. Incident report dated 16.03.2023 prepared on the spot.
7	Rohee Trading Private Limited & Esliya Exim Private Limited	27AAICR8872Q1Z8 & 27AAFCE0220J1ZO	B-105, 1 st Floor, Darshan Heights, Sitaram Poddar Marg, Zaodawadi Thakurdwar, Kalbadevi, Mumbai, Maharashtra, 400002	Premises found locked. Incident report dated 16.03.2023 prepared on the spot.
8	Nivedita Diam Private Limited	27AAFCE0235P1ZL	111, 1 st Floor, Plot - 83, Sadbhavana, Sitaram, Poddar Marg, Fanaswadi Thakurdwar, Kalbadevi, Mumbai, Maharashtra, 400002	Premises found locked. Incident report dated 16.03.2023 prepared on the spot.

9	Fortix Multitrade Private Limited	27AAECF4150D1Z0	Shop No. 5, Sonam Annpurna Chsl, Bldg No. 2, New Golden Nest, Bhayander East, Mira Bhayander, Thane, Maharashtra, 401105	Records as per panchnama resumed. M/s Fortix Multitrade Private Limited vacated the premise in 3-4 Months after renting it in January 2021. Currently premises is rented by some other person.
10	Kevin Diamonds Private Limited	27AAFCK8464J1Z0	Shop No 130, Oswal Shopping Centre CHSL, Opp Bhayander Station, Jesal Park Road, Bhayander East, Thane, Maharashtra, 401105	Records as per panchnama resumed. Currently premises is rented by Ketan B Balsara who runs a Laptop repairing shop
11	Boss Exim LLP	27AATFB4840Q1ZN	13, 2 nd Floor, Plot-45, B, Girgaon Terrace, Dr D D Sathe Marg, Prathana Samaj, Girgaon, Mumbai, Maharashtra, 400004	Search was conducted in presence of partner of firm Shri Pawan K Chaplot. There was no documents/things found related to firm.
12	Soliox Multitrade Private Limited	27ABECS6976K1ZK	Office No 104, 1 st Floor, Aditya Heritage Co-Op Ind Premises Soc. Ltd, Malad West, Mumbai, Mumbai Suburban, Maharashtra, 400064	Premise was under renovation. The rent deed of Soliox Multitrade Private Limited had expired and they had vacated premise in the month of February, 2023. Incident report dated 17.03.2023 prepared on the spot.
13	Anuj Gems Private Limited	27AARCA1235H1Z0	24, Dimple Arcade Pemises Chs Ltd, Asha Nagar, Opp Western Exp Highway Mumbai, Kandivali East, Mumbai, Maharashtra, 400101	Premise was rented by Sanajy Harishchander Tandel in October, 2021 who vacated the premises in April, 2022. Currently premise is rented by Desire Holiday Pvt. Ltd. Records as per panchnama resumed.

Searches at total 13 premises were conducted, wherein only two firms, viz. M/s Sheth Gems Star LLP and M/s Sheth Star LLP were found functional and all the other 12 firms were found non existing / non functional. Statement of Shri Paresh U Sheth, Partner, M/s Sheth Gems Star LLP and M/s Sheth Star LLP was recorded under Section 108 of the Customs Act, 1962 on 15.03.2023 wherein he inter alia stated –

- (i) that he is partner in two firms (A) M/s Sheth Gems Star LLP and (B) M/s Sheth Star LLP and both these firms are engaged in trading and import of Diamonds,
- (ii) that he purchased Diamonds from M/s Europea (DTA Unit).
- (iii) that Shri Suresh Jagetia himself or through his representative delivered the Diamonds in respect of said purchases.
- (iv) that they have made payment through RTGS against the purchase made from M/s Europea Makeour Jewel Pvt. Ltd.

70. Searches at units located in Surat-

The searches at various locations were carried out by a team of officers of the Customs Commissionerate, Jodhpur (Hqrs at Jaipur) at various locations with the assistance of officers of SIIB Surat Customs from 17.04.2023 to 18.04.2023. The outcome of the searches is summarized as under :-

S. N o.	Premises searched	GSTIN	Address	Panchnama/incident report status
1	Abhishek Diamond Private Limited, Janki Gems Private Limited, Daksha Gems Private Limited	24AAJCA6310M1ZP 24AADCJ6568L1Z4 24AAFCD5896B1ZO	5/1583, Office No. 1 st Floor 101-B, Front Side Jariwala Building, Limda Sheri, Haripura, Surat, Gujarat, 395003	The premises was found open. No authorized person of the said firms was available. No records related to sale, purchase and other statutory records found in premises.
2	Abhishek Diamond Private Limited, Janki Gems Private Limited	24AAJCA6310M1ZP 24AADCJ6568L1Z4	6/2497, Cabin No. B, 3 rd Floor, Balaji Sadan, Limbu Sheri, Mahidharpura, Surat - 395003.	Some other firms found working at the premises. Visit Note dated 17.04.2023 prepared on the spot
3	Radhey Diamex	24AAKCR4232J1Z	Office No.120, First Floor, World Diamond Center	Premises found locked. Panchnama

	Private Limited	C	Commercial Complex, Hatfalia Haripura, Surat, Gujarat, 395003	was drawn on the spot.
4	Glitzys Gems Llp	24AAWF G3884C1 Z4	B-323, Fortune Mall, Nr. Galaxy Circle, Pal, Surat, Gujarat, 395009	Premises found locked. Panchnama was drawn on the spot.
5	Krishnam Diamex LLP	24AAVFK 8410D1Z B	B-304, Third Floor, Fortune The Shopping Island, Near Galaxy Circle, Surat, Gujarat, 395009	Premises found locked. Panchnama was drawn on the spot.
6	Adhishree Exim Private Limited	24AATCA 7448Q1Z Q	Office No. 301, 3 rd Floor, Mahavir Chamber, Hanuman Sheri, Mahidharpura, Surat, Gujarat, 395003	Premises vacated by firm 3 months ago. Panchnama was drawn on the spot.
7	Pakshal Exim Pvt Ltd	24AAHCP 3801G1Z R	302, 3 rd Floor, Umiya Diamond Complex, Havadiya Sheri, Mahidharpura,, Surat, Gujarat, 395003	Premises found locked. Panchnama was drawn on the spot.
8	Prime Mine O Jewels Pvt Ltd	24AABCP 6498D1Z C	6, Shakti Chambers, Rughnathpura, 6/2620-22 Main Road, Mahidharpura, Surat, Gujarat, 395003	Premises found locked. Panchnama was drawn on the spot.
9	Samkit Diamond Mfg Co Private Ltd	24AADCS 9472L1Z U	14, 6 2620 22, Main Road, Shakti Chambers, Rughnathpura Mahidharpura, Surat, Gujarat, 395003	Premises found locked. Panchnama was drawn on the spot.
10	D Make	24BLYPS 1243M1Z F	501, A2, Krishna Arcade Buliding, Dabholi, Surat, Gujarat, 395004	The premises was found open. No authorized person of the said firms was available. No records related to sale, purchase and other statutory records found in premises. Panchnama was drawn on the spot.
11	Crystal's Spot LLP	24AAQFC 2757A1Z O	10/1727, 20, Second Floor, Nilkanth Apartment, Limdachowk, Navsari, Navsari, Gujarat, 396445	No such premises found in existence on the spot. Panchnama was drawn on the spot.
12	H S Impex	24ATKPM 0907D1Z 2	41, Purshottam Park Society, B/H Kantareshwar Mandir, Katargam, Surat, Gujarat, 395004	No records related to sale, purchase and other statutory records found in premises. Summon dated 18.04.2023

				issued to Shri Hiteshkumar Shyamjibhai Mordiya
13	Swamin Exim LLP	24AECFS 7212L1Z Z	A-401, 4 th , Jainam Residency, Pal Road, Surat, Gujarat, 395009	No records related to sale, purchase and other statutory records found in premises. Summon dated 18.04.2023 issued to Partner Shri Mehulbhai Arjunbhai Kakdiya. Statement dated 19.04.2023 recorded at Customs office. He sought time for submission of documents. Another summon dated 19.04.2023 issued to him

Searches at total 13 premises, belonging to 15 firms (three firms used one address), were conducted, wherein all the 15 firms were found non existing / non functional. At the time of search at M/s Swamin Exim LLP at A-401, 4th, Jainam Residency, Pal Road, Surat on 18.04.2023, it was found to be a residential address belonging to one of the partners Sanjay Bhai who was in Mumbai for 2-3 days. Summon dated 18.04.2023 was issued to other partner of firm Shri Mehulbhai Arjunbhai Kakdiya. His statement was recorded on 19.04.2023 wherein he *inter alia* stated that –

- (i) He has bought Diamonds from M/s. Europea (DTA Unit) and M/s Maahi (DTA Unit).
- (ii) that Shri Suresh Jagetia himself or through his representative delivered the Diamonds in respect of said purchases.

71. Whereas, during investigation, it was revealed that M/s. Europea (DTA Unit) had issued bills / invoices (mere paper transactions) valued at Rs. 20.42 Crore during the period August, 2020 to January, 2021 to M/s. Shubhang Enterprises Pvt. Ltd, Mumbai (non-existent firm) without actual supply of Diamonds and Precious Stones.

72. During investigation, it was also revealed that M/s. Maahi (DTA Unit) had also issued bills /invoices without actual supply of Diamonds and Precious Stones (mere paper transactions), valued at Rs. 5.18 Crore, during September, 2020 to M/s. Shubhang Enterprises Pvt. Ltd., Mumbai (non-existent firm).

73. From the investigation of almost all the firms from whom sales and purchase have been shown by M/s. Europea (DTA Unit) and M/s. Maahi (DTA Unit), Surat, it is evident that-

- (i) Purchases were shown from local market, but in reality, only the bills were procured from local market, whereas goods were actually not purchased, but diverted from SEZ units; that the invoices issued by DTA units are fake and issued to show the transaction of supply as legal for the diverted Diamond / Precious Stones from SEZ units; the diverted Diamond / Precious Stones were sold in the local market in cash and the entry of cheque was taken; that the purchase shown in the GST Return is not the actual purchase.
- (ii) A web of fake firms with multiple layers was created to facilitate the illicit sale of diverted Diamond / Precious Stones and to escape the eyes of various Government agencies.
- (iii) Duty free goods imported by SEZ firms were diverted through their DTA firms with same name but different GST registration, to evade the Customs duty payment.
- (iv) Payments were received in the Bank Accounts of SEZ firms against the sale made by DTA firms.
- (v) They intentionally opened the Bank Account for the SEZ units and got the funds transferred in that account from DTA parties against the supply made by DTA units, whereas both the DTA and SEZ firms are registered under GST with separate registration and thus they are separate entity.

74. Investigation of Financial Statements / Documents-

74.1 On the basis of details retrieved from records and relevant entries in banks' statements of importer firms /companies (M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology), bank account statements of various local trading firms /companies at second layer (who were shown to be the service recipients of above mentioned Importer Firms) and bank account statements of local firms which were at third layer (which were engaged in Precious Metals and Stones business) were obtained from respective banks for financial investigation during further investigation to unearth the flow of goods and money. Details of the bank statements of these Local Trading / Second Layer and Third Layer Indian Domestic Firms / Companies are summarized herein below:

Sr. No.	Name of the Bank	Name of <u>Second Layer Indian Domestic firms/companies</u> (M/s)	Account Number
1	Equitas Small Finance Bank	Shreeji Infotech, Mumbai	200001394029
2	Yes Bank	Shreeji Infotech, Mumbai	042263300001513
3	Equitas Small Finance Bank	Spenta Trading	200001318203
4	ICICI Bank	DNB Trading	675405600617
5	Yes Bank	Beetle Shine Multimedia Services	045963300000794
6	Yes Bank	Solution Infotech	31163300001476

Sr. No.	Name of the Bank	Name of <u>Third Layer Indian Domestic firms / companies</u> (M/s)	Account Number
1	Equitas Small Finance Bank	Shree Ganesh Impex	206378925218
2	Kotak Mahindra Bank	Subhang Enterprise Pvt Ltd	7911920083
3	Axis Bank	Dilwara Exim Pvt Ltd	882935375
4	Equitas Small Finance Bank	Shreeji Impex	200001294890
5	Equitas Small Finance Bank	Swastik Impex	200001124484

74.2 Analysis on the basis of Bank Statements revealed that financial transactions were made by creating a maze of multiple layers of units to fraudulently remit amounts of high magnitude to Hong Kong and UAE based firms, by showing the same to be payments against import of services (which were never actually imported and were mere paper transactions without any actual supply of service) with the ulterior motive of using the fraudulent remittances for funding illegal imports of Gold, Diamonds and other Precious Stones / Metals.

74.3 At the top of this pyramid / layers are M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology, who were shown to be the importer of Services from Hong Kong and UAE based units. Both these firms i.e. M/s Visual Birds Technology and M/s Belstar Techno Solutions (OPC) Pvt. Ltd. were shown as IT companies and claimed to deal in content procurement, IT services like Animations, Graphics, Designs, 2D, 3D and Multimedia Audio Visuals which are published for private subscription channels, Educational Channels and Infomercials on various internet, OTT channels and mobile applications.

74.4 M/s Belstar Techno Solutions (OPC) Pvt. Ltd. has got three GST registrations, at (i) 31A/1, Sai Path, Keshav Vihar, Gopalpura Bypass, Jaipur (GSTIN 08AAJCB5667L1Z2), (ii) at Plot No. 7, Sweety Housing Complex, Phase-I, Ganganagar, Unit-6, Bhubaneshwar, Orissa (GSTIN 21AAJCB5667L1ZE) and (iii) at Gupta Villa, Door No. 9-29-19/A, Balaji Nagar, Opp. Canara Bank, Visakhapatnam (Andhra Pradesh) (GSTIN 37AAJCB5667L1ZI).

74.5 M/s Visual Birds Technology (proprietor Shri Nitesh Kumar) having GST Registration No. 08BJBPK6941D1ZC was registered at the same premises viz. 31A/1, Sai Path, Keshav Vihar, Gopalpura Bypass, Jaipur, where M/s Belstar Techno Solutions (OPC) Pvt. Ltd., Jaipur is also registered. All of these firms were found non-existent / non-operational during search on 24.11.2021.

74.6 On scrutiny of bank accounts of M/s Visual Birds Technology and M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and various other firms and their GSTN data, the following facts emerged :-

- (i) On scrutiny of bank statements (UCO Bank) of M/s Visual Birds Technology, A/c. No.00110210005224 and M/s Belstar Techno

Solutions (OPC) Pvt. Ltd., A/c No.01180210003350, it was revealed that 80 to 90% amount, which was remitted by these 2 firms, was transferred to them by a firm M/s Shreeji infotech through RTGS. M/s Shreeji Infotech (Proprietor Shri Kunal Saini) is registered under GST, vide Registration No. 08GCUPS3367G1ZR, address at H-16, Ram Nagar Vistar, Sodala, Jaipur and as per GSTIN records, is engaged in trading of Diamonds and Precious Stones. M/s Shreeji infotech was found non-existent during search on 24.11.2021. During statement dated 24.11.2021, the proprietor of the firm said that he never opened such firm and his documents might have been used by someone.

- (ii) Some other firms i.e. M/s DNB Trading, Jaipur (GST Registration No. 08COCPR7500G2ZX), M/s Spenta Trading, (Prop. Virendra Pratap Singh) (GST Registration No. 27HZLPS8692P1ZR), address at G-18, Ground Floor, Pearl Plaza, Tata Road No. 2, Roxy Cinema, Opera House, Girgaon, Mumbai and M/s Beetel Shine Multimedia, Shop No. 01, Dayasagar Cooperative Housing Society, Virat Nagar, Virar (West), Mumbai have also transferred funds to M/s Visual Birds Technology and M/s Belstar Techno Solutions (OPC) Pvt. Ltd.
- (iii) GSTR-1 Returns of M/s Belstar Techno Solutions (OPC) Pvt. Ltd., registered at Orissa & Andhra Pradesh and M/s Visual Birds Technology, Jaipur revealed that during the period from May, 2021 to September, 2021, these firms had made supplies amounting to Rs. 10 Crore approx. to M/s Shreeji Infotech, Jaipur. The supplies were made at Nil rated / Exempted @ 0% and few supplies @ 18%. However, as per GST Returns of M/s Shreeji Infotech, Jaipur, they have filed "NIL" Returns and no further supplies have been made.
- (iv) In view of huge fund transfers from Shreeji Infotech to M/s Visual Birds Technology and M/s Belstar Techno Solutions (OPC) Pvt. Ltd., the bank statement and KYC details of M/s. Shreeji Infotech, having Account No. 200001394029 in Equitas Small Finance Bank, were obtained, which revealed that this account was opened in the name of M/s Shreeji Infotech (prop. Sunil Pannalal Valmiki), having address as Office 6, Gr. Floor, Swadeshi Mill Bldg, Jagnath Sankarseth Marg, Central Plaza, Cinema, Charni Road, Mumbai. As per KYC details, the address of Shri Sunil Pannalal Valmiki is, Room No. 788, 1st Floor, Dr. Babasaheb Ambedkar Nagar, 29 Road, TL Waswani Marg, Colaba, Mumbai. During his statement, Shri Sunil Pannalal Valmiki stated that he never opened such firm or bank account.
- (v) On scrutiny of bank statement of M/s Shreeji Infotech, it was observed that mainly transactions have been made with M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology, M/s. Sortex Logistics Private Ltd., 103, Royal Sands Cooperative Housing Ltd., Off New Link Road, BHD City Mall, Andheri (West), Mumbai.
- (vi) On further verification, it was observed that M/s. Sortex Logistics Private Ltd. was not found registered with GST, yet as per bank statements (Equitas Small Finance Bank) of M/s Shreeji Infotech, substantial transactions have been made with M/s Sortex Logistics

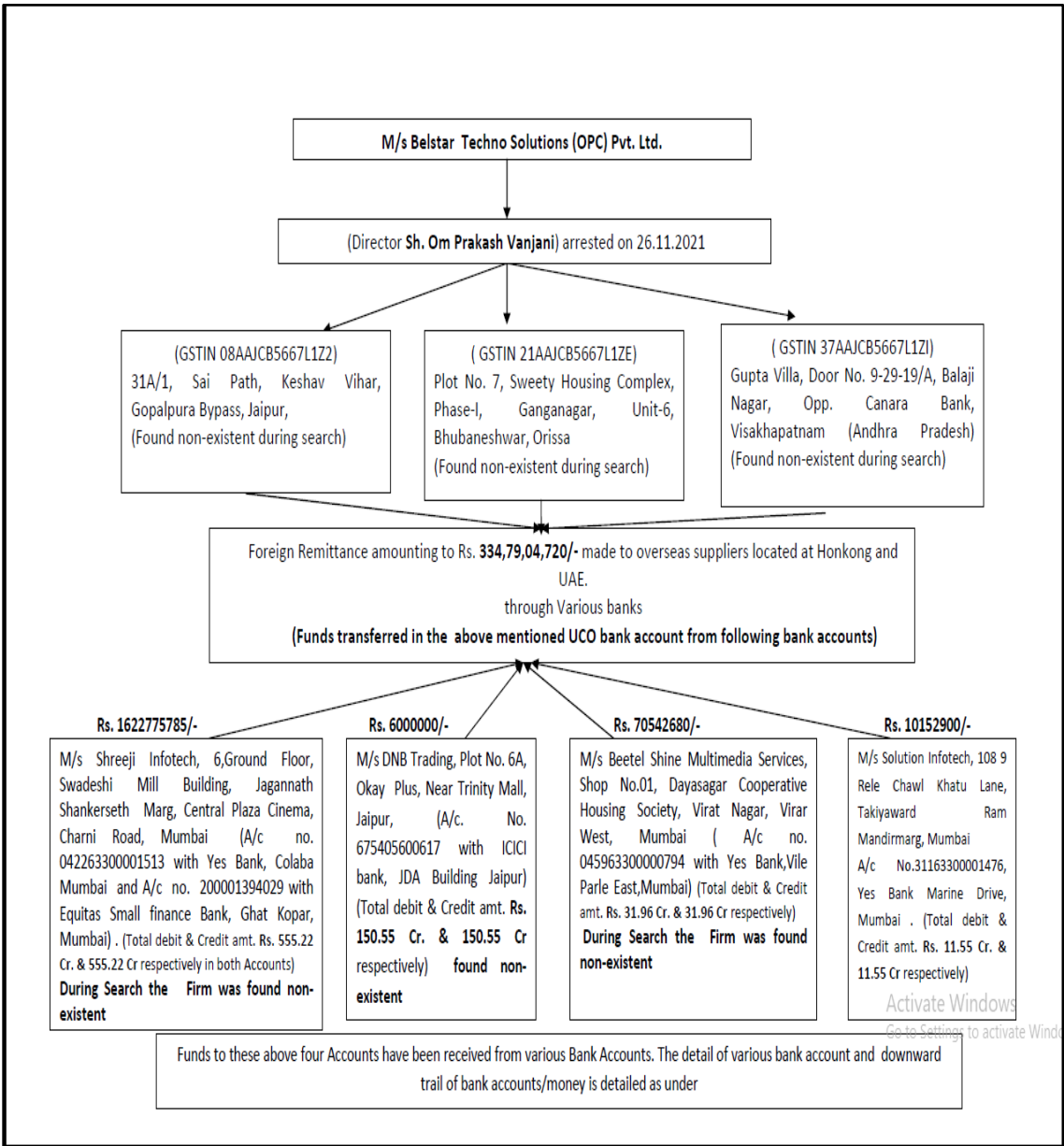
Private Ltd, however, in actual, no business seems to be carried out by this firm.

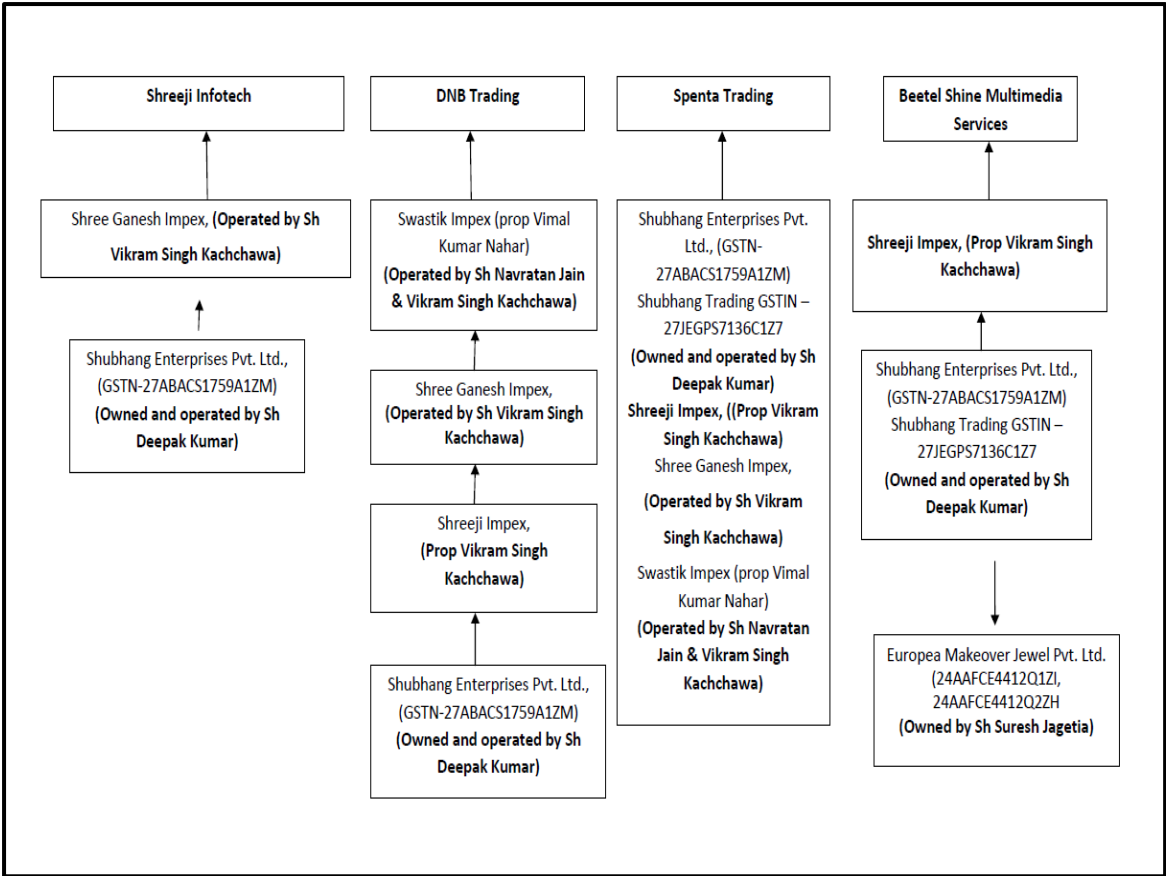
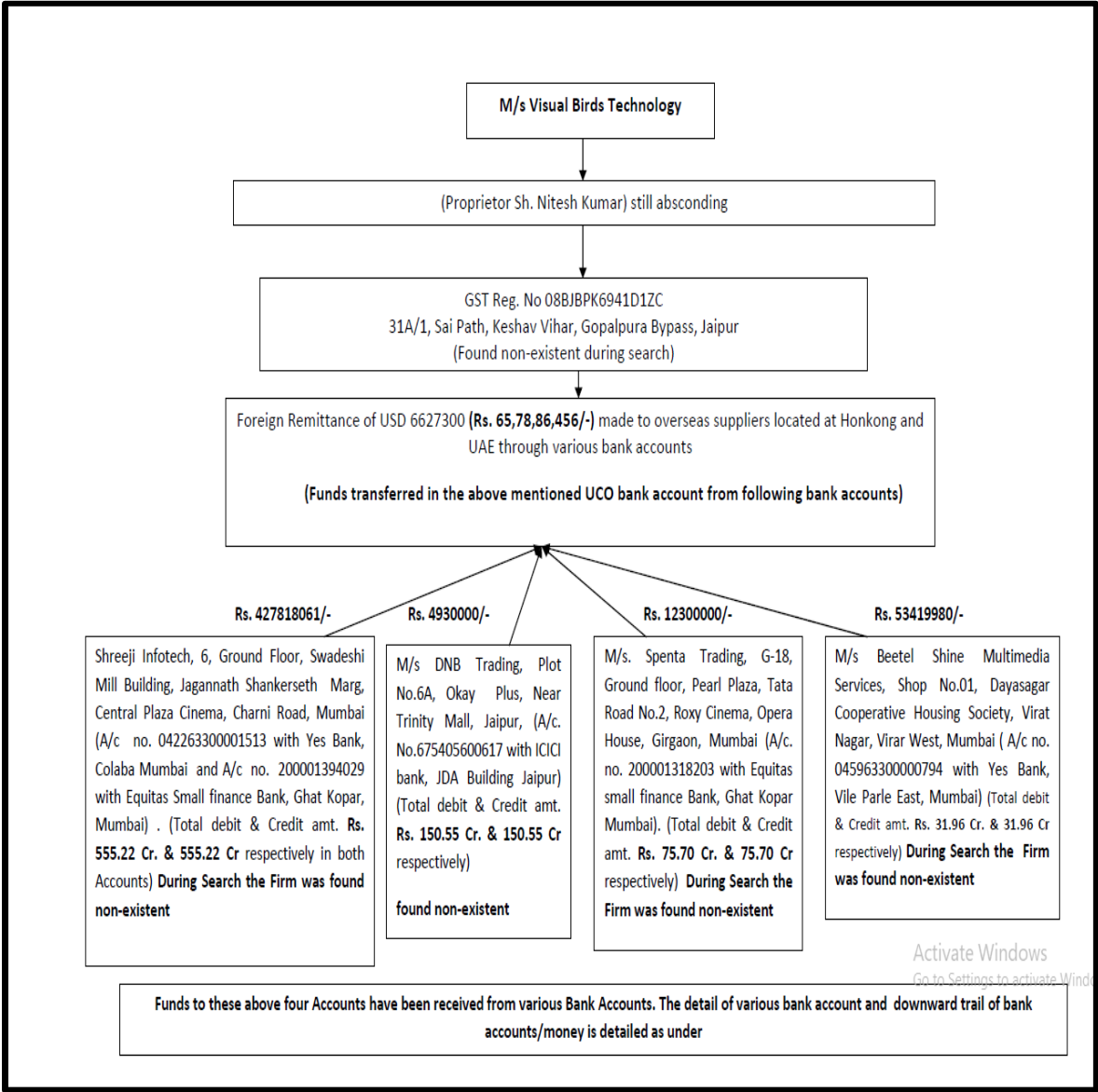
- (vii) On further verification, it was observed that Shri Nitesh Kumar, Director of M/s Visual Birds Technology, is director in many other firms too, and these firms are also interlinked in this maze / layering of firms. These are M/s Sortex Logistics Private Ltd., M/s. Alentraa Multitrading Pvt. Ltd. (GSTIN. - 27AARCA8072C1ZH) address at M-19, Floor-MEZ, Pearl Plaza, Tata Road No.2, Roxy Cinema, Opera House, Girgaon, Mumbai and M/s. Centercore Multitrading Pvt. Ltd. (GSTIN 27AAHCC9690C1ZF) Address- M-19, Floor-MEZ, Pearl Plaza, Tata Road No. 2, Roxy Cinema, Opera House, Girgaon, Mumbai. Both these firms i.e. M/s. Alentraa Multitrading Pvt. Ltd. and M/s. Centercore Multitrading Pvt. Ltd. are registered at the same address and as per GSTN record are shown to be engaged in business of Gold & Diamond. It was also observed that one more firm viz. M/s Morris Tradelink (Prop. Magna Ram Jat) is also registered on the same address as M/s. Alentraa Multitrading Pvt. Ltd. and M/s. Centercore Multitrading Pvt. Ltd. Shri Magna Ram Jat (M/s Morris Tradelink) is registered for supply of Limestone, Portland Cement, Refractory Cement, Iron Bars and Rods. Search was conducted at the said address M-19, Floor-MEZ, Pearl Plaza, Tata Road No. 2, Roxy Cinema, Opera House, Girgaon, Mumbai on 24.11.2021 and no firm was found working on the said address.
- (viii) It was observed that M/s. Alentraa Multitrading Pvt. Ltd. had shown supplies of Diamond valuing Rs. 12,29,26,103 (0.25%) in February, 2020 and Rs. 10,62,17,590 (0.25%) in January, 2020 to Magna Ram Jat (M/s Morris Tradelink) (GSTIN 27ATPPJ2117F1ZS) in their GSTR-1 Returns, which appeared incongruous as Shri Magna Ram Jat (M/s Morris Tradelink) is registered for supply of Limestone, Portland Cement, Refractory Cement, Iron Bars and Rods.
- (ix) It was also observed that Shri Magna Ram Jat, in his GSTR-1 Returns, showed supplies of Diamond and Gold valuing Rs. 56,10,00,000 (3%) in October, 2019, Rs. 63,75,00,000 (3%) in January, 2020 and Rs. 67,99,52,572 (3%) in March, 2020 to Shankar Lal Bairwa (M/s JMD Tradelink) (GSTIN 27DSSPB7009H1ZJ). All the firms involved in these transactions are non-existent, as discussed above.
- (xi) During further verification, it was also observed that M/s DNB Trading, Jaipur, has transferred Rs. 49,30,000/- through RTGS to M/s Visual Birds Technology on 31.08.2021 and Rs. 45,00,000/- to M/s Belstar Techno Solutions (OPC) Pvt. Ltd. on 07.09.2021. As per records, M/s DNB Trading, Jaipur has been shown to be dealing in Gold and Diamond etc. but has filed NIL Returns of GST.
- (xii) From the backward trail of funds received by the above firms, it was observed that M/s Spenta Trading, dealing in Gold, has transferred Rs. 1,23,00,000/- through RTGS to M/s. Visual Birds Technology, during March and April, 2021. Further trail reveals large scale trading of Gold and Diamonds.

(xiii) Further, the above bank statements also revealed that during the period May and June, 2021, a firm M/s Beetel Shine Multimedia, Mumbai, has also transferred Rs. 5,32,58,992/- through RTGS to M/s Visual Birds Technology. Further, during the period May and June, 2021, they have also transferred Rs. 7,05,42,680/- through RTGS to M/s Belstar Techno Solutions (OPC) Pvt. Ltd.

74.7 From the investigation, it is apparent that web / layers of firms have been created to give a legal look to the fraudulent transactions by a gang of fraudsters with ulterior motive of defrauding the exchequer and to escape the eyes of various government agencies.

74.8 An illustrative chart has been prepared, depicting the pyramid of firms created for the above stated purpose i.e. to fraudulently rotate the funds between a large chain of bank accounts to escape from getting tracked. This chart is an example to understand this web of firms. Same is presented below-





74.9 From the above analysis, it appears that multiple layers of bank accounts / firms were created wherein at first layer, there are the importer

firms /companies (M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology), at the second layer, there are various local trading firms (who were shown to be the service recipients of above mentioned importer firms and were shown to be engaged in business of Jewellery / Diamond/ Gold) and at the last layer, there are various local firms (which were shown to be engaged in Jewellery business or some other trading). This whole fraud was perpetrated by a racket / gang, which adopted a novel *modus operandi* under which several bogus / fake companies / firms were created and several bank accounts were opened to fraudulently remit amounts of high magnitude to Hong Kong and UAE - based firms, by showing the same to be payments against import of services (which were never actually imported and were mere paper transactions without any actual supply of service) with the ulterior motive of using the fraudulent remittances for funding illegal imports of Gold, Diamonds and other Precious Stones / Metals. The chain of these transactions' web starts by the cash amount (earned through illegal sale of Diamond / Precious Stone, which was imported without paying duty in SEZ units) given by Shri Suresh Ratanlal Jagetia to Shri Vikram Singh Kachchawa (the person who creates and operates dummy firms for rotation of illicit money) with directions to send this money to foreign units created by Shri Suresh Ratanlal Jagetia. Then, Shri Vikram Singh Kachchawa creates a web of multiple firms to ultimately send this money through fake importer firms (M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology). Apart from funding for payment of smuggled Gold and Diamond, the purpose of this rotation is to remit the money back to SEZ units as sale proceeds and to fulfil the statutory requirement of Positive Net Foreign Exchange.

75. Analysis of financial documents of M/s. Europea Makeour Jewels Pvt. Ltd. (SEZ and DTA Unit) and M/s. Maahi Jewellery Exim Pvt. Ltd. (SEZ and DTA Unit), Surat -

75.1 It is evident by the above discussion that M/s. Europea Makeour Jewels Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd, Surat obtained two GST registration, one each for the SEZ units and one each for their DTA units. As discussed above, the DTA units were non functional / non existent and did not do any business. They were just created with the sole purpose of diverting the Diamonds / Precious Stones into the DTA. The said Diamond / Precious Stones were imported by the SEZ units without paying any Customs duty and same were diverted through their DTA units. This fact has been corroborated by the searches conducted at the units located at Surat and Mumbai, which were shown as the suppliers of the DTA units of M/s. Europea Makeour Jewels Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd.

75.2 These facts are also corroborated from the correspondences made with SEZ authorities and RBI vide letter dated 04.01.2023 as detailed below:

75.3 The Specified Officer of Surat SEZ, Sachin, Surat, vide his reply letter dated 12.01.2023 informed that as per Annual Performance Report of M/s. Europea Makeour Jewels Pvt. Ltd for the year 2020-21, pending realization was Rs. 730.41 crores, for which the unit has already been issued letters. The unit has not submitted the Annual Performance Report for 2021-22 onwards, for which, they have been reminded several times through letters. Similarly, they have reported that M/s. Maahi Jewellery Exim Pvt. Ltd. has

commenced its manufacturing activity w.e.f. 13.07.2020 and the unit has not submitted the Annual Performance Report for the Financial Year 2020-21 and 2021-22. The said unit has been communicated several times for submission of pending Annual Performance Reports.

75.4 Similarly, the RBI, Jaipur, vide e-mail dated 12.01.2023 supplied the details of realization against exports made by both the SEZ units. On analysis of the same, it is noticed that very small quantum of funds were realized against exports made by both these SEZ units.

75.5 Hence it is evident that a large amount was pending for realization against the exports made by SEZ units of M/s. Europea Makeour Jewels Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd. due to inferior quality material supplied by them and due to several reminders from RBI and SEZ authorities, Shri Jagetia was under extreme pressure to clear their pending dues for obtaining positive NFE and, therefore, he availed the services of Shri Vikram Singh Kachchawa.

75.6 On analysis of Bank statements of M/s. Europea Makeour Jewels Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd., it is revealed that the bank accounts were opened by M/s. Europea (SEZ Unit) and M/s. Maahi (SEZ Unit) with their respective GSTN. As per LOPs of both the SEZ units, they are not allowed to do any DTA sales / job work in DTA (condition number XIV of the letter dated 01.05.2019 of the Development Commissioner, SEZ, Surat). Whereas, both the SEZ units have received huge amounts in their accounts from various DTA units (almost all of these units are non-functional). On investigation, it has been revealed that this money has been received in consideration of Diamond / Precious Stones diverted by SEZ units. Shri Suresh Ratanlal Jagetia also agreed to these facts during his statements recorded under Section 108 of the Customs Act, 1962.

75.7 From the above summary (discussed in detail in previous Paras), it appears that these are not legitimate transactions of business but are only a large scale attempts to camouflage illegal fund transfer through the methods described above. The enormous volumes, as well as value of trade flows obfuscate specific transactions, and it is difficult to delineate these transactions with mathematical precision. There is a clear attempt to disguise the origin and movement of funds, as well as the origin and movement of goods, by using multiple levels of firms / companies, bank accounts, paper sales / purchases, imports / exports, etc.

76. MODUS OPERANDI ADOPTED BY THE GANG / NEXUS INVOLVED IN THIS FRAUD-

(i). From the investigation conducted so far, it is evident that with the sole intent to defraud the exchequer, the racket / gang adopted a novel *modus-operandi* under which fake companies / firms were created and several bank accounts were opened for remitting amounts of high magnitude to Hong Kong and UAE based firms against non-existent import of services for funding the Hong Kong and UAE based companies to make the payments to M/s. Europea Makeour Jewel Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd. against import of studded jewellery from them.

(ii) Shri Suresh Ratanlal Jagetia, alongwith Shri Om Prakash Vanjani, Shri Ravindra Kumar, CA, Shri Vikram Singh Kachchawa, Shri Kamlesh Nagda, Shri Deepak Kumar, Shri Navratan Jain, Shri Vimal Nahar and several others, have associated, conspired, indulged and involved themselves in fraudulently sending remittance of huge amounts to foreign based firms in Hong Kong and UAE against non-existent import of Services, for funding the Hong Kong and UAE based companies to make the payments to M/s. Eurpea Makeour Jewel Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd. against import of studded jewellery from them.

(iii) During investigation, it was found that firms have been registered with GST department for short period, just to issue bogus invoices for supply of smuggled Gold, Diamond and Precious Stones. The bank accounts were opened for transferring the sale proceeds in banking system and after rotating the funds in numerous bank accounts, it was fraudulently remitted abroad. It was revealed that units were frequently registered and closed either *suo-moto* or by the department for non - filing of GST Returns. These units are opened in the name of dummy persons or sometimes by the assessee themselves in their own name. Likewise, numerous bank accounts in the name of dummy account holders have been opened, for the sake of rotating money and thereafter closed. It has been noticed that firms / units have been created with same or similar names, viz. Shreeji Infotech / Shriji Impex, DNB Trading / DNB Multitrading, Shubhang Enterprises Pvt. Ltd. / Shubhang Trading, M/s. Europea (SEZ Unit) / M/s. Europea (DTA Unit), M/s Maahi (SEZ Unit) / M/s Maahi (DTA Unit); that common bank accounts of the SEZ units and DTA units are opened. It was also noticed that in most of the cases, new units are opened in the name of a few set of persons only. In some cases, firms which are not registered with GST, are registered with Maharashtra Shops and Establishments (Regulations of Employment and Conditions of Service) Act, 2017 for opening of bank accounts and showing the existence of firm. Dummy firms / companies in the name of individuals, using their Aadhar, PAN are opened with ROC and these firms / companies opened bank accounts and fraudulently received and transferred huge amounts into several bank accounts. The frequent opening of various new firms and bank accounts for a shorter period is to create a web of companies with the motive to escape from coming to adverse notice of the department(s) / being nabbed.

(iv) It also appears that there has been uniform pattern of transactions in the bank statements wherein it appears that at first, the funds from dummy domestic firms were transferred in the bank account of SEZ units of M/s. Europea Makeour Jewel Pvt. Ltd. and M/s Maahi Jewellery Exim Pvt. Ltd. towards the payment against supplies made by the DTA units of M/s. Europea Makeour Jewel Pvt. Ltd. and M/s Maahi Jewellery Exim Pvt. Ltd. and these amounts were then remitted overseas for the payment towards import of goods i.e. precious / semi precious rough stones, through the bank account of SEZ units. It is also observed that the funds received on a particular day from various domestic firms were then transferred in the bank accounts of exporters located in Hong Kong on the same day or at the maximum on next day by these SEZ units, which cannot be a mere coincidence. Screenshots of some sample bank statement pages are indicated herein below for reference purpose:-

bank.pdf - Adobe Acrobat Reader (64-bit)

File Edit View Sign Window Help

Home Tools CORPORATION.01... bank.pdf x

Page 1 of 3

Sign In

Transaction Details

04-09-2021 13:55:16
REP27

UNION BANK OF INDIA, SACHIN
EUROPEA MAKEOUR JEWEL PRIVATE LIMITEDREGISTER

Report To :JH
Service OutLet :13692 SACHIN
Account Number :510351000921126/INR
Report for the Period :01-04-2020T031-07-2021

04-09-2021 13:55:16
REP27

UNION BANK OF INDIA, SACHIN
EUROPEA MAKEOUR JEWEL PRIVATE LIMITEDREGISTER
Report for the Period :01-04-2020T031-07-2021

Date Id	Tran	Ref Num	Particulars	Debit Amt.	Credit Amt.	Balance Amt. Date	Contra
Account Opening balance : 1000000.00CR							
Brought Forward : 10,00,000.00							
07-05-2020XS6867635	0001781834	RTGS	TO KOMAL EXIM PVT LT	9,00,000.00	10,00,000.00	10,00,000.00CR	
19-05-2020XS6581130		RTGS	fm NEHAL DIAM:IBKLH2		17,00,000.00	1,00,000.00CR	
22-05-2020 XS924941		RTGS	fm NEHAL DIAM:IBKLH2		34,90,200.00	18,00,000.00CR	
28-05-2020XS1101903		RTGS	fm NEHAL DIAM:IBKLH2		32,85,000.00	52,90,200.00CR	
28-05-2020XS1226789		RTGS	fm NEHAL DIAM:IBKLH2		41,80,250.00	85,75,200.00CR	
29-05-2020XS2280247		RTGS	fm NEHAL DIAM:IBKLH2		44,80,000.00	1,27,55,450.00CR	
29-05-2020XS2294083		RTGS	fm NEHAL DIAM:IBKLH2		49,00,000.00	1,72,35,450.00CR	
29-05-2020XS2312442		IMPS	RRN:015012975016/Fro	2,00,000.00		2,21,35,450.00CR	
29-05-2020XS2315634		IMPS	RRN:015012975527/Fro	1,97,000.00		2,23,35,450.00CR	
29-05-2020XS2318489		IMPS	RRN:015012977663/Fro		1,29,000.00	2,25,32,450.00CR	
01-06-2020XS7527514		Bill Id : [IMDR0185200005]		2,20,52,701.00		8,03,749.00CR	
01-06-2020XS7527514		Bill Id:[IMDR01052000032]		4,779.49		7,98,969.51CR	
01-06-2020XS7527514		Bill Id : [IMDR0185200005]		24,190.00		7,74,779.51CR	
05-06-2020 XM151755		FBC ON IMDR01852000052		1,521.00		7,73,258.51CR	
08-06-2020 XS406251		NAMAN SALES		7,800.00		7,65,458.51CR	
08-06-2020 XS406251		ARHAM ENTERPRISE		68,497.00		6,96,961.51CR	
08-06-2020 XS406251		UMIYA MARKETING		400.00		6,96,561.51CR	
09-06-2020XS2575130		DARSHAN TOOLS		9,884.00		6,86,677.51CR	
15-06-2020XS3234665		DIAMOND AND GEM DEVELOPM		30,000.00		6,56,677.51CR	
16-06-2020 XM45835		SELF		2,50,000.00		4,06,677.51CR	
16-06-2020XS105426		BOMBAY STATIONERY MART		2,800.00		4,03,877.51CR	
20-06-2020XS1913519		FREEDOM FRAGRANCES		1,500.00		4,02,377.51CR	
26-06-2020XS1221719		RTGS fm KOMAL EXIM:INDBH2			24,87,546.00	28,89,923.51CR	
26-06-2020XS1620217		NEFT fm KOMAL EXIM PRIVAT			58,00,000.00	86,89,923.51CR	
26-06-2020XS2034371		NEFT fm RTGS UNPROCESSED			49,94,300.00	1,36,84,223.51CR	
29-06-2020XS5714970	0001859519	RTGS TO UTIB0000029 CORPR		49,98,456.00		86,85,767.51CR	
29-06-2020XS5895755	0001859592	NEFT TO MARUTI GEMS:00018		43,800.00		86,41,967.51CR	
29-06-2020XS5930309	0001859621	RTGS TO EUROPEA MAKEOUR J		85,39,431.00		1,02,536.51CR	
14-07-2020XS3594666		RTGS fm KAVYA IMPE:KKBKH2			58,00,000.00	59,02,536.51CR	
14-07-2020XS3676566		RTGS fm KAVYA IMPE:KKBKH2			88,00,000.00	1,47,02,536.51CR	
14-07-2020XS3694917		RTGS fm KAVYA IMPE:KKBKH2			55,00,000.00	2,02,02,536.51CR	
14-07-2020XS3712612		RTGS fm SWASTIK IM:KKBKH2			10,00,000.00	2,12,02,536.51CR	
14-07-2020XS3718162		RTGS fm SWASTIK IM:KKBKH2			20,00,000.00	2,32,02,536.51CR	
14-07-2020XS3723775		RTGS fm SWASTIK IM:KKBKH2			7,00,000.00	2,39,02,536.51CR	
14-07-2020XS3755926		RTGS fm KOMAL EXIM:IBKLH2			54,50,000.00	2,93,52,536.51CR	
14-07-2020XS3780151	0001889887	RTGS TO UTIB0000029 CORPR		49,97,786.00		2,43,54,750.51CR	
15-07-2020XS4942117	0001890792	RTGS TO UTIB0000029 CORPR		24,40,786.00		2,19,13,964.51CR	
15-07-2020XS5368004		Bill Id : [IMDR0185200006		2,15,16,299.00		3,97,665.51CR	
15-07-2020XS5368004		Bill Id:[IMDR01852000067]		4,682.93		3,92,982.58CR	
15-07-2020XS5368004		Bill Id : [IMDR0185200006		10,500.00		3,82,482.58CR	
18-07-2020 XS421991		FIRST ERP SOFTWARE SOLUTI		18,000.00		3,64,482.58CR	
22-07-2020XS7071018		RTGS fm KAVYA IMPE:KKBKH2			3,00,000.00	6,64,482.58CR	
23-07-2020XS8218601	0001903636	RTGS TO GARP TOOLS PVT LT		2,00,000.00		4,64,482.58CR	
23-07-2020XS8278041	0001903636	NEFT TO RISHAB CREATION		18,200.00			

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UNION BANK OF INDIA, SACHIN
EUROPEA MAKEOUR JEWEL PRIVATE LIMITEDREGISTER

Report To :JH
Service OutLet :13692 SACHIN
Account Number :510351000921126/INR
Report for the Period :01-04-2020T031-07-2021

04-09-2021 13:55:16
REP27

UNION BANK OF INDIA, SACHIN
EUROPEA MAKEOUR JEWEL PRIVATE LIMITEDREGISTER
Report for the Period :01-04-2020T031-07-2021

Date Id	Tran	Ref Num	Particulars	Debit Amt.	Credit Amt.	Balance Amt. Date	Contra
Account Opening balance : 1000000.00CR							
Brought Forward : 10,00,000.00							
07-05-2020XS6867635	0001781834	RTGS	TO KOMAL EXIM PVT LT	9,00,000.00	10,00,000.00	10,00,000.00CR	
19-05-2020XS6581130		RTGS	fm NEHAL DIAM:IBKLH2		17,00,000.00	1,00,000.00CR	
22-05-2020 XS924941		RTGS	fm NEHAL DIAM:IBKLH2		34,90,200.00	18,00,000.00CR	
28-05-2020XS1101903		RTGS	fm NEHAL DIAM:IBKLH2		32,85,000.00	52,90,200.00CR	
28-05-2020XS1226789		RTGS	fm NEHAL DIAM:IBKLH2		41,80,250.00	85,75,200.00CR	
29-05-2020XS2280247		RTGS	fm NEHAL DIAM:IBKLH2		44,80,000.00	1,27,55,450.00CR	
29-05-2020XS2294083		RTGS	fm NEHAL DIAM:IBKLH2		49,00,000.00	1,72,35,450.00CR	
29-05-2020XS2312442		IMPS	RRN:015012975016/Fro	2,00,000.00		2,21,35,450.00CR	
29-05-2020XS2315634		IMPS	RRN:015012975527/Fro	1,97,000.00		2,23,35,450.00CR	
29-05-2020XS2318489		IMPS	RRN:015012977663/Fro		1,29,000.00	2,25,32,450.00CR	
01-06-2020XS7527514		Bill Id : [IMDR0185200005]		2,20,52,701.00		8,03,749.00CR	
01-06-2020XS7527514		Bill Id:[IMDR01052000032]		4,779.49		7,98,969.51CR	
01-06-2020XS7527514		Bill Id : [IMDR0185200005]		24,190.00		7,74,779.51CR	
05-06-2020 XM151755		FBC ON IMDR01852000052		1,521.00		7,73,258.51CR	
08-06-2020 XS406251		NAMAN SALES		7,800.00		7,65,458.51CR	
08-06-2020 XS406251		ARHAM ENTERPRISE		68,497.00		6,96,961.51CR	
08-06-2020 XS406251		UMIYA MARKETING		400.00		6,96,561.51CR	
09-06-2020XS2575130		DARSHAN TOOLS		9,884.00		6,86,677.51CR	
15-06-2020XS3234665		DIAMOND AND GEM DEVELOPM		30,000.00		6,56,677.51CR	
16-06-2020 XM45835		SELF		2,50,000.00		4,06,677.51CR	
16-06-2020XS105426		BOMBAY STATIONERY MART		2,800.00		4,03,877.51CR	
20-06-2020XS1913519		FREEDOM FRAGRANCES		1,500.00		4,02,377.51CR	
26-06-2020XS1221719		RTGS fm KOMAL EXIM:INDBH2			24,87,546.00	28,89,923.51CR	
26-06-2020XS1620217		NEFT fm KOMAL EXIM PRIVAT			58,00,000.00	86,89,923.51CR	
26-06-2020XS2034371		NEFT fm RTGS UNPROCESSED			49,94,300.00	1,36,84,223.51CR	
29-06-2020XS5714970	0001859519	RTGS TO UTIB0000029 CORPR		49,98,456.00		86,85,767.51CR	
29-06-2020XS5895755	0001859592	NEFT TO MARUTI GEMS:00018		43,800.00		86,41,967.51CR	
29-06-2020XS5930309	0001859621	RTGS TO EUROPEA MAKEOUR J		85,39,431.00		1,02,536.51CR	
14-07-2020XS3594666		RTGS fm KAVYA IMPE:KKBKH2			58,00,000.00	59,02,536.51CR	
14-07-2020XS3676566		RTGS fm KAVYA IMPE:KKBKH2			88,00,000.00	1,47,02,536.51CR	
14-07-2020XS3694917		RTGS fm KAVYA IMPE:KKBKH2			55,00,000.00	2,02,02,536.51CR	
14-07-2020XS3712612		RTGS fm SWASTIK IM:KKBKH2			10,00,000.00	2,12,02,536.51CR	
14-07-2020XS3718162		RTGS fm SWASTIK IM:KKBKH2			20,00,000.00	2,32,02,536.51CR	
14-07-2020XS3723775		RTGS fm SWASTIK IM:KKBKH2			7,00,000.00	2,39,02,536.51CR	
14-07-2020XS3755926		RTGS fm KOMAL EXIM:IBKLH2			54,50,000.00	2,93,52,536.51CR	
14-07-2020XS3780151	0001889887	RTGS TO UTIB0000029 CORPR		49,97,786.00		2,43,54,750.51CR	
15-07-2020XS4942117	0001890792	RTGS TO UTIB0000029 CORPR		24,40,786.00		2,19,13,964.51CR	
15-07-2020XS5368004		Bill Id : [IMDR0185200006		2,15,16,299.00		3,97,665.51CR	
15-07-2020XS5368004		Bill Id:[IMDR01852000067]		4,682.93		3,92,982.58CR	
15-07-2020XS5368004		Bill Id : [IMDR0185200006		10,500.00		3,82,482.58CR	
18-07-2020 XS421991		FIRST ERP SOFTWARE SOLUTI		18,000.00		3,64,482.58CR	
22-07-2020XS7071018		RTGS fm KAVYA IMPE:KKBKH2			3,00,000.00	6,64,482.58CR	
23-07-2020XS8218601	0001903636	RTGS TO GARP TOOLS PVT LT		2,00,000.00		4,64,482.58CR	
23-07-2020XS8278041	0001903636	NEFT TO RISHAB CREATION		18,200.00			

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04-09-2021 13:55:16
REP27

UNION BANK OF INDIA, SACHIN
EUROPEA MAKEOUR JEWEL PRIVATE LIMITEDREGISTER

Report To :JH
Service OutLet :13692 SACHIN
Account Number :510351000921126/INR
Report for the Period :01-04-2020T031-07-2021

04-09-2021 13:55:16
REP27

UNION BANK OF INDIA, SACHIN
EUROPEA MAKEOUR JEWEL PRIVATE LIMITEDREGISTER
Report for the Period :01-04-2020T031-07-2021

Date Id	Tran	Ref Num	Particulars	Debit Amt.	Credit Amt.	Balance Amt. Date	Contra
Account Opening balance : 1000000.00CR							
Brought Forward : 10,00,000.00							
07-05-2020XS6867635	0001781834	RTGS	TO KOMAL EXIM PVT LT	9,00,000.00	10,00,000.00	10,00,000.00CR	
19-05-2020XS6581130		RTGS	fm NEHAL DIAM:IBKLH2		17,00,000.00	1,00,000.00CR	
22-05-2020 XS924941		RTGS	fm NEHAL DIAM:IBKLH2		34,90,200.00	18,00,000.00CR	
28-05-2020XS1101903		RTGS	fm NEHAL DIAM:IBKLH2		32,85,000.00	52,90,200.00CR	
28-05-2020XS1226789		RTGS	fm NEHAL DIAM:IBKLH2		41,80,250.00	85,75,200.00CR	
29-05-2020XS2280247		RTGS	fm NEHAL DIAM:IBKLH2		44,80,000.00	1,27,55,450.00CR	
29-05-2020XS2294083		RTGS	fm NEHAL DIAM:IBKLH2		49,00,000.00	1,72,35,450.00CR	
29-05-2020XS2312442		IMPS	RRN:015012975016/Fro	2,00,000.00		2,21,35,450.00CR	
29-05-2020XS2315634		IMPS	RRN:015012975527/Fro	1,97,000.00		2,23,35,450.00CR	
29-05-2020XS2318489		IMPS	RRN:015012977663/Fro		1,29,000.00	2,25,32,450.00CR	
01-06-2020XS7527514		Bill Id : [IMDR0185200005]		2,20,52,701.00		8,03,749.00CR	
01-06-2020XS7527514		Bill Id:[IMDR01052000032]		4,779.49		7,98,969.51CR	
01-06-2020XS7527514		Bill Id : [IMDR0185200005]		24,190.00		7,74,779.51CR	
05-06-2020 XM151755		FBC ON IMDR01852000052		1,521.00		7,73,258.51CR	
08-06-2020 XS406251		NAMAN SALES		7,800.00		7,65,458.51CR	
08-06-2020 XS406251		ARHAM ENTERPRISE		68,497.00		6,96,961.51CR	
08-06-2020 XS406251		UMIYA MARKETING		400.00		6,96,561.51CR	
09-06-2020XS2575130		DARSHAN TOOLS		9,884.00		6,86,677.51CR	
15-06-2020XS3234665		DIAMOND AND GEM DEVELOPM		30,000.00		6,56,677.51CR	
16-06-2020 XM45835		SELF		2,50,000.00		4,06,677.51CR	
16-06-2020XS105426		BOMBAY STATIONERY MART		2,800.00		4,03,877.51CR	
20-06-2020XS1913519		FREEDOM FRAGRANCES		1,500.00		4,02,377.51CR	
26-06-2020XS1221719		RTGS fm KOMAL EXIM:INDBH2			24,87,546.00	28,89,923.51CR	
26-06-2020XS1620217		NEFT fm KOMAL EXIM PRIVAT			58,00,000.00	86,89,923.51CR	
26-06-2020XS2034371		NEFT fm RTGS UNPROCESSED			49,94,300.00	1,36,84,223.51CR	
29-06-2020XS5714970	0001859519	RTGS TO UTIB0000029 CORPR		49,98,456.00		86,85,767.51CR	
29-06-2020XS5895755	0001859592	NEFT TO MARUTI GEMS:00018		43,800.00		86,41,967.51CR	
29-06-2020XS5930309	0001859621	RTGS TO EUROPEA MAKEOUR J		85,39,431.00		1,02,536.51CR	
14-07-2020XS3594666		RTGS fm KAVYA IMPE:KKBKH2			58,00		

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Date Id	Tran	Ref Num	Particulars	Debit Amt.	Credit Amt.	Balance Amt. Date	Contra
Brought Forward :				19,48,56,532.90	22,55,25,738.00	3,06,69,205.10CR	
18-08-2020XS6383966			RTGS fm SHUBHANG E:KKBKH2		55,40,000.00	3,62,09,205.10CR	
18-08-2020XS6640717			Bill Id : [IMDR0185200010	3,58,39,849.00		3,69,356.10CR	
18-08-2020XS6640717			Bill Id: [IMDR01852000104]	7,261.17		3,62,094.93CR	
18-08-2020XS6640717			BILL ID : [IMDR0185200010	10,500.00		3,51,594.93CR	
19-08-2020XS8370774			RTGS fm SHUBHANG E:KKBKH2		48,52,680.00	52,04,274.93CR	
19-08-2020XS8407010			RTGS fm SHUBHANG E:KKBKH2		45,89,250.00	97,93,524.93CR	
19-08-2020XS8850520			RTGS fm SHUBHANG E:KKBKH2		69,51,979.00	1,67,45,503.93CR	
19-08-2020XS8877050			RTGS fm SHUBHANG E:KKBKH2		61,45,672.00	2,28,91,175.93CR	
19-08-2020XS8877127			RTGS fm SHUBHANG E:KKBKH2		69,51,979.00	2,98,43,154.93CR	
19-08-2020XS8923669		0001950524	RTGS TO IBKL0000051 CORP	45,00,000.00		2,53,43,154.93CR	
19-08-2020XS8984356			RTGS fm SHUBHANG E:KKBKH2		65,10,370.00	3,18,53,524.93CR	
19-08-2020XS9025249			RTGS fm SHUBHANG E:KKBKH2		45,00,000.00	3,63,53,524.93CR	
20-08-2020 XS718927			BILL ID : [IMDR0185200010	3,60,22,979.00		3,30,545.93CR	
20-08-2020 XS718927			Bill Id: [IMDR01852000108]	7,294.14		3,23,251.79CR	
20-08-2020 XS718927			Bill Id : [IMDR0185200010	10,500.00		3,12,751.79CR	
24-08-2020XS7280308			RTGS fm EVAIO DIAM:KKBKH2		39,76,000.00	42,88,751.79CR	
24-08-2020XS7411141			RTGS fm SHUBHANG E:KKBKH2		24,21,655.00	67,10,406.79CR	
24-08-2020XS7600323			RTGS fm SHUBHANG E:KKBKH2		51,75,468.00	1,18,85,874.79CR	
24-08-2020XS7646599			RTGS fm EVAIO DIAM:KKBKH2		24,75,000.00	1,43,60,874.79CR	
24-08-2020XS7862199			NEFT fm AFFLON IMPEX PRIV		52,00,000.00	1,95,60,874.79CR	
25-08-2020XS8682884			RTGS fm SHUBHANG E:KKBKH2		43,15,880.00	2,38,76,754.79CR	
25-08-2020XS8709647			RTGS fm SHUBHANG E:KKBKH2		26,72,730.00	2,65,49,484.79CR	
25-08-2020XS8737404			RTGS fm SHUBHANG E:KKBKH2		56,30,000.00	3,21,79,484.79CR	
25-08-2020XS8739210			RTGS fm AFFLON IMP:KKBKH2		57,50,000.00	3,79,29,484.79CR	
25-08-2020XS8795543			RTGS fm AFFLON IMP:KKBKH2		57,50,000.00	4,36,79,484.79CR	
25-08-2020XS8795543			RTGS fm EVAIO DIAM:KKBKH2		19,00,000.00	4,55,79,484.79CR	
25-08-2020XS9417802			Bill Id : [IMDR0185200011	4,53,41,084.00		2,38,400.79CR	
25-08-2020XS9417802			Bill Id: [IMDR01852000112]	8,971.40		2,29,429.39CR	
25-08-2020XS9417802			Bill Id : [IMDR0185200011	10,500.00		2,18,929.39CR	
27-08-2020XS3414788			RTGS fm NARGIS TRA:KKBKH2		48,00,000.00	50,18,929.39CR	
27-08-2020XS3433065			RTGS fm NARGIS TRA:KKBKH2		52,00,000.00	1,02,18,929.39CR	
27-08-2020XS3812788			NEFT fm NARGIS TRADING PV		50,00,000.00	1,52,18,929.39CR	
28-08-2020 XM148595			DD issue charge	2,891.00		1,52,16,038.39CR	
28-08-2020 XM148595			DD/CC ISSUED	4,89,958.00		1,47,26,080.39CR	
28-08-2020 XM153900			DD Canceln 202013690000001		4,89,958.00	1,52,16,038.39CR	
28-08-2020 XM155848			DD/CC ISSUED	4,89,958.00		1,47,26,080.39CR	
28-08-2020XS4610797			RTGS fm SHUBHANG E:KKBKH2		60,79,820.00	2,08,05,900.39CR	
28-08-2020XS4712481			RTGS fm SHUBHANG E:KKBKH2		39,20,180.00	2,47,26,080.39CR	

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MOD Balance : 0.00

Uncleared Amount : 0.00

Balance as on 1 Apr 2022 : 38,66,616.54

Account Statement from 1 Apr 2022 to 30 Apr 2022

Txn Date	Value Date	Description	Ref No./Cheque No.	Branch Code	Debit	Credit	Balance
04/04/2022	04/04/2022	BY TRANSFER-RTGS UTR NO: ICICR42022040400523376 -TRANSFER FROM 3199856044300-N.V. STAR EXIM LLP	TRANSFER FROM 3199856044300 / -	4430		67,54,232.00	1,06,20,848.54
04/04/2022	04/04/2022	BY TRANSFER-RTGS UTR NO: ICICR42022040400523307 -TRANSFER FROM 3199860044304-N.V. STAR EXIM LLP	TRANSFER FROM 3199860044304 / -	4430		54,67,891.00	1,60,88,739.54
04/04/2022	04/04/2022	BY TRANSFER-RTGS UTR NO: ICICR42022040400523472 -TRANSFER FROM 3199856044300-N.V. STAR EXIM LLP	TRANSFER FROM 3199856044300 / -	4430		52,34,566.00	2,13,23,305.54
04/04/2022	04/04/2022	BY TRANSFER-RTGS UTR NO: ICICR42022040400523598 -TRANSFER FROM 3199860044304-N.V. STAR EXIM LLP	TRANSFER FROM 3199860044304 / -	4430		55,64,711.00	2,68,88,016.54
04/04/2022	04/04/2022	BY TRANSFER-RTGS UTR NO: ICICR42022040400523551 -TRANSFER FROM 3199860044304-N.V. STAR EXIM LLP	TRANSFER FROM 3199860044304 / -	4430		49,78,600.00	3,18,66,616.54
04/04/2022	04/04/2022	BY TRANSFER-RTGS UTR NO: ICICR42022040400528008 -TRANSFER FROM 3199860044304-N.V. STAR EXIM LLP	TRANSFER FROM 3199860044304 / -	4430		49,99,596.00	3,68,66,212.54
04/04/2022	04/04/2022	BY TRANSFER-RTGS UTR NO: ICICR42022040400528126 -TRANSFER FROM 3199859044307-N.V. STAR EXIM LLP	TRANSFER FROM 3199859044307 / -	4430		50,00,404.00	4,18,66,616.54
04/04/2022	04/04/2022	CHEQUE WDL-CHEQUE TRANSFER FROM 10733594042 DIAMOND AND GEM DEVELOPMENT	TRANSFER FROM 10733594042 DIAMOND AND GEM DEVELOPMENT	9120	17,423.00		4,18,49,193.54

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Txn Date	Value Date	Description	Ref No./Cheque No.	Branch Code	Debit	Credit	Balance
04/04/2022	04/04/2022	TO TRANSFER-INB RTGS UTR NO: SBINR12022040476326119- RTGS INB: CRD1140759 TRANSFER TO 4599110044305-RUBY DIAMOND	RTGS INB: CRD1140759 TRANSFER TO 4599110044305 / -	99922	2,92,041.00		4,15,57,152.54
04/04/2022	04/04/2022	TO TRANSFER-INB NEFT UTR NO: SBIN122094517235- NEFT INB: CNABXBAF05 TRANSFER TO 3199302044302-AF FERRARI SECURE LOGITECH PVT LTD	NEFT INB: CNABXBAF05 TRANSFER TO 3199302044302 / -	99922	40,351.00		4,15,16,801.54
04/04/2022	04/04/2022	TO TRANSFER-: 63749220S0000061 004020500001TF305499684 11-TRANSFER TO 97695011114-	TRANSFER TO 97695011114 / -	63749	3,76,65,725.00		38,51,076.54
04/04/2022	04/04/2022	TO TRANSFER-: 63749220S0000061 004020500001TF305499684 1-TRANSFER TO 97934637493-	TRANSFER TO 97934637493 / -	63749	7,500.00		38,43,576.54
04/04/2022	04/04/2022	TO TRANSFER-: 63749220S0000061 00402504000001TF305499684 11-TRANSFER TO 98741637493-	TRANSFER TO 98741637493 / -	63749	500.00		38,43,076.54
04/04/2022	04/04/2022	TO TRANSFER-: 63749220S0000061 00402205000001TF305499684 11-TRANSFER TO 97934637493-	TRANSFER TO 97934637493 / -	63749	1,000.00		38,42,076.54
05/04/2022	05/04/2022	TO CLEARING-HDF NIRAV IMPEX PVT LTD-748408	- / 748408	10392	16,099.00		38,25,977.54
05/04/2022	05/04/2022	TO CLEARING-HDF SHYAM CONSULTANCY-748413	- / 748413	10392	94,320.00		37,31,657.54

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- (v) That units engaged in manufacturing of Jewellery are opened in the SEZ (Special Economic Zones), with ulterior motive to import duty free Diamond and Precious Stones and fraudulently divert and sell them in Domestic Tariff Area (DTA) and defraud the exchequer to the tune of total duty saved in such imports by SEZ Units. Also, units with same names are opened in both SEZ and DTA, who use same accounts.
- (vi) SEZ units import Superior Quality Diamond / Precious Stone at their company M/s. Europea (SEZ Unit) and the value of the goods is declared in the Invoice / Bill of Entry; that they divert the imported Diamond / Precious Stone in the local market and from local market they purchase / bring inferior quality Diamond / Precious Stones; then these inferior quality Diamond / Precious Stones are studded in Silver Jewellery at their SEZ unit and thereafter, exported. The value of exported Jewellery (of Diamond /

Precious Stones) is very less in comparison to the declared value and the export is made to their own companies created in the foreign countries. Therefore, the foreign remittances equal to the declared value in Invoice is not realized; that since, the foreign remittance is not received, funds for further import is managed by selling the earlier imported Diamond / Precious Stones in local market to actual users.

(vii) Bank accounts are opened with various banks by the SEZ units of M/s. Europea Makeour Jewels Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd. with their respective GSTN. Further, in these SEZ bank Accounts, they receive huge amounts in their accounts from various DTA units (almost all of these units are non-functional). This money appears to be the consideration of Diamond / Precious Stones diverted by SEZ units.

(viii) As these SEZ units make exports to their own units (units created by them) in foreign locations, the export proceeds / amount could not be realised and accordingly the export obligation were also not fulfilled. To avoid action from SEZ Authorities for non-fulfillment of Export Obligation, they had to devise a plan / scheme to send fund to their own units in Hong Kong. For this purpose, a racket / gang was formed, which adopted a novel *modus-operandi* under which at first level, firms were created which were shown to be importer and suppliers of various IT services like Animations, Graphics, Designs, 2D, 3D etc. These imports were shown to be done from firms located in Hong Kong so that fund could be sent there and then that fund could be rotated back to SEZ units. There was no supply / import of services made and entire import / supply process was done only on paper. Various fake companies / firms were created and several bank accounts were opened for remitting amounts of high magnitude to Hong Kong and UAE based firms against these non-existent imports of Services for funding of illegal import of Gold, Diamonds and other Precious Metals.

77. Legal Provisions Applicable -

Provisions of the Special Economic Zones Act, 2005, and the Special Economic Zones Rules, 2006

77.1 As per section 20 of the SEZ Act, 2005, notwithstanding anything contained in any other law for the time being in force, the Central Government may, by notification, specify any officer or agency to carry out surveys or inspections for securing of compliance with the provisions of any Central Act by a Developer or an entrepreneur, as the case may be, and such officer or agency shall submit verification and compliance reports, in such manner and within such time as may be specified in the said notification.

77.2 As per Section 21(1) of the SEZ Act, 2005, the Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.

77.3 As per Section 21(2) of the SEZ Act, 2005, the Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence or offences committed in a Special Economic Zone.

77.4 As per Section 21(3) of the SEZ Act, 2005, every officer or agency

authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection, search or seizure as is provided under the relevant Central Act in respect of the notified offences.

77.5 As per Section 22 of the SEZ Act, 2005, the agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation, inspection, search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone: Provided that no investigation, inspection, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or sub-section (3) of section 21 without prior approval of the Development Commissioner concerned. Provided further that any officer or agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.

77.6 Further, the Ministry of Commerce, vide its notification dated 05.08.2016 has notified the offences under the Customs Act, 1962, in exercise of the powers conferred by sub-section (1) of section 21 of the Special Economic Zones Act, 2005. The relevant portion is reproduced below-

"In exercise of the powers conferred by sub-section (1) of section 21 of the Special Economic Zones Act, 2005 (28 of 2005) (hereinafter referred as the Act), the Central Government hereby, notifies the offences contained in the under-mentioned sections of the Customs Act, 1962 (52 of 1962), the Central Excise Act, 1944 (1 of 1944) and the Finance Act, 1994 (32 of 1994) as offences under the Act:-

The Customs Act, 1962

- 1. Section 28, 28AA and 28AAA*
- 2. Section 74 and 75*
- 3. Section 111*
- 4. Section 113*
- 5. Section 115*
- 6. Section 124*
- 7. Section 135*
- 8. Section 104"*

77.7. Further, the Ministry of Commerce, in exercise of the powers conferred by sub-section (1) of section 22 of the Special Economic Zones Act, 2005, vide its notification dated 05.08.2016 has authorized the Jurisdictional Customs Commissioner to carry out investigation, inspection, search or seizure in SEZ in respect of the offences under the Customs Act, 1962. The relevant portion is reproduced below-

"In exercise of the powers conferred by section 22 of the Special Economic Zones Act, 2005 (28 of 2005) (hereinafter referred as the Act), the Central Government authorises the jurisdictional Customs Commissioner, in respect of offences under the Customs Act, 1962 (52 of 1962) and Commissioner of Central Excise in respect of offences

under the Central Excise Act, 1944 (1 of 1944) and the Finance Act, 1994 (32 of 1994) and notified under the Act, for the reasons to be recorded in writing, to carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to the Development Commissioner, concerned.”

77.8 As per Section 26 of the SEZ Act, 2005, the entrepreneur shall be entitled to exemption from any duty of Customs under the Customs Act, 1962 or the Customs Tariff Act, 1975, or any other law for the time being in force, on goods imported into a Unit to carry on the authorized operations by the entrepreneur.

77.9 As per Section 30 of the SEZ Act, 2005, subject to the conditions specified in the Rules made by the Central Government in this behalf, any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of Customs including Anti-Dumping Duty etc., where applicable, as leviable on such goods when imported.

77.10 As per Rule 25 of the SEZ Rules 2006, where an entrepreneur or developer does not utilize the goods on which exemption was availed for the authorized operations or unable to duly account for the same, the entrepreneur or the developer, as the case may be, shall refund an amount equal to the benefits of exemption availed without prejudice to any other action under the relevant provisions of the Customs Act, 1962.

77.11 Rule 30 of SEZ Rules, 2006.

RULE 30. Procedure for procurements from the Domestic Tariff Area. — (1) *The Domestic Tariff Area supplier supplying goods or services to a Unit or Developer shall clear the goods or services, as in the case of zero-rated supply as per provisions of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) either under bond or legal undertaking or under any other refund procedure permitted under Goods and Services Tax laws or Central Excise law, or as duty or tax paid goods under claim of rebate, on the cover of documents laid down under the relevant Central Excise law for the purpose of export by a manufacturer or supplier.*

(2) *Goods or services procured by a Unit or Developer, on which Goods and Services Tax or exemption has been availed but without any availment of export entitlements, shall be allowed admission into the Special Economic Zone on the basis of documents referred to in sub-rule (1) of Rule 30.*

(3) *The goods procured by a Unit or Developer under claim of export entitlements shall be allowed admission into the Special Economic Zone on the basis of documents referred to in sub-rule (1) of Rule 30 and a Bill of Export filed by the supplier or on his behalf by the Unit or Developer and which is assessed by the Authorised Officer before arrival of the goods :*

Provided *that if the goods arrive before a Bill of Export has been filed and assessed, the same shall be kept in an area designated for this purpose by the Specified Officer and shall be released to the Unit or*

Developer only after completion of the assessment of the Bill of Export;

(4) A copy of the document referred to in sub-rule (1) or copy of Bill of Export, as the case may be, with an endorsement by the authorised officer that goods have been admitted in full into the Special Economic Zone shall be treated as proof of export and a copy with such endorsement shall also be forwarded by the Unit or Developer to the Goods and Services Tax or Central Excise Officer having jurisdiction over the Domestic Tariff Area supplier within forty-five days failing which the Goods and Services Tax or Central Excise Officer, as the case may be, shall raise demand of tax or duty against the Domestic Tariff Area supplier;

*(5) * * **

(6) The Bill of Export shall be assessed in accordance with the instructions and procedures, including examination norms, laid down by the Department of Revenue as applicable to export goods :

Provided *that at the time of assessment, it shall be specifically examined whether the goods are required for the authorized operations by the Unit or Developer, with reference to the Letter of Approval or the list of goods approved by the Approval Committee for the Developer.*

(7) On arrival of the goods procured from the Domestic Tariff Area at the Special Economic Zone gate, the Authorized Officer shall examine the goods in respect of description, quantity, marks and other relevant particulars given in the documents referred to in sub-rule (1) of Rule 30, invoice, Bill of Export and packing list and also as per the examination norms laid down in respect of export goods in cases where the goods are being procured under claim of an export entitlement.

*(8) * * **

*(9) * * **

(10) Where the goods are to be procured by a Unit or Developer from a Domestic Tariff Area supplier who is not registered with the Central Excise authorities, or is a trader or merchant exporter, the procedure under sub-rule (1) and (2) above shall apply, mutatis mutandis, except that the goods shall be brought to the Special Economic Zone under the cover of an Invoice and the ARE-1 shall not be required.

(11) The Unit or Developer may also procure goods from Domestic Tariff Area without availing exemptions, drawbacks and any other such benefits or concessions on the basis of invoice or transport documents, issued by the supplier :

Provided *that such invoices or transport documents shall be endorsed to the effect that no exemptions, drawbacks and [any other such benefits or] concessions have been availed on the said supplies.*

(12) *Procedure for procurement from warehouse shall be as under : -*

- (a) where goods are to be procured from warehouse, a Unit or Developer shall file a Bill of Entry with the specified Officer;*
- (b) the Unit or Developer shall submit Bill of Entry assessed by the Authorized Officer to the Customs Officer in charge of the warehouse from where the Special Economic Zone Unit or Developer intends to procure the goods;*
- (c) the Customs Officer in charge of the warehouse shall allow clearance of the goods from the warehouse for supply to the Unit or Developer without payment of duty on the cover of ex-bond Shipping Bill and on the basis of Bill of Entry duly assessed by the Authorized Officer;*
- (d) where the re-warehousing certificate by way of endorsement by the Authorized Officer on the copy of ex-bond Shipping Bill is not received by the Customs Officer in charge of warehouse within forty-five days from the date of clearance of the goods from the warehouse, the Customs Officer in charge of the warehouse shall proceed to demand applicable duty from the supplier :*

Provided *that for procurement of goods from Nominated Agency located in Special Economic Zone, the procedure as specified by Specified Officer shall be followed and there shall be no requirement of assessment of Bill of Entry or transfer of the goods under the cover of ex-bond Shipping Bill.*

(13) *A Special Economic Zone Unit or Developer may also procure goods from international exhibitions held in India following the procedures under sub-rule (12).*

(14) *A Unit or Developer may also procure goods or services, without payment of duty from an Export Oriented Unit or Software Technology Park Unit or Bio-Technology Park Unit, by following procedures under sub-rule (12).*

(15) *A Unit or Developer may procure goods and services from another Unit located in the same or any other Special Economic Zone, subject to following conditions, namely :-*

- (i) the receiving Unit or Developer shall file Bill of Entry for home consumption with the Authorized Officer, in quintuplicate, giving description of the goods along with an invoice and packing list for assessment;*
- (ii) on the basis of such assessed Bill of Entry, the goods shall be allowed to be transferred to the receiving Unit or Developer under transshipment permit;*
- (iii) there shall be no requirement to file any additional documents or bond(s) for the purpose of transshipment of goods and the transshipment permission shall be stamped on the Bill of Entry itself;*
- (iv) the supplying Unit shall submit the re-warehousing certificate to the Specified Officer having jurisdiction over the supplying unit within forty five days, failing which the Specified Officer of*

the supplying Unit shall write to the Specified Officer having jurisdiction over the receiving Unit or Developer for demand of duty from the receiving Unit or Developer;

- (v) *where the supplying and receiving Units or Developer are located in the same Special Economic Zone, the provisions of sub-rules (i) to (iv) shall not apply and the movement of goods shall be allowed and such transactions shall be recorded in the regular books of accounts of the receiving Unit or Developer and the supplying Unit and no Bill of Entry shall be required to be filed.*

(16) Procurement of cut and polished diamonds and precious and semi precious stones from Domestic Tariff Area. — *A gem and jewellery Unit may procure cut and polished diamonds and precious and semi precious stones from the Domestic Tariff Area, as per the following procedure, namely :-*

- (i) *the parcel shall be brought into the Zone in a sealed condition by the authorized representative of the Domestic Tariff Area supplier or Customs House Agent, who shall present the invoice clearly marked original, duplicate and triplicate to the Authorized Officer at the gate;*
- (ii) *the Authorized Officer shall register the invoice at the gate of the Special Economic Zone and endorsing the registration number on the original and duplicate copies of the Invoice and the parcel shall be allowed to be taken into the premises of the Unit and such goods shall be separately accounted for by the Unit;*
- (iii) *the duplicate copy of the invoice with the endorsement of the Authorized officer shall be forwarded to the supplier in the Domestic Tariff Area for claiming Replenishment Licence from the Development Commissioner of the Special Economic Zone.*

77.12 Rule 34 of the SEZ Rules, 2006

RULE 34. Utilization of goods. — *The goods admitted into a Special Economic Zone shall be used by the Unit or the Developer only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption :*

Provided *that in case a Unit is unable to utilise the goods or services imported or procured from Domestic Tariff Area, it may, -*

- (i) *export the goods; or*
- (ii) *sell the same to other Unit or to an Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park or Bio-Technology Park, without payment of duty; or*
- (iii) *sell to an Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park or Bio-Technology Park -*
- (a) *on payment of Integrated Goods and Services Tax as applicable under section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017); and*

- (b) *without payment of duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and additional duty, if any, leviable thereon under sub-sections (1), (3) and (5) of section 3 of the said Act and such sale shall also be made without payment of integrated tax and compensation cess leviable thereon under sub-sections (7) and (9) of section 3 of the said Act as per notification issued by the Department of Revenue and such exemptions, as applicable;*
- (iv) *dispose of the same in the Domestic Tariff Area on payment of applicable duties or taxes on the basis of an import licence submitted by the Domestic Tariff Area buyer, wherever applicable.]*

77.13 Rule 35 of the SEZ Rules, 2006

RULE 35. Co-relation of import consignment with corresponding export consignment. — *The Unit shall account for the entire quantity of goods imported or procured duty free, by way of export, sales or supplies in Domestic Tariff Area or transfer to other Special Economic Zone Unit or Export Oriented Unit or Electronic Hardware Technology Park unit or Software Technology Park Unit or Bio-technology Park Unit or bonded warehouses and the balance held in stock :*

Provided *that at no point of time the Unit shall be required to co-relate every import consignment with its export or transfer to other Special Economic Zone Unit or Export Oriented Unit or Electronic Hardware Technology Park unit or Software Technology Park Unit or Bio-technology Park Unit or sales in Domestic Tariff Area or supply to bonded warehouses except in case of goods covered under proviso to clause (d) of sub-rule (4) of rule 18 and goods held as stock and the Unit may adopt 'First-in-First-Out' method and a consignment which has been received first, shall be deemed to have been utilized first.*

77.14 Rule 36 of the SEZ Rules, 2006

RULE 36. Filing of documents for admission and removal. — *All documents for admission of goods into and out of Special Economic Zone shall be filed before the Authorized Officer of Customs.*

77.15 Rule 47 of the SEZ Rules, 2006

RULE 47. Sales in Domestic Tariff Area. — (1) *A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or byproducts arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of Customs duties under section 30, subject to the following conditions, namely. -*

- (a) *Domestic Tariff Area sale under sub-rule (1), of goods manufactured by a Unit shall be on submission of import licence, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy :*

Provided *that goods imported or procured from the Domestic Tariff Area and sold as such without being subjected to any*

manufacturing process shall be subject to the provisions of the Foreign Trade Policy as applicable to import of similar goods into India.

(b) Domestic Tariff Area sale under sub-rule (1) of rejects or scrap or waste or remnants arising during the manufacturing process or in connection there-with by the Unit shall not be subject to the provisions of the Import Trade Control (Harmonized System) of Classification of Export and Import Items :

Provided that the Central Government may notify restrictions, as it deems fit on all or any class of such goods mentioned under this clause.

(2) Scrap or dust or sweeping of gold or silver or platinum may be sent to Government of India Mint or Private Mint from a Unit and returned in standard bars in accordance with the procedure specified by Customs authorities or may be sold in the Domestic Tariff Area on payment of duty on the gold or silver or platinum content in the said scrap :

Provided that the value of samples of gold or silver or platinum sweepings or scrap or dust taken at the time of clearance and sent to the Government Mint or Private Mint for assaying and assessment shall be finalized on the basis of reports received from the Government Mint or Private Mint, as the case may be.

(3) Surplus power generated in a Special Economic Zone's Developer's Power Plant in the SEZ or Unit's captive power plant or diesel generating set may be transferred to Domestic Tariff Area on payment of duty on consumables and raw materials used for generation of power subject to the following conditions, namely :-

(a) proposal for sale of surplus power received by the Development Commissioner shall be examined in consultation with the State Electricity Board, wherever considered necessary :

Provided that consultation with State Electricity Board shall not be required for sale of power within the same Special Economic Zone;

(b) norms for production of a unit of power shall be approved by the Approval Committee;

(c) sale of surplus power to other Unit or Developer in the same or other Special Economic Zone or to Export Oriented Unit or to Electronic Hardware Technology Park Unit or to Software Technology Park Unit or Bio-technology Park Unit, shall be without payment of duty;

(d) for sale of surplus power in Domestic Tariff Area, the Unit shall obtain permission from the Specified Officer and the State Government authority concerned;

(e) duty on sale of surplus power to the Domestic Tariff Area shall be as provided for in this rule.

(4) Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder.

(5) Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to authorised operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, the Central Excise Act, 1944, and the Finance Act, 1994 and the rules made thereunder or the notifications issued thereunder.

77.16 As per Rule 48 of the SEZ Rules, 2006

RULE 48. Procedure for Sale in Domestic Tariff Area. — (1) Domestic Tariff Area buyer shall file Bill of Entry for home consumption giving therein complete description of the goods and/or services namely, make and model number and serial number and specification along with invoice and packing list with the Authorised Officers :

Provided that the Bill of Entry for home consumption may also be filed by a Unit on the basis of authorization from a Domestic Tariff Area buyer.

(2) Valuation of the goods and/or services cleared into Domestic Tariff Area shall be determined in accordance with provisions of Customs Act and rules made thereunder as applicable to goods when imported into India :

(3) Where goods procured from Domestic Tariff Area by a Unit are supplied back to the Domestic Tariff Area, as it is or without substantial processing, such goods shall be treated as re-imported goods and shall be subject to such procedure and conditions as applicable in the case of normal re-import of goods from outside India :

Provided that in the case where such goods are supplied back to the Domestic Tariff Area, as it is, and where the import duty on such goods is 'Nil" and while procurement of such goods no export benefits were allowed against such goods, the Unit may be allowed to supply back such goods to Domestic Tariff Area on the basis of invoice only and filing of Bill of Entry in such cases shall not be required.

78. Liability under the provisions of the SEZ Act

- A. Special Economic Zone, Sachin (SEZ), Surat Authorities, vide their letter dated 23.09.2022 has provided year – wise total value of Imports by M/s Europea Makeover Jewels Pvt. Ltd. and M/s Maahi Jewellery Exim Pvt Ltd. and total duty, that has been forgone on these imports of Diamond and Precious Stone. Year wise summary of duty forgone is as under:-

M/S EUROPEA MAKEOVER JEWELS PVT. LTD. SEZ SURAT		
DUTY CALCULATION SUMMARY		
YEAR	ASSESSABLE VALUE FOR THE ITEM IN INR	DUTY FORGONE / PAID AMOUNT

2019-20	3823459842	325782675
2020-21	7857972962	669548409
2021-22	11637340174	954775750
2022-23 (Upto Aug, 2022)	2995893988	172675840
Total	26314666966	2122782674

M/S MAAHI JEWELLERY EXIM PVT LTD., SEZ SURAT		
DUTY CALCULATION SUMMARY		
YEAR	ASSESSABLE VALUE FOR THE ITEM IN INR	DUTY FORGONE / PAID AMOUNT
2020-21	5966112656	514504459
2021-22	10019796874	805732865
2022-23 (Upto Aug, 2022)	2940109797	169460578
Total	18926019327	1489697902

- B. As per data provided by the SEZ, M/s Europea (SEZ Unit) have imported Diamond / Precious Stone amounting to Rs. 2631,46,66,966/- (Rupees Two Thousand Six Hundred Thirty One Crore, Forty Six Lakh, Sixty Six Thousand, Nine Hundred Sixty Six Only) during the period of 2019-20 to 2022-23 wherein total duty (Basic Customs Duty + IGST + Cess) amounting to Rs. 212,27,82,674/- (Rupees Two Hundred Twelve Crore, Twenty Seven Lakh, Eighty Two Thousand, Six Hundred Seventy Four only) have been foregone. They have diverted these imported Diamonds /Precious stone in the local market and from local market they purchased inferior quality Diamonds / Precious Stones; that these inferior quality Diamonds / Precious Stones are studded in Silver Jewellery at their SEZ unit and thereafter, exported. As such they have defrauded the exchequer to tunes of total duty saved in such imports in SEZ Units i.e. Rs. 212,27,82,674/-. It appears that M/s Europea (SEZ Unit) has violated the provisions of the SEZ Act, 2005 and SEZ Rules, 2006.
- C. As per the data provided by the SEZ, M/s Maahi (SEZ Unit) have imported Diamond / Precious Stone amounting to Rs. 1892,60,19,327/-(Rupees One Thousand Eight Hundred Ninety Two Crore, Sixty Lakh, Nineteen Thousand, Three Hundred Twenty Seven Only) during the period from 2020-21 to 2022-23 wherein total duty (Basic Customs Duty + IGST + Cess) amounting to Rs. 148,96,97,902/-(Rupees One Hundred Forty Eight Crore, Ninety Six Lakh, Ninety Seven Thousand, Nine Hundred Two only) has been foregone. They have diverted these imported Diamonds / Precious Stone in the local market and from local market they purchased inferior quality Diamonds / Precious Stones; that these inferior quality Diamonds / Precious Stones are studded in Silver Jewellery at their SEZ unit and thereafter, exported. As such, they have defrauded the exchequer to the tune of total duty saved in

such imports in SEZ Units i.e. Rs. 148,96,97,902/-. It appears that M/s Maahi (SEZ Unit) have violated the provisions of the SEZ Act, 2005 and SEZ Rules, 2006.

- D. Therefore, M/s Europea Makeover Jewels Pvt. Ltd. and M/s Maahi Jewellery Exim Pvt Ltd. are liable to pay the entire amount of duty saved (Customs Duty, IGST and Cess) at the applicable rate in terms of provisions of Section 30 of the SEZ Act, 2005 and Rule 25 of the SEZ Rules, 2006, along with applicable interest under Section 28AA of the Customs Act, 1962. They are also liable for penalty under the SEZ Act, 2005, SEZ Rules, 2006 as well as Customs Act, 1962.

79. Provisions of the Customs Act, 1962

- A. In terms of Section 28(4) of the Customs Act, 1962 -

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

- (a) collusion; or*
- (b) any wilful mis-statement; or*
- (c) suppression of facts,*

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

- B. In terms of sub-section (26) of Section 2 of the Customs Act, 1962, "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer. Further, sub-section (3A) of Section 2 of the Customs Act, 1962 defines "beneficial owner" as any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported.

- C. In terms of Section 28AA of the Customs Act, 1962 -

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-Section (2), whether such payment is made voluntarily or after determination of the duty under that Section.

(2) Interest, at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of Section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

- D. In terms of Section 111.- Confiscation of improperly imported goods, etc. -

The following goods brought from a place outside India shall be liable to confiscation:

(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;

(b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;

(c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;

(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;

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest, import manifest or import report which are not so mentioned;

(g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;

(h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;

(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;

(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;

(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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

(n) any dutiable or prohibited goods transitted with or without transshipment or attempted to be so transitted in contravention of the provisions of Chapter VIII;

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

(p) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.

E. In terms of Section 114A of the Customs Act, 1962 – Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-Section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.

F. In terms of Section 114AA of the Customs Act, 1962 – If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the

transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

- G. In terms of Section 111(m) of the Customs Act, 1962 - 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 transshipment, with the declaration for transshipment referred to in the proviso to sub-Section (1) of Section 54 shall be liable to confiscation.
- H. In terms of Section 111(j) of the Customs Act, 1962 - 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, shall be liable to confiscation.
- I. In terms of Section 112(a) of the Customs Act, 1962 - Any person, 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 shall be liable to penalty.
- J. In terms of 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, shall be liable to penalty.
- K. In terms of Section 113 - Confiscation of goods attempted to be improperly exported, etc. -

The following export goods shall be liable to confiscation :-

(a) any goods attempted to be exported by sea or air from any place other than a customs port or a customs airport appointed for the loading of such goods;

(b) any goods attempted to be exported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the export of such goods;

(c) any goods brought near the land frontier or the coast of India or near any bay, gulf, creek or tidal river for the purpose of being exported from a place other than a land customs station or a customs port appointed for the loading of such goods;

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(e) any goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;

(f) any goods which are loaded or attempted to be loaded in contravention of the provisions of section 33 or section 34;

(g) any goods loaded or attempted to be loaded on any conveyance, or water-borne, or attempted to be water-borne for being loaded on any vessel, the eventual destination of which is a place outside India, without the permission of the proper officer;

(h) any 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;

(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;

(ia) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75;

(j) any goods on which import duty has not been paid and which are entered for exportation under a claim for drawback under section 74;

(ja) any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this Act or any other law for the time being in force;

(k) any goods cleared for exportation which are not loaded for exportation on account of any wilful act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer;

(l) any specified goods in relation to which any provisions of Chapter IVB or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.

- L. In terms of Section 132 of the Customs Act, 1962 - Whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.
- M. As per Section 135 of the Customs Act, 1962- Evasion of duty or prohibitions-

(1) Without prejudice to any action that may be taken under this Act, if any person-

(a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or

(b) 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 or Section 113, as the case may be; or

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under Section 113; or

(d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods; or

(e) obtains an instrument from any authority by fraud, collusion, wilful misstatement or suppression of facts and such instrument has been utilised by such person or any other person,

he shall be punishable, -

(i) in the case of an offence relating to, -

(A) any goods the market price of which exceeds one crore of rupees; or

(B) the evasion or attempted evasion of duty exceeding fifty lakh of rupees; or

(C) such categories of prohibited goods as the Central Government may, by notification in the Official Gazette, specify; or

(D) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause (d), if the amount of drawback or exemption from duty exceeds fifty lakh of rupees; or with imprisonment for a term which may extend to seven years and with fine:

(E) obtaining an instrument from any authority by fraud, collusion, willful misstatement or suppression of facts and such instrument has been utilised by any person, where the duty relatable to utilisation of the instrument exceeds fifty lakh rupees.

80. Roles of the Individuals / Firms -

A. Role of Shri Om Prakash Vanjani, Director of M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. -

- Opened a company in early 2021 in the name of M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. in 3 States i.e. Rajasthan, Andhra Pradesh & Orrisa, for non physical import of services like Graphics & Animation.
- During the period from March, 2021 to September, 2021, his company had remitted Rs. 334,79,04,720/- to their overseas suppliers located at Hong Kong and UAE in the name of obtaining the services (non-physical Import) through various Bank accounts.
- As discussed in foregoing paras, it has been revealed that the money was remitted by his company in lieu of payment for illegal import of Gold, Diamonds and Precious Stones after rotating in various bank accounts. Through his firm, M/s. Europea Makeour Jewels Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd. also sent money fraudulently to their own units located in Hong Kong.
- From the investigation conducted so far, it is evident that total amount of more than Rs. 400 Crore has been remitted by M/s Belstar Techno Solutions (OPC) Private Limited & M/s Visual Birds Technology, Jaipur against the import of Gold, Diamond & other Precious Metals as per the data verified till date.
- During search at Bijaynagar (Ajmer), Shri Om Prakash Vanjani, Director of M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. was summoned and his statements dated 24.11.2021, 25.11.2021 and 26.11.2021 were recorded, wherein, he revealed that M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. was opened to remit the funds to Hong Kong and UAE against the illicit import of Gold, Diamonds and Precious Stones. Shri Om Prakash Vanjani was arrested on 26.11.2021 and presented before the ACJM Court (Economic Offence) Jaipur and ordered for judicial custody.

B. Role of Shri Ravindra Kumar, CA -

- Statements dated 24.11.2021 and 25.11.2021 of Shri Ravindra Kumar, CA, were recorded, wherein he admitted of issuing 310 numbers of Form-15CB Certificates valued at Rs. 348.70 Crore for M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology, facilitating the foreign remittance in lieu of smuggling of Gold, without verifying the relevant documents / facts, whether the services have been received or not.
- Form-15CB Certificate is required to be issued in case of non physical import (import of service) as per RBI Guidelines, for confirmation of the receipt of service by the importer company / firm.
- In his statement, he accepted that he was aware that actually no services were received and the amount was being remitted for smuggling of Gold.

- Shri Ravindra Kumar, CA was arrested on 26.11.2021 and presented before the ACJM Court (Economic Offence) Jaipur and ordered for judicial custody.

C. Role of Shri Vikram Singh Kachchawa -

- Shri Vikram Singh Kachchawa was operating around 200 numbers of bank accounts of various firms from Udaipur (Rajasthan). Therefore, searches were conducted on 13/14.01.2022 at Hotel Vatika Inn, Gulab Bag Road, Old City Brahmpuri, Udaipur, Rajasthan and other locations. At Hotel Vatika Inn, Udaipur, during search, various incriminating documents / records, 9 Laptops, 51 Mobile Phones, 211 SIM cards, number of bank cheque books / passbooks and Debit Cards of various firms, Hard Disc, Name plates of various firms were recovered.
- As discussed in the foregoing paras that during investigation, Shri Vikram Singh Kachchawa, in his statements dated 14.01.2022 and 15.01.2022 admitted that, he arranges money through hawala, which is transferred overseas for making payment for illegal Gold and Diamond, imported from Hong Kong and Dubai (UAE), bypassing the legal channel; that he has opened about 200 bank accounts in the name of various companies and individuals. The amount to be sent abroad, after rotating in various bank accounts, was transferred to the bank accounts of M/s. Belstar Techno Solutions (OPC) Pvt. Ltd., M/s Visual Birds Technology and other firms and thereafter remitted overseas. In order to open the bank accounts, PAN Card and Aadhar Card are obtained from those persons, who are either known to him or are in need of money; that from the companies opened by him and from the companies purchased by him from market for rotating money, the total transaction done by him through internet banking is to the tune of Rs. 2000 - 2500 Crore for remittance overseas in the name of import of service. During investigation, invoices relating to supply of about 350 Kgs. of Gold were recovered from the Laptop of Shri Vikram Singh Kachchawa.
- Invoices of Sale of Diamond / Precious Stones by M/s Europea Makeover Jewel Pvt. Ltd. were recovered from his premises. These Invoices were showing sale of Diamond (Rough and Lab Grown) by M/s Europea Makeover Jewel Pvt. Ltd. to the non-existing firms M/s Subhang Enterprises Private Limited, Mumbai and M/s Swastik Impex, Mumbai.
- From the investigation conducted, it is revealed that Shri Vikram Singh Kachchawa, Director of M/s Dilwara Exim Pvt. Ltd., M/s Perfect Square Multitrade Pvt. Ltd. and M/s Shanti Nath Trading Pvt. Ltd. was consciously involved in transferring funds in various bank accounts which was ultimately remitted overseas for illegal import of Gold / Diamond. Shri Vikram Singh Kachchawa was arrested on 15.01.2021.

D. Role of Shri Kamlesh Nagda-

- During investigation, statement of Shri Kamlesh Nagda was recorded under section 108 of the Customs Act, 1962 on 15.01.2022, wherein, he stated that he opened a firm in the name of M/s. Dilwara Exim Pvt.

Ltd. in which he was director. He further admitted that he also opened two firms in the name of M/s. Perfect Square Multimedia Pvt Ltd. and M/s Shanti Nath Trading; that he has opened several bank accounts with different banks in his own name; that he opened the said bank accounts for the transactions of funds in the accounts of various firms for sending money to the foreign countries for illegal import of Gold / Diamond.

- On scrutiny of various bank accounts of the firms, which have transferred the funds to bank account of M/s. Belstar Techno solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology, it was revealed that M/s. Shanti Nath Trading Pvt. Ltd., in which Shri Kamlesh Nagda is one of the directors, has transferred an amount of Rs.12 (Twelve) Crore (approx.) as detailed below:-

Detail of firms in which amount was transferred by M/s Shantinath Trading Pvt Ltd. Mumbai			
Name of the firm which transferred amount in the accounts of M/s. Belstar Techno solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology	Bank account No	Name of Bank	Amount
Shree Ganesh Impex	206378925218	Equitas small Finance Bank, Ghatkopar Mumbai	1,18,30,000
Spenta Trading	200001318203	Equitas small Finance Bank, Ghatkopar Mumbai	1,97,75,400
Swastik Impex	200001124484	Equitas small Finance Bank, Ghatkopar Mumbai	5,45,00,000
Shreeji Impex	200001294890	Equitas small Finance Bank, Ghatkopar Mumbai	3,37,40,000
		Total	119845400

Further, it was also revealed during the investigation, that Shri Kamlesh Nagda was also operating several Personal bank accounts in his own name and made huge transactions as detailed below:-

Personal Bank accounts held by Kamlesh Nagda			
Bank name	Account no.	Total Debit	Total Credit
Bandhan bank	52200033505118	23694631	23698146

Udaipur			
Equitas small Finance bank, Udaipur	109680206154	28120906	28120922
ICICI Bank Udaipur	4505011870	47840426	47845464
IDFC Bank Udaipur	10060207692	218532	218538
		99874495	99883070

- From the investigation conducted, it is revealed that Shri Kamlesh Nagda, Director of M/s Dilwara Exim Pvt. Ltd., M/s Perfect Square Multitrade Pvt. Ltd. and M/s Shanti Nath Trading Pvt. Ltd., alongwith Shri Vikram Singh Kachchawa, was consciously involved in transferring funds in various bank accounts, which were ultimately remitted overseas for illegal import of Gold / Diamond. Shri Kamlesh Nagda was arrested on 15.01.2022.

E. Role of Shri Deepak Kumar -

- As discussed in the foregoing paras, searches were conducted on 29.04.2022 at M/s. Shubhang Trading Company, MB 9, First Floor, Flox Chamber, TATA Road No. 1, Opera House, Mumbai and M/s. Shubhang Enterprises Private Limited, 136, 1st Floor, Amrut Diamond House, TATA Road No. 1, Opera House, Mumbai. Both the units / firms were not found working at the given addresses.
- Statements of Shri Deepak Kumar were recorded on 05.05.2022 and 07.05.2022, wherein he admitted that he had merely issued bills without supply from both his firms / company. Bills / Invoices were issued to M/s. Maxis Bullion, Mumbai and M/s. Shilpit Enterprises, Mumbai. Shri Deepak Kumar admitted that M/s. Shubhang Enterprises Private Limited had issued bills for the said Gold smuggled by Shri Ram Raj Choudhary, Shri Vikram Singh Kachchawa, Shri Navratan Jain and Shri Tonu Bhai; that for selling the smuggled GOLD BAR through his firm, he used to get 0.50% of the bill amount in cash; that the amount was deposited against smuggling of Gold and Diamond which was rotated in other accounts and were ultimately remitted abroad.
- On verification of GSTR-1 of M/s Shubhang Trading Company and Shubhang Enterprises Private Limited, Mumbai, it is revealed that invoices for supply of Diamond and Gold amounting to Rs. 167 Crore (approx.) for the period from April, 2018 to till date have been issued by both these units / firms. It was also noticed that M/s. Europea (DTA Unit) and M/s. Maahi (DTA Unit) have issued bills / invoices to M/s. Shubhang Enterprises Private Limited.

F. Role of Shri Navratan Singh Jain -

- As discussed in the foregoing paras that during investigation, Shri Navratan Singh Jain in his statement recorded under Sections 108 of the Customs Act, 1962, has admitted that he has been involved in smuggling of Gold / Diamond alongwith Shri Surendra Mali *alias* Shankar Mali.

- Shri Navratan Singh Jain admitted that he opened the Companies / firms namely M/s. Gehna Trading LLP and M/s. DNB Multitrade (I) Pvt Ltd. using the documents of Shri Ashok Kumar Jain and Shri Pankaj Paldecha; that, these companies are being operated by himself; that, these companies are engaged in issuing and receiving bills (mere paper transactions, without actual supply); that they have issued bills amounting to Rs. 900 Crore approx. for supply of Diamond.
- Shri Vimal Nahar in his statement dated 21.02.2023, 22.02.2023 and 23.02.2023 stated that the transactions made in his firm M/s. Swastik Impex have only been done by Shri Navratan Singh Jain and Shri Vikram Singh Kachchawa. Further, he stated that both of them were engaged in smuggling of Gold and evasion of tax by issuing fake invoices. Further, he stated that they (Shri Kachchawa and Shri Navratan) used to procure bills from any firm / company without actual receipt of goods whereas goods were actually procured from other sources which were subsequently sold on the strength of Invoices issued in the name of his firm.
- In view of the above, it is evident that Shri Navratan Singh Jain had been consciously involved in smuggling of Gold and supply of illegally imported / smuggled Gold and Diamonds. It is evident that he was also involved in creating fake firms for supplying the smuggled Diamonds & smuggled Gold in local market by issuing bogus / fake Bills. The bogus / fake firms / companies and bank accounts created / opened and operated by him have been opened and created with sole intent to defraud the exchequer by issuing bogus / fake bills through these firms which are non-existent / non-functional and working only on paper.

G. Role of Shri Vimal Nahar -

- As discussed in the foregoing paras, statements of Shri Vimal Nahar were recorded under Section 108 of the Customs Act, 1962 on 21.02.2023, 22.02.2023 and 23.02.2023 wherein, he has, *inter-alia* stated that his sole proprietorship firm M/s. Swastik Impex [GST No. 27APEPN7660J1ZG] is engaged in trading activity of Gold Bullion and Diamond and has admitted / confessed that he issued fake bills / invoices from his firm, for making the supply of smuggled Gold and Diamonds appear legitimate. In return, the payment used to be credited in the bank account of his firm, which, instead of being transferred in the bank account of that firm (from which the bogus bill showing purchase of Gold Bullion / Diamonds was obtained), was actually transferred in another firm's bank account with which his firm M/s Swastik Impex had not made any purchases. Through his firm, he has shown fake purchase from M/s Europea Makeover Jewel Pvt. Ltd. and he has transferred funds into the bank accounts of M/s Spenta Trading who has ultimately transferred the funds into the account of M/s Visual Birds Technology who has remitted the said fund to the Hong Kong based firms against import of services which never existed in reality.

- He has facilitated the supply of illegally imported and diverted Diamond and Precious Stone by Shri Suresh Ratanlal Jagetia from SEZ units by creating a fake firm with the assistance of Shri Navratan Singh Jain and Vikram Singh Kachchawa.

H. Role of Shri Suresh Ratanlal Jagetia -

- As discussed in the foregoing paras, during the search at the premises of M/s. Europea (SEZ Unit) and M/s Maahi (SEZ Unit), stock of diamond and precious stones (Ruby) was physically verified. Such Diamond and Precious Stones appeared of inferior quality, therefore, the valuation of the said stock was got done from a Government Approved Valuer at the premises itself. As per the valuation report dated 26.05.2022, a huge difference was found between the declared value and value assessed by the Government Approved Valuer, therefore, the goods were seized.
- Shri Suresh Jagetia, during his statement recorded on 28.05.2022, 30.05.2022 and 31.05.2022, admitted that apart from managing his unit M/s. Europea Makeour Jewel Pvt. Ltd, he was also operating M/s Maahi Jewellery Exim Pvt. Ltd., SEZ Unit alongwith Shri Ram Raj Choudhary; that, both the SEZ units have diverted the superior quality imported Diamonds / Precious Stones (Ruby) into the domestic market; that they have arranged inferior quality Diamonds / Precious Stones (Ruby) from the domestic market as replacement and exported the same after studding in the silver rings and pendants.
- Shri Suresh Jagetia further stated that the money received against supply / sale of the diverted imported Diamonds / Precious Stones (Ruby) was obtained in cash through angadias and such cash was given to certain persons operating fake firms for transferring money into the bank accounts of the DTA units of the firms M/s. Europea Makeour Jewel Pvt. Ltd. and M/s Maahi Jewellery Exim Pvt. Ltd.; that common bank accounts of the SEZ units and DTA units have been opened with the motive, so that the SEZ units may utilize the amount in the common bank accounts for their import payments; that foreign remittances for exports are either not received or received in negligible amount; that the complete sale proceeds in lieu of the diverted imported Diamonds / Precious Stones (Ruby) are received by the DTA units in the common bank accounts but the purchase bills of the DTA units of the said two firms are merely the book adjustments and no amount is paid by the DTA units for such purchases; that the firms which are receiving the exported inferior quality diamonds / Precious Stones studded silver jewellery overseas are opened by his known persons.
- Shri Suresh Jagetia stated that he obtained services of Shri Vikram Singh Kachchawa, an expert in operating fake firms for sending money abroad; that he gave cash around Rs. 80-90 Crore to Shri Vikram Singh Kachchawa, who, after rotating money through RTGS and Cheques in the bank accounts of his several fake firms, ultimately sent the money abroad through M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology.

- Thus, M/s. Europea Makeour Jewel Pvt. Ltd. and M/s Maahi Jewellery Exim Pvt. Ltd., both the SEZ Units appear to have imported and diverted Diamond and Precious Stones valued at **Rs. 4524,06,86,293/-** from SEZ Units to DTA, during the period from 2019-20 to May, 2022. Thus, both units have violated the provisions of the Customs Act, 1962 and the provisions of the SEZ Act, 2005.
- It has been found that M/s. Europea (DTA Unit) during the period August, 2020 to January, 2021, without supply of Diamonds and Precious Stones, have issued bills / invoices valued at Rs. 20.42 Crore to M/s. Shubhang Enterprises Pvt. Ltd, Mumbai. M/s. Maahi Jewellery Exim Pvt. Ltd., Surat (DTA Unit out side SEZ Surat) also, without supply of Diamonds and Precious Stones, have issued bills / invoices valued at Rs. 5.18 Crore during September, 2020 to M/s. Shubhang Enterprises Pvt. Ltd., Mumbai. It was also found that M/s. Europea (DTA Unit), without supply of Diamonds and Precious Stones have issued bills / invoices valued at Rs. 16.91 Crore to M/s. Swastik Impex, Mumbai.
- Shri Suresh Ratanlal Jagetia conspired with Shri Deepak Kumar (Director, M/s Subhang Enterprises, Mumbai), enabling Shri Deepak Kumar to show fake purchase of Diamonds and Precious Stones valued at Rs. 20.07 Crore and Rs. 5.18 Crore from M/s Europea Makeour Jewels Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd respectively. Similarly, Shri Suresh Ratanlal Jagetia conspired with Shri Vimal Nahar (Prop. M/s Swastik Impex), enabling Shri Vimal Nahar to show fake purchase of Diamonds and Precious Stones valued at Rs. 16.91 Crore from M/s Europea Makeour Jewels Pvt. Ltd. On the basis of these fake purchases of Diamond and Precious Stones, he could issue sale bill of that quantity of Diamonds and Precious Stones to the customers to whom that much quantity of smuggled Diamonds and Precious Stones was supplied by Shri Vikram Singh Kachchawa and his other associates. Thus, Shri Suresh Ratanlal Jagetia enabled Shri Deepak Kumar, Shri Vimal Nahar and Shri Vikram Singh Kachchawa and his other associates to remove, sell the Smuggled Diamonds and Precious Stones in violation of the provisions of Section 135 of the Customs Act, 1962.
- In light of above discussion, it is evident that a racket / gang was formed which adopted a novel *modus operandi* under which several bogus / fake companies / firms were created and several bank accounts were opened to fraudulently remit amounts of high magnitude to Hong Kong and UAE-based firms by showing the same to be payments against import of services (which were never actually imported and were mere paper transactions without any actual supply of service) with the ulterior motive of using the fraudulent remittances for funding illegal imports of Gold, Diamonds and other Precious Stones / Metals.
- Shri Suresh Ratanlal Jagetia, in collusion with Shri Navratan Singh Jain, Shri Nitesh Kumar, Shri Om Prakash Vanjani, Shri Ravindra Kumar, CA, Shri Vikram Singh Kachchawa, Shri Surendra Mali, Shri Rajendra Jangid Shri Kamlesh Nagda, Shri Deepak Kumar and Shri Vimal Nahar, has been instrumental in fraudulently sending

remittances of huge amounts to their own firms established in Hong Kong, by showing the same to be payments against import of services (which were never actually imported and were mere paper transactions without any actual supply of service) with the ulterior motive of using the fraudulent remittances for funding illegally diverted Diamonds and other Precious Stones / Metals which had been imported through SEZ units.

I. Role of Shri Ram Raj Choudhary –

- As discussed in the foregoing paras, Shri Kailash Choudhary stated that he has no say in the Sale and Purchase of his company; that he is just a Dummy Director of his firm, who is paid Rs. 50,000/- per month on the direction of Shri Suresh Jagetia (Director of M/s Europea Jewel Pvt Ltd) and Shri Ram Raj Choudhary (other Director of M/s Maahi Jewellery Exim Private Limited); that he has no idea whether the firm's DTA unit is working or not; that for all the irregularities in his company, Shri Suresh Jagetia and Shri Ram Raj Choudhary are responsible.
- During his statement dated 29.05.2022, Shri Kailash Choudhary stated that although he has signed the Rent Agreement for its DTA unit, whose address was Office No 104, RT Apartment Co-op Housing Society, Dalgiyya Street, Mahidharpura, Surat, but the said unit was only operative on paper, whereas there was no actual working in the said DTA unit; that the actual delivery of Cut & Polished Diamonds and Stones imported by his firm was taken by him sometimes along with Shri Deepak or sometime with Shri Vivek from the Strong-Room of SEZ, however, every time while taking the delivery from Strong-Room either Shri Deepak or Shri Vivek used to sign on the Register; that after taking the delivery of the imported Diamonds or Precious Stones, **the said parcel was given to Shri Suresh Jagetia (Director of M/s Europea Jewel Pvt Ltd) or Shri Ram Raj Choudhary (other Director of M/s Maahi Jewellery Exim Private Limited) as directed by them and in return, every time they used to give the other parcel, which at first sight always looked of inferior quality; that, thereafter the replaced parcel of inferior quality was taken to the manufacturing process of his SEZ unit and then studded jewellery was made out of it and the same was exported;** that being dummy director of the firm, he was directed by Shri Suresh Jagetia and Shri Ram Raj Choudhary to do above said irregularities and in return, he was paid Rs. 50,000/- per month as salary; that other than that, he has no role and no say in the Company.
- Shri Suresh Ratanlal Jagetia, during his statement dated 28.05.2022 was asked about statement dated 26.5.2022 of Shri Kailash Choudhary, wherein Shri Suresh Jagetia stated that the whole work of M/s. Maahi (SEZ Unit) was looked after by him (Shri Suresh Ratanlal Jagetia) and Shri Ram Raj Choudhary, another director of M/s. Maahi Jewellery Exim Pvt. Ltd., Shri Suresh Ratanlal Jagetia stated that M/s. Maahi Jewellery Exim Pvt. Ltd was opened by him (Suresh Ratanlal Jagetia) and the Import and Export work and funding of the unit was also looked after by him (Suresh Ratanlal Jagetia); that the work of

DTA unit of M/s. Maahi Jewellery Exim Pvt. Ltd. was looked after by Shri Ram Raj Choudhary

- Shri Ram Raj Choudhary, in collusion with Shri Suresh Ratanlal Jagetia, has been instrumental in fraudulently sending remittances of huge amounts to their own firms established in Hong Kong by showing the same to be payments against import of services (which were never actually imported and were mere paper transactions without any actual supply of service) with the ulterior motive of using the fraudulent remittances for funding illegally diverted Diamonds and other Precious Stones / Metals which had been imported through SEZ units.
- Various summons dated 03.06.2022, 21.06.2022, 01.07.2022, 20.07.2022, 09.11.2022, 14.12.2022, 10.01.2023 and 01.03.2023 were issued to Shri Ram Raj Choudhary under section 108 of the Customs Act, 1962 however, he never appeared for tendering statement.

J. Role of Shri Nitesh Kumar-

- As discussed in the foregoing paras, Shri Nitesh Kumar, Proprietor of M/s Visual Birds Technology, is director in many other firms too, and these firms are also interlinked in this maze / layering of firms. These are M/s Sortex Logistics Private Ltd., M/s. Alentraa Multitrading Pvt. Ltd. (GSTIN.-27AARCA8072C1ZH) address at M-19, Floor-MEZ, Pearl Plaza, Tata Road No. 2, Roxy Cinema, Opera House, Girgaon, Mumbai and M/s. Centercore Multitrading Pvt. Ltd. (GSTIN 27AAHCC9690C1ZF), address - M-19, Floor-MEZ, Pearl Plaza, Tata Road No. 2, Roxy Cinema, Opera House, Girgaon, Mumbai. Both these firms i.e. M/s. Alentraa Multitrading Pvt. Ltd. and M/s. Centercore Multitrading Pvt. Ltd. are registered at the same address, and as per GSTN record, are shown to be engaged in business of Gold and Diamond. It was also observed that one more firm M/s Morris Tradelink (Prop. Magna Ram Jat) is also registered on the same address as M/s. Alentraa Multitrading Pvt. Ltd. and M/s. Centercore Multitrading Pvt. Ltd. Shri Magna Ram Jat (M/s Morris Tradelink) is registered for supply of Limestone, Portland Cement, Refractory Cement, Iron Bars and Rods. Search was conducted at the said address i.e. at M-19, Floor-MEZ, Pearl Plaza, Tata Road No. 2, Roxy Cinema, Opera House, Girgaon, Mumbai on 24.11.2021 and no firm was found working on the said address.
- He has clearly facilitated the remittance to the Hong Kong based firms against import of services, said import never took place and the money was actually remitted against illegal import of Diamond/Precious Stones.
- Various summons were issued to Shri Nitesh Kumar under section 108 of the Customs Act, 1962, however, he never appeared for tendering statement. Complaint under section 190 was filed against him with the Metropolitan Magistrate No. 11, Jaipur-First, Jaipur for non compliance of summon.

K. Roles of Shri Surendra Mali alias Shankar Mali and Shri Rajendra Jangid –

- As discussed in the foregoing paras, Shri Om Prakash Vanjani, *inter alia*, stated that Shri Surendra Mali, resident of Nadi Mohalla, Bijaynagar, is their head and second to Shri Surendra Mali was Shri Rajendra Jangid, who is resident of Rajeev Colony (Kailash Tailors), near Vishwakarma Farm House, Bijaynagar and he has been working in Mumbai for last 5 years.
- Shri Om Prakash Vanjani further stated that Shri Surendra Mali looked after the work of unit of M/s Belstar Techno Solutions (OPC) Pvt. Ltd. situated at Visakhapatnam and Shri Rajendra Jangid looked after the work of unit of M/s Belstar Techno Solutions (OPC) Pvt. Ltd. situated at Bhubaneswar and the profit earned from the so called business was distributed equally among Shri Surendra Mali and Shri Rajendra Jangid.
- Statements of Shri Narendra Kumar Mali, Resident of Nadi Mohalla, Ice Factory, Bijaynagar, Ajmer, were also recorded under Section 108 of the Customs Act, 1962. He, *inter-alia* stated that Shri Surendra Mali sent him to Orissa for work and after that he came to Visakhapatnam, where Shri Surendra Mali also used to visit for work related to M/s Belstar Techno Solutions (OPC) Pvt. Ltd.
- Shri Surendra Mali and Shri Rajendra Jangid have played active part in creation and operation of M/s Belstar Techno Solutions (OPC) Pvt. Ltd. at Jaipur, Vishakhapatnam and Bhubaneswar and M/s Visual Bird Technology, Jaipur.
- Various summons were issued to Shri Surendra Mali *alias* Shankar Mali and Rajendra Jangid under section 108 of the Customs Act, 1962, however, they never appeared for tendering statement. Complaint under section 190 were filed against them with the Metropolitan Magistrate No. 11, Jaipur-first, Jaipur for non compliance of summon.

81. Liability under the provisions of the Customs Act, 1962 -

81.1 It appears that M/s. Europea (SEZ Unit) and M/s Maahi (SEZ Unit) have evaded the applicable Customs duties payable on the imported Diamond / Precious Stones as well as the applicable IGST and Cess on the said Customs Duty. They imported these Diamond / Precious Stones duty free at the SEZ unit and cleared these goods to DTA, without paying any duty thereon. This *modus operandi* of misuse of SEZ scheme / provisions has led to **evasion of a total duty of Rs. 212,27,82,674/- on total diverted goods amounting to Rs. 2631,46,66,966/- by M/s. Europea (SEZ Unit)** and **evasion of total duty of Rs. 148,96,97,902/- on total diverted goods amounting to Rs. 1892,60,19,327/- by M/s Maahi (SEZ Unit)**. All these acts and omission on their part have rendered the goods "Diamond / Precious Stones", imported in the past (and not seized, since not available for seizure), as detailed in **Annexure A & B** to the SCN under adjudication, liable to confiscation under the provisions of Section 111(j) and 111(m) of the Customs Act, 1962. Further, as discussed hereinabove all these acts tantamount to "smuggling" within the meaning of

Section 2(39) of the Customs Act, 1962, as these goods have been improperly removed from the premises of M/s. Europea (SEZ Unit) and from the premises of M/s. Maahi (SEZ Unit). The Bills of Entry wise / Financial Year wise duty calculation of duty forgone is attached as **Annexure A & B** in respect of M/s. Europea (SEZ Unit) and M/s Maahi (SEZ Unit), respectively. Shri Suresh Ratanlal Jagetia voluntarily deposited Rs. 40,00,000/- (Customs Duty – Rs.34,69,963, IGST – Rs.3,46,996/-, SWS- Rs.1,83,041/-) vide Form TR-6 dated 31.05.2022 towards payment of evaded duty by M/s. Europea Makeour Jewel Pvt. Ltd., the same amount is liable to be appropriated in light of facts stated above.

81.2 It is apparent that M/s. Europea (SEZ Unit) and M/s Maahi (SEZ Unit) have diverted the superior quality imported Diamonds / Precious Stones (Ruby) into the domestic market; that they have arranged inferior quality Diamonds / Precious Stones (Ruby) from the domestic market as replacement and exported the same after studding in the silver rings and pendants. It is also apparent that the goods (Diamonds / Precious Stones), which were seized vide Panchnama dated 26/27.5.2022 were arranged / procured illegally from DTA to the Customs Area i.e. SEZ, without any documents, without following any procedure and without any permission from the Specified Officer of the SEZ, in contravention of various provisions of law, for use in the future exports. The said goods, therefore, appear liable to confiscation in terms of Section 113(d) of the Customs Act, 1962 as they have been brought within the limits of Customs area in contravention of provisions of various Acts and for the purpose of being exported in violation of the provisions of Customs Act, 1962.

81.3 The acts of omission and commission on the part of M/s. Europea (SEZ Unit) and M/s Maahi (SEZ Unit) appears to have made them liable to penalty in terms of Section 112(a) and Section 112(b) *ibid*. Further, the duty appears to have been evaded by suppression of the above stated facts. Due to above mentioned collusion, willful misstatement and suppression of facts, extended period of limitation under Section 28(4) of the Customs Act, 1962 is invokable in this case. Accordingly, the duty appears liable to be demanded from M/s. Europea (SEZ Unit) and M/s Maahi (SEZ Unit) in terms of Section 28(4) of the Customs Act, 1962 along with interest under the provisions of Section 28AA *ibid*. For the same reasons, M/s. Europea (SEZ Unit) and M/s Maahi (SEZ Unit) also appear liable to penalty under Section 114A and Section 114AA of the Customs Act, 1962.

81.4 Further, in view of the detailed role of persons involved, as enumerated above, it appears that such firms / persons had consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962, have rendered themselves liable for penalty under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962. They prepared / got prepared, signed / got signed documents which they had reasons to believe were false and thereby rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962. Since above mentioned firms / companies have violated the provisions of Section 17, 46 and 50 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, they shall also be liable to penalty under Section 117 of Customs Act, 1962. The tabulation of applicable penalties against the respective persons is as detailed hereunder in 'TABLE T-1':

TABLE T-1						
S. No	Name M/s or S/Shri	In the capacity of	Penal provisions / Sections of Customs Act, 1962			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Shri Suresh Ratanlal Jagetia	Mastermind/Co-Conspirator/ controller/ beneficial Director of M/s. Europea Makeour Jewel Pvt. Ltd.	112 (a) & 112(b)		114AA	117
2	Shri Ram Raj Choudhary	Mastermind/Co-Conspirator/ controller/ beneficial Director of M/s. Maahi Jewellery Exim Pvt. Ltd	112 (a) & 112(b)		114AA	117
3	Shri Navratan Singh Jain	Mastermind/Handler/ controller/Co-Conspirator	112 (a) & 112(b)		114AA	117
4	Sh. Om Prakash Vanjani	Co-Conspirator /Director of M/s. Belstar Techno Solutions (OPC) Pvt. Ltd,	112 (a) & 112(b)		114AA	117
5	Shri Vikram Singh Kachchawa	Mastermind/Handler/ controller/Co-Conspirator/Hawala Handler	112 (a) & 112(b)		114AA	117
6	Shri Ravindra Kumar, CA	Chartered Accountant/ Co-Conspirator	112 (a) & 112(b)		114AA	117
7	Shri Kamlesh Nagda	Handler/Co-Conspirator/Hawala Handler	112 (a) & 112(b)		114AA	117
8	Shri Deepak Kumar	Director, M/s Subhang Enterprises, Mumbai/ Co-Conspirator	112 (a) & 112(b)		114AA	117
9	Sh. Vimal Nahar	Prop., M/s Swastik Impex/ Co-Conspirator	112 (a) & 112(b)		114AA	117
10	Shri Nitesh Kumar	Prop., M/s Visual Birds Technology/ Co-Conspirator	112 (a) & 112(b)		114AA	117
11	Shri Surendra Mali <i>alias</i> Shankar Mali	Mastermind/Handler/ controller/ Co-Conspirator	112 (a) & 112(b)		114AA	117
12	Shri Rajendra Jangid	Mastermind/Handler/ controller/Co-Conspirator	112 (a) & 112(b)		114AA	117

82. Various summons were issued to Shri Nitesh Kumar on dated 09.02.2022, 21.06.2022, 01.07.2022, 20.07.2022, 20.09.2022, 19.10.2022, 09.11.2022, 10.01.2023 and 01.03.2023, summons to Shri Surendra Mali *alias* Shankar Mali on 13.01.2022, 08.02.2022, 25.03.2022, 21.04.2022, 09.05.2022, 21.06.2022, 01.07.2022, 20.07.2022, 20.09.2022, 19.10.2022, 09.11.2022, 14.12.2022, 10.01.2023 and 01.03.2023, and to Shri Rajendra Jangid on 13.01.2022, 08.02.2022, 25.03.2022, 21.04.2022, 09.05.2022, 21.06.2022, 01.07.2022, 20.07.2022, 20.09.2022, 19.10.2022, 09.11.2022, 14.12.2022, 10.01.2023 and 01.03.2023, under section 108 of the Customs Act, 1962. However, they never appeared for tendering statement. Complaint under section 190 were filed against them with the Metropolitan Magistrate No. 11, Jaipur-first, Jaipur for non compliance of summon.

83. Investigation against all the Companies / firms / individuals who appear to be part of this syndicate, involved in fraudulently remitting money to foreign firms in consideration of illegal imports of Gold / Diamond / Other Precious Stones by using the *modus operandi* as discussed above, is under progress. Overseas enquiry has also been initiated in this matter through proper channel; outcome of the same is awaited. The show cause notice(s) against such Companies / firms / individuals would be issued separately, if needed, after completion of investigation.

84. Accordingly, a Show Cause Notice dated 20.05.2023 was issued from F.No.GEN/ADJ/COMM/342/2023-Tech to:

(A) M/s. Europea Makeour Jewel Pvt. Limited, Unit No. 401 & 403 on Plot No. 247-248 and 225B, Surat Special Economic Zone, Sachin, Surat – 394230, calling upon to show cause to the Commissioner of Customs, Ahmedabad, as to why:

- (i) The goods i.e. "cut and polished Diamonds, Precious Stones" illegally diverted in DTA, totally valued at **Rs. 2631,46,66,966/- (Rupees Two Thousand Six Hundred Thirty One Crore, Forty Six Lakh, Sixty Six Thousand, Nine Hundred Sixty Six Only)** as detailed in **Annexure-A to SCN** should not be confiscated under Section 111(j) and 111(m) of the Customs Act, 1962. However, as the said goods are not available for confiscation, why redemption fine in lieu of confiscation should not be imposed;
- (ii) Total Duty (Basic Customs Duty + IGST + Cess) amounting to **Rs. 212,27,82,674/- (Rupees Two Hundred Twelve Crore, Twenty Seven Lakh, Eighty Two Thousand, Six Hundred Seventy Four Only)** should not be demanded from them, in terms of the provisions of Section 28(4) of the Customs Act, 1962 read with Section 30 of the Special Economic Zones Act, 2005 and Rule 25 of the Special Economic Zones Rules, 2006, along with the applicable interest under Section 28AA of the Customs Act, 1962;
- (iii) **Rs. 40,00,000/- (Rupees Forty Lakh Only)** (Customs Duty – Rs. 34,69,963, IGST – Rs. 3,46,996/-, SWS – Rs. 1,83,041/-) deposited voluntarily vide Form TR-6 dated 31.05.2022, should not be appropriated towards above demand of duty;
- (iv) The said seized goods *viz.* "cut and polished Precious Stones, cut and polished Precious Stones studded and cut and polished

Diamond”, seized vide Seizure Memo dated 26/27.05.2022, which were actually valued at **Rs. 5,11,28,910/- (Rupees Five Crore Eleven Lakh Twenty Eight Thousand Nine Hundred Ten Only)**, and which were illegally brought into the Customs area for the purpose of export, should not be confiscated under Section 113 (d) of the Customs Act, 1962;

- (v) Penalty should not be imposed upon them under Section 112(a) & (b) and Section 114AA of the Customs Act, 1962;
- (vi) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;
- (vii) Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962

(B) M/s. Maahi Jewellery Exim Private Limited, Unit No. 407 on Plot No. 248, Surat Special Economic Zone, Sachin, Surat – 394230 are called upon to show cause to the Commissioner of Customs, Ahmedabad, as to why:

- (i) The goods i.e. “cut and polished Diamonds, Precious Stones” illegally diverted in DTA, totally valued at **Rs. 1892,60,19,327/- (Rupees One Thousand Eight Hundred Ninety Two Crore, Sixty Lakh, Nineteen Thousand, Three Hundred Twenty Seven Only)** as detailed in **Annexure-B to SCN** should not be confiscated under Section 111(j) and 111(m) of the Customs Act, 1962. However, as the said goods are not available for confiscation, why redemption fine in lieu of confiscation should not be imposed;
- (ii) Total Duty (Basic Customs Duty + IGST + Cess) amounting to **Rs. 148,96,97,902/- (Rupees One Hundred Forty Eight Crore, Ninety Six Lakh, Ninety Seven Thousand, Nine Hundred Two only)** should not be demanded from them, in terms of provisions of Section 28(4) of the Customs Act, 1962 read with Section 30 of the Special Economic Zones Act, 2005 and Rule 25 of the Special Economic Zones Rules, 2006, along with the applicable interest under Section 28AA of the Customs Act, 1962.
- (iii) The said seized goods viz. “cut and polished Diamonds and Precious Stones”, seized vide Seizure Memo dated 26.05.2022, which were actually valued at **Rs. 4,36,01,886/- (Rupees Four Crore Thirty Six Lakh One Thousand Eight Hundred Eighty Six Only)**, and which were illegally brought into the Customs area for the purpose of export, should not be confiscated under Section 113 (d) of the Customs Act, 1962;
- (iv) Penalty should not be imposed upon them under Section 112(a) & (b) and Section 114AA of the Customs Act, 1962;
- (v) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;

(vi) Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

(C) The persons as detailed in Column No. (2) of Table T-1-A (in respect of Table-T-1) below, calling upon to show cause to the Commissioner of Customs, Ahmedabad, as to why penalty should not be imposed upon them, under penal provisions of Customs Act, 1962 as mentioned from Column Nos. 4 to 7 of the said Table-T-1-A (relevant part) reproduced hereunder against their respective names for their acts of commission and omissions as detailed above:

TABLE T-1-A'						
S. No	Name M/s or S/Shri	In the capacity of	Penal provisions / Sections of Customs Act, 1962			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Shri Suresh Ratanlal Jagetia	Mastermind/Co-Conspirator/ controller/ beneficial Director of M/s. Europea Makeour Jewel Pvt. Ltd.	112 (a) & 112(b)		114AA	117
2	Shri Ram Raj Choudhary	Mastermind/Co-Conspirator/ controller/ beneficial Director of M/s. Maahi Jewellery Exim Pvt. Ltd	112 (a) & 112(b)		114AA	117
3	Shri Navratan Singh Jain	Mastermind/Handler/ controller/Co-Conspirator	112 (a) & 112 (b)		114AA	117
4	Shri Om Prakash Vanjani	Co-Conspirator /Director of M/s. Belstar Techno Solutions (OPC) Bank Pvt. Ltd,	112 (a) & 112(b)		114AA	117
5	Shri Vikram Singh Kachchawa	Mastermind/Handler/ controller/Co-Conspirator/Hawala Handler	112 (a) & 112(b)		114AA	117
6	Shri Ravindra Kumar, CA,,	Chartered Accountant/ Co-Conspirator	112 (a) & 112(b)		114AA	117
7	Shri Kamlesh Nagda	Handler/Co-Conspirator/Hawala Handler	112 (a) & 112(b)		114AA	117
8	Shri Deepak Kumar	Director, M/s Subhang Enterprises,Mumbai/ Co-Conspirator	112 (a) & 112 (b)		114AA	117
9	Shri Vimal Nahar	Prop,M/s Swastik Impex/ Co-Conspirator	112 (a) & 112 (b)		114AA	117
10	Shri Nitesh Kumar	Prop., M/s Visual Birds Technology/ Co-Conspirator	112 (a) & 112 (b)		114AA	117
11	Shri Surendra Mali <i>alias</i>	Mastermind/Handler/ controller/Co-Conspirator	112 (a) & 112 (b)		114AA	117

	Shankar Mali				
12	Shri Rajendra Jangid	Mastermind/Handler/ controller/Co-Conspirator	112 (a) & 112 (b)	114AA	11 7

85. During a search operation conducted under panchnama proceedings on 28/29/30.04.2022 at the premises of M/s Kavish Gems, (Proprietor Sh. Uday Shah), Mumbai, having IEC No. AAJPS2598C, PAN No.AAJPS2598C & GSTIN 27AAJPS2598C1ZD) engaged in manufacturing of Cut and Polished Diamonds, a stock of 485.23 Carat Cut and polished diamonds valued Rs. 2,11,43,901/- (as per valuation done by the Govt approved valuer during search) were found unaccounted and there was a difference between stock register and physical goods found during the search. Therefore, these unaccounted 485.23 Carat Cut & Polished Diamonds valued Rs. 2,11,43,901/- were detained under the provisions of Section 110 of the Customs Act,1962 under Detention Memo dated 29/30.04.2022. It appears that these goods are the imported goods which have been diverted from SEZ, Surat without payment of duty thereon and covering GST Invoices have been issued in respect of impugned goods by some bogus firms with intent to evade Customs duty liable to be paid thereon, in contravention of Provisions of Section 46 of the Customs Act, 1962 and Sections 26 and 30 of the Special Economic Zones Act,2005 read with Rule 25 of the Special Economic Zones Rules,2006 as per the facts stated herein.

86. Whereas, on preliminary inquiry/investigation, it came to notice that M/s Kavish Gems, (Proprietor Sh. Uday Shah), Mumbai have procured Cut & Polished Diamonds from M/s Alentraa Multi Trading Pvt. Ltd. and M/s Centre Core Multitrade Pvt. Ltd. Incidentally, these two firms/companies are amongst the various firms involved in the case related to evasion of Customs Duty to the tune of several Crores and making fraudulent remittances abroad in the guise of payments against non-existent imports of Services (which were actually not received & were mere paper transactions) by M/s Belstar Techno Solutions (OPC) Pvt. Ltd. & M/s Visual Birds Technology, Jaipur which was investigated by Customs (Preventive) Commissionerate, Jodhpur (Hqrs: Jaipur). Both the supplier firms namely M/s Alentraa Multi Trading Pvt. Ltd.and M/s Centre Core Multitrade Pvt. Ltd. were found non-existent during the search conducted on 24.11.2021at their premises during the course of investigation in the said case also.

87. Accordingly, during the investigation in respect of un-accounted stock found during search conducted by officers of Customs, Mumbai with assistance of Customs Staff of Customs (Preventive) Commissionerate, Jodhpur (Hqrs: Jaipur), various statements of Shri Uday Hasmukhlal Shah, Proprietor of M/s Kavish Gems, DE-3250, Bharat Diamond Bourse, Bandra Kurla Complex, G Block, Bandra (E), Mumbai-400 051were recorded under Section 108 of the Customs Act, 1962, which are summarised as below-

A. Statement dated 28/29/30.04.2022

He inter-alia stated -

- i. That their firm is engaged in manufacturing of Polished Diamonds and sells their finished product i.e. Polished Diamonds in India as well as to foreign markets through exports; that their firm purchase rough diamonds through import mainly from firms located at Belgium and Dubai and they export mainly to buyers located at Hongkong, US and Belgium;

- ii. That two firms are operating from their premises at DE-3250, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra, Mumbai namely:
 - (i) M/s Kavish Gems- of which he is the proprietor and
 - (ii) M/s Kavya Gems- his son Shri Kavish Shah is the proprietor of the same.
- iii. On being asked about his firm's transaction with M/s Swastik Impex, he said that they sold diamonds amounting to Rs.97,25,000/- to M/s Swastik Impex.
- iv. On being asked about excess stock of 485.23 Cts diamond having value of Rs. 2,11,43,901/- found at his business premises during search on 29/30.04.2022, he admitted that he can't produce relevant documents regarding the excess stock, however he would provide the documents pertaining to the said stock and would clarify that the stock is procured domestically or imported.

B. Statement dated 19.05.2022

He inter-alia stated

- (i) On being asked to explain the excess stock of 485.31 Carat diamond, found at his premise during search, he stated that regarding difference of 439 Carats he is hereby submitting 4 vouchers (Commonly known as Jhanghad or sale on approval basis vouchers) in which only agents name is there. He produced self attested copies of said vouchers containing following details-

Sr. No.	Voucher No.	Name of Company	Agent name	Carats	Rate
1	3351/20.04.2022	V Arvind kumar &Co.	Nilesh bhai goyani	188.03	47000
2	3356/21.04.2022	V Arvind kumar &Co.	Nilesh bhai goyani	170.80	60000
3	Nill/26.04.2022	Jeel.Impex	Jignesh Mojpusa	47.33	-
4	Nill/27.04.2022	Ragee Gems	Jignesh Mojpusa	32.89	-

That name of his firm M/s Kavish Gems was not mentioned even once in any of the said vouchers and only third party agent's name was written on them. That regarding the difference of 46.05 Carat, he is providing the invoice of M/s Shasvin Jewels (Invoice No. SH/PO/22-23/009 dt. 25.04.2022) which he couldn't provide at the time of search proceedings;

- (ii) that sometimes they purchase goods (cut and polished diamonds) through Jhanghad process and sometimes they personally visit the offices of sellers for purchase of goods;
- (iii) on being asked to provide copies of all the Jhanghad/Vouchers wherein purchase have been made through Jhanghad system, he said that he would provide copies of Jhanghad within few days;
- iv. On being asked about three payments made by his firm i.e. Kavish Gem to M/s R.K. Diam of respective values of Rs. 30,00,000/- Rs. 27,00,000/- and Rs. 39,00,000/- through RTGS, he stated that he made these payments against the purchase of Cut & Polished Diamonds made by them from M/s R.K. Diam and he would provide ledgers, invoices/jhangad in respect of the same in few days.

C. Statement dated 17.05.2023

He inter-alia stated-

- i. On being reminded that in his answer to question no. 8 during the statement dated 19.05.2022 he had stated that he would provide copies of Jhanghad (sale of approval basis voucher), he stated that most of their purchases are made through Jhanghad system (sale on approval basis voucher) wherein they either approve (pass) or reject the goods on the basis of price and quality of the goods received through Jhanghad system. If approved the party (seller) send invoice through agent and they make payment through RTGS and in case of rejection the Jhanghad (sample goods and voucher) are returned immediately. That they destroy Jhanghad (voucher) on mutual agreement with seller immediately once the GST invoice is raised.

D. Statement dated 01.06.2023

He inter-alia stated

- (i) that is he in total agreement with contents of Panchnama drawn at his premises, recording the proceedings of search conducted on 28/29/30.04.2022.
- (ii) he was reminded that in the said Panchnama the two independent panchas have stated that during the search when the stone purported to be diamonds were recovered from Shri Jignesh Rameshbhai Majpura, you had stated/admitted that the said diamonds belonged to you, whereby in his subsequent statements dated 19.05.2022 and 17.05.2023 he changed his stance and submitted that these diamonds had been brought by freelance agent Shri Jignesh Rameshbhai Majpura under the Jhanghad system. He was asked to explain the reason of these contradictions in his statement wherein he could not give any explanation for these contradictions and reiterated the same thing about Shri Jignesh Rameshbhai Majpura being a freelance agent and submitted that he has nothing more to add to the same (answer to question 7 and 8).
- iii. He was reminded that in his statement in his answer to question no. 8 during the Statement dated 19.05.2022 he had stated that he would provide copies of Jhanghad (sale of approval basis voucher) wherein in his statement dated 17.05.2023 he stated that most of his purchases are made through Jhanghad system and these Jhanghad are destroyed on mutual agreement with seller immediately once the GST invoice is raised. He was asked to explain such drastic contradictions in his statements wherein he again couldn't provide any explanation for this contradiction (answer to question no 10).
- iv. He was asked to peruse statement dated 31.05.2022 of Shri Akshay Pannalal Doshi, Proprietor of **M/s Ragee Gems, Mumbai** wherein he has stated that he has not received any approval from M/s Kavish Gems and he can not confirm or claim that the diamonds detained at the premises of M/s Kavish Gems belong to him, whereas he (Shri Uday Hasmukhlal Shah) in his statement dated 19.05.2022 submitted that out of excess stock of 485.31 Carat diamond, found at his premise during search, 32.89 carat belonged to M/s Ragee Gems and same was brought there as Jhanghad or sale on approval basis vouchers. On being asked to explain the same, he said that he does not know why Shri Akshay Pannalal Doshi, Proprietor of M/s Ragee Gems has given such answers.

E. Statement dated 02.06.2023

He inter-alia stated-

- (i) He was asked to peruse incident report dated 24.11.2021 relating to the search proceedings at the office premises of M/s Alentraa Multi Trading Pvt. Ltd., 114, Floor, G-Plot, 80/84, Swadeshi Mill Building, Amrit Diamond Trade Centre Bldg, P.L. Jagannath Shankar Sheth Marg, Central Plaza Cinema, Charni Road, Mumbai, as per incident report the said building was not in existence and the firm was found non-existent, as per GST website the said firm's registration had been cancelled from 06.10.2020. On being asked to explain how could his firm made sells (as shown in his records) to M/s Alentraa Multi Trading Pvt. Ltd., a non-existing company, he stated that he sold goods (cut and polished diamonds) and delivered the same through hand delivery.
- (ii) He was asked to peruse incident report dated 24.11.2021 relating to the search proceedings at the office premises of M/s Centre Core Multitrade Pvt. Ltd., Floor MEZ, M-19, Pearl Plaza, Tata Road No. 2, Roxy Cinema, Opera House, Girgaon, Mumbai, as per incident report the said building was not in existence and the firm was found non-existent, as per GST website the said firm's registration had been cancelled from 01.07.2020. He was also asked to peruse statement of Shri Navratan Jain dated 28.10.2022 wherein in reply to question no. 2, he has stated/ admitted that he made dealing through M/s Centre Core Multitrade Pvt. Ltd., and same is a fake/bogus firm. On being asked to explain how could his firm made sells(as shown in his records) to M/s Centre Core Multitrade Pvt. Ltd., a non-existing/fake/bogus firm/company, he said he sold goods(cut and polished diamonds) after receiving the advance payments and delivered the same through hand delivery.
- iii. He was asked to peruse incident report dated 29.04.2022 relating to the search proceedings at the office premises of M/s R K Diam, Floor 305, Panchvati Dham B, Shiv Vallabh Raad, Ashokvan Dahisar E, Mumbai, as per incident report the said firm was found non-existent, On being asked to explain how could his firm made purchases (as shown in his records) from M/s R K Diam, a non-existing/fake/bogus firm, he said that M/s R K Diam is represented by Shri Ketan bhai and he showed the goods to him and deal was finalized.
- iv. He was asked to peruse panchnama dated 26.05.2022 relating to the Search proceedings at the office premises of M/s Gehna Trading LLP, Somnath Mahadev NI Sheri, SY No. 1105-1107, 1st Floor, 110, Tulsi Blding, Mahidharapura, Mumbai, as per panchnama the said firm was found non-existent. He was asked to explain how he made sells to a non-existent firm. He was also asked to peruse statement dated 27.10.2022 of Shri Navratan Jain wherein he has categorically stated that M/s Gehna Trading LLP was created by him by using id of some another person's and he had given hs own phone number in GST registration, that M/s Gehna Trading LLP was only engaged in supplying of fake/bogus bills of sale/purchase of Gold and diamond without any actual sale/purchase. He was asked to explain his transactions with non-existing /bogus firm M/s Gehna Trading LLP, on which he replied that his firm made the sells after receipt of payment through RTGS and they hand delivered the goods i.e. Diamonds.

- v. He was asked to peruse panchnama dated 24.11.2021 relating to the Search Proceedings at the office premises of M/s Jamna Gems Pvt. Ltd., 1st Floor, 15 Plot No. 302, Guru Niwas, Vittal Bhai Patel Road, Girgoan, Mumbai, as per panchnama the said firm was found non-existent. On being asked to explain how could his firm made sells (as shown in his records) from M/s Jamna Gems Pvt. Ltd, a non-existing/fake/bogus firm, on which he again replied that his firm made the sells after receipt of payment through RTGS and they hand delivered the goods i.e. Diamonds.
- vi. He was asked to peruse statement dated 22.02.2023 of Shri Vimal Nahar, proprietor M/s Swastik Impex, Mumbai, wherein, in reply to question to Nos. 4,5 and 6, he has admitted to have issued and received fake bills from his firm M/s Swastik Impex without actual supply or receipt of any diamonds and gold. He was asked to explain his transactions with non-existing /bogus firm M/s Swastik Impex in light of statement of Shri Vimal Nahar, on which he again replied that his firm made the sells after receipt of payment through RTGS and they hand delivered the goods i.e. diamonds.

Findings on the basis of Statements of Shri Uday Hasmukhlal Shah, Proprietor of M/s Kavish Gems, DE-3250, Bharat Diamond Bourse, Bandra Kurla Complex, G Block, Bandra(E), Mumbai-400 051-

- A. That in his statement dated 28/29.04.2022 recorded during search proceedings, he admitted that the excess stock (Diamonds) of 485.23 Carats, found during search proceedings belong to his firm M/s Kavish Gems and he said that he would provide documents pertaining to same.
- B. That in his statement dated 19.05.2022 he changed his stance and he brought/conjured up story of Jhngahd (sell on approval basis voucher) and said that said excess stock was brought under Jhanghad to his premises and it belonged to three firms-
 - i. M/s V Arvind Kumar & co.,
 - ii. M/s Jeel Impex and
 - iii. M/s Ragee Gems.He said he would provide the said Jhngahds(vouchers) through which this stock had been brought to his premise, at the earliest, but failed to provide the same so far.
- C. Then in his statement dated 17.05.2023, he again changed his stance and said a new story when asked to produce Jhanghad as promised by him in statement dated 19.05.2022, he said that these Jhngahd are destroyed on mutual agreement with seller immediately once the GST invoice is raised. He was asked to explain such drastic contradictions in his statements wherein he again couldn't provide any explanation for this contradiction.
- D. It was evident from his records /ledgers that his firm M/s Kavish Gems, he has made many purchase sales/transactions from many non-existing firms (which were part of a syndicate engaged in creation of a web of fake firms for supply of smuggled/illegally cleared diamond and gold). On being asked to explain these transactions he could not provide any plausible answer and just tried to misguide the department.

88. Whereas, during the investigation, on perusal of the records of M/s Kavish Gems it is revealed that they have made Sell/Purchase transactions with following firms as detailed below:-

Sr. No.	Name of Party	Address	Brief
1	Alentraa Multi Trading Pvt. Ltd.	114, Floor, G-Plot, 80/84, Swadeshi Mill Building, Amrit Diamond Trade Centre Bldg, P.L. Jagannath Shankar Sheth Marg, Central Plaza Cinema, Charni Road, Mumbai	As per incident report dated 24.11.2021 no such building named swadeshi mill building was found in existence.
2	Centre Core Multitrade Pvt. Ltd.	Floor MEZ, M-19, Pearl Plaza, Tata Road No. 2, Roxy Cinema, Opera House, Girgaon, Mumbai	As per incident report dated 24.11.2021 no such building named pearl plaza was found in existence.
3	Gehna Trading LLP	Somnath Mahadev NI Sheri, SY No. 1105-1107, 1st Floor, 110, Tulsi Blding, Mahidharapura, Mumbai	As per panchnama dated 26.05.2022 this firm was not found in existence.
4	Jamna Gems Pvt. Ltd.	1st Floor, 15 Plot No. 302, Guru Niwas, Vittal Bhai Patel Road, Girgoan, Mumbai,	As per panchnama dated 24.11.2021 this firm was not found in existenece.
5	Kevin Diam Pvt. Ltd.	Shop no 130, Ostwal Shopping Centre CHSL, Opp Bhayander Station, Jesal Park Road, Bhayander East, Thane, Maharashtra, 401105	As per panchnama dated 16.03.2023 this firm was not found in existence.
6	Lakshita Exports	68/A, 4, Popular Arcade, Tata Road No. 1, Roxy Cinema, Opera House, Girgoan, Mumbai	As per incident report dated 15.03.2023 this firm was not found in existence.
7	Nivedita Diam Pvt. Ltd.	111, FLOOR - 1ST, PLOT - 83, SADBHAVANA, SITARA M, PODDAR MARG,, FANASWADI	As per incident report dated 16.03.2023 this firm was not found in existence.

		THAKURDWAR, KALBADEVI,, MUMBAI, Mumbai, Maharashtra, 400002	
8	R K Diam	305, PANCHVATI DHAM B, SHIV VALLABH RAAD, ASHOKVAN DAHISAR E, Mumbai, Maharashtra, 400068	As per incident report dated 29.04.2022 this firm was not found in existence.
9	Swastik Impex	127, GR Floor, Plot No. 80/84, Amrut Diamond Trade Centre Pl, JSS Marg, Central Plaza, Girgoan, Mumbai	As per statement dated 21 to 23.02.2023 shri Vimal Kumar Nahar, informed that his firm has issued bills only.
10	Zhaik Enterprises Pvt. Ltd.	2nd Floor, 7/A, Plot No. 192/194, Kalbadevi Road, Bhuleshwar, Kalbadevi, Mumbai	As per incident report dated 28.04.2022 this firm was not found in existence.
11	Komal Exim Pvt. Ltd.	B-6/2497, Ground Floor, Balaji Metllar, Limbu Sheri, Mahindrapura, Surat	As per panchnama dated 25.05.2022 this firm was not found in existence. Visit note dated 17.04.2023 this addres no firm exist.
12	Pangat Impex	Plot No. 80/84, Floor-G, Swadeshi Mill Bldg, Jagannath Shankarsheth Marg, Central Plaza Cinema, Charni Road, Mumbai	As per incident report dated24.11.2021 no such building named swadeshi mill building was found in existence.
13	Nakoda Gemsstar	303, 3-11/15, Fatma Faizan Kharwala, Regal Arcade Building, Tata Road No. 2, Roxy Cinema, Opera House, Girgoan, Mumbai	Purchased diamonds from M/s Europea as per GSTR-1. reg cancelled on 01.11.2022
14	Hetvi Trading LLP (Mumbai)	MB-7, 7, Flox Chambers, First Floor, Tata Road No. 1, Ambewadi, Mumbai	Purchased diamonds from M/s Europea as per GSTR-1
15	Prayag Gems Pvt. Ltd.	Offc No. 101C, 1st Floor, Amrut	Purchased diamonds from M/s Europea as

		Diamond House, Roxy Cinema, Opera House, Mumbai	per GSTR-1
16	Rapid Stones Pvt. Ltd.	Off No. 332, Amrut Diamond House, 3rd Floor, Tata Road No. 1, Mumbai	Purchased diamonds from M/s Europea as per GSTR-1. registration cancelled on 15.12.2020
17	Pratham Exports	M 12, 10/25, FLOX CHAMBER, TATA ROAD NO. 1 , ROXY CINEMA, OPERA HOUSE, GIRGAON, MUMBAI, Mumbai, Maharashtra, 400004	Purchased diamonds from M/s Europea as per GSTR-1. registration cancelled on 01.03.2021

All these firms were either found non-existent at their locations or indulged in supplying the goods diverted from SEZ units- M/s. Europea Makeour Jewels Pvt. Ltd. and M/s. Maahi Exim Pvt. Ltd., and were part of a web of fake/bogus firms/companies to facilitate remittances to foreign locations to fund illegal import of Gold, diamond and other precious metals.

Most of the above firms made purchases / procurements from M/s. Maahi Exim Pvt. Ltd., Surat & M/s. Europea Makeour Jewels Pvt. Ltd., Surat. These two firms were engaged in diverting/smuggling diamonds in DTA(Domestic Tariff Area) from their SEZ units. Wherein, a racket/gang was formed, which adopted a novel modus-operandi under which at first level, firms were created which were shown to be Importer and suppliers of various IT services like animations, graphics, designs, 2D, 3D etc. These imports were shown to be done from firms located in Hongkong so that fund could be sent there and then that fund could be rotated back to SEZ units. Wherein there was no actual supply/import of services made and entire import/supply process was done only on paper. Various fake companies/firms were created and several bank accounts were opened for remitting amounts of high magnitude to Hong Kong and UAE based firms against these non-existent importers of Services for funding of illegal import of Gold, Diamonds and other precious metals.

89. Therefore, a case was booked against such fake importer of services against M/s. Belstar Techno Solutions (OPC) Pvt. Ltd., Jaipur & M/s. Visual Birds Technology, Jaipura. Both of these were found non-existent at the time of search and during the investigation, it is evident that Shri Suresh Ratanlal Jagetia with the sole intent to defraud the exchequer, adopted a novel modus-operandi under which fake companies/firms were created and several bank accounts were opened for remitting huge amounts to their own firms established in Hongkong by showing the same to be payments against import of services with the ulterior motive of using the fraudulent remittances for funding illegally diverted Diamonds and other precious stones/metals which had been imported through SEZ units. Shri Suresh Ratanlal Jagetia being instrumental in diversion of imported Diamond/ Precious stones from SEZ units to DTA units and sending money abroad illegally through M/s. Belstar

Techno Solutions (OPC) Bank Pvt. Ltd. & M/s. Visual Birds Technology Jaipur was arrested on 30.05.2022 under Section 104 of the Customs Act, 1962 for committing offences under Section 132 and 135 of the Customs Act, 1962. He was produced before the Hon'ble Economic Offences Court, Jaipur, who ordered for his Judicial Custody. He was released on bail on 08.02.2023 after being in custody for the period of almost 9 months.

89.1 M/s. Swastik Impex is amongst the firms which showed purchase/procurement of goods i.e. diamonds from the DTA units of M/s Europea Makeour Jewel Pvt. Limited and M/s Maahi Jewellery Exim Private Limited and thereafter supplied to M/s Kavish Gems, Mumbai. Wherein, it has already been established that the goods (Diamond and precious stones), were the goods which were diverted by them through their SEZ Units without payment of duty thereon. Further, Shri Vimal Nahar, Proprietor of M/s Swastik Impex tendered his statement under section 108 of Customs Act, 1962 on 22.02.2023, wherein, in reply to question to Nos. 4,5 and 6, he has admitted to have issued and received fake bills from his firm M/s Swastik Impex without any supply or receipt of any diamonds and gold. These facts, leads to reasonable belief that excess stock of 485.23 Cts diamond having value of Rs. 2,11,43,901/- found at business premises of M/s Kavish Gem during search on 29/30.04.2022 are part of the Diamonds, which have been removed from the SEZ units, by Shri Suresh Ratanlal Jagetia, through his DTA units M/s Europea Makeour Jewel Pvt. Ltd., and M/s Maahi Jewels Exim Pvt. Ltd. to M/s Swastik Impex and other non-existing firms, who has further diverted these diamonds to M/s Kavish Gem, Mumbai.

89.2 Many other non-existing firms who were part of syndicate of Shri Suresh Ratanlal Jagetia and/or showed purchases from M/s. Europea Makeour Jewel Pvt. Limited and M/s. Maahi Jewellery Exim Private Limited, have sells/purchase transactions with M/s Kavish Gems. Name of the units are as follows:

Sr. No.	Name of Unit
1	Alentraa Multi Trading Pvt. Ltd.
2	Centre Core Multitrade Pvt. Ltd.
3	Gehna Trading LLP
4	Jamna Gems Pvt. Ltd.
5	Kevin Diam Pvt. Ltd.
6	Lakshita Exports
7	Nivedita Diam Pvt. Ltd.
8	R K Diam
9	Swastik Impex
10	Zhaik Enterprises Pvt. Ltd.
11	Komal Exim Pvt. Ltd.
12	Pangat Impex
13	Nakoda Gemsstar
14	Hetvi Trading LLP (Mumbai)
15	Prayag Gems Pvt. Ltd.
16	Rapid Stones Pvt. Ltd.
17	Pratham Exports

89.3 Whereas, in terms of Section 53 of the SEZ Act, 2005, SEZ is deemed to be a territory outside the Customs territory of India. As per Sec.

2(i) of the SEZ Act, 2005, Domestic Tariff Area means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones. SEZs are deemed to be an airport, port, Land Custom Stations, and Inland Container Depot under the Customs Act. Thus, removals from a SEZ unit into the DTA are deemed to be an import into India and therefore, any diversion from a SEZ in contravention of the provisions would tantamount to illegal import / smuggling.

89.4 During the course of investigation in the instant case, it revealed that the Diamonds imported under the SEZ scheme by the SEZ Units namely, M/s Europea Makeour Jewel Pvt. Ltd. and M/s Maahi Jewellery Exim Pvt. Ltd., Surat have been fraudulently / illegally removed through their DTA units of the same name, to M/s. Swastik Impex, Surat who in turn supplied the same to the noticee / M/s. Kavish Gems in contravention of provisions of the Sec.29 or the Sec.30 of the SEZ Act, read with Rules 47 and 48 of the SEZ Rules, 2006, Sec. 30, Sec. 53(1) of the SEZ Act, 2005 read with the definition of the Domestic Tariff Area given in the Sec. 2(i) *ibid*.

89.5 Whereas, during recording of his statements under Customs Act, 1962, Shri Uday Hasmukhlal Shah, Proprietor of M/s. Kavish Gems was asked to explain these sells/purchases to the non-existing units. He was also shown statements of Shri Navratan Jain (creator of fake firms M/s Centre Core Multitrade Pvt. Ltd. and M/s Gehna Trading LLP) and Shri Vimal Nahar, Proprietor of M/s Swastik Impex wherein they have categorically said that these were fake/bogus firms and have issued and received fake bills without actual supply or receipt of any diamonds and gold. It is evident from records /ledgers, M/s Kavish Gems has made many Sale/purchase transactions with these non-existing firms (which were part of a syndicate engaged in creation of a web of fake firms for supply of smuggled/illegally cleared diamond and gold). On being asked to explain these transactions Shri Uday Hasmukhlal Shah could not provide any logical explanation for these transactions with non-existing firms and he said his firm hand delivered goods to these non-existing units, which seems completely fictitious.

89.6 Further, Shri Uday Hasmukhlal Shah, Proprietor of M/s. Kavish Gems has not been able to explain the un-accounted stock of 485.23 carat diamonds found in his premises during search on 28/29/30.04.2022. At the time of search proceedings he said the stock belong to his firm M/s Kavish Gems and he said that he would provide documents pertaining to same. Whereas later in his statement dated 19.05.2022 he said that said excess stock was brought under Jhanghad (sell on approval basis voucher) to his premises and it belonged to three firms-(i) M/s V Arvind Kumar & co., (ii) M/s Jeel Impex and (iii) M/s Ragee Gems and that he would provide the said Jhanghads(vouchers) through which this stock was brought. Then in his statement dated 17.05.2023 he again changed his stance and said a new story when asked to produce Jhanghad as promised by him in statement dated 19.05.2022, he said that these Jhnaghad are destroyed on mutual agreement with seller immediately once the GST invoice is raised. He was asked to explain such drastic contradictions in his statements wherein he again couldn't provide any explanation for this contradiction. Shri Uday Hasmukhlal Shah has constantly suppressed/altered facts and tried to misguide the department.

89.7 Whereas, statement of Shri Akshay Pannalal Doshi, Proprietor of M/s Ragee Gems, Mumbai, was recorded on 31.05.2022, wherein he has stated that he does not know M/s Kavish Gems, that he has not done any business till date with M/s Kavish Gems and that he has not received any approval from M/s Kavish Gems, that he can not confirm or claim that the diamonds detained at the premises of M/s Kavish Gems belong to him. Whereas, Shri Uday Hasmukhlal Shah has stated that some diamonds out of total un-accounted stock, belonged to M/s Ragee Gems, Mumbai.

89.8 Shri Uday Hasmukhlal Shah have not been able to provide any purchase bills in respect of un-accounted stock of 485.23 carat diamonds, rather he has tried to eyewash the department and has regularly cooked some fictitious stories in respect of origins/source of these goods. M/s. Kavish Gems are engaged in unexplainable transactions with more than dozen of firms, which were created solely to facilitate illegal diversion of goods(diamonds) from SEZ units M/s Europea Makeour Jewel Pvt. Ltd., and M/s Mahi Jewels Exim Pvt. Ltd.. These facts leads to reasonable belief that these excess quantity of 485.23 carat Diamonds are part of the Diamonds, which have been removed from the SEZ units, by Shri Suresh Ratanlal Jagetia, through his DTA units M/s Europea Makeour Jewel Pvt. Ltd., and M/s Mahi Jewels Exim Pvt. Ltd..

90. Based on above facts, a reasonable belief has been drawn that these are the goods, which have fraudulently been diverted from the SEZ units M/s Europea Makeour Jewel Pvt. Ltd. and M/s Maahi Jewellery Exim Pvt. Ltd., Surat in contravention of the provisions of Special Economic Zones Act, 2005 and Special Economic Zones Rules, 2006 read with provisions of Customs Act, 1962; therefore, these goods are, in effect, improperly imported goods, which makes them smuggled goods as per Sec.2(39) of the Customs Act, 1962; Hence, these goods procured by the noticee / M/s. Kavish Gems, appeared liable for confiscation under Customs Act, 1962 and accordingly goods were detained under detention memo dated 29/30.04.2022 and were handed over to Shri Uday Hasmukhlal Shah under Supurdnama dated 29/30.04.2022. Subsequently, the said detained goods were seized by Customs Mumbai and later on request of the noticee/ M/s. Kavish Gems, the goods were provisionally released under Section 110A of the Customs Act, 1962 by Customs Mumbai on submission of Bond and Bank Guarantee No.1217NDDG00000223 dated 20.10.2022 by the Noticee /M/s. Kavish Gems and goods were handed over to the notice under Acknowledgment of Receipt dated 21.10.2022.

100.1 Whereas, the value of the goods are also liable to be re-determined by taking recourse to the provisions of Section 14 of the Customs Act 1962 and the Customs Valuation (Determination of value of imported goods) Rules, 2007. The Section 14 (1) read with its Proviso 2 of the Customs Act, 1962 which stipulates that while determining transaction value under Section 14 of the Act, the buyers and sellers of the goods are not related and the price is the sole consideration for the sale, which is absent in the instant case. It appears that value in the present case cannot be ascertained as per the method prescribed under Rule 3(1) of the Customs Valuation (Determination of value of imported goods) Rules, 2007. Accordingly, the provisions of Rule 3(4) ibid are to be applied for arriving at the correct value in the instant case.

100.2 Whereas, in terms of Rule 3(4) *ibid*, the value shall be determined by proceeding sequentially through Rule 4 to Rule 6 of Customs Valuation (Determination of value of imported goods) Rules, 2007. From the investigations conducted as detailed in preceding paragraphs of this show cause notice, it appears that it is also not possible to have recourse to determination of import value by comparison for arriving at the actual value of the goods detailed in this show cause notice.

100.3 Therefore, taking recourse of Rule 9 (Residual method) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for determination of the value of the impugned goods. The valuation done by the independent valuer during the course of investigation is reasonable means consistent with the principles and general provisions of these rules. As there were no invoices pertaining to the goods. The value is required to be determined on the basis of valuation report submitted by Government approved valuer. It is reported in the valuation report in form 8 submitted by Government approved valuer Shri Shripalkumar N Desai that the goods in the current lot are Cut & Polished Diamonds and the value of the whole consignment is Rs.2,11,43,901/-.

101. Provisions of Customs Act, 1962 relevant in the this case -

All the provisions of Customs Act read with SEZ Act have already been enumerated and discussed in length in the original show cause notice dated 20.05.2023

Further, relevant provisions of the Customs (Supplementary Notice) Regulations, 2019, published vide Notification No. 42/2019-Customs (NT) dated 18.06.2019, reproduces hereunder:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
NEW DELHI
NOTIFICATION NO
42/2019-Customs (NT); Dated: June 18, 2019

.....
Regulation 3. Application. - *These regulations shall apply to the notices issued under clause (a) of subsection (1) or in sub-section (4) of section 28 or under second proviso to section 124 of the Act including those which have not been adjudicated on the date of enforcement of these regulations.*

Regulation 4. Manner and circumstances under which a supplementary notice may be issued.- (1) *Where a notice has been issued under section 28 or section 124 of the Act, a supplementary notice may be issued by the proper officer in any of the following circumstances:*

(a) *in case there is a difference in the quantum of duty demanded in such notice including the cases which may necessitate change in adjudicating authority;*

(b) *for invoking penal action under the provisions of the Act against a person/persons in addition to those charged in such notice;*

(c) *for invoking additional section/sections of the Act in such notice;*

(d) *in case there is any additional evidence that may have a significant bearing on the outcome of the case.*

(2) *Where a notice has been issued under section 28 or section 124 of the Act, the supplementary notice shall be issued within the time limit as prescribed in the relevant sections of the Act.*

102. Liability under the provisions of the Customs Act, 1962-

As discussed above the noticee / M/s. Kavish Gems has procured goods which were diverted from SEZ, Surat, without payment of duty thereon. These goods therefore, appear liable for confiscation under Section 111 of the Customs Act, 1962. Further as discussed herein above all these acts tantamount to "smuggling" within the meaning of Section 2(39) of Customs Act, 1962 as these goods have been improperly removed from the premises of M/s. Europea Makeour Jewel Pvt. Ltd. Plot No.247, Unit No.401, Plot No.248 Unit No.403, Plot No. 225, SEZ Sachin, Surat and from the premises of M/s Maahi Jewellery Exim Private Limited, Unit No -407, Plot No. 248, SEZ, Sachin, Surat. As can be seen from the facts of this case, goods which were removed from the SEZ unit were without payment of the appropriate Custom duties, hence Section 28 and 28AA of the Customs Act, 1962 will be applicable for the recovery of duties and interest on such smuggled good. However, Customs duty foregone on entire imports made by these two SEZ units have already been demanded from M/s. Europea Makeour Jewel Pvt. Ltd. and M/s Maahi Jewellery Exim Private Limited vide SCN dated 20.05.2023 issued by Commissioner Customs Ahmedabad under F.No.GEN/ADJ/COMM/342/2023-TECH. Further, the duty appears to have been evaded by suppression of the above stated facts. Due to above mentioned collusion, willful misstatements and suppression of facts extended period of limitation under Section 28(4) of the Customs Act, 1962 is invokable in this case.

103. Roles of Fake firms (non-existing firms)

103.1 It appears that the firms which were found non-existent during the searches at their premises, have shown sells/purchase transactions with M/s Kavish Gems. It was also noticed that DTA units of M/s. Europea Makeour Jewels Pvt. Ltd., Unit 410, IInd Floor, Podar Plaza, Ghod Dod Road, Surat and M/s. Maahi Exim Pvt. Ltd. Office no. 104, RT apartment co-op. Housing society, Dalgiya Street, Mahidharpura, Surat have issued bills/invoices to these units and as such they are part of the nexus and have helped in diversion of Goods from SEZ and procurement of the goods by M/s Kavish Gems.

103.2 They have facilitated the supply of illegally imported and diverted diamond and precious stone by Shri Suresh Ratan Lal Jagetia from SEZ units by creating fake firms. They had consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under Section 111 of the Customs Act, 1962, have rendered themselves liable for penalty under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962.

103.3 They prepared/got prepared, signed /got signed documents which they had reasons to believe were false and thereby rendered themselves liable for penalty under Section 114A and Section 114AA of Customs Act, 1962. Since above mentioned firms/companies have violated the provisions of Section 17 and 46 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, they shall also be liable to penalty under Section 117 of Customs Act, 1962.

104. The acts of omission and commission on the part of M/s. Kavish Gems, Mumbai, as per the fact of the case, that they had consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under Section 111 of the Customs Act, 1962, have rendered themselves liable for penalty under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962. They prepared/got prepared, signed /got signed documents which they had reasons to believe were false and thereby rendered themselves liable for penalty under Section 114A and Section 114AA of Customs Act, 1962. Since above mentioned firms/companies have violated the provisions of Section 17 and 46 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, they shall also be liable to penalty under Section 117 of Customs Act, 1962.

105. Accordingly, consequent to the evidences and facts emerged subsequently, as mentioned herein paras above, a supplementary show cause notice dated 24.04.2024 was accordingly issued from F.No.GEN/ADJ/COMM/342/2023-Tech in terms of Customs (Supplementary Notice) Regulations, 2019, issued vide Notification No. 42/2019-Customs (N.T) dated 18.04.2019, on the grounds stated herein above paras to:

(I) M/s Kavish Gems, (Proprietor Sh. Uday Shah), DE-3250, Bharat Diamond Bourse, Bandra Kurla Complex, G Block, Bandra(E), Mumbai-400 051 calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

- (i) The value of whole consignment of goods i.e. 485.23 Carat Cut and polished diamonds found un-accounted/ excess during search and later on same were detained and seized should not be determined as Rs.2,11,43,901/- as per the valuation report of Government approved valuer, as there was no invoice pertaining to the said goods, in terms of sub-rule (4) of Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of Customs Act, 1962.
- (ii) The said seized goods of Diamonds, vide detention memo dated 29/30.04.2022 which are valued at Rs.2,11,43,901/- should not be confiscated under Section 111 of the Customs Act, 1962;
- (iii) Penalty should not be imposed upon them under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;
- (iv) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;
- (v) Penalty should not be imposed upon them under Section 117 of the Customs Act, 1962;
- (vi) BG No.1217NDDG00000223 dated 20.10.2022 executed by them for provisional release of the goods should not be encashed in favour of exchequer against any liability arisen on this account.

(II). M/s. Alentraa Multi Trading Pvt. Ltd., 114, Floor, G-Plot, 80/84, Swadeshi Mill Building, Amrit Diamond Trade Centre Bldg, P.L. Jagannath Shankar Sheth Marg, Central Plaza Cinema, Charni Road, Mumbai calling

upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

- (i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;
- (ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;
- (iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

(III). M/s. Centre Core Multitrade Pvt. Ltd., Floor MEZ, M-19, Pearl Plaza, Tata Road No. 2, Roxy Cinema, Opera House, Girgaon, Mumbai calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

- (i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;
- (ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;
- (iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

(IV) M/s. Gehna Trading LLP, Somnath Mahadev NI Sheri, SY No. 1105-1107, 1st Floor, 110, Tulsi Blding, Mahidharapura, Surat calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

- (i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;
- (ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;
- (iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

(V). M/s. Jamna Gems Pvt. Ltd., 1st Floor, 15 Plot No. 302, Guru Niwas, Vittal Bhai Patel Road, Girgoan, Mumbai calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

- (i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;
- (ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;
- (iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

(VI). M/s. Kevin Diam Pvt. Ltd., Shop no 130, Ostwal Shopping Centre CHSL, Opp Bhayander Station, Jesal Park Road, Bhayander East, Thane, Maharashtra, 401105 calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

(i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;

(ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;

(iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

(VII). M/s. Lakshita Exports, 68/A, 4, Popular Arcade, Tata Road No. 1, Roxy Cinema, Opera House, Girgoan, Mumbai calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

(i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;

(ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;

(iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

(VIII). M/s. Nivedita Diam Pvt. Ltd., 111, Floor - 1st, Plot - 83, Sadbhavana, Sitara M, Poddar Marg, Fanaswadi Thakurdwar, Kalbadevi, Mumbai, calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

(i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;

(ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;

(iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

(IX). M/s. R K Diam, 305, Panchvati Dham B, Shiv Vallabh Raad, Ashokvan Dahisar E, Mumbai, Maharashtra, 400068 calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

(i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;

(ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;

(iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

(X). M/s. Swastik Impex, 127, GR Floor, Plot No. 80/84, Amrut Diamond Trade Centre Pl, JSS Marg, Central Plaza, Girgoan, Mumbai calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

(i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;

(ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;

(iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

(XI). M/s. Zhaik Enterprises Pvt. Ltd., 2nd Floor, 7/A, Plot No. 192/194, Kalbadevi Road, Bhuleshwar, Kalbadevi, Mumbai calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

(i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;

(ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;

(iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

(XII). M/s. Komal Exim Pvt. Ltd., B-6/2497, Ground Floor, Balaji Metllar, Limbu Sheri, Mahindrapura, Surat calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

(i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;

(ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;

(iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

(XIII). M/s. Pangat Impex, M 12, 10/25, Flox Chamber, Tata Road No. 1, Roxy Cinema, Opera House, Girgaon, Mumbai, Maharashtra, 400004 calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

(i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;

(ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;

(iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

(XIV). M/s. Nakoda Gemsstar, 303, 3-11/15, Fatma Faizan Kharwala, Regal Arcade Building, Tata Road No. 2, Roxy Cinema, Opera House, Girgaon, Mumbai calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

(i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;

(ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;

(iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

(XV). M/s. Hetvi Trading LLP (Mumbai), MB-7, 7, Flox Chambers, First Floor, Tata Road No. 1, Ambewadi, Mumbai calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

(i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;

(ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;

(iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

(XVI). M/s. Prayag Gems Pvt. Ltd., Offc No. 101C, 1st Floor, Amrut Diamond House, Roxy Cinema, Opera House, Mumbai calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

(i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;

(ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;

(iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

(XVII). M/s. Rapid Stones Pvt. Ltd., Off No. 332, Amrut Diamond House, 3rd Floor, Tata Road No. 1, Mumbai calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

(i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;

(ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;

(iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

(XVIII). M/s. Pratham Exports, M 12 , 10/25, Flox Chamber, Tata Road No. 1 , Roxy Cinema, Opera House, Girgaon, Mumbai, Maharashtra, 400004 calling upon to show cause to the Principal Commissioner / Commissioner of Customs, Ahmedabad, as to why:

(i) Penalty should not be imposed upon him under Section 112(a) & 112(b) and Section 114 AA of Customs Act, 1962;

(ii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;

(iii) Penalty should not be imposed upon him under Section 117 of the Customs Act, 1962.

106 Customs (Prev.) Jodhpur, Headquarters at Jaipur, vide above letter dated 22.04.2024 informed that M/s Kavish Gems and some other firms are also part of racket formed by Shri Suresh Jagetia, Director of M/s. Europea Makeour Jewel Pvt. Ltd.. The duty forgone on entire import made by these two SEZ units has already been demanded in the SCN dated 20.05.2023, therefore, penal action under Customs Act, 1962 proposed against them by issuance of a supplementary SCN in terms of above Notification No. No. 42/2019-Customs (N.T) dated 18.04.2019 to the original SCN dated 20.05.2023 issued to M/s. Europea Makeour Jewel Pvt. Ltd., SEZ, Surat and M/s Maahi Jewellery Exim Private Limited, SEZ, Surat & Others.

107 Notification No. 42/2019-Customs (N.T) dated 18.04.2019 relating to the 'Customs (Supplementary Notice) Regulations, 2019'. The notification provides Manner and circumstances under which a supplementary notice may be issued. The relevant portion of the Regulation 4 is reproduced below —

Regulation 4

"4. Manner and circumstances under which a supplementary notice may be issued. - (1)

"Where a notice has been issued under section 28 or section 124 of the Act, a supplementary notice may be issued by the proper officer in any of the following circumstances:

(a) in case there is a difference in the quantum of duty demanded in such notice including the cases which may necessitate change in adjudicating authority;

(b) for invoking penal action under the provisions of the Act against a person/persons in addition to those charged in such notice;

(c) for invoking additional section/sections of the Act in such notice;

(d) in case there is any additional evidence that may have a significant bearing on the outcome of the case."

108 Sub-section 7A of the Section 28 of the Customs Act, 1962 provides that:

Section 28 (7A) - Save as otherwise provided in clause (a) of sub-section (1) or in sub-section (4), the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed, and the provisions of this section shall apply to such supplementary notice as if it was issued under the said sub-section (1) or sub-section (4).

Accordingly, Supplementary SCN dated 24.04.2024 was issued in terms of regulation 4(1) (b) of the 'Customs (Supplementary Notice) Regulations, 2019'

109 Section 28(9) of the Customs Act, 1962 provides that:

(9) The proper officer shall determine the amount of duty or interest under sub-section (8), —

(a) within six months from the date of notice, in respect of cases falling under clause (a) of sub-section (1);

(b) within one year from the date of notice, in respect of cases falling under sub-section (4).

[Provided that where the proper officer fails to so determine within the specified period, any officer senior in rank to the

proper officer may, having regard to the circumstances under which the proper officer was prevented from determining the amount of duty or interest under sub-section (8), extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year:

Provided further that where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued.]

110 Looking to the above, developments taken place, the Hon'ble Principal Chief Commissioner, Customs, Gujarat Zone, Ahmedabad has granted extension for adjudication of the above Show Cause Notice dated 20.05.2023 on 23.04.204 for a period of one year in terms of the first proviso to Section 28(9) of the Customs Act,1962.

111 All the noticees to the original SCN dated 20.05.2023 were informed about extension of time period for adjudication of the SCN dated 20.5.2023 vide letter dated 26.04.2024, forwarding copy of the supplementary SCN dated 24.04.2024 to them.

DEFENCE REPLY /WRITTEN SUBMISSION:

112. Written submissions to the Show Cause Notice / defence reply submitted by the noticees is summarised herein as under:

112.1 M/s.Europea Makeour Jewel Pvt. Limited (Noticee No.1):

M/s.Europea Makeour Jewel Pvt. Ltd. in their written submissions inter-alia submitted that:

Submission dated 17.06.2023:

- Requested for release of import documents and non RUDs documents. Gadgets, peripherals, CCTV recorder etc. seized during searches;

Submission under e-mail dated 11.01.2024 through their advocate who has attended personal hearing virtually:

- Reiterated the submissions dated 17.06.2023;

Submission dated 08.04.2024:

- Re-iterated the submissions dated 10.02.2024, 06.03.2024 and 23.03.2024 by their Director – Shri Suresh Ratan Lal Jagatia (notice No.3) for CCTV Footage installed in the interrogation room and the room where statements of one the Directors Shri Suresh Ratanlal Jagatia and other co-noticees were recorded;
- Statements were recorded by the officers of Customs, Jaipur and others who have no jurisdiction over Surat SEZ so same cannot be relied upon. Commissioner Customs Ahmedabad has not carried out investigation except accompany the officers of Customs Jaipur;
- Share the authority under the Customs Act,1962 or any other law time being in force that statements recorded by the officers other than jurisdictional customs officer can be relied upon and SCN can be issued based on the same without carrying out independent investigation by the jurisdictional customs officers;

- M/s. Europea has received impugned Show Cause Notice (SCN) without certified copy of Relied upon Documents and Annexure – A to C; many of them not legible; requested for legible certified copy of all 3 Annexure and 82 Relied Upon Documents may be arranged with English Translation of documents in Hindi;
- It is settled position of law that non-furnishing of Relied Upon Documents and not return of Non-relied upon documents amounts to violation of principle of natural justice and such proceedings are liable to be quashed only on that ground. They have relied upon the case laws;
- Allegation are based on third party statements recorded under Section 108 of the Customs Act,1962 without adducing any evidence for such allegations and department miserably failed to bring on record recipient of huge quantity of imported goods said to have been diverted, it's movement, receipt of payments etc.. Requested to allow it to cross examine co-noticees at Sr.No. 3 to 14 and other persons whose statements etc. were recorded by the investigation; Also insisted upon to examine all witnesses referred in Annexure-C to SCN and other statements referred in the SCN and it may be allowed to cross examine all such departmental witnesses as provided under sub-section (2) of Section 138 of the Customs Act, 1962;
- Statements recorded under Section 108 of the Customs Act,1962 is subject to Section 138B ibid and if same is not considered on whatsoever ground such statement cannot have nay evidential value at all and it has to be eschewed from the evidence. In the instant case there is no other evidence other than oral evidence collected in the form of statements. If such statements are eschewed from the evidences, the SCN is required to be dropped;
- It is settled position of law that any statement recorded under Section 108 of the Customs Act,1962 and Section 14 of the Central Excise Act,1944 can be admitted as evidence only when its authenticity is established under provisions of Section 138B and Section 9D(1) of the Act, ibid as held by Hon'ble High Court of Delhi in the case of J.K. Cigarettes Ltd. Vs. CCE, 2009 (242) ELT 189 (Del). Para 12 of the said decision clearly holds that by virtue of sub-section (2) of Section 9D, the provisions of sub-section (1) thereof would extend to adjudication proceedings as well

"There can therefore, be no doubt about the legal position that the procedure prescribed in sub-section (1) of Section 9D is required to be scrupulously followed, as much in adjudication proceedings as in criminal proceedings relating to prosecution."

Also relied upon other case laws;

- Provisions of Section 9D of the Central Excise Act,1944 and Section 138B of the Customs Act,1962 are pari materia therefore, ratio of the same is squarely applicable in the present case. In view of the provisions of Section 138B of the Customs Act,1962 and above judgments, all the witnesses may be examined and arrange to furnish your opinion that their statement are to be admitted as evidence and thereafter it may be allowed to cross examination of departmental witnesses. Therefore, in view of the above, it wishes to cross examine the said witnesses so as to bring on record that depositions made by them were voluntary or otherwise so as to unearth the truth in the

interest of justice. After cross examination it would like to make further submission in the matter.

- the investigating officers have exceeded their jurisdictions and recorded the statements, conducted search and seizures without being authorized to do so under the SEZ Acts and accordingly M/s. Europea requested to allow cross examination of the officers of Customs who had recorded the statements, conducted search and seized the documents. They have mentioned that the Hon'ble High Court of Madras (Madurai Bench) in W.P. (MD) NO.11379 to 11382 in the case of K.Sugumar Vs. The Commissioner of customs, Tichurapalli had allowed the cross examination;
- it may also be clarified that whether such reasons were recorded in writing to carry out the investigation, inspection, search and seizure in a unit of SEZ by the Commissioner of Customs, Jaipur and Commissioner Customs, Ahmedabad? In the same way whether any prior intimation was given to the Development Commissioner of Surat SEZ, Surat by the Commissioner of Customs, Jaipur and Commissioner Customs, Ahmedabad. If yes, requested for legible certified copy of such reasons recorded in writing and intimation given by both Commissioner i.e. Commissioner, Customs Jaipur and Commissioner, Customs Ahmedabad. Both are vital conditions for carrying out search in a unit of SEZ and to decide jurisdiction of the action taken by the officer in a unit of SEZ;
- M/s. Europea assure to file interim reply in the matter at an early date while waiting for legible Certified copy of all RUDs, return of non-relied upon documents, electronic gadgets and cross examination of department's witnesses;
- on receipt of the above documents and after cross examination of department's witnesses wishes to make further detailed submissions in the matter.

Submission dated 19.04.2024:

- Referred the submissions dated 10.02.2024, 06.03.2024, 23.03.2023 and 08.04.2024 and requested for documents and electronic gadgets mentioned in their preliminary reply dated 08.04.2024;
- Would file interim reply in the matter at an early date while waiting for legible certified copy of all RUDs, return of non-relied upon documents, electronic gadgets and cross examination of department's witnesses;

Submission dated 25.04.2024:

- it is alleged under the impugned SCN that the said imported goods valued at Rs.2631 Crores involving Customs duty of Rs.212 Crores were diverted without any documentary evidence and without bringing on record to whom such goods were supplied in DTA. There is no proof of diversion of goods as well as substitution of imported goods with inferior quality goods and export of such inferior quality goods. In facts entire imported goods (except goods were lying stock) were exported under Customs Supervision and even foreign exchange realized except for the pending receipt of remittance. There is no dispute of export of imported goods by anyone including the Development Commissioner and/or the jurisdictional Customs Officers prior to the unauthorized action initiated by the officers of Jaipur Customs;
- Entire case has been booked based on the confessional statements of one of the directors which were recorded under pressure, duress,

threat of arrest. The Director Shri Sureshbhai Jagetia was after completion of search for 3 days in the unit was forced to accompany the officers of Customs, Jaipur on 27.05.2022 by booking his tickets with them. According to Shri Sureshbhai Jagetia was kept in illegal custody in the Customs Office, Jaipur till he was arrested on 30.05.2022 by the officer of the Jaipur Customs and between those days his statements were recorded and his signatures were taken;

- Though the search warrants were issued by the Assistant/ Deputy Commissioner, Customs, Surat and panchnamas were drawn by the inspectors / Superintendents of Customs, Surat but the officers of the Customs, Jaipur had accompanied them during the search.
- The seizure is totally illegal and without any base, it cannot be seized on any ground including over valuation as same were lying in SEZ unit only. Apart from that provision of Section 110 of the Customs Act, 1962 is not notified for the purpose of SEZ under the notified under SEZ Act, 2005 and the officers of Jaipur Customs are not proper officer to carry out search and seizure in SEZ unit, Surat, Gujarat;
- attention was invited towards the provisions of Section 20, Section 21 and Section 22 of the SEZ Act, 2005 and Notification No. S. O. 2665(E) dated 05.08.2016 issued under Section 21(1) of the SEZ Act, 2005 and alternatively submitted that Section 110 of the Customs Act, 1962 is not notified under the said notification as offence under the SEZ Act, therefore, seizure is illegal and liable to be lifted;
- attention was invited towards Notification No. S. O. 2667(E) dated 05.08.2016 issued under Section 22 of the SEZ Act, 2005 and submitted that as per the said Notification the jurisdictional Customs Commissioner in respect of offences under the Customs Act, 1962 and notified under the SEZ Act, 2005 is authorized by the Central Government, so as to carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit but before that he has to record the reasons in writing and with prior intimation to the Development Commissioner, concerned. Based on that it was submitted that the Commissioner of Customs, Jaipur and his officers have no jurisdiction to carry out investigation, search and seizure etc. in the SEZ unit of M/s. Europea situated at SEZ, Surat. Therefore, impugned SCN issued based on such investigation and search viz. statements recorded by the officers of the Customs, Jaipur and panchnama drawn in their presence is totally beyond the provisions of the SEZ Act, 2005, therefore, same is liable to be struck down;
- as per Sr. No. 3 of the Notification No. 21/2022-Cus. (N.T.) dated 31.03.2022 that the Commissioner of Customs (Preventive), Jodhpur is invested with the power of the Commissioner of Customs in the area of the whole of state of Rajasthan and he is not the Commissioner of SEZ, Surat in Gujarat state. In other words, he has no jurisdiction over the unit of M/s. Europea situated in SEZ, Surat, Gujarat. Therefore, entire actions are beyond the provisions of the SEZ Act, 2005. In fact as per Sr. No. 14 of the said notification the Principal Commissioner of Customs, Ahmedabad is invested with the power of the Principal Commissioner in the area of SEZ, Surat in Gujarat;
- attention was invited towards the provisions of Section 108, Section 138B of the Customs Act, 1962 and settled position of law viz. decision of Hon'ble Kerala High Court in the case of Kallatra Abbas Haji Vs. GOI - 1994 (69) ELT 212 (Ker.)(Especially para 27), JVS Food Pvt. Ltd. Vs. UOI - 2018 (10) GSTL 291(Raj.)(Especially para 8), M.C.M. Metaliesers

Ltd. Vs. UOI - 2018(10) GSTL (Guj.)(Especially para 4), (Especially Para 5 and 7), Parmarth Iron Pvt. Ltd. Vs. Commissioner of C. Ex. -I - 2010 (255) ELT 496 (A11.) and Jindal Drugs Pvt. Ltd. Vs. UOI - 2016 (340) ELT 67 (P & H) (Especially paragraph 9, 17, 20, 21 and 25) and submitted that statements of department's witnesses cannot be relied upon without examining and cross examining them. Therefore, if adjudicating authority wishes to rely upon statements of witnesses they may be examined and we may be allowed to cross examine them;

- Attention was invited towards the Order dated 30.05.2022 of Additional Chief Mahanagar Magistrate, Jaipur wherein Shri Sureshbhai Jagetia, Director of M / s. Europea had retracted the statements by submitting that his statements were recorded under duress, pressure and threat;
- Attention was also invited towards the provisions of Section 123 of the Customs Act, 1962 and Notification No. 103/2016- Cus. (NT) dated 25.07 .2016 and submitted that the imported seized goods are not notified goods under the said section, so goods are smuggled lies upon the department and department miserably failed to discharge the burden. On the contrary goods were imported through proper channel of Customs and lying in the SEZ unit only. Therefore, goods cannot be confiscated under any of the provisions of Section 111 of the Customs Act, 1962. In support of the same attention was invited towards decision of Hon'ble Tribunal Sachin A. Mehta Vs. Commr. of Customs (Prev.),4 Kolkata - 2003 (162), ELT 722 (Trr. - Kolkata) (Especially paragraph 3(c), 3(d),3(e) and 3(g));
- requested that before passing any adverse decision in the matter arrange to furnish legible certified copy of RUDs, return of Non-Relied upon Documents including documents and electronic gadgets listed in Annexure - A to the Panchnama dated 25.05.2022 to 27.05.2022 drawn at the SEZ unit of M/s. Europea, CCTV Camera's footage installed in interrogation room where all the relied upon statements were recorded and allow us cross examination of department's witness etc. as requested vide letters dated 10.02.2024, 06.03.2024, 23.03.2024 and 19.04.2024. On receipt of the same, they wish to make further detailed submission in the matter and also wish to be heard in person once again;
- submitted that the hearing dated 24.04.2024 is considered as 4th hearing but in fact in third hearing and in this 4th hearing appearances were/are made so there are only two adjournments in the matter. Therefore, as per Section 122A of the Customs Act, 1962 only two adjournments were sought that too on the grounds of documents etc. as stated in para 6 were not furnished. So same may not be considered as adjournments for the purpose of said Section 122A ibid.

Submissions dated 20.05.2024:

- referred submissions dated 10.02.2024, 06.03.2024, 23.03.2024, 08.04.2024, 19.04.2024, oral submissions made during Personal Hearing held on 24.04.2024 read with submission dated 25.04.2024 and requested to furnish documents, certified copies of RUD, return non-relied upon documents, electronic gadgets etc, allow cross examination, RUDs of supplementary SCN dated 24.04.2024;
- requested for unconditional release/return of seized goods as provided under Section 110(2) of the Customs Act,1962 as goods were seized

- on 26.05.2022 and SCN was issued on 20.05.2023 i.e. beyond six months from date of seizure and the noticee has never received any written reasons extending further period of six months before expiry of six months from the Commissioner of Customs, Jodhpur/Ahmedabad;
- from the provisions of Section 110(2) it is very clear and also as per settled position amongst other following decisions department is bound to return seized goods as no show cause notice is issued under Section 124(a) of the Customs Act,1962 nor any extension for further six months was issued, therefore, it is prayed that seized goods may be returned unconditionally at an early date; relied upon the case laws;
 - requested to furnish legible certified copy of record of reasons in writing to carry out the investigation, inspection, search or seizure in SEZ unit of M/s.Makeour Jewel Pvt. Ltd., SEZ Unit, Surat SEZ, Sachin, Surat and copy of prior intimation given to the Development Commissioner of Surat SEZ as well as authority under which impugned SCN are issued based on the investigation carried out by the officers other than the proper officer.

Submission dated 30.05.2024:

Under this letter they have raised concern regarding extension granted by the Hon'ble Principal Chief Commissioner for 1 year for adjudication of SCN dated 20.05.2023 and stated that: -

- Requested to furnish grounds and circumstances under which adjudicating authority was prevented from determining the amount of duty under sub-section (8) of the Customs Act,1962 based on which the Chief Commissioner, Customs, Gujarat Zone, Ahmedabad has granted extension of 1 year for adjudication of the SCN dated 20.05.2023 in terms of proviso to Section 28(9) of the Customs Act,1962;
- It is not clear from letter dated 26.04.2024, *(the letter under which the noticees were communicated about extension granted by the Hon'ble PC Sir)*, that on which date the Principal Chief Commissioner had extended the period of adjudication for one year; it is also not forthcoming under which circumstances the adjudicating authority was prevented from determining the amount of duty under sub-section (8) of the Customs Act,1962;
- Principal Chief Commissioner sir cannot extend period of one year without satisfying about the circumstances under which the Principal Commissioner was prevented from determining the amount of duty within the period of one year and without putting other side communicating such circumstances and hearing in person;
- It is not the case of department that the amount was not determined for any of the reason stated in sub-section 9A of the Section 28 of the Customs Act,1962, therefore, extension granted by the Principal Chief Commissioner sir is beyond the provisions of the Customs Act,1962;
- Extension under proviso to sub-section 9 of the Section 28 cannot be on the ground that supplementary SCN is issued under sub-section 7A of the Section 28;
- It means so as to grant the extension supplementary SCN dated 24.04.2024 is issued after 11 months to 18 co-noticees against whom no new investigation was carried out after issue of SCN dated 20.05.2024 except in one case of proprietor of M/s.Kavish

Gems for the sake of recording two statements dated 01.06.2023 and 02.06.2023;

- It is not clear from 02.06.2023 to 23.04.2024 what prevented the department to issue supplementary SCN if any and why adjudication was not done during the period;

Submission dated 30.05.2024:

Under this letter they have raised concern regarding issuance of supplementary SCN dated 24.04.2024 and stated that: -

- To furnish under which clause of Regulation 4, Supplementary SCN is issued and also may be clarified when draft SCN with all RUDs were received from the office of the Commissioner, Customs, Jodhpur;
- It is not forthcoming from the supplementary SCN dated 24.04.2024 as under which sub-clause of regulation 4 of Customs (Supplementary Notice) Regulations, 2019 the supplementary SCN has been issued;
- It appears that same may be issued under clause (b) of regulation 4 ibid but ongoing through the supplementary SCN it clearly reveals that except two statements all other RUDs were recorded well before issue of the SCN dated 20.05.2023, which are recorded for sake of recording statement as whatever statements and panchamas stated in these two statements were for the period prior to 20.05.2023;
- A question may be raised why these exercises were not carried out at the time of issue of SCN dated 20.05.2023. It clearly reveals that same is done so as to implicate M/s.Europea, fabricate case against it and so as to issue supplementary SCN at the last moment so as to extend the time limit of adjudication of the said SCN dated 20.05.2023;

112.2 Shri Suresh Ratanlal Jagetia Director of M/s.Europea Makeour Jewel Pvt. Limited (notice No.3):

Shri Suresh Ratanlal Jagetia, in his written submissions inter-alia submitted that:

Submission dated 17.06.2023:

- Requested for release of import documents and non RUDs documents, gadgets, peripherals, CCTV recorder etc. seized during searches;

Submission under e-mail dated 11.01.2024 through their advocate who has attended personal hearing virtually:

- Reiterated the submissions dated 17.06.2023;

Submission dated 10.02.2024:

- Following undisputed facts are being brought on record: M/s. Europea and M/s. Maahi are undisputedly the SEZ Units in the Surat Special Economic Zone; investigation into the alleged violations of the Customs Act, 1962, by these SEZ units, has been conducted by the Ahmedabad Customs Commissionerate; The present Show Cause Notice has also been issued by the jurisdictional Customs Commissioner, that is the Principal Commissioner of Customs. Ahmedabad; the allegation of evasion of customs duty is totally based

on inculpatory statements of the respondents including that of undersigned recorded under Section 108 of Customs Act, 1962 by the officers of Jodhpur Customs at Jaipur; these statements have not been corroborated by any independent, reliable and incontrovertible evidence; while granting bail to him and other respondents, Rajasthan High Court has recorded in its order pronounced on 08.02.2023 that the statement was made under coercion and pressure. Further in the remand order dated 30.5.2022, Hon'ble Addl. Chief Metropolitan Magistrate has also recorded that statement was taken by Customs Officers under threat, coercion and pressure;

- In order to prove that the statements of the undersigned and other respondents were obtained/ recorded by Investigating Officers under duress, threat, coercion and by using third degree methods, CCTV footage of interrogation and recording of statement would be crucial evidence;
- attention is invited to orders/ directions contained in Supreme Court judgment in Special Leave Petition (Criminal) No.3543 Of 2020 [Paramvir Singh Saini Vs Baljit Singh & Others] regarding installation of CCTV and preservation of CCTV footage. These directions are in furtherance of the fundamental rights of each citizen of India guaranteed under Article 21 of the Constitution of India;
- CCTV is a form of electronic evidence and is deemed to be document. This has been explained by Apex Court in Para 21 of the judgment dated 14.07.2020 in Arjun Panditrao Kothar vs Kailash Kushanrao Gorantyal and Ors. [civil appeal nos. 20825-20826 OF 2017];
- In the case of T. Takano v. Securities and Exchange Board of India [2022 SCC OnLine SC 210], the Supreme Court, in the matter relating to SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003, emphasised on the importance of disclosure of documents, and how it was inextricably linked to natural justice;
- The Division Bench of the Bombay High Court in the case of Silicon Graphics System India Private Limited vs Union of India [2006(204) E.L. T.247 (Bombay)] in categorical terms held that the non-supply of the unrelayed documents may be one of the facets of the violation of principle of natural justice as the authorities may not find those documents to be relevant for the purpose of initiation of the proceeding, but those documents may be a vital piece of a defence. The aforesaid proposition was also taken previously by Calcutta High Court in the case of Kayal Bros. (Pvt). Ltd. Ps. Additional Collector of Customs reported in 2000 (125) E.L. T. 200 (CAL);
- In view of above directions of Supreme Court and case laws cited above you are requested to:
 - (i) inform whether CCTV was installed in the interrogation room and the room where statements of the undersigned and other respondents were recorded?
 - (ii) if yes, then CCTV footage (video and audio both) of the interrogation and recording of statement of the undersigned and other respondents may be provided at the earliest.
- On receipt of information/ CCTV footage, detailed and final reply to the Show Cause Notice would be submitted;

Submission dated 06.03.2024 and submission under e-mail dated 09.03.2024:

- Re-iterated the submissions made under letter dated 10.02.2024;

Submission dated 23.03.2024:

- that during personal hearing (attended on 18.03.2024) the following request was made by his counsel: (a) Supply of CCTV footage of interrogation and recording of statement in terms of directions issued by Supreme Court; (b) Cross examination of persons whose statement is being relied upon in the SCN for framing case against him;
- He has not received any response from the department. As pointed out in earlier letters dated 10.02.2024 and 06.03.2024;
- CCTV footage/electronic evidence is considered as "document" under Sec 3 of The Indian Evidence Act, 1872 and all documents including electronic records produced for the inspection of the adjudicating authority are called documentary evidence. On this issue Supreme Court in the judgment dated 29 Nov., 2019 in Criminal Appeal No 1794 of 2019 [P. Gopalkrishnan @ Dileep vs State of Kerala] has laid down that CCTV footage contained in an electronic recording device is "document";
- The above legal proposition has been laid down in a criminal case but this legal proposition is applicable in civil/quasi-judicial matters as well. Relied upon the judgment of Madras High Court in the case of Mohnumed Haroolr Vs The Additional Director General DRI on 26 April, 2021 [WP(MD) Nos.3917 & 3918 of 2020 and WMP (MD)No.5459 of 2021];
- Refusal of the department to provide electronic evidence/ CCTV footage and allow cross examination of concerned persons would be violation of natural justice;
- Article 14 often described as the 'Constitutional Guardian' of the principles of natural justice, expressly forbids the state, as defined in Article 12, from denying to any person, equality before the law or equal protection of laws. Natural justice is a concept of common law and represents higher procedural developed by the courts, which every judicial, quasi-judicial and administrative agency must follow while taking any decision adversely affecting the rights of a private individual. The significant role played by procedural fairness in the backdrop of internalising the principles of natural justice into the Constitution cannot be overstated. This aspect has been highlighted by Division Bench of Apex Court in Madhyamam Broadcasting Limited Vs. Union of India & Others [2023 SCC online 366];
- Reluctance and refusal of the adjudicating authority to supply of CCTV footage and allow cross examination is violation of principles of natural justice and reflects biasness on the part of adjudicating authority. Thus bias strikes at the very basis of a decision, which is supposed to be fair. Rule against bias is part of natural Justice. In State of Gujarat Vs. R.A. Mehta, (2013) 1MLJ 362 (SC) while dealing with the doctrine of bias, the apex court held that reasonable suspicion that there is likelihood of bias affecting decisions would be sufficient to invoke the doctrine of bias;
- In the present case it is more than apparent that adjudicating authority, by not responding to the request has made up his mind to confirm the demand as raised in SCN and decide the matter against them. This is under the doctrine of biasness, is termed as official/departmental bias and preconceived notion bias;
- Since natural justice is most important procedural part of adjudication, the adjudicating authority is requested to accede to the request of

undersigned to supply recordings of CCTV and allow cross examination of concerned persons. This is also important because this is the best defence available to the respondent to prove that allegation made in the Show Cause Notice is baseless.

Submission dated 19.04.2024:

- Cross examination is enshrined in the provisions of the Customs Act,1962 and is a statutory right of the noticee. Section 138B of the Customs Act,1962 is pari-materia with Section 9D of the Central Excise Act,1944 and it is settled position of law that any statement recorded under Section 14 of the Central Excise Act,1944 can be admitted as evidence only when its authenticity is established under provisions of Section 9D(1) of the Act,ibid as held by the Hon'ble High Court of Delhi in the case of J.K. Cigarettes Ltd. Vs. CCE,2009 (242) ELT 189 (Del). As per the above provisions, it is mandatory on the part of the adjudicating authority to allow cross-examination of witnesses and the noticee is not required to provide any reasons for cross-examination. By asking for specific points or reasons, a decision regarding allowing cross-examination is likely to be taken, which is against the mandate of the law; Relied upon the judgments;
- Referred the para 14.9 of CBEC Circular No.1053/2/2017-CX., dated 10.03.2027, regarding corroborative evidence and cross examination, and submitted that it is obligatory to allow cross examination of the person whose statement has been relied upon in the SCN. It is settled law fact that departmental circular is binding upon its officers and have to be followed without taking shelter of any other judgments, which might have been pronounced based on many facts which may not be similar to the present case. Relied upon the judgments;
- The noticee had sufficient reasons for asking the cross-examination. The entire Show Cause Notice is based on the statements of persons listed as noticee No. 4 to 13 and himself. Adverse inferences have been drawn on the basis of those statements and it is necessary in the pursuit of justice to establish whether there is any nexus between such witness and the noticee and as such to bring out the truth and to assist adjudicating authority in the interest of justice, cross examination of noticee No. 4 to 14 is required;
- Referred Letter dated 08.04.2024 of M/s.Europea Makeour Jewel Pvt. Ltd. and requested to provide same documents to him also;
- In the SCN the alleged role of Shri Kamlesh Nagda has been discussed and it is mentioned that his statement was recorded on 15.01.2022, however, copy of statement not listed in the RUDs (Annexure-C) and has not been supplied to him;
- Referred para 13.0 of CBEC Circular No.1053/2/2017-CX., dated 10.03.2027, regarding service of SCN and RUDs and relied upon the case laws"
- As requested, documents may be provided, cross examination may be allowed and then only a reply based on such facts and documents can be filed.

Submission dated 29.04.2024:

- The investigation leading to the show cause notice is biased, lacks jurisdiction and full of many factual errors;
- it would not be possible and proper to file the final reply without getting the documents requested for and allowing the cross-

- examination of the departmental witnesses and final reply may be filed only after the documents requested for is supplied and the cross examination of witnesses are allowed;
- the proposal for penalty on him is based on the premise that he had dealt with such goods which were liable for confiscation, but the Panchnama dated 25,26 & 27.05,2022 and the seizure memo dated 26.05.2022 and also the Supratnama dated 27.05.2022 nowhere mentions the value of goods so seized. Without such mention as to how an exact amount of Rs.5,11,28,910/- was shown as the value of the goods [Para 8a(iv) of the show cause notice;
 - In addition to the earlier letters and the letter dated 19.04.2024 which was discussed during the personal hearing following submissions are made, which may be taken as a preliminary reply to the notice;
 - It is submitted that penalties under section 112(a) & 112(b) and section 114 AA as well as section 117 has been proposed to be imposed on him on the allegation that he had dealt with the goods which were liable for confiscation and for that it is alleged that he conspired with other persons named as noticee no. 2 to 12;
 - the department could not trace and record the statement of noticee no.2, 10 and 12. It is also submitted that all the other noticees except Shri Deepak Kumar, noticee no. 8 have never said a single word either about M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) or him. Shri Deepak Kumar in his statement had stated that he had purchased Diamonds from M/s. Europea Makeour Jewel Pvt Ltd (DTA unit). This fact is clearly mentioned in Para 48, page 17 and Para E, page 71 of the show cause notice. It is also submitted that one Shri Paresh U Sheth in his statement dated 15.03.2023 (RUD-63) had stated that he purchased diamonds from M/s. Europea Makeour Jewel Pvt Ltd (DTA unit) (Para 69, page 38 of the SCN). One Shri Mehulbhai Arjunbhai Kakadiya (RUD-65) also stated that he has brought diamonds from M/s. Europea Makeour Jewel Pvt Ltd.;
 - M/s. Europea Makeour Jewel Pvt Ltd (DTA unit) is altogether a different entity from M/s. Europea Makeour Jewel Pvt.Ltd (SEZ Unit). In the respective statements of several persons, the name of M/s. Europea Makeour Jewel Pvt Ltd has been mentioned without differentiating between the two and creates confusion as to about which Europea Makeour Jewel Pvt. Ltd, the DTA unit or SEZ unit is being referred about. The present case is related to M/s. Europea Makeour Jewel Pvt. Ltd (SEZ Unit) and the present show cause notice has been issued to M/s. Europea Makeour Jewel Pvt. Ltd (SEZ Unit) only. It is also alleged in the show cause notice that M/s. Europea Makeour Jewel Pvt Ltd (DTA unit) was found to be non-existent/non-functional. It is humbly submitted that the officers of Customs have visited the premises of M/s. Europea Makeour Jewel Pvt Ltd (DTA unit) on 25.05.2022 and when they visited the premises, they found the premises operative and functional and there were two salesmen of M/s. Europea Makeour Jewel Pvt Ltd (DTA unit) and both of them confirmed that the company was engaged in the business of sales of 'laboratory created or laboratory grown or man-made or cultured or synthetic diamonds'. It is submitted that when the premises was functional, it is not forthcoming as how it was found to be non-existent/non-functional;
 - in Table T-1A (Para 86) of the notice all the persons at Sr. no.1,2,3,5,11 and 12 have been named as mastermind, which itself

- proves that this word has been used without realizing the meaning of this word. He has been also named as Co-conspirator, if a person is alleged to be a Co-conspirator', there must be a 'Conspirator and the show cause notice fails to identify that Conspirator. There is no evidence on record or reasoning to allege that SRJ was a beneficial director of M/s Europea Makeour Jewel Pvt Ltd. The very purpose of using this term is not coming out from the show cause notice and none of these terms find any place in the entire Customs Act, 1962 or any other related provisions for the purpose of imposition of penalty;
- many facts and the inferences drawn in the show cause notice from the statements are not in consonance with those statements and also with other circumstantial evidences as mentioned in various Panchnamas. For these reasons the cross-examination of following persons is required, which may kindly be allowed:
 - (i) Shri Ram Raj Choudhary
 - (ii) Shri Navratan Singh Jain
 - (iii) Shri Om Prakash Vanjani
 - (iv) Shri Vikram Singh Kachchawa
 - (v) Shri Ravindra Kumar
 - (vi) Shri Karnlesh Nagda
 - (vii) Shri Deepak Kumar
 - (viii) Shri Vimal Nahar
 - (ix) Shri Nitesh Kumar
 - (x) Shri Surendra Mali
 - (xi) Shri Rajendra Jangid
 - (xii) Shri Paresh U Sheth (RUD-63)
 - (xiii) Shri Mehulbhai Arjunbhai Kakadiya (RUD-65)
 - (xiv) Shri Vikasraj fihkraj Juneja
 - (xv) The Custom Officer who seized the goods in the premises of M/s Europea (SEZ)
 - (xvi) Shri Kailash Choudhary (RUD-60)
 - Following documents may be provided for submission of reply to the show cause notice:
 - (i) Statement of Shri Kamlesh Nagda- Para D, Page 69 (not in the list of RUD)
 - (ii) Copy of letter of authorization given to the officers of Customs, Jodhpur to search and investigate the case in Surat SEZ.
 - (iii) CCTV footage of the room where the statements of the persons referred in the show cause notice have been relied upon
 - (iv) Appointment letter of Shri Vikasraj Tilakraj Juneja, the Government approved valuer appointing Shri Juneja as Valuer of Gems & Jewellery.
 - (v) Lab certification of the diamonds so seized in M/s Europea (SEZ) unit.
 - (vi) RUD-1
 - (vii) RUD-10
 - (viii) Copy of letter by the Commissioner of Customs (Preventive), Jodhpur intimating the Development Commissioner, Surat SEZ regarding the visit and inspection of the officers in Surat SEZ.
 - (ix) Copy of letter of extension for issuing show cause notice for confiscation of goods after the required period of six months as per section 10(2) of the Customs Act, 1962
 - the Customs Administration has been divided into various formations as per defined geographical boundaries and the officers posted in a

particular formation are empowered to function in that particular geographical area unless specifically empowered or entrusted to work outside the jurisdiction. It is humbly submitted that as per Sr. No. 3 of the Notification No. 21 /2022-Cus. (N.T.) dated 37.03.2022 the Commissioner of Customs (Preventive), Jodhpur is invested with the power of the Commissioner of Customs in the geographical area of the state of Rajasthan and he has not been empowered to exercise his power outside Rajasthan and he cannot subsume the power of or act as the Commissioner of SEZ, Surat in the state of Gujarat, where M/s Europea Makeour Jewel Pvt. Ltd (SEZ Unit) is working. Accordingly, the action taken by the officers of Customs (Preventive), Jodhpur is not only in violation of the SEZ Act, 2005 but also against the provisions of Customs Act, 1962;

- the provisions of Section 20, Section 21 and Section 22 of the SEZ Act, 2005 and Notification No. S. O. 2665 (E) dated 05.08.2016 issued under Section 21(1) of the SEZ Act, 2005 does not enable and support the officers of Customs to seize the goods in any SEZ and as such the seizure is illegal;
- without providing the required documents and allowing cross-examination of the above persons, the process of adjudication may not be fair and considered as prejudiced. As such, the requested documents may be provided, cross-examination may be allowed and then only a reply based on such facts and documents can be filed. Persona-I hearing in the matter may be fixed only after the requested documents has been provided, cross examination has been conducted and a final written submission has been filed.

112.3 Shri Navratan Singh Jain, (Noticee No.5)

Shri Navratan Singh Jain, in his written submissions inter-alia submitted that:

Submission dated 16.06.2023:

- In the present case all the consignments were examined, assessed and allowed clearance by the proper officer exercising powers under the Customs Act. The power to reassess and/or demand duty vests only with "the proper officer" who had assessed the goods and had granted out-of-charge of the goods at the relevant time. Neither the officers of Commissioner of Preventive nor the Commissioner was "the proper officer" who had assessed the goods and allowed clearance; hence, SCN Commissioner, Customs, Ahmedabad did not have power to issue Show Cause Notice exercising powers under section 28(4) of the Customs Act; the legislature has affirmed the findings of the Hon'ble Supreme Court in the case of Canon India and has accordingly inserted section 110AA of the Act, clarifying that officer of Customs after carrying out investigation in the cases specified therein, will have to transfer the proceeding to the proper officer who have been assigned assessment under section 5 of the Act; Commissioner is not the officer who could have assessed the bills of entry in light of Canon India. Hence, the Show Cause Notice is without jurisdiction and the same deserves to be dropped. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall. In such situation, the legal maxim "subtato fundamento cadit opus" meaning thereby that foundation being removed, structure/work falls, comes into play and applies in the present case. Hon'ble Supreme

Court has held that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to the present proceedings; relied upon various case laws wherein the judiciary fora have set aside the adjudication orders, following the decision of Hon'ble Supreme Court in the case of Canon India;

- the investigating officers of Customs (Preventive-Rajasthan) did not have power or jurisdiction to inspect or seize goods in respect of units situated in SEZ area. The power to investigate in respect of any offence committed in SEZ unit is conferred on officers empowered under Section 22 of the SEZ Act. Further, section 52 of the SEZ Act also spells out that the Customs Act is not applicable in respect of units situated in SEZ unit;
- 1. Vide a Notification bearing No. 2665(E) dated 05.08.2016, the Central Government Notified various offence to be notified offences under the SEZ Act which includes section 28 of the Customs Act, 1962.
- 2. Further, vide Notification S.O. 2666(E) dated 05.08.2016, the Central Government, in exercise of the powers conferred by sub-section (2) of section 21 and second proviso to section 22 of the Act, inter alia notified the Additional Director General, Directorate of Revenue Intelligence for offences under the Customs Act, 1962 to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone.
- 3. Vide another Notification No. S.O. 2667(E) dated 05.08.2016, the jurisdictional Commissioner of Customs was also notified in respect of offences under the Customs Act.

Hence, as per Section 21 (2) of the Act, the Central Government was empowered to notify officer and/or agency to give them powers to search, seize etc, the Central Government specifically gave powers only to the Jurisdictional Commissioner or the Additional Director General of the DRI, the power to search, seize etc; All the statements were recorded without complying with the directions of the Hon'ble Supreme Court in the case of Paramveer Singh Saini, without installation of C.C. T. V. Cameras, while conducting interrogation or recording of statements. Since, most of the statements have been retracted, examination/cross-examination of all the noticees along with the officers who recorded the statements is vital for conducting adjudication proceedings; After examination-in-chief, the noticee would cross-examine the persons whose statements are relied upon and also the Officers, who recorded the statement, to verify as to whether the statements were recorded voluntarily and, in the manner, prescribed by the Board and Hon'ble Court; relied upon the judgments regarding cross examinations - Jindal Drugs Pvt. Ltd. & Anr Vs UOI, reported in 2016-TIOL-1230-HC-P&H-CX, Hon'ble Punjab and Haryana High Court; Andaman Timber (Infra), reported in 2015 (324) E.L.T. 641 (S.C.); Krishan Kishore Agarwal, reported in 2019 (366) ELT 970 (Del); A. Tajudeen, reported in 2014-TIOI,-85- SC-FEMA; Noor Aga v/s State of Punjab (2008) 16 SCC 417; Mehar Singh Vs. The Appellate Board Foreign Exchange 1986 (10) DRJ 19; Ayaaubkhan Noorkhan Pathan v. State of Maharashtra & others reported in (2013) 4 SCC 465; Prem Singh Vs. Special Director, Enforcement Directorate, CRL A. 276 of 2008;

- Be that as it may, even otherwise the penalties under section 112(a) & (b) and section 114AA of the Act is not imposable inasmuch as the investigation carried out and the Show Cause Notice is without authority and jurisdiction and hence seizure of such goods is illegal and void ab initio. Since seizure is void ab initio, the same cannot be confiscated inasmuch as the predicate requirement of seizure has not been satisfied; Provisions of section 112 do not stand attracted in the present case. The penalty under section 112 can be imposed only for improper importation of goods. In the present case, there has been no improper importation of goods. Mere allegation has been made as regards non-compliance of the condition attached to the duty-free import of goods. The importer was required to export the goods after processing the imported goods, instead he has allegedly diverted the goods. Hence, at the most, the case pertains to non-compliance or breach of the import condition. Even if, the importer has committed breach of the Import condition, section 112 cannot be invoked in relation to the same. Section 112 relates only to the act committed or omitted to commit or any omission at the time of import of the goods; In the present case, the import of the goods has been carried out in accordance with the statutory provisions and no breach of whatsoever nature has been alleged to have been committed by the importer. Hence, none of the provisions of section 112 would stand attracted; The Show Cause Notice does not make any proposal under which sub-clause it was seeking to impose penalty upon the noticee. Non mentioning of the relevant sub-clause is fatal to the Adjudication proceedings. Hence, generic allegation for imposition of penalty is vague and improper in nature. Further the Show Cause Notice also lacks any reasoning to invoke any of the sub-clauses of 112, therefore the proceeding in the entirety is unsustainable. On this ground alone, the Show Cause Notice is bad-in-law and the same deserves to be dropped; Even otherwise penalty under Section 114AA is imposable only when a person knowingly or intentionally makes, signs, or uses, or causes to be made, signed or used, any declaration, statement ,or documetns which is false or incorrect in any material particulr. In the present case, the noticee has not signed any document in relation to the import of goods, hence, no penalty under Section 114AA of the Act is invocable qua him; Surprisingly, section 117 has also been invoked in the Show Cause Notice. Section 117 deals with the situation where the contravention is committed in relation to any provision of the act for which no express penalty is elsewhere provided for. In the present case, when penal provision of section 112 and 114 has already been invoked, then section 117 could not have been invoked and goes beyond the very concept of imposing penalty under section 117. Hence, the proposal made in the Show Cause Notice is completely mis-conceived;
- The Show Cause Notice has inherent lacuna as regards:
 - (i) the authority of the Customs (Preventive) causing Investlgatron,
 - (ii) authority of the Commissioner to issue Show Cause Notice,
 - (iii) absence of any material evidence in relation to the allegation made,
 - (iv) provision invoked for confiscation of goods,
 - (v) proposal for imposition of penalty under section 112, 114AA and 117;

- the Show Cause Notice is therefore completely vague and unsustainable and hence the same deserves to be dropped.

Submission dated 27.03.2024:

- submitted name of the persons whose cross-examination is sought:
 - Vikram Singh Kachchhawa - stating that the allegations against the noticee by Vikram Singh Kachchhawa not established with any corroborative evidence, hence examination required;
 - Deepak Kumar - stating that in the later portion of his statement name of the noticee added to the name of Ram Raj Chaudhary and Vikram Singh Kachchhawa and no specific averment or allegation was made against the noticee. There are absolutely no reasons available or implication that the noticee was involved in any of the alleged chain of event that is impugned in the SCN, hence examination and cross examination required;
 - Navratan Singh Jain, (he himself) - stating that he wishes to produce himself for the purpose of examination to determine the truth and veracity of his statements recorded under duress and coercion. Filing repeated complaint by the noticee from time to time shows that he was not at all concerned with the proceedings impugned in the SCN;
 - Vimal Kumar Nahar - stating that in version of Vimal Kumar Nahar in his statement about the noticee appears to be hearsy. The reasons being that the communications or transactions were carried out by the noticee at the behest of Mr. Kachchhawa. Vimal has improved and changed his statement on 22.02.2023 and included the name of the noticee alongwith Kachchhawa. Name of the noticee has been added in relation to the procedure of sale and purchase of goods and it is alleged that the noticee issued directions for issuance of invoices. Vimal in his statement dated 23.02.2023 made reference of having received communication from Kachchhawa as well as from the noticee and he explained the process through chart;
 - Suresh Ratanlal Jagatia - stating that Suresh Jagatia in his statement stated that Mr. Tonu and the noticee took him (Suresh) to Mr. Kachchhawa and Mr. Kachchhawa was the person handling arranging of funds. The noticee can't be merely implicated being an alleged introducer, hence examination required
- statement of the following officers who had recorded the statements is also necessary, since the statement have been obtained in a manner not prescribed under the provisions of the Customs Act, 1962 read with provisions of Code of Criminal Procedure:
 - Nitin Kumar Gupta,
 - S C Maich,
 - Ram Prasad,
 - Sushil Kumar Jakhar,
 - Sudhir Tiwari

Submission dated 23.04.2024:

- re-iterated the submission dated 27.03.2024 and requested that the examination of the persons named may kindly be conducted and

informed to the noticee to enable him to remain present during the course of the aforesaid proceedings, in the interest of justice.

112.4 Shri Om Prakash Vanjani, Director of M/s. Belstar Techno Solutions (OPC) Bank Pvt. Ltd, (noticee No.06):

Shri Om Prakash Vanjani, in his written submission dated NIL received on 23.01.2024 inter-alia submitted that:

- At the first instance, the applicant submitted that he has not received complete copy of the SCN including annexure mentioned therein. He has requested to provide complete copy of SCN dated 20.05.2023 alongwith annexures as mentioned therein in order to permit the applicant to file reply to the afore said SCN; At the outset, the applicant denies each and every singular allegations/statements made in the subject notice except as specifically admitted herein below; the subject notice under reference is based upon wrong apprehension of facts and events and further the allegations levelled against eh applicant are not admitted as in the manner stated therein; It is not admitted and denied that the applicant filed any GST return of the company without conducting any business. Merely if a company allegedly not found in existence at the alleged given address, then the sole cannot be reason to suspect any company to be operating fraudulently;
- It is not admitted and denied that M/s.Belstar Techno Solution (OPC) Pvt. Ltd. is non-existent Company/firm which had been created only on paper and they factually never made any import of services. Department did not made sufficient evidence so as to categorise the company has been created only on papers and they factually never made any import of service;
- The applicant does not stand by his statements given under Section 108 of the Customs Act,1962. The Statement so taken by the applicant was under severe coercion and was being subjected to abused and beaten;
- It is not admitted and denied that the applicant opened a fake company in any manner whatsoever and in order to give a legal look to fraudulent remittances sent abroad, the company was fraudulently registered in GST for receipt of services and he in collusion with other accomplices, was instrumental in remittances to Hongkong and UAE. The applicant has not committed any sort of offence whatsoever, more so, the investigation so allegedly being done by the department does not come under fora of the Act, 1962;
- Making the sole reliance upon the statement under Section 108 of the Customs Act,1962 is certainly not permissible, as the statement under Section 108 of the Act, cannot be taken blindly;
- For the alleged act of M/s.Europea Makeour Jewel Private Limited and M/s.Mahi Jewellery Exim Private Limited, the applicant cannot be made liable; Furthermore, without prejudice to the contentions of the applicant, it is submitted that the department has not followed the proper procedure, needed to investigate a unit under SEZ;
- It is not admitted and further denied that any money was remitted by the applicant's company in lieu of payment of illegal gold, diamond and precious stones and denied that any amount has been remitted by the applicant's company specifically against the import of gold, diamond and precious material;

- The applicant has not committed any offence whatsoever and it completely innocent thereby, at the first instance in the present case, provision of the Customs Act,1962 are not at all attracted in any manner whatsoever, qua the case of the applicant, no seizure of gold or any precious stone has been done by the department, so there is no case made out against the present applicant. Even otherwise also, provisions of Section 112(a), 112(b), 114AA and 117 of the Customs Act,1962 are specifically not made out qua the applicant, therefore, there is no occasion for the applicant to make liable under any of the provisions of the Act,1962;
- The subject case qua the applicant does not come under the purview of the Act,1962 and more so, neither the Customs Authority at Rajasthan nor at Ahmedabad have jurisdiction to enquire and investigate the subject alleged case qua the present applicant. The subject SCN is even otherwise also barred by the limitation, as the applicant was allegedly shown to be arrested on 26.11.2021, and investigation from the complaint filed qua the present applicant, it appears that the investigation was allegedly started in October,2021 and the subject Show Cause Notice carries the date 20.05.2023. Therefore, the subject SCN is beyond the limitation as prescribed under the Act,1962;
- The company M/s.Belstar Techno Solution (OPC) Pvt. Ltd.is inter-allia engaged in the business of import of various services in respect of Animation and Graphic having been duly registered under the IGST Act,2017, having the requisite GST registration number as mentioned therein. The Company receives work orders from its respective domestic clients, for procurement of animations and graphic services, in turn they place orders on its foreign supplier and duty, remits amount to them by complying with the relevant guidelines. They have paid the IGST on the amount of commission received by it;
- Civil Writ Petition No.1485/2021filed by the applicant before the Hon'ble Rajasthan High Court at Jaipur bench to quash the investigation, was decided as withdrawn vide order dated 20.012.2021;
- Scope of the Customs Act,1962 is limited to import or export of goods, hence, the department can verify only the details as regards the import or export made or attempted to be made by any person. As remittance made and investigation relating thereto, the same falls within the ambit of RBI and Enforcement Directorate under FEMA. Custom officers have not been authorised to conduct any investigation in relation to the remittances made;
- For the subject case, the criminal proceedings are being pending at the concerning court at Jaipur jurisdiction and now, the present SCN has been issued by the department at the Ahmedabad jurisdiction. Therefore, it appears that contradictory stands have been taken with respect to territorial jurisdiction;
- The applicant has been shown to be the Director of the subject company (M/s.Belstar Techno Solution (OPC) Pvt. Ltd.), however, it is no where been shown that the subject company independently has been arrayed as a party independently therein. Therefore, on this account itself, the subject SCN demands to be set aside;
- Relevancy of statement under certain circumstances has been provided under Section 138 of the Customs Act,1962 wherein it has been held that only when the person who has made the statement is

examined as a witness in the case before the court, the court is of the opinion that the statement should be admitted, than only it has value. Otherwise any statement recorded does not have nay value or cannot be relied upon in the proceedings, since the validity of the same has not been tested by court of law. In the present case, statements are required to be examined by a court and hence, the same cannot be relied upon at this stage. He has relied upon the judgment of the Hon'ble Supreme Court in the case against 'Noor Aga Vs. State of Punjab' [(2008) 16 SCC 417]; in the case of 'A. Tajudeen Vs. UOI [(2015) 4 SCC 435]; judgment of Hon'ble Bombay High Court in the case of 'Union of India Vs. Kisan Ratan Singh & Ors reported in MANU/MH/0035/2020;

- The applicant cannot be fastened with any liability or penalty based upon the sole statements of the certain persons as mentioned in the subject SCN; He has relied upon the judgment pronounced in context of Section 141 of the Negotiable Instrument Act,1881 by the Hon'ble Apex Court in the case of 'Aneeta Handa and ors. Vs Godfather Travels and Tours Pvt Ltd. and ors' [AIR 2012 SC 2795] and in the case of 'Sharad Kumar Sanghi Vs. Sangita Rane [MANU/SC/0205/2015];
- The table under the heading of duty calculation summary for M/s.Europea, the year (at first coloumn) is being mentioned of 2019-20 and for M/s.Mahi, the year (at the first column) 2020-21. In this regard, it is submitted that when in the subject case, the alleged investigation started from the letter dated 12.10.2021, then how come the alleged duty can be calculated from the year 2019-20;

112.5 Shri Vikram Singh Kachchawa, (noticee No.07)

Shri Vikaram Kachchhawa, in his various written submissions inter-alia submitted that:

Submission dated 24.01.2024:

- He has been called upon to explain as to why penalty U/s 112(a) and (b), 114AA and 117 should not be imposed upon him; requested for a copy of all the Relied upon Documents [RUDs] may kindly be supplied to the noitcee as soon as possible so as to allow him a meaningful opportunity to defend himself; at the outset he dened all the allegations levelled against him in the SCN under reply. The allegations made in the SCN are nothing more than conjectures and surmises based solely and entirely upon the assumptions and presumptions, none of which remotely relates to truth; he never had any connection whatsoever with any of the aforementioned companies i.e. M/s Europea Makeour Jewel Private Limited & Ors. or M/s Maahi Jewellery Exim Private Limited; there is no allegation at all that he had any role to play in the so-called diversion of goods made by M/s Europea Makeour Jewel Private Limited & Ors. and M/s Maahi Jewellery Exim Private Limited; There is not even any allegation that the noticee had ever entered into any conspiracy with the management of these entities;
- the provisions of Section 112 are not attracted at all; penalty under clause (a) of Section 112 can be imposed only if the condition precedent provided there under are fulfilled; In the present case however there is no allegation against the noticee of having dealt with any goods whatsoever in any manner; the only allegation against noticee is of circulating / transferring funds, which has nothing to do with any goods whatsoever, and interestingly no such allegation has

been leveled against noticee at all; The question of abettment of such acts or omission would arise only if the noticee had any connection or contact with these entities; it has nowhere been alleged that the noticee had any contact or connection directly with these entities; Therefore, the provisions of Section 112 (a)/112(b) are not attracted at all; there is no allegation that the noticee had used or signed any document which was found to be false; against the noticee, there is not even an allegation that the document, if any, used by the Noticee were ever used in any transaction related to customs; Even otherwise for invoking Section 114AA it must be shown that the contents of documents etc. were false in any material particular; Section 117, it needs no emphasis that this is a residuary provision providing for imposition of penalty in cases where no specific provision exists for certain particular acts / omissions; Further more it is required to be mandatorily shown that certain provisions of the customs act have been violated; Therefore, in the facts and circumstances of the present case the provisions of Section 117 are also not attracted; there is no evidence on record to support the allegations made in the SCN, except for the statements of noticee forcefully recorded under section 108 of the Customs Act, 1962. The statements of noticee cannot be the sole basis for imposition of penalty. It is trite law that the statements recorded by department without corroboration or substantiation with any independent evidence; he has relied upon the following case law- Nathu vs. State of Uttar Pradesh AIR (1956) SC 56; In the absence of any other evidence to corroborate the confessional statements of noticee, the statements cannot be relied upon the noticee. In this regard reliance is placed on the case laws:

- The statements sought to be so used against noticee are of third parties who are totally unrelated to the noticee. Therefore, in the absence of cross-examination of such persons / witnesses, their statements cannot be relied upon against the noticee; demanded cross-examination of all the persons whose statements are sought to be utilized against the noticee; in case if the cross examination as requested is not allowed, then the adjudication proceedings will be a nullity for violation of principles of natural justice; even the Central Board of Excise & Customs which is the Apex regulatory authority of Customs Department [now Central Board of Indirect Taxes & Customs], in "CBEC's Excise Manual of Supplementary Instructions, 2005" has admitted that Adjudication proceedings have to be conducted by observing the principles of natural justice. And where, the principles of natural justice are violated, the entire proceedings become vitiated; the issue is no more res-integra in view of the judgment of this Hon'ble Court in the case of Andaman Timber Industries Vs. CCE [(2016) 15 SCC 785], wherein, it has been held that opportunity of cross-examination of witnesses is an integral part of the principles of natural justice; in the present case the burden of proving that the penalty is U/s 112, 114AA and 117 is leviable is upon the department and the burden to disprove cannot be said to lie upon the noticee in terms of Section 123 of the Customs Act; it is clear beyond doubt that it comes into operation only when the subject goods are seized; In the present case since no seizure of goods has taken place from the possession of noticee, therefore the provisions of Section 123 do not even prima-facie come into picture;

- Therefore, in light of the facts and circumstances of the case, the submissions made hereinabove as well as the legal position concerning Section 112, 114AA, 117 of Customs Act, 1962 and also in view of the case laws cited hereinabove, it is submitted that no penalty whatsoever can be imposed against the noticee under the aforesaid provisions.

Submission dated NIL received on 31.03.2024:

- he has informed that the cross examination is required of all the persons whose statements have been utilised against him. He has given name of 8 such persons for cross examination:
- He has raised objection for demand of providing specific points for cross examination.
- Stated that he cannot be compelled to disclose his points. Cross examination is his fundamental right and most ingredient of natural justice. Relied upon SC judgment [Andaman Timber Industries Vs. CCE, CA No.4228/2006 dated 02.09.20215] -adjudicating authority cannot indulge into guise work as to the purpose for which cross examination is sought for.

112.6 Shri Ravindra Kumar, CA, (Noticee No.08)

Shri Ravindra Kumar, in his written submission dated 18.07.2023 inter-alia submitted that:

- He is a practicing Chartered Accountant and engaged into professional practice through his Sole Proprietorship Firm in the name and style of "Kumar Ravindra & Company", Jhunjhunu (Rajasthan);
- he is restricting to reply only to the aspect of the allegation against him i.e. issuance of Form no. 15CB and for which, it is necessary to understand the nature and impact of Form No. 15CB in light of the applicable law. In the course of his practice, a Chartered Accountant has to file or issue various Returns, Form, Certificates as prescribed by and desired under various laws; One such Certificate is contained in "Form No. 15CB", which is required to be issued under Rule 37BB of the Income Tax Rules, 1962, read with Section 195(6) of the Income Tax Act, 1966. As per said Rule 37BB, a person responsible for paying to a foreign company a sum which is chargeable under the Income Tax Act, 1961, shall have to furnish inter alia, a Certificate in Form No. 15CA with the Income Tax Department, which is uploaded on the web portal of the department. Alongwith Part-C of Form No. 15CA, another Form i.e. "Form No. 15CB" is also required to be furnished. This Form No. 15CB is issued by a Chartered Accountant. This Form No. – 15CB, which is required to be issued by a Chartered Accountant in pursuance of Rule 37BB [of I.T. Rules, 1962] read with section 195(6) [of I.T. Act, 1961], is nothing but a Certificate declaring the applicability or non-applicability of TDS [Tax Deduction at Source]. A bare perusal of the format of Form No. – 15CB would reveal that what is certified thereunder is about – whether tax has been deducted at source or not? i.e. whether TDS has been made or not?. In the regular course of his practice, the petitioner had also issued some certificates in Form No. - 15CB ensuring strict compliance with Rule 37BB read of Section 195(6) in accordance with law. The nature and purpose of 15CB has been examined and explained by the Income Tax Appellate Tribunal, Bangalore Bench in the case of Bosch Ltd. Vs. Income Tax Officer, International Taxation [2013] 141 ITD 38 (Bang),

MANU/IL/0268/2012. the ITAT, which is the appellate tribunal constituted for the purpose of Income Tax law has laid down that Form No. - 15CB is only an opinion of the Chartered Accountant and is not alone sufficient to determine the nature of the transaction. Therefore, it has falsely been alleged that the foreign remittance took place only because of the certificate issued by petitioner. Similarly, he has also referred the judgment dated 23.11.2022 of High Court of Madra in the case of Murali Krishna Chakrala v/s Deputy Director, Directorate of Enforcement (Criminal Revision Case No.1354 of 2022 and CrI.M.P.No.14792 of 2022) and stated that as held by the Hon'ble Madra High Court as well as the Appellate Tribunal Form No. 15CB is only an opinion of the Chartered Accountant, therefore, even if it is claimed that the Chartered Accountant has wrongly issued the Certificate, then also Chartered Accountant cannot be charged with any penalty. Even assuming that a Chartered Accountant has wrongly issued a certificate in Form 15CB, then also, the Income Tax Act does not make it an offence. Even if it is assumed that a certificate was wrongly issued by a Chartered Accountant, then the only action which can be taken against the Chartered Accountant is to impose penalty under the Income Tax itself. As a matter of fact, the Income Tax Act, 1961 specifically contains a provision with regard to imposition of penalty upon a Chartered Accountant for issuance of incorrect certificate. Section 2713 of the Income Tax Act provides for imposition of a penalty of Rs.10,000/- upon the Chartered Accountant in case if the concerned income tax authority finds that the Chartered Accountant has furnished any incorrect certificate under the provision of Income Tax Act. Thus, a certificate which is essentially issued under the Income Tax Act and which is meant/relevant only for the purpose of Income Tax, if found to have been issued incorrectly, the same and the most can be subjected to penalty U/s 271J of the Income Tax Act. By no stretch of imagination, a Form 15CB can be subject to penalty U/s 112 of the Customs Act, 1962;

- The present show cause notice is concerned with the alleged evasion of customs duty of a huge quantum by two entities named - (1) M/s EuropeaMakeour Jewel Private Limited, and (2) M/s Maahi Jewellery Exim Pvt. Ltd. The show cause narrates in detail as to in what manner these entities have manipulated and misuse the concession/exemption provided under law from payment of customs duty to the units established under the Special Economic Zone. However, it remains and admitted fact that he had nothing to do with any of these entities. Admittedly, there is no allegation in entire show cause notice of issuance of Form 15CB to these entities by the noticee. In other words, it is not even the case of department that the noticee had ever issued a Form 15CB to any of the above mentioned two entities or in any other manner ever dealt with them. There is not even any allegation that the noticee had ever entered into any conspiracy with the management of these entities. Admittedly there is no connection or contact between the noticee and the aforesaid two firms. That being so the noticee cannot be saddled with any liability for the acts committed by those entities. In the aforesaid facts and circumstances of the case the provisions of Section 112 are not attracted at all in as much as that in the present case, there is no allegation against the noticee of having dealt with any goods whatsoever in any manner;

- Further, there is no abettment in the facts and circumstances of the present case for the reason that the alleged acts / omission with respect to the goods involved are stated to have been on the part of aforesaid two entities i.e. M/s Europea Makeour Jewel Private Limited and M/s Maahi Jewellery Exim Pvt. Ltd. The question of abetment of such acts or omission would arise only if the noticee had any connection or contact with these entities. In the entire show cause notice, it has nowhere been alleged that the noticee had any contact or connection directly with these entities. That being so, no question of abetment can arise. Therefore, the provisions of Section 112 (a) are not attracted at all. Similarly, the question of applicability of clause (b) of Section 112 gets ousted by a bare perusal of the provisions thereof which require that in order to impose penalty thereunder, the concerned person must either acquire possession of or be concerned in dealing in any manner with certain goods which are liable for confiscation U/s 111 of the Act. It needs no repetition that the noticee had never dealt with any goods whatsoever nor had acquired possession thereof. In fact, there is no such allegation anywhere in the entire show cause notice. That being so, there arises no question of imposition of penalty U/s 112(b);
- With respect to penalty U/s 114AA, the noticee stated that in the present case the document that was issued by noticee was "Form No. – 15CB" which is issued under Income Tax Law and is filed with the Income Tax Department. Thus, a document [Form 15CB], which is issued under Income Tax Rules, and is submitted to the Income Tax Department does not have any relation or connection or business with the Customs. Customs Act or rules do not envisage issuance of Form 15CB, nor is it submitted to Customs Authorities. Also, Form 15CB is not relevant to any proceedings under the Customs Act;
- That there is not even an allegation that the Form 15CB issued by the Noticee were ever used in any transaction related to customs. Since it remains an admitted position that Form 15CB has no use for any transaction relating to customs or under the Customs Act, 1962, the provisions of Section 114AA are not attracted at all. Even otherwise for invoking Section 114AA it must be shown that the contents of documents etc. were false in any material particular. As submitted above, Form 15CB is a certificate opining liability of deduction of tax at source under Income Tax Act, wherein the particulars of transactions are filled in only on the basis of data provided by the client i.e. the person making foreign remittance. As held by Hon'ble Madras High Court in the case of Murli Krishan Chakraborty (Supra), the role of Chartered Accountant is limited only to examine the Income Tax implication on the transaction of foreign remittance. He is not required to investigate into the truthfulness or correctness of the data / information provided by his client concerning the transaction. The law does not cast any such liability upon the Chartered Accountant. In any event, in order to allege that the certificate issued by the noticee was false / wrong, then what must be proved is that the opinion given by the Chartered Accountant regarding taxability of the transaction was wrong and not that the information provided by the client was wrong. In the present case there is not even an iota of allegation that the opinion rendered by the noticee regarding taxability of foreign remittance was wrong in any manner. The noticee had issued all the Certificates in Form 15CB as per his understanding of law and after

verification of the agreement or invoice. It is submitted that examination / verification of agreement or invoice is done so as to ascertain the nature of remittance and the purpose for which remittance is being made. The nature and purpose of remittance, as declared in the invoice / agreement is to be taken on its face value and then taxability [under Income Tax Act] and applicability of TDS is determined by the Chartered Accountant which is accordingly certified in Form No. 15CB. It is submitted that for issuing Form No. 15CB, the Chartered Accountant has to rely on the invoice of the concerned transaction, and he has to take the nature and purpose of transaction on its face value as declared. He has no mandate or means to investigate as to whether the declared nature or purpose is true or not. Form 15CB only certifies taxability and applicability of TDS [under Income Tax Act] and does not certify or approve the nature or purpose of transaction;

- The noticee has been accused of issuing Certificates to certain firms which are alleged to be non-existing. In this regard it is submitted that the noticee had issued the certificates only after satisfying himself that these firms are existing entities. Noticee had checked for their GST Registration status on the official web Portal of the GST department, wherein, the GSTIN status of M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology was shown as 'Active'. Further, the website also reflected that these firms have been regularly filing their GST returns. Furthermore, noticee had also checked the incorporation status of M/s Belstar Techno Solutions (OPC) P. Ltd. on the official website of Ministry of Corporate Affairs, wherein, the 'Company Status' was shown as "Active". Therefore, the noticee had done his part of due diligence to the extent what he was capable of doing. He cannot be expected to conduct a full fledged investigation into the actual physical existence or actual business of these companies, because the law does not require him to do so, nor does he have any means to launch such investigation;
- the provisions of Section 117, is a residuary provision providing for imposition of penalty in cases where no specific provision exists for certain particular acts / omissions. Resort to this provision can be taken only if there is no penalty expressly / specifically provided for a particular act / omission else where in the Customs Act. Further more it is required to be mandatorily shown that certain provisions of the customs act have been violated. In the present case however the show cause notice is devoid of any allegation or averment to the effect that any provision of the customs act has been violated by the noticee in any manner. Therefore, in the facts and circumstances of the present case the provisions of Section 117 are also not attracted;
- with regard to the statements of noticee recorded by the Department, it is submitted at the outset that such statements are neither voluntary nor incriminating;
- Vide his letter dated 06.12.2021, submitted to the Customs Department, the noticee retracted his statements recorded forcefully by department u/s 108 of the Customs Act, 1962 on 24.11.2021 and 25.11.2021 under threat, pressure and coercion; admittedly there is no allegation against noticee of having committed any act of evasion of duty or prohibition. In the facts and circumstances of present case, following is the admitted position:

- Noticee has not imported any goods; Noticee has not exported any goods; Noticee has never dealt with any goods of whatsoever nature, let alone be it goods liable to confiscation under section 111 or 113;
- Noticee has nothing to do with any gold or diamond and he has never dealt with the same;
- Noticee has not claimed any duty drawback or exemption;
- Noticee has not obtained any instrument from any authority by fraud or whatsoever.
- The allegation of noticee's awareness about the foreign remittance being against illegal import of gold / diamond etc. by traders of Gujarat and Mumbai is absolutely false and unsubstantiated by any evidence available on record. It is submitted that noticee was not aware of the fact so alleged. In fact, he had no means or connection by which he could have possibly known any such fact;
- Most importantly, there is no evidence on record to show that noticee had any such awareness, except for the statements of noticee forcefully recorded under section 108 of the Customs Act, 1962. It is submitted that the statements of noticee cannot be the sole basis upon which noticee's awareness is alleged. It is trite law that the statements recorded by department without corroboration or substantiation with any independent evidence;
- even otherwise mere knowledge or awareness about something is not enough to saddle a person with penal liability, unless he has voluntarily conspired with mala-fide intention with the perpetrators of alleged evasion and had done some act in furtherance of such conspiracy. In the present case however, there is not even an allegation of noticee entering into any conspiracy with any of the perpetrators of the alleged evasion. Conspiracy requires prior meeting of minds and a resulting agreement to do an illegal act or to do an act by illegal means, and some act in furtherance or pursuance of such agreement must be committed. In the present case, there is no allegation of conspiracy against noticee;
- Decision of the Hon'ble Supreme Court in the case of Nathu vs. State of Uttar Pradesh AIR (1956) SC 56, wherein it held by with regard to confessions that prolonged custody immediately preceding the making of confession is sufficient to stamp it as involuntary unless it is properly explained. In fact, the customs officers have offered no explanation for keeping the noticee in the prolonged custody before recording of confessional statements. Therefore, the statements of noticee being involuntary cannot be used against noticee. In the absence of any other evidence to corroborate the confessional statements of noticee, the statements cannot be relied upon the noticee;
- In the present case the burden of proving that the penalty is U/s 112, 114AA and 117 are leviable is upon the department and the burden to disprove cannot be said to lie upon the noticee in terms of Section 123 of the Customs Act. In fact the provisions of Section 123 have no application in the facts and circumstances of the present case. Perusal of section 123 would make it clear beyond doubt that it comes into operation only when the subject goods are seized. In other words, until and unless there is seizure of goods, the burden of proof cannot shift upon the accused u/s 123 of the act. The Hon'ble Gujarat High Court, in the case of Assistant collector of customs vs. Mukbulhussain

Ibrahim IO GLR 662 held that in order to attract the presumption u/s 123 of the customs act, goods must be shown to have been seized from the possession of the accused by customs authorities. Like wise in the case of Union of India vs. Abdulkadar Abdulgani Hasmani 1991 (55) E.L.T 497 (Guj.) as reiterated that section 123 shifts the burden on the accused only when the goods are seized under the act. In the present case since no seizure of goods has taken place from the possession of noticee, therefore the provisions of Section 123 do not even prima-facie come into picture;

- Therefore, in light of the facts and circumstances of the case, the submissions made hereinabove as well as the legal position concerning Section 112, 114AA, 117 of Customs Act, 1962 as well as Section 195(6) of Income Tax Act, 1961 read with Rule 37 BB of Income Tax Rules, 1963, and also in view of the case laws cited hereinabove, it is submitted that no penalty whatsoever can be imposed against the noticee under the aforesaid provisions and therefore, the instant show cause notice against the present noticee is liable to be dropped

112.7 Shri Kamlesh Nagda, (Noticee No.09)

Shri Kamlesh Nagda, in his various written submissions inter-alia submitted that:

Submission dated 24.01.2023:

- He has been called upon to explain as to why penalty U/s 112(a) and (b), 114AA and 117 should not be imposed upon him; requested for a copy of all the Relied upon Documents [RUDs] may kindly be supplied to the noticee as soon as possible so as to allow him a meaningful opportunity to defend himself; at the outset he denied all the allegations levelled against him in the SCN under reply. The allegations made in the SCN are nothing more than conjectures and surmises based solely and entirely upon the assumptions and presumptions, none of which remotely relates to truth; he never had any connection whatsoever with any of the aforementioned companies i.e. M/s Europea Makeour Jewel Private Limited & Ors. or M/s Maahi Jewellery Exim Private Limited; there is no allegation at all that he had any role to play in the so-called diversion of goods made by M/s Europea Makeour Jewel Private Limited & Ors. and M/s Maahi Jewellery Exim Private Limited; There is not even any allegation that the noticee had ever entered into any conspiracy with the management of these entities;
- the provisions of Section 112 are not attracted at all; penalty under clause (a) of Section 112 can be imposed only if the condition precedent provided there under are fulfilled; In the present case however there is no allegation against the noticee of having dealt with any goods whatsoever in any manner; the only allegation against noticee is of circulating / transferring funds, which has nothing to do with any goods whatsoever, and interestingly no such allegation has been leveled against noticee at all; The question of abetment of such acts or omission would arise only if the noticee had any connection or contact with these entities; it has nowhere been alleged that the noticee had any contact or connection directly with these entities; Therefore, the provisions of Section 112 (a)/112(b) are not attracted at all; there is no allegation that the noticee had used or signed any document which was found to be false; against the noticee, there is not even an allegation that the document, if any, used by the Noticee

were ever used in any transaction related to customs; Even otherwise for invoking Section 114AA it must be shown that the contents of documents etc. were false in any material particular; Section 117, it needs no emphasis that this is a residuary provision providing for imposition of penalty in cases where no specific provision exists for certain particular acts / omissions; Further more it is required to be mandatorily shown that certain provisions of the customs act have been violated; Therefore, in the facts and circumstances of the present case the provisions of Section 117 are also not attracted; there is no evidence on record to support the allegations made in the SCN, except for the statements of noticee forcefully recorded under section 108 of the Customs Act, 1962. The statements of noticee cannot be the sole basis for imposition of penalty. It is trite law that the statements recorded by department without corroboration or substantiation with any independent evidence; he has relied upon the following case law- Nathu vs. State of Uttar Pradesh AIR (1956) SC 56; In the absence of any other evidence to corroborate the confessional statements of noticee, the statements cannot be relied upon the noticee. In this regard they had relied upon laws;

- The statements sought be so used against noticee are of third parties who are totally unrelated to the noticee. Therefore, in the absence of cross-examination of such persons / witnesses, their statements cannot be relied upon against the noticee; demanded cross-examination of all the persons whose statements are sought to be utilized against the noticee; in case if the cross examination as requested is not allowed, then the adjudication proceedings will be a nullity for violation of principles of natural justice; even the Central Board of Excise & Customs which is the Apex regulatory authority of Customs Department [now Central Board of Indirect Taxes & Customs], in "CBEC's Excise Manual of Supplementary Instructions, 2005" has admitted that Adjudication proceedings have to be conducted by observing the principles of natural justice. And where, the principles of natural justice are violated, the entire proceedings become vitiated; the issue is no more res-integra in view of the judgment of this Hon'ble Court in the case of Andaman Timber Industries Vs. CCE [(2016) 15 SCC 785], wherein, it has been held that opportunity of cross-examination of witnesses is an integral part of the principles of natural justice; in the present case the burden of proving that the penalty is U/s 112, 114AA and 117 is leviable is upon the department and the burden to disprove cannot be said to lie upon the noticee in terms of Section 123 of the Customs Act; it is clear beyond doubt that it comes into operation only when the subject goods are seized; In the present case since no seizure of goods has taken place from the possession of noticee, therefore the provisions of Section 123 do not even prima-facie come into picture;
- Therefore, in light of the facts and circumstances of the case, the submissions made hereinabove as well as the legal position concerning Section 112, 114AA, 117 of Customs Act, 1962 and also in view of the case laws cited hereinabove, it is submitted that no penalty whatsoever can be imposed against the noticee under the aforesaid provisions.

Submission dated NIL received on 31.03.2024:

- he has informed that the cross examination is required of all the persons whose statements have been utilised against him. He has given name of 9 such persons for cross examination:
 - Vikram Singh Kachchhawa,
 - Om Praksh Vanjani,
 - Surendra Mali,
 - Navratan Jain
 - Narendra Mali,
 - Rajendra Jangid,
 - Suresh Ratanlal Jagetia,
 - Vimal Kumar Nahar,
 - Deepak Kumar
- He has raised objection for demand of providing specific points for cross examination. Stated that he cannot be compelled to disclose his points. Cross examination is his fundamental right and most ingredient of natural justice. Relied upon SC judgment [Andaman Timber Industries Vs. CCE, CA No.4228/2006 dated 02.09.2015] - adjudicating authority cannot indulge into guise work as to the purpose for which cross examination is sought for.

112.8 Shri Deepak Kumar, (Noticee No.10)

Shri Deepak Kumar, in his written submission dated 18.07.2023 inter-alia submitted that:

- it is categorically submitted that any and all allegations made in the captioned SCN are denied inasmuch as they are based on conjecture, surmises, and irrelevant claims; the captioned SCN is not issued by the "proper officer"; since the issuing authority of the captioned SCN is neither the officer who had cleared the bills of entry nor he is the successor of the person who'd cleared such bills of entry nor is he part of the same office, therefore, he is not 'the' proper officer in light of in light of Hon'ble Supreme Court's decision in Ms Canon India Private Limited v. Commissioner of Customs, [Civil Appeal No. 1827 of 2018]; the inquiry/investigation conducted in relation to the SEZ units of the Main Noticees (located in Sachin SEZ, Surat) has been done so by Customs (Preventive), Jodhpur which is in teeth of Notification No. 21/2022 dated 31.03.2022, issued by the Central Government in exercise of powers u/ss. 3, 4, and 5 of the Act, and Notification dated 05.08.2016 bearing S.O.(E) 2667, issued by the Central Government under the provisions of Special Economic Zone Act, 2005 inasmuch as the jurisdictional Commissioner of Customs could have only caused such inquiry/investigation. Therefore, on this ground alone, the captioned SCN deserves to be dropped, set aside, and/or quashed; none of the allegations levelled against the noticee warrant imposition of the penalties proposed inasmuch as the said allegations have erroneous and uncorroborated foundations; for the sake of argument, even if the allegation of aiding/facilitating the Jaipur Entities to make foreign remittances by being in the third layer of the web of companies which have been used to rotate funds for giving such funds a legitimate outlook for foreign remittance is accepted, it is befuddling how such participation is a violation of the Act to attract the penalties as sought to be proposed; the allegation that the noticee is involved in sale of smuggled goods, through its business concern, is baseless inasmuch as the said allegation is merely based on his statements which have

been recorded under duress, threat of arrest, and involuntarily and the said statements have to be subjected to the anvil of examination-in-chief and cross-examination which has been discussed below in detail; the facts and circumstances set out in the captioned SCN vis-a-vis the noticee lack uniformity, consistency, and clarity to the extent that several material facts which demanded careful consideration and detailed enquiry have been left to imagination; the captioned SCN deserves to be dropped as far as the noticee is concerned. Reliance in this regard is placed on Commissioner of Central Excise, Bangalore a Brindavan Beverages (P) Ltd. , and Ors., [(2007) 5 SCC 388]; Vikash Kumar Singh, Shashank Shekhar Jtta v. Commissioner Of State Tax, State Of Jharkhand, Deputy Commissioner Of State Tax, Jharkhand Goods And Service Tax, Godda & Dumka, Godda, [2023 (4) TMI 402]; Aggarwal Dyeing And Printing Works v. State Of Gujarat & 2 Others, [2022 (4) TMI 864; Amit Chandrakant Shah v. State Of Gujarat, [2023 (1) TMI 979; the aforesaid judgments emphasise to observe the cardinal principle that show cause notices should be issued in a detailed fashion wherein the role of every noticee should have a direct nexus with the allegations levelled and the penalties, if any, sought to be imposed. Since, in the instant case, such nexus is glaringly invisible, the captioned SCN deserves to be dropped as far as the noticee is concerned; the statements of all the individuals including the noticee – relied upon in the captioned SCN, are *a fortiori* irrelevant and cannot be relied upon for imposing any penalty, punitive or mandatory, on the noticee; incriminating statements, bereft of any corroborative evidence, are not sufficient to demand and/or recover tax and/or penalty especially in cases where such statements are not ipso facto admissible in evidence; The Department has failed to bring on record the CCTV footages of the individuals whose statements have been recorded by them. It is pertinent to note here that the Hon'ble Supreme Court in Paramvir Singh Saini u Baljit Singh and On, /SLP (CrI.) No. 3543/2020/ has mandated all the investigating agencies to install cameras at all the conspicuous places of their offices excluding washrooms but including the gallery area of such offices to ensure transparency and fair play. However, in the instant case the said imprimatur of the Hon'ble Supreme Court which is binding under Article 141 of the Constitution has been thrown to the winds; Therefore, in the instant case, any imposition of penalty would be arbitrary and illegal inasmuch as such statements are irrelevant as well as inadmissible in evidence, as adverted to above, and the voluntary nature of such statements is also clouded by doubts and suspicions glaringly visible from the conduct of the Department; the noticee requested to conduct examination-in-chief of the aforesaid individuals involved in the captioned SCN and allow cross-examination, thereafter, of such individuals in the interest of justice; penalties under section 112(a) & (b) is not imposable inasmuch as the seizure of goods by the officers of customs is illegal and void ab initio; Since the said seizure is void ab initio , the goods thus seized cannot be confiscated inasmuch as the predicate requirement of seizure has not been fulfilled; Further, the captioned SCN has not been issued by the proper officer, thus, such proposition to confiscate the illegally seized goods does not survive; section 114AA of the Act which mandates existence of knowledge or intention for use of false and incorrect materials, however, in the instant case, there is no whisper in the

captioned SCN in form of corroborative evidence highlighting the malafides of the noticee to that extent or role of the noticee in making/using/signing (along with its agnates and cognates) any fabricated or manipulated document for the purposes of carrying out transaction/business under the Act; the duty/responsibility, if any, under the said provisions is saddled upon the importer/exporter of goods and not on 'any other' person, therefore, penalty u/s 117 of the Act (a residuary penalty provision for violation of sections 17, 46, and 50 of the Act), in the instant case, is not imposable.

112.9 Shri Vimal Nahar, (Noticee No.11)

Shri Vimal Nahar, in his written submissions **dated** 11.01.2024 and 28.06.2024 inter-alia submitted that:

- The crux of the allegation qua him is at para 80.G. wherein it has been alleged that he was proprietor of Swastik Impex engaged in trading activity of gold bullion and diamond, which had allegedly issued fake bills, invoices from the firm and that fake purchases were sold from Europea Makeover Jewel Pvt. Ltd. and subsequently the funds were transferred to Spenta Trading and there after to Visual Birds Technology. Surprisingly, the allegation is based upon the statement recorded by officer under duress and coercion. Apart therefrom, Spenta Trading, Swastik Impex and Visual Birds Technology are the necessary parties in whose account the amounts have been transferred and such parties have not been made noticees to the Show Cause;
- The finding as regard the role played is contradictory to the statement recorded. Though, in the statement recorded, he has stated that he was not concerned with the business activities carried out by Vikram Singh Kachchawa in the name of his (Viaml Nahar's) concern. He was merely acting as an employee and had no role or knowledge about the business activities being carried out and conducted by Vikram Singh Kachchawa;
- he was never involved in any activities which would have any relation to import or export of consignment in the Customs area. It is apparent that the allegation forming part of the Show Cause Notice does not show the nature of breach of the provisions of the Customs Act, committed by him, whereby penalty is sought to be imposed under Section 112 (a) & 112 (b), 11'AA and 117 of the Customs Act. 1962;
- Show Cause Notice not issued by "the proper officer". Neither the officers of Commissioner of Preventive nor the Commissioner was "the proper officer" who had assessed the goods and allowed clearance. Hence, the Commissioner, Customs Ahmedabad does not have power to issue Show Cause Notice exercising powers under section 28(4) of the Customs Act. For invocation of the power under section 28(4) read with section 110AA of the Customs Act, 1962, it is sine qua non that such re-assessment is required to be done by "the proper officer" only . The Proper Officer is the authority who had carried out the assessment of the goods and only such authority is empowered to quantify and demand duty, interest and consequently would derive power for imposition of penalty if any. No other officer can exercise such powers for re..determination or re-quantification;
- the legislature has affirmed the findings of the Hon'ble Supreme Court in the case of Canon India and has accordingly inserted section 1 10AA of the Act, clarifying that officer of Customs after carrying out

investigation in the cases specified therein, will have to transfer the proceeding to the proper officer who have been assigned assessment under section 5 of the Act. The Show Cause Notice merely alleges diversion of the goods in the local market, however, not a single purchaser has been identified who had procured such diverted goods. So also, not a single goods have been seized, which were allegedly imported by the importer;

- He has relied upon the following para of judgment of the Hon'ble Supreme Court's decision in MA Canon India Private Limited v. Commissioner of Customs, Civil Appeal No. 1827 of 2018]:

"1 1. Parliament has employed the article "the " not accidentally but with the intention to designate the proper officer who had assessed the goods at the time of clearance. It must be clarified that the proper officer need not be the very officer who cleared the goods but may be his successor in office or any other officer authorised to exercise the powers within the same office. In this case, anyone authorised from the Appraisal Group."

and submitted that Since Commissioner is not the officer who could have assessed the bills of entry in light of Canon India (supra). Hence, the Show Cause Notice is without jurisdiction and the same deserves to be dropped;

- He has also relied upon various judgments pronounced by different forums based on the judgment of the Hon'ble Apex court in the case of Canon India Private Limited v. Commissioner of Customs;
- Investigation caused without authority of law, consequently Show Cause Notice based on such investigation is without jurisdiction. The entire investigation has been carried out by officers of Customs (Preventive), without jurisdiction and any legal authority by such Officers, who is not of the rank of ' Additional Director General. DRI', or the Jurisdictional Customs Commissioner, therefore in ex facie contravention of S.O. 2666(E)] dated 5th August 2016, and S.O.2667(E) dated 5th August, 2016 issued by Central Government, in exercise of powers conferred by sub-section 2 of Section 21 and second proviso to Section 22 of the Special Economic Zones Act, 2005;
- The main allegation in the show Cause Notice is in relation to import of diamonds and diversion in the local market. In that relation, no allegation has been made qua him. The conclusion drawn in the Show Cause Notice is contrary to the statement recorded during the investigation. Since, most of the statements have been retracted, examination/cross-examination of all the noticees along with the officers who recorded the statements is vital for conducting adjudication proceedings. There is no link to the allegation made in the investigation against him. Since the Show Cause Notice relies upon such statements, examination of all such persons is of vital importance. The statements do not in any manner show that he was concerned with the importers or diversion made by them in the local market;
- Requested to examine all such persons whose statements have been relied upon in the Show Cause Notice against him, since such statements are sole basis for issuing the Show Cause Notice, and such an exercise will be in the course of the principles of natural justice and fair play in adjudication proceedings. Reference is placed upon the guidelines framed by the Board and judgment passed by the Hon'ble Supreme Court and High Court mandating that examination / cross-

- examination is an important integral part of adjudication proceedings and not complying with the same leads to violation of principles of natural justice and fair play;
- After examination-in-chief, he would cross-examine the persons whose statements are relied upon and also the Officers, who recorded the statement, to verify as to whether the statements were recorded voluntarily and, in the manner, prescribed by the Board and Hon'ble Court. He has relied upon the case laws;
 - Be that as it may, even otherwise the penalties under section 112(a) & (b) and section 114AA of the Act is not imposable in as much as the investigation carried out and the Show Cause Notice is without authority and jurisdiction and hence seizure of such goods is illegal and void ab initio. Since seizure is void & initio, the same cannot be confiscated inasmuch as the predicate requirement of seizure has not been satisfied;
 - The captioned Show Cause Notice has been issued proposing the penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962. Since the sub-clauses (a) and (b) operate in entirely two different situations and hence a casual mention of 112(a) and 112(b) confuses the noticee and deprives the opportunity of making a proper defence. In an identical situation, the Hon'ble CESTAT, Principal Bench, New Delhi in P.P.Dutt Wing Cdr (Retd). Vs Commissioner of Customs, New Delhi [2013 (293) ELT 127 (Tri-Del.-)] set aside the penalty on this ground. Hence, the Show Cause Notice is vague and based on improper reasoning or basis, which deserves to be dropped, in the interest of justice;
 - That section 112 postulates penalty for improper importation of goods under clause (a) and clause (b). Imposition of penalty under the two clauses has been classified under 5 sub-clauses (i) to (v), which provides the quantum of imposition of penalty. 112 (i) relates to case of goods in respect of which prohibition is in force; 112(ii) relates to dutiable goods, other than prohibited goods; 112(iii) refers to the valuation of the goods; 112(iv) refers to goods falling under clause (i) and (iii) and 112(v) refers to goods falling under clause (ii) and (iii). The Show Cause Notice does not make any proposal under which sub-clause it was seeking to impose penalty upon me. Non mentioning of the relevant sub-clause is fatal to the Adjudication proceedings. Hence, generic allegation for imposition of penalty is Vague and improper in nature. Further the Show Cause Notice also lacks any reasoning to invoke any of the sub-clauses of 112, therefore the proceeding in the entirety is unsustainable. On this ground alone, the Show Cause Notice is bad-in-law and the same deserves to be dropped;
 - From the above it is substantially clear that section 114AA of the Act is clearly not applicable in the present case and the same deserves to be dropped in the interest of justice. Even otherwise penalty under section 114AA is imposable only when a person knowingly or intentionally makes, signs, or uses, or causes to be made, signed or used. any declaration, statement or document which is false or incorrect in any material particular. In the present case, he is not related to the importers and have not signed any document in relation to the import of goods, hence no penalty under section 114AA of the Act is invocable;
 - Surprisingly, section 117 has also been invoked in the Show Cause Notice. Section 117 deals with the situation where the contravention

is committed in relation to any provision of the act for which no express penalty is elsewhere provided for. In the present case, when penal provision of section 112 and 114 has already been invoked, then section 117 could not have been invoked and goes beyond the very concept of imposing penalty under section 117. Hence, the proposal made in the Show Cause Notice is completely misconceived;

- In order that a person is penalised under the above provisions, it has to be established that he acquired possession of or was 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 knew or had reason to believe, were liable to confiscation under Section 111 of the Customs Act. In the present case, he neither being the importer nor having dealt with the imported goods in any manner, the penal provisions does not stand attached against him;
- The Show Cause Notice has inherent lacuna as regards-
 - (i) The authority of the Customs (Preventive) causing investigation,
 - (ii) Authority of the Commissioner to issue Show Cause Notice,
 - (iii) Absence of any material evidence in relation to the allegations made,
 - (iv) Provision invoked for confiscation of goods,
 - (v) Proposal for imposition of penalty under Section 112, 114AA and 117 of the Customs Act,
- the Show Cause Notice is therefore, completely vague and unsustainable and hence, the same deserves to be dropped.

112.10 Shri Surendra Mali alias Shankar Mali, (Noticee No.13)

Shri Surendra Mali alias Shankar Mali, in his written submission dated 23.01.2024 and dated Nil received on 11.06.2024 inter-alia submitted that:

- At the outset, the applicant denies each and every singular allegations/statements made in the subject Notice under reference, except as specifically admitted herein below; the subject notice under reference is based upon wrong apprehension of facts and events and further the allegations levelled against the applicant are not admitted as in the manner stated therein;
- He has not committed any sort of offence and is completely innocent thereby he cannot be made liable or put to penalty for any sort of alleged action on the part of alleged firms;
- Relevancy of statement under certain circumstances has been provided under Section 138 of the Customs Act, 1962 wherein it has been held that only when the person who has made the statement is examined as a witness in the case before the court, the court is of the opinion that the statement should be admitted, than only it has value. Otherwise any statement recorded does not have any value or cannot be relied upon in the proceedings, since the validity of the same has not been tested by court of law. In the present case, statements are required to be examined by a court and hence, the same cannot be relied upon at this stage. He has relied upon the judgment of the Hon'ble Supreme Court in the case against 'Noor Aga Vs. State of Punjab' [(2008) 16 SCC 417]; in the case of 'A. Tajudeen Vs. UOI' [(2015) 4 SCC 435]; judgment of Hon'ble Bombay High Court in the case of 'Union of India Vs. Kisan Ratan Singh & Ors' reported in MANU/MH/0035/2020;

- The applicant cannot be fastened with any liability or penalty based upon the sole statements of the certain persons as mentioned in the subject SCN; He has relied upon the judgment pronounced in context of Section 141 of the Negotiable Instrument Act, 1881 by the Hon'ble Apex Court in the case of 'Aneeta Handa and ors. Vs Godfather Travels and Tours Pvt Ltd. and ors' [AIR 2012 SC 2795] and in the case of 'Sharad Kumar Sanghi Vs. Sangita Rane [MANU/SC/0205/2015];
- Each commissinate can exercise jurisdiction only for the area as designated by the Board. From the alleged case, it appears that the investigation sought to be caused is as allegedly as regards to allege supplying of smuggled goods, and the initial remittance alleged to be made was from Vishakhapatnam. Without prejudice to any of the submissions, even if the allegation made be accepted as gospel truth, then also the alleged act of dealing or supplying with smuggled goods have been carried out not a Jaipur, which does not fall within the jurisdiction of the Department at Jaipur jurisdiction or Ahmedabad (Gujarat) jurisdiction. Hence, the department cannot seek to cause investigation or any such exercise of power seeking to examine any act beyond its jurisdiction, unless authorized by the Board, make the investigation illegal and without jurisdiction. So also, the investigation is being exercised for the remittances made from India. Contending from the same it is submitted that the initial investigation so allegedly laid by the Customs department, the Customs department at Jaipur (Rajasthan) jurisdiction conducted the investigation and now the subject Show Cause Notice has been given by the department at Ahmedabad (Gujarat) jurisdiction. The Said events are contradictory in themselves;
- The investigation under the Customs Act, can be conducted only in relation to any activity which has relation to either import or export of any goods and against a person who has dealt with the same in any manner. Scope and ambit of conducting any inquiry in relation with remittances made from India falls under the purview of Foreign Exchange Management Act, 1999 and the officers appointed there under, can only cause or initiate such investigation. Customs department could not have transgressed its powers seeking to conduct investigation or inquiry which are not within its domain to examine. Department can verify only the details as regards the import or export made or attempted to be made by any person or any compliance of the conditions under the licensing or drawback rules. As regards remittance made and investigation relating thereto, the same falls within the ambit of RBI and Enforcement Directorate under FEMA. Custom Officers have not been authorized to conduct any investigation in relation to the remittances made;
- The power under the Customs Act, can be exercised only in relation to the goods which were attempted to be imported or exported. Once the import stands complete and the goods become part of the land-mass of India and cannot be segregated and / or identified of having separate identity, then no investigation could have been caused by the Customs department and exercise of power of investigation is improper;
- It is difficult to contend that either a company or a bank account can be opened in someone's name and that person can later shown himself to be unaware of the alleged transaction carried out from the subject bank account. Suffice to state that the various persons who have

allegedly been shown as the account holder, proprietors and Directors have not been made party. Company cannot be categorized as a fake one, solely on the ground that it has not been found operating at the concerned address.

- Firstly, the applicant has not committed any sort of offence whatsoever and is completely innocent thereby, secondly qua the case of the applicant, there is no ingredients, for which the provision of the Act,1962 can be invoked in any manner whatsoever, therefore, there is no occasion to invoke any sort of penalty qua the present applicant, even otherwise also no specific averments has been made qua the case of the applicant so as to entail him for any liability or penalty under the provisions of the Act,1962, except the mention of alleged statements of person so allegedly taken under the Act,1962, wherein the name of the applicant is allegedly been mentioned;
- The applicant while reserving his right to file the detailed reply as and when need arises, submit this subject reply to the Show Cause Notice dated 2.05.2023 and in view of the averments made therein, prays that the subject Show Cause Notice and its implications be dropped and no penalty being imposed against the present applicant in any manner whatsoever.

112.11 Shri Rajendra Jangid, (Noticee No.14)

Shri Rajendra Jangid, in his written submissions dated 23.01.2024 and dated Nil received on 11.06.2024 inter-alia submitted that:

- At the outset, the applicant denies each and every singular allegations/statements made in the subject Notice under reference, except as specifically admitted herein below; the subject notice under reference is based upon wrong apprehension of facts and events and further the allegations levelled against the applicant are not admitted as in the manner stated therein;
- He has not committed any sort of offence and is completely innocent thereby he cannot be made liable or put to penalty for any sort of alleged action on the part of alleged firms;
- Relevancy of statement under certain circumstances has been provided under Section 138 of the Customs Act,1962 wherein it has been held that only when the person who has made the statement is examined as a witness in the case before the court, the court is of the opinion that the statement should be admitted, than only it has value. Otherwise any statement recorded does not have any value or cannot be relied upon in the proceedings, since the validity of the same has not been tested by court of law. He has relied upon the judgment of the Hon'ble Supreme Court in the case against 'Noor Aga Vs. State of Punjab' [(2008) 16 SCC 417]; in the case of 'A. Tajudeen Vs. UOI [(2015) 4 SCC 435]; judgment of Hon'ble Bombay High Court in the case of 'Union of India Vs. Kisan Ratan Singh & Ors reported in MANU/MH/0035/2020;
- The applicant cannot be fastened with any liability or penalty based upon the sole statements of the certain persons as mentioned in the subject SCN; He has relied upon the judgment pronounced in context of Section 141 of the Negotiable Instrument Act,1881 by the Hon'ble Apex Court in the case of 'Aneeta Handa and ors. Vs Godfather Travels and Tours Pvt Ltd. and ors' [AIR 2012 SC 2795] and in the case of 'Sharad Kumar Sanghi Vs. Sangita Rane [MANU/SC/0205/2015];

- Each commissinerate can exercise jurisdiction only for the area as designated by the Board. From the alleged case, it appears that the investigation sought to be caused is as allegedly as regards to allege supplying of smuggled goods, and the initial remittance alleged to be made was from Vishakhapatnam. Without prejudice to any of the submissions, even if the allegation made be accepted as gospel truth, then also the alleged act of dealing or supplying with smuggled goods have been carried out not a Jaipur, which does not fall within the jurisdiction of the Department at Jaipur jurisdiction or Ahmedabad (Gujarat) jurisdiction. Hence, the department cannot seek to cause investigation or any such exercise of power seeking to examine any act beyond its jurisdiction, unless authorized by the Board, make the investigation illegal and without jurisdiction. So also, the investigation is being exercised for the remittances made from India. Contending from the same it is submitted that the initial investigation so allegedly laid by the Customs department, the Customs department at Jaipur (Rajasthan) jurisdiction conducted the investigation and now the subject Show Cause Notice has been given by the department at Ahmedabad (Gujarat) jurisdiction. The Said events are contradictory in themselves;
- The investigation under the Customs Act, can be conducted only in relation to any activity which has relation to either import or export of any goods and against a person who has dealt with the same in any manner. Scope and ambit of conducting any inquiry in relation with remittances made from India falls under the purview of Foreign Exchange Management Act, 1999 and the officers appointed there under, can only cause or initiate such investigation. Customs department could not have transgressed its powers seeking to conduct investigation or inquiry which are not within its domain to examine. Department can verify only the details as regards the import or export made or attempted to be made by any person or any compliance of the conditions under the licensing or drawback rules. As regards remittance made and investigation relating thereto, the same falls within the ambit of RBI and Enforcement Directorate under FEMA. Custom Officers have not been authorized to conduct any investigation in relation to the remittances made;
- The power under the Customs Act, can be exercised only in relation to the goods which were attempted to be imported or exported. Once the import stands complete and the goods become part of the land-mass of India and cannot be segregated and / or identified of having separate identity, then no investigation could have been caused by the Customs department and exercise of power of investigation is improper;
- It is difficult to contend that either a company or a bank account can be opened in someone's name and that person can later shown himself to be unaware of the alleged transaction carried out from the subject bank account. Suffice to state that the various persons who have allegedly been shown as the account holder, proprietors and Directors have not been made party. Company cannot be categorized as a fake one, solely on the ground that it has not been found operating at the concerned address.
- Firstly, the applicant has not committed any sort of offence whatsoever and is completely innocent thereby, secondly qua the case of the applicant, there is no ingredients, for which the provision of the

Act,1962 can be invoked in any manner whatsoever, therefore, there is no occasion to invoke any sort of penalty qua the present applicant, even otherwise also no specific averments has been made qua the case of the applicant so as to entail him for any liability or penalty under the provisions of the Act,1962, except the mention of alleged statements of person so allegedly taken under the Act,1962, wherein the name of the applicant is allegedly been mentioned;

- The applicant while reserving his right to file the detailed reply as and when need arises, submit this subject reply to the Show Cause Notice dated 2.05.2023 and in view of the averments made therein, prays that the subject Show Cause Notice and its implications be dropped and no penalty being imposed against the present applicant in any manner whatsoever.

112.12 M/s.Kavish Gems (Noticee No.1 of the supplementary SCN):

M/s.Kaish Gems in their interim written submissions dated 22.06.2024 and 09.07.2024 *inter-alia* submitted that:

Cross Examination of Certain Persons:

- In the Supplementary SCN, the investigation has cited and relied upon the following two statements recorded under Section 108 of the Customs Act, 1962 to buttress the allegations against us:
 - (a)Statement dated 31.05.2022 of Shri Akshay Pannalal Doshi, Proprietor of M/s Ragee Gems, Mumbai; and
 - (b)Statement dated 22.03.2023 of Shri Vimal Kumar Nahar Proprietor of M/s Swastik Impex.

Therefore, they requested for examination and cross examination of Shri Akshay Pannalal Doshi and Shri Vimal Kumar Nahar in terms of Section 138B of the Customs Act, 1962;

Their possession of the diamonds was licit supported with documentary proof:

- They were in licit possession of the diamonds as claimed by them with the support of documentary evidences which were duly presented to the officers during the search operations which were however disregarded by them as well as vide their letter dated 03.05.2022 and thereafter vide 13 reminder letters addressed to the investigation. They stated source of the diamonds under seizure as under:

Sr No	Quantity in Carats	Received from
1	188.03	Received from M/s V. Arvindkumar & Co., Mumbai [GSTIN 27AADFV7780R1Z4] on approval (Jangad) basis vide their Challans dated 20.04.2022 & 21.04.2022 through the broker Mr Nilesh B. Goyani.
2	170.80	
3	47.33	Received from M/s Jeel Impex Mumbai [GSTIN 27AELPM9414P1ZP] on approval (Jangad) basis vide their Challan dated 26.04.2022.
4	32.84	Received from M/s Ragee Gems Surat [GSTIN 24ABGPD9476Q1ZZ] on approval (Jangad) basis vide their Challan dated 27.04.2022.

5	46.05	Purchased from M/s Shashvin Jewels, Surat [GSTIN 24APYPN9176M2ZO] vide their Tax Invoice No SH – PD/22-23/009 dated 25.04.2022 for Rs 6,90,750/- and received on 28.04.2022.
	485.05	Total

- They re-submitted copies of the documents in support of the above transactions as under:
 - (a) Copies of Jangad No 3351 dated 20.04.2022 for 188.03 Carats, Jangad No 3358 dated 21.04.2022 for 170.80 Carats, Affidavit sworn by Shri Vishal Arvind Bhai Monpara Partner of M/s V. Arvindkumar & Co., Mumbai on 02.05.2022 and Affidavit sworn by Shri Nilesh B Goyani, broker, on 02.05.2022 in relation to the diamonds received from M/s V. Arvindkumar & Co., Mumbai;
 - (b) Copies of Jangad dated 21.04.2022 for 47.33 Carats, Affidavit sworn by Shri Dharmendra Somalal Mujpura Proprietor of M/s Jeel Impex Mumbai on 04.05.2022 and Affidavit sworn by Shri Jignesh Mujpura, broker, on 04.05.2022 in relation to the diamonds received from M/s Jeel Impex Mumbai;
 - (c) Copies of Jangad dated 27.04.2022 for 32.84 Carats and Affidavit sworn by Shri Akshay Pannalal Doshi, Proprietor of M/s Ragee Gems, Surat on 03.05.2022 in relation to the diamonds received from M/s Ragee Gems, Surat;
 - (d) Copy of Tax Invoice No SH – PD/22-23/009 dated 25.04.2022 for Rs 6,90,750/- in relation to 46/05 Carats purchased from M/s Shashvin Jewels, Surat;
- In view of the above, there was no unaccounted stock of the diamonds as alleged in the Sup SCN and the proceedings initiated vide the Supplementary SCN against them are required to be dropped forthwith and the Bank Guarantee is required to be released and returned to them as early as possible;

The officers had no ‘reasonable belief’ at the time of seizure of the diamonds and further in the facts of this case, there was no need to form the so-called ‘reasonable belief’ as claimed in the Sup SCN:

- The Customs Act, 1962 mentions the expression ‘reasonable belief’ only once and that is in Section 123. However, the expression ‘reason to believe’ is mentioned 18 times in various Sections including in Section 110(1);
- The expressions ‘reason to believe’ used in Section 110 and ‘reasonable belief’ used in Section 123, used interchangeably, have not been defined in the Customs Act, 1962 but have been the subject matter in a plethora of reported cases decided by the Apex Court and various High Courts. Relied upon various case laws;
- Reasonable belief could be entertained either on the basis of some external indicia or on the basis of some internal information that the goods had been illegally imported into India from some foreign country either without payment of duty or in contravention of any restriction or prohibition imposed by statute. There was nothing to suggest foreign origin of the seized diamonds. There was nothing to suggest the illegal importation of the diamonds into the country;

- Reasonableness of *belief* has to be judged in the light of the facts and circumstances of each case. The expression "*reason to believe*" requires the proper officer to refer to facts and figures to show existence of positive belief. It is the consistent view of Hon'ble Supreme Court that '*reason to believe*', as provided in several provisions of the Customs Act, 1962 and as defined in Section 26 of the Indian Penal Code, on the part of the officer concerned is essentially a question of fact as held in the case of Noor Aga reported as 2008 (7) TMI 853 - SUPREME COURT. The facts and circumstances of this case cannot constitute the basis for forming a '*reasonable belief*', which was formed based on mere suspicion and speculation, that the diamonds going to be seized were smuggled. Therefore, the investigation did not have a '*reasonable belief*' in the first place to assert that the diamonds placed under seized were smuggled ones and hence, were liable to confiscation which '*reasonable belief*' is essential precondition before the goods can be seized. Relied upon judgment in the case of Directorate of Revenue Vs Mohammed Nisar Holia reported as 2007 (12) TMI 413 - SUPREME COURT;
- Further, the '*reasonable belief*' has to exist at the time when the goods are seized and not much after the seizure. In this case the diamonds were detained on 28th/29th/30th April 2022 and were seized on 21.10.2022. The so-called '*reasonable belief*' was formed after the statement of Shri Vimal Kumar Nahar was recorded on 22.02.2023 as mentioned and admitted in Para 8.1 of the Supplementary SCN itself. Therefore, there was no '*reasonable belief*' at the time of seizure of the diamonds. The Supplementary SCN has thus put the cart before the horse and upturned the legal position;
- Even otherwise, there was no '*reason to believe*' that the said diamonds were part of the diamonds, which were alleged to have been removed from the SEZ units, by Shri Suresh Ratanlal Jagetia, through his DTA units M/s Europea Makeour Jewel Pvt. Ltd., and M/s Maahi Jewellery Exim Pvt. Ltd. to M/s Swastik Impex and other non-existing firms even on 22.02.2023 when the statement of Shri Vimal Kumar Nahar, Proprietor of M/s Swastik Impex, was recorded inasmuch the said statement is general & does not specifically incriminates them and there is no evidence to suggest the assumed and presumed nexus. Further chain of custody of the diamonds has not been established;
- Without prejudice to the above and assuming but without admitting, that the diamonds were unaccounted, simply because the diamonds were not accounted for at the time of search proceedings (which is otherwise a wrong and fraudulent claim of the investigation as stated above inasmuch as documents/information showing licit possession were submitted to the officers during the search proceedings) it does not necessarily *ipso facto* mean that the diamonds were smuggled one;

Diamonds are not covered by Section 123 and therefore burden to prove that the diamonds were not smuggled did not shift:

- Provisions of Section 123(1) do not apply to diamonds and therefore the onus to prove that the diamonds under seizure were not smuggled does not shift to them and the burden has to be discharged by the authority which alleges that the diamonds were smuggled. The authority has miserably failed to discharge the burden;

The Supplementary SCN has not linked the diamonds under seizure to any alleged fake invoice(s) from the SEZ or the DTA units and 'chain of custody' of the diamonds is not proved;

The Supplementary SCN requires them to prove the negative:

- The Supplementary SCN tacitly requires them to prove the negative that the diamonds under seizure are not from the diamonds, which were alleged to have been removed from the SEZ units, by Shri Suresh Ratanlal Jagetia, through his DTA units M/s Europea Makeour Jewel Pvt. Ltd., and M/s Maahi Jewellery Exim Pvt. Ltd. to M/s Swastik Impex and other non-existing firms without leading any evidence in this regard;
- There is a legal embargo on this. They cannot prove the negative in the absence of any specific allegations supported with cogent evidence regarding the alleged acts of omissions & commission by them. It is for the investigation to lead the evidence relating to the allegations which they have miserably failed to discharge as their burden of proof. In this regard, they relied upon various case laws:

Jurisdiction to issue the Supplementary SCN is lacking:

- The diamonds were detained by the officers of the CC(P) Jaipur in Mumbai and were later seized by the officers of the CC(P) Mumbai. In the facts of the case, it was a case of town seizure in Mumbai. The diamonds have been arbitrarily linked to the diamonds, which were alleged to have been removed from the SEZ units, in Surat by Shri Suresh Ratanlal Jagetia, through his DTA units M/s Europea Makeour Jewel Pvt. Ltd., and M/s Maahi Jewellery Exim Pvt. Ltd. to M/s Swastik Impex and other non-existing firms by concocting a fictional cock and bull story without the support of any cogent evidence. Therefore, since the source of the diamonds was not and has not been proved to be from Surat SEZ, Commissioner of Customs, Ahmedabad does not have jurisdiction to issue the Supplementary SCN in relation to the diamonds under seizure;

Supplementary SCN was not warranted in the facts of the case and hence is not legal & proper:

- The Sup SCN does not explicitly mention under which of the four clauses (a), (b), (c) or (d) of Regulation (4) of the Customs (Supplementary Notice) Regulations, 2019, the Sup SCN has been issued. The Sup SCN claims that '*consequent to certain evidences and facts emerging subsequently*' this Sup SCN has been issued. This is not covered under any of the four clauses of Regulation (4), *ibid*;
- They stated that:
 - (a) It is not a case of difference in the quantum of duty demanded in the main SCN including the case which necessitated change in adjudicating authority;
 - (b) It is not a case for invoking penal action under the provisions of the Act against a person/persons in addition to those charged in the main SCN;
 - (c) It is not a case for invoking additional section/sections of the Act in the main SCN;
 - (d) It is not a case where there is any additional evidence that may have a significant bearing on the outcome of the case made out in the main SCN.

- Having seized the diamonds without any legal basis improperly as stated above, the investigation has hypothetically linked the matter to the main SCN without any evidence by illegally issuing the Supplementary SCN instead of honourably releasing the diamonds. On this ground alone, the Supplementary SCN merits to be dropped;

The Supplementary SCN places selective reliance on evidences:

- The Supplementary SCN is bad and vitiated for placing selective reliance of the evidences on record to suit the investigation;
- Investigation did conduct verification and investigation with Shri Vishal Arvind Monpara of M/s V Arvindkumar & Co [who had supplied total 358.83 Carats of the diamonds] and Shri Dharmendra Mujpura of M/s Jeel Impex & their broker Shri Jignesh Rameshchandra Mujpura [who had supplied 47.33 Carats of the diamonds] who were also belatedly summoned by the officers of the CC(P) Jaipur and were interrogated and their statements were recorded under Section 108 of the Customs Act, 1962. Further these persons had also submitted certain documents to the investigation in relation to source of the said Cut and Polished diamonds under seizure. However, statements of the above three persons and the documents submitted by them to the investigation have been totally ignored and have not been made part of the Supplementary SCN and its relied upon documents primarily may be because of the reason that these documents appear to be supporting their case and are against the story of the Supplementary SCN;
- Investigation had also summoned Shri Akshay Pannalal Doshi, Proprietor of M/s Ragee Gems, Surat [who had supplied 32.84 Carats of the diamonds] and his statement was recorded on 31.05.2022 wherein he stated, inter-alia, that he does not know M/s Kavish Gems; that he has not done any business till date with M/s Kavish Gems; that he has not received any approval from M/s Kavish Gems; and that he cannot confirm or claim that the diamonds detained at the premises of M/s Kavish Gems belong to him;
- Transaction with M/s Ragee Gems Surat was through broker named Shri Jignesh Mujpura and therefore, the above statement. They had submitted a copy of the Affidavit sworn by Shri Akshay Pannalal Doshi as early as on 3rd May 2022 stating the fact that his firm had supplied 32.84 Carats of the diamonds to them. Therefore, they have requested for his examination and cross examination which may please be permitted to discover the truth and to put the matter straight;
- The Supplementary SCN has narrated the above statement of Shri Akshay Pannalal Doshi, Proprietor of M/s Ragee Gems, Surat in Para 8.7 thereof and relied upon the same to counter their claim of having received the 32.84 Carats of the diamonds from them. However, the Supplementary SCN has not narrated the investigation conducted with Shri Vishal Arvind Monpara of M/s V Arvindkumar & Co [who had supplied total 358.83 Carats of the diamonds] and Shri Dharmendra Mujpura of M/s Jeel Impex & their broker Shri Jignesh Rameshchandra Mujpura [who had supplied 47.33 Carats of the diamonds] and has not referred to their statement & the documents submitted by them to the investigation;
- The Supplementary SCN thus placed reliance selectively on certain documents and evidences [considered as favourable to the story of the

- Sup SCN] while hiding/suppressing other including the statutory documents [which counter the said story]. This selective reliance on the evidence on record is not permitted in law;
- Investigation appears to have kept the statements recorded from Shri Vishal Arvind Monpara of M/s V Arvindkumar & Co [who had supplied total 358.83 Carats of the diamonds] and Shri Dharmendra Mujpura of M/s Jeel Impex & their broker Shri Jignesh Rameshchandra Mujpura [who had supplied 47.33 Carats of the diamonds] and the documents submitted by them during the investigation away from your honour also as the Sup SCN issuing authority as well. This is as serious as it can get and needs to be dealt with sternly with suitable remedial action;
 - Therefore, when on receipt of the Supplementary SCN they found that the statements recorded from Shri Vishal Arvind Monpara of M/s V Arvindkumar & Co [who had supplied total 358.83 Carats of the diamonds] and Shri Dharmendra Mujpura of M/s Jeel Impex & their broker Shri Jignesh Rameshchandra Mujpura [who had supplied 47.33 Carats of the diamonds] and the documents submitted by them were missing from the RUDs as well as from the narration in the Supplementary SCN, they requested the Adjudicating Authority with a copy to the investigating Commissionerate for the said documents vide their letter dated 07th June 2024 followed up with two reminders dated 11th June 2024 and 18th June 2024;
 - This selective reliance on the evidence on record is not permitted in law. In this regard, they relied upon ratio of the case of Shri Dinesh Sharma & Others Vs Commissioner of Customs (Import & General), New Delhi reported as 2022 (8) TMI 1009 - CESTAT NEW DELHI;

Mere Suspicion Cannot Replace Proof:

- It is settled law that mere suspicion howsoever strong or great cannot take the place of proof - a dictum which can always bear repetition;

The Supplementary SCN is vague, general, & arbitrary; is based on assumptions & presumptions; is self-contradictory; and is contrary to the records:

- The Supplementary SCN is vague, general, and arbitrary; is also based on unsubstantiated assumptions & presumptions; is self-contradictory; and is contrary to the records inasmuch as:
 - (a) The Seizure Memo states on the one hand that during further investigation conducted by Jodhpur Preventive Commissionerate, Jaipur, the source of the detained goods could not be established and on the other hand it mentions that on investigation of Jodhpur Preventive Commissionerate, Jaipur, there is reason to believe that the aforesaid 485.23 Carats of Diamonds valued at Rs 2,11,43,901/- as detailed in enclosed Supuradnama dated 30.04.2022 were illegally procured or smuggled into India by M/s Kavish Gems and were liable for confiscation under the provisions of the Customs Act, 1962. These two assertions are self-contradictory;
 - (b) The Seizure Memo states, inter-alia, that the said diamonds were illegally procured or smuggled into India by them which is as vague as it can get;
 - (c) In the Seizure Memo dated 21.10.2022, it was the claim of the investigation that there was reason to believe that the aforesaid 485.23 Carats of Diamonds valued at Rs.2,11,43,901/- were

illegally procured or smuggled into India by M/s Kavish Gems and are liable for confiscation under the provisions of the Customs Act, 1962. However, in the Supplementary SCN, it is the charge that the diamonds under seizure are from the Diamonds, which are alleged to have been removed from the SEZ units, by Shri Suresh Ratanlal Jagetia, through his DTA units M/s Europea Makeour Jewel Pvt. Ltd., and M/s Maahi Jewellery Exim Pvt. Ltd. to M/s Swastik Impex and other non-existing firms. The Supplementary SCN therefore, is self-contradictory and is also contrary to the facts on record;

- (d) It is alleged in Para 8.1 of the Supplementary SCN that the impugned diamonds were from the diamonds, which are alleged to have been removed from the SEZ units, by Shri Suresh Ratanlal Jagetia, through his DTA units M/s Europea Makeour Jewel Pvt. Ltd., and M/s Maahi Jewellery Exim Pvt. Ltd. to M/s Swastik Impex and other non-existing firms, who had further diverted these diamonds to M/s Kavish Gem, Mumbai whereas narration in the Supplementary SCN is mainly about M/s. Swastik Impex;
- (e) The Supplementary SCN in Para 8.1 states that it has already been established that the goods (Diamond and precious stones), were the goods which were diverted by Shri Suresh Ratanlal Jagetia, through his DTA units M/s Europea Makeour Jewel Pvt. Ltd., and M/s Maahi Jewellery Exim Pvt. Ltd. without payment of duty thereon whereas the main SCN issued in the matter is still pending adjudication and the allegations are yet to be proved/established;
- Relied upon Hon'ble Supreme Court judgment in the case of M/s Brindavan Beverages reported as 2007 (6) TMI 4 - SUPREME COURT

The entire proceeding including search, seizure, investigation and consequently issue of the Sup SCN smacks of malafide:

- In the facts of the case where source of the diamonds under seizure was adequately explained, no investigation was required to be conducted and the diamonds should not have been detained and later seized in the first place. The search and seizure were therefore, not legal and proper as stated above;
- Further having seized the diamonds, the investigation should have released the same once the officers had verified factual position from the suppliers of the said diamonds. Instead of honourably releasing the diamonds, the investigation chose to issue the Sup SCN by manipulating the evidences and suppressing vital evidences germane to the issue which came on record during the investigation;
- The investigation examined Shri Vimal Kumar Nahar Proprietor of M/s Swastik Impex the so-called non-existing fictitious entity and recorded three statements from him. However, owners of the other 16 entities were not examined and their say was not recorded;
- The investigation conducted verification with three out of the four entities which had supplied the diamonds under seizure. While the investigation verified the factual position with M/s V Arvindkumar & Co, Mumbai; M/s Jeel Impex, Mumbai; and M/s Ragee Gems, Surat, no such verification was conducted with M/s Shashvin Jewels, Surat for the reasons best known to them;

Extended period under Section 28(4) cannot be invoked against them:

- The diamonds under seizure were from the diamonds which are alleged to have been improperly removed from the premises of M/s. Europea Makeour Jewel Pvt. Ltd. SEZ Sachin, Surat and from the premises of M/s Maahi Jewellery Exim Private Limited, SEZ, Sachin, Surat without payment of applicable customs duty is false and has been made based on assumptions and presumptions without any evidence as elaborated above. Therefore, customs duty is not payable on the said diamonds and the question of invoking extended period under Section 28(4) for demanding duty does not arise at all;

The Cut & Polished Diamonds under seizure are not liable to confiscation under Section 111 of the Customs Act, 1962:

- The Supplementary SCN alleged that the Cut & Polished Diamonds under seizure are liable for confiscation under Section 111, *ibid*, The Supplementary SCN has alleged that the Cut & Polished Diamonds under seizure were procured by them which were otherwise diverted from the said two units in the SEZ, Surat, without payment of duty thereon. As stated above, this allegation has been made based on assumptions and presumptions without any cogent evidence in this regard;
- Section 111 relates to confiscation of improperly imported goods. The diamonds were not imported/smuggled by them and they have proved licit possession with the support of documentary evidences. Therefore, the diamonds are not liable for confiscation under Section 111. Further Section 111 has 17 Clauses from (a) to (q). The Supplementary SCN has not stated under which Clause(s) of Section 111, the Cut & Polished Diamonds under seizure are liable for confiscation and hence is vague. On this ground alone the Sup SCN merits to be dropped so far as they are concerned;

The Noticee is not liable to Penalty under Clauses (a) & (b) of Section 112 of the Customs Act, 1962:

Submission on the proposal for imposition of penalty on them under Section 112(a), *ibid*:

- Clause (a) of Section 112 of the Customs Act, 1962 provides for penalty against the person 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. Perusal of this Section, revealed that for abetting an offence existence of mens rea is an essential ingredient due to mention of word "abet". Therefore, for invocation of second part of Section 112(a) on stakeholders, who assist importer/exporter/beneficial owner in customs clearance and rendered the goods liable for confiscation, mens rea is an absolute necessity. Without animus on the part of such stakeholders, it is difficult to invoke Section 112(a) or bring them under the four corners of this penal provision. In this regard reliance is placed on the case of Amrtlakshmi Machine Works Vs Commr of Customs (Import) Mumbai reported as 2016 (335) E.L.T. 225 (Bom.);

Submissions on the Proposal to impose Penalty on them under Clause (b) of Section 112 of the Customs Act, 1962:

- Considering the language of clause (b) of Section 112, it applies in case the Noticee had acquired possession of or was in any way concerned in carrying, removing, depositing, harbouring, keeping,

concealing, selling or purchasing, or in any other manner dealing with the goods which they knew or had reason to believe were liable to confiscation under section 111. The impugned goods were not improperly imported goods and hence, were not liable to confiscation under Section 111, *ibid*, as stated above;

- Without prejudice to the above, they never knew or had any reason to believe that the goods were liable to confiscation under Section 111, *ibid*. It has been held recently in the case of Jorabhai Valabhai Rabari Desai and Premabhai Jethabhai Attiya Patel reported as 2021 (7) TMI 1199 - CESTAT AHMEDABAD that it is evident from a plain reading of Section 112(b) of the Customs Act, 1962, which uses the expressions "which he knows or has reason to believe are liable to confiscation under Section 111", that penalty under this Section can be imposed wherever there is an element of *mens rea* or conscious knowledge, which is a *sine qua non* for imposition of the said penalty. The facts of the case in hand do not reveal any such element of *mens rea* or conscious knowledge qua the Noticee and therefore the proposal to impose the penalty on the Noticee under Section 112(b) of Customs Act 1962 is not justified;

Burden to Prove existence of 'Knowledge' or 'Reason to Believe' on the part of the Noticee not discharged by the Department:

- From the language of Section 112(b) it is clear that for imposition of penalty under this clause on a person, involved in carrying, removing, keeping, concealing etc. of goods, which are to be held liable for confiscation under Section 111, the knowledge or reason to believe on the part of the person about the liability of the goods for confiscation is necessary and the burden to prove its existence would be on the Revenue as held by Hon'ble CESTAT in the case of Green Express Transport Service [2010 (257) ELT 441 (Tri - Del)]. The department has squarely failed to discharge that burden. The proposal for the said penalty, therefore, remains unsubstantiated;
- The Noticee did not acquire possession of or was in no way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with the impugned goods which he knew or had reason to believe were liable to confiscation under Section 111;
- There is nothing in the Supplementary SCN which even remotely alludes them doing any of the actions mentioned in clause (b) of Section 112 and hence penalty under clause (b) of Section 112 cannot be imposed on them;

The Noticee is not liable to Penalty under both the Clauses (a) & (b) of Section 112 of the Customs Act, 1962 simultaneously:

- The Sup SCN proposes imposition of penalty on the Noticee under both the clauses (a) and (b) of Section 112 of the Customs Act, 1962. The Noticee states that in the facts of the case and role of the Noticee, both the clauses cannot be invoked against them simultaneously. The use of the word 'or' between both the clauses proves his contention. In this regard, they relied upon the ratio of Hon'ble CESTAT order in the case of Shri Ganesh Maharudra Desai reported as 2022 (6) TMI 213 - CESTAT MUMBAI and Madras HC order in the case of Lakshmidhara Vs GoI reported as 1983 (12) E.L.T. 322 (Mad. HC) W.P. No. 2943 of 1978, decided on 18-09-1981;

- Therefore, penalty under Section 112(a) and 112(b) of the Customs Act, 1962 is not imposable on the Noticee inasmuch as ingredients of these clauses are not present and no mens rea has been substantiated against him;

Submissions regarding the proposal for imposition of penalty on them under Section 114A:

- The Supplementary SCN has grossly erred in proposing penalty on them under Section 114A of the Customs Act, 1962. On a plain reading of the above provision, it is evident that Section 114A of the Act has three limbs. The first limb talks of non-levy/ non-payment, short levy/ short payment, or erroneous refund of duty of customs. The second limb relates to the reason for such non-levy/ non-payment etc. on account of various ingredients such as collusion or any wilful mis-statement or suppression of facts. The third and last limb refers to the liability of the person to pay the duty as determined under Section 28 of the Customs Act, 1962;
- Supplementary SCN has not demanded Customs Duty on the goods from them and they have not been held as the person who is liable to pay the duty. Assuming but without admitting that they had prepared or got prepared and/or signed or got signed documents which they had reasons to believe were false are not the grounds for imposition of penalty on them under Section 114A of Customs Act, 1962;
- From a bare reading of Section 114A of the Act it is evident that the said provision contemplates imposition of penalty when the ingredients such as collusion or any wilful mis-statement or suppression of facts etc. are established on the part of the importer liable to pay Customs Duty. Therefore, for invoking the provisions of Section 114A, the ingredients contained in the proviso to Section 28 (4) of the Act (pertaining to the extended period of limitation) need to be satisfied. In this case, extended period cannot be invoked as elaborated above. As laid down in CC vs. Videomax Electronics, reported as 2011 (264) ELT 0466 (Tri.-Bom), if the extended period of limitation under Section 28 is not invokable, penalty under Section 114A of the Customs Act, 1962 cannot be imposed;
- Furthermore, even if the penalty is to be imposed under Section 114A, the penalty has to be equal to duty demanded and determined. In this case, no duty has been demanded from them, therefore penalty amount is indeterminable. On this ground also penalty under Section 114A cannot be imposed on them;
- Reliance is placed on CC v. MMK Jewellers - 2008 (225) E.L.T. 3 (S.C.) – Review Petition dismissed by the Hon'ble Supreme Court in Commissioner v. M.M.K. Jewellers - 2009 (243) E.L.T. A90 (S.C.) submission is also supported by the Apex Court ruling in the case of UOI vs. Rajasthan Spinning and Weaving Mills *Ltd.* - 2009 (238) ELT 3 (SC)

Submissions on the proposal for imposition of penalty on them under Section 114AA of the Customs Act, 1962:

- Supplementary SCN has erred in proposing penalty under Section 114AA of the Customs Act, 1962. Section 114AA is very specific about purposes for which the penalty under this section is imposable. Provisions of Section 114AA will be applicable only when it is proved with the help of cogent evidence that they had, knowingly or

- intentionally, made, signed or used, or caused to be made, signed or used, any declaration, statement or document which was false or incorrect in any material particular, in the transaction of the business relating to the impugned goods;
- Without prejudice to their above submission, the impugned goods were not imported goods and hence, the provisions of Section 114AA are not applicable;
 - Further, the Supplementary SCN is vague & general and does not specify as to whether:
 - (a) They had made or signed or used any declaration, statement or document which was false or incorrect in any material particular; or
 - (b) They had caused to be made, signed or used any declaration, statement or document which was false or incorrect in any material particular.
 - In the facts of the case, they have not filed or caused to be filed any declaration much less false declaration;
 - Without further prejudice to the above, the purpose of introduction of Section 114AA in the Customs Act, 1962 w.e.f. 13.07.2006 vide the Taxation Laws (Amendment) Act, 2006 was different i.e. to check frauds in export as evidenced by the observations of the Twenty Seventh Report of the Standing Committee on Finance (2005 – 06) in relation to the Taxation Laws (Amendment) Bill, 2005. They also relied upon the ratio of Hon'ble Order in the case of M/s Access World Wide Cargo reported as 2021 (8) TMI 640 - CESTAT BANGALORE wherein it was held, inter-alia, that the ingredients of Section 114AA of the Act are meant against the fraudulent exporter as is made out from 27th Report of the Standing Committee on Finance (cited Supra);
 - In view of the above, in the facts of the present case which does not relate to export of goods, penalty is not imposable on them under Section 114AA on the above ground as well;
 - It has been recently held in the case of Suresh Kumar Aggarwal reported as 2024 (6) TMI 779 - CESTAT MUMBAI that penalty under Section 114AA is not imposable when goods are involved and that penalty under Section 114AA is imposable when only paper transaction is made;

Penalty under Section 114AA can be imposed only on a natural person and not on an artificial person:

- Without prejudice to the above, they state that penalty under Section 114AA can be imposed on a natural person and not on a legal entity/artificial person because a document can only be made or caused to be made by a natural person. Hence, it is submitted that penalty under Section 114AA of the Act cannot be imposed on them for this reason as well.

On this ground also, the penalty under Section 114AA is not imposable on them.

Submissions on the Proposal for imposition of penalty on them under Section 117 of the Customs Act, 1962:

- The Supplementary SCN has erred in proposing penalty under Section 117 of the Customs Act, 1962. They have not imported the impugned goods and hence, they have not violated the provisions of Section 17 and 46 of the Customs Act, 1962 which, in the facts of the case, was

- not even their duty to comply with. Therefore, they are not liable to penalty under Section 117 of the Customs Act, 1962;
- Without prejudice to the above, Section 117 is a residuary provision and provides for imposition of penalty where no express penalty is provided elsewhere for the alleged contravention. In this case, penalties have been proposed under Section 112(a), 112(b), 114A and 114AA. Therefore, residuary provisions of Section 117 cannot be invoked to impose further penalty on them;
 - Though section 117 of Customs Act, 1962 enables imposition of penalty in the absence of prescription elsewhere in the statute, it does not empower conceiving of contraventions and breaches not elsewhere specified. It is intended to be invoked for breach of statutory stipulations that must be enumerated before recourse can be had to imposing detriment;
 - Without further prejudice to the above, analysis of the provisions of Section 117 reveals that it has three limbs and it provides for imposition of penalty not exceeding four lakh rupees on any person under the following three situations:
 - (a) The person contravenes any provision of the Customs Act, 1962 or
 - (b) The person abets any such contravention or
 - (c) The person 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.
 - The Supplementary SCN does not mention anywhere as to:
 - (a) Which provision of the Customs Act, 1962 has been contravened by them; or
 - (b) Contravention of which provision of the Customs Act, 1962 has been abetted by them; or
 - (c) Which provision of the Customs Act, 1962 they have failed to comply with which it was their duty to comply with.
 - They have not contravened any of the provisions of the Customs Act, 1962 in relation to the impugned goods. they have not dealt with the goods either pre-import or post import in any manner. The Supplementary SCN also fails to specify any particular provision of the Customs Act, 1962 which has been contravened by them. Therefore, penalty under Section 117 should not be imposed on them;

112.13 M/s.Gehna Trading (Noticee No.4 of the supplementary SCN):

M/s.Gehna Trading in their interim written submissions dated 26.06.2024 *inter-alia* submitted that:

- Be that as it may. even othelrwise the penalties under section 1 12(a) & (b) and section 1 14AA of the Act is not imposable inasmuch as the investigation carried out and the Show Cause Notice is without authority and jurisdiction and hence seizure of such goods is illegal and void ab intio. Since seizure is void ab initio. the same cannot be confiscated inasmuch as the predicate requirement of seizure has not been satisfied;
- The penalty under section 112 can be imposed only for improper importation of goods. In the present case, there has been no impropel importation of goods. Mere allegation has been made as regards noncompliance of the condition attached to the duty-free import of

goods. The importer was required to export the goods after processing the imported goods, instead he has allegedly diverted the goods. Hence, at the most, the case pertains to non-compliance OI breach of the import condition. Even if, the importer has committed breach of the Import condition, section 112 cannot be invoked in relation to the same. Section 112 relates only to the act committed or omitted to commit or any omission at the time of import of the goods. In the present case, the import of the goods has been carried out in accordance with the statutory provisions and no breach of whatsoever nature has been alleged to have been committed by the importer. Hence, none of the provisions of section 112 would stand attracted;

- They do not concerned in any manner with the importers and therefore no penalty can be levied under section 112 of the Customs Act upon him;
- Even otherwise penalty under section 114AA is imposable only when a person knowingly or intentionally makes, signs, or uses, or causes to be made. signed or used, any declaration, statement or document which is false or incorrect in any material particular. In the present case, the noticee has not signed any document in relation to the import of goods, hence no penalty under section 114AA of the Act is invocable qua him;
- Surprisingly, section 117 has also been invoked in the Show Cause Notice. Section 117deals with the situation where the contravention is committed in relation to any provision of the act for which no express penalty is elsewhere provided for. In the present case, when penal provision of section 112 and 114 has already been invoked, then section 117 could not have been invoked and goes beyond the very concept of imposing penalty under section 117. Hence, the proposal made in the Show Cause Notice is completely misconceived;
- In order that a person is penalised under the above provision, it has to be established that he acquired possession of or was 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 knew or had reason to believe, were liable to confiscation under Section 111 of the Act. In the present case, they neither being the importer nor having dealt with the imported goods in any manner, the penal provisions does not stand attracted qua hint.

PERSONAL HEARING:

113.1 In this case opportunities to all the noticees to the SCN dated 23.05.2024 were awarded to present their case in person and accordingly following personal hearings are given to all the noticees:

Personal Hearing	Proceedings of PH / outcome
Ist PH was fixed on 11.01.2024.	- Shri Arun Goel, authorised advocate for M/s.Europea Makeour Jewels Pvt. Ltd. (notice-1) and Shri Suresh Jagetia, Director (notice-3) appeared in virtual mode (online) on behalf of the noticees. He submitted that they do not have copies of relevant Bills of Entry based on which demand has been raised. He was told that we would be requesting the seizing unit / investigation agency [Customs (Prev.) Jodhpur, Hq at Jaipur] to look into their submission of non-availability of copies Bills of Entry with

	them. He further submitted that they do not have non RUDs as it has not been returned back to them by the seizing unit / investigation agency. They were asked to directly approach the seizing unit / investigation agency for non RUDs. Further, in the interim submission vide e-mail dated 11.01.2024, the representative of the above noticees, Noticee No.1 and Noticee no.3 has requested for one month's time to file reply. - In response to the 1st PH scheduled to held on 11.01.2024, Noticee Shri Surendra Mali (notice-13) vide letter dated NIL received through e-mail dated 11.01.2024 requested for time to file reply and engage advocate. - In response to the 1st PH scheduled to held on 11.01.2024, Noticee Shri Vikram Singh Kachchhawa (notice-7) vide e-mail dated 11.01.2024 requested for adjournment for two weeks. - Other noticees have neither responded to the PH communication nor have attended the PH.
2 nd PH was fixed on 24.01.2024	- Shri Arun Goel, authorised advocate for M/s.Europea Makeour Jewels Pvt. Ltd. (noticee-1) and Shri Suresh Jagetia, Director (noticee-3) vide e-mail correspondence dated 13.01.2024 requested for adjournment. - Shri Surendra Mali (noticee-13), Shri Rajendra Jangid (noticee-14) and Shri Om Prakash Vanjani (noticee-6), Shri Vimal Nahar (noticee No.11), Shri Vikram Singh Kachhawa (noticee No.07), Shri Kamlesh Nagda (noticee No.09) have sent their reply to SCN by post and no one had appeared for PH. - Other noticees have neither responded to the PH communication nor have attended the PH.
3 rd PH was fixed on 18.03.2024	- Shri Vikash Mehta, authorised advocate of M/s.Europea Makeour Jewels Pvt. Ltd. (noticee-1) and Shri Suresh Jagetia, Director (noticee-3) appeared in PH and reiterated the written submissions and submitted that he would be submitting additional written submission by 31.03.2024. - As requested by Shri Shri Brijesh Pathak, advocate for Shri Shri Navratn Singh Jain (noticee No.5) for virtual hearing vide letter dated 15.03.2024, link for virtual hearing alongwith user Id and password was shared to him vide e-mail dated 15.03.2024 and at the given time of 13.30 hrs, the link was logged in by the adjudicating authority, however, the advocate has not joined the PH despite telephonic call at that time and waiting till 13.50 hrs. - Other noticees have neither responded to the PH communication nor have attended the PH.
4 th PH was fixed on 24.04.2024	- Shri P.D. Rachchh, authorised advocate of M/s.Europea Makeour Jewels Pvt. Ltd. (noticee-1) appeared in PH and submitted following: (i) Copy of notification dated 05.08.2016; (ii) Copy of SEZ Act,2005 (Section 20,21 and 22); (iii) Copy of Customs Act,1962 (Section 108, 122A, 123

	138B); (iv) Copy of notification No.21/2022-Cus (NT) dated 31.03.2022; (v) Copy of notification No.103/2016 Cus (NT) dated 25.07.2016; (vi) Case law reported as 2016 (340) ELT)P&H); 1994 (69) ELT 212; 2010 (255) ELT 496 (All); 2018 (10) GSTL 537 (Guj); 2018 (10) GSTL 291 (Raj); 2003 (162) ELT 722 (Tri-Kolkata); (vii) Copy of Order by “अतिरिक्त मुख्य महानगर मजिस्ट्रेट, जयपुर” dated 30.05.2022; Further, he reiterated his submissions as detailed in their submission dated 10.02.2024, 06.03.2024, 23.03.2024 and 19.04.2024. - Shri R. C. Prasad, authorised advocate of Shri Suresh Jagetia, Director (noticee-3) appeared in PH and reiterated the written submissions. - Vide letter dated 23.04.2024, Shri Brijesh R Pathak, Advocate of Shri Navratan Singh Jain (noticee-5) mentioned about the detailed submissions filed on 16.06.2023, 13.03.2024 and 15.03.2024 reiterating the request to conduct examination of various persons. - Other noticees have neither responded to the PH communication nor have attended the PH.

113.2 In this case opportunities to all the noticees to the supplementary SCN dated 24.04.2024 were awarded to present their case in person and accordingly following personal hearings are given to all the noticees:

Personal Hearing	Proceedings of PH / outcome
Ist PH was fixed on 12.06.2024, which was re-scheduled to 18.06.2024.	None of noticees had responded to the PH letter except the noticee – M/s.Kavish Gem. M/s.Kavish Gem has requested for adjournment.
2 nd PH was fixed on 08.07.2024	None of noticees had responded to the PH letter except the noticee – M/s.Kavish Gem. Shri Uday Shah Proprietor of M/s.Kavish Gems alongwith their Consultant Shri Hans Raj Garg attended the personal hearing on 08.07.2024. During the course of personal hearing they had re-iterated their submissions dated 22.06.2024 and 25.06.2024.
3 rd PH was fixed on 19.07.2024	None of noticees had responded to the PH letter.

DISCUSSIONS AND FINDINGS:

114. I have carefully gone through the Show Cause Notice dated 20.05.2023 and supplementary SCN dated 24.04.2024 to the SCN dated 20.05.2023, written submissions made by the Noticees, submission as well as the arguments and discussions made by the noticee as well Noticee’s Counsel during the course of personal hearings. I find that in the present case, mainly the issue before me is as to whether M/s. Europea Makeour

Jewel Pvt. (SEZ Unit) and M/s. Maahi Jewellery Exim Private Limited (SEZ Unit) had diverted the duty free imported superior quality Diamonds / Precious Stones into DTA without payment of Customs duty through their DTA units and replaced the same with inferior quality Diamonds / Precious Stones which was procured locally to use in place of imported superior quality Diamonds / Precious Stones in studded jewellery to export for fulfilment of export obligation against the duty free imports, and also, whether they remitted the amount overseas to receive it back as export proceeds. The following issues are to be decided in this regard:

(A)

- (i) Whether the goods i.e. "cut and polished Diamonds, Precious Stones" illegally diverted in DTA, by M/s. Europea Makeour Jewel Pvt. Limited (SEZ Unit), Unit No. 401 & 403 on Plot No. 247-248 and 225B, Surat Special Economic Zone, Sachin, Surat – 394230, totally valued at **Rs.2631,46,66,966/- (Rupees Two Thousand Six Hundred Thirty One Crore, Forty Six Lakh, Sixty Six Thousand, Nine Hundred and Sixty Six Only)** as detailed in **Annexure-A** to the SCN under adjudication should be confiscated under Section 111(j) and 111(m) of the Customs Act, 1962. However, as the said goods are not available for confiscation, whether redemption fine in lieu of confiscation should be imposed;
- (ii) Whether total Duty (Basic Customs Duty + IGST + Cess) amounting to **Rs.212,27,82,674/- (Rupees Two Hundred Twelve Crore, Twenty Seven Lakh, Eighty Two Thousand, Six Hundred and Seventy Four Only)** should be demanded from M/s. Europea Makeour Jewel Pvt. Limited (SEZ Unit), in terms of the provisions of Section 28(4) of the Customs Act, 1962 read with Section 30 of the Special Economic Zones Act, 2005 and Rule 25 of the Special Economic Zones Rules, 2006, along with the applicable interest under Section 28AA of the Customs Act, 1962;
- (iii) Whether **Rs. 40,00,000/- (Rupees Forty Lakh Only)** (Customs Duty – Rs. 34,69,963, IGST – Rs. 3,46,996/-, SWS – Rs. 1,83,041/-) deposited voluntarily vide Form TR-6 dated 31.05.2022, should be appropriated towards above demand of duty;
- (iv) Whether the said seized goods viz. "cut and polished Precious Stones, cut and polished Precious Stones studded and cut and polished Diamond", seized vide Seizure Memo dated 26/27.05.2022, which were actually valued at **Rs. 5,11,28,910/- (Rupees Five Crore, Eleven Lakh, Twenty Eight Thousand, Nine Hundred and Ten Only)**, and which were illegally brought into the Customs area for the purpose of export, should be confiscated under Section 113 (d) of the Customs Act, 1962;
- (v) Whether penalty should be imposed upon M/s. Europea Makeour Jewel Pvt. Limited (SEZ Unit) under Section 112(a) & (b); Section 114AA; Section 114A; Section 117 of the Customs Act, 1962;

(B)

- (vii) Whether the goods i.e. "cut and polished Diamonds, Precious Stones" diverted in DTA, by M/s. Maahi Jewellery Exim Private

Limited (SEZ Unit), Unit No. 407 on Plot No. 248, Surat Special Economic Zone, Sachin, Surat – 394230 totally valued at **Rs.1892,60,19,327/- (Rupees One Thousand Eight Hundred Ninety Two Crore, Sixty Lakh, Nineteen Thousand, Three Hundred and Twenty Seven Only)** as detailed in **Annexure-B to the SCN** should be confiscated under Section 111(j) and 111(m) of the Customs Act, 1962. However, as the said goods are not available for confiscation, why redemption fine in lieu of confiscation should not be imposed;

- (viii) Whether total Duty (Basic Customs Duty + IGST + Cess) amounting to **Rs.148,96,97,902/- (Rupees One Hundred Forty Eight Crore, Ninety Six Lakh, Ninety Seven Thousand, Nine Hundred and Two only)** should be demanded from M/s. Maahi Jewellery Exim Private Limited (SEZ Unit), in terms of the provisions of Section 28(4) of the Customs Act, 1962 read with Section 30 of the Special Economic Zones Act, 2005 and Rule 25 of the Special Economic Zones Rules, 2006, along with applicable interest under Section 28AA of the Customs Act, 1962.
- (ix) Whether the said seized goods viz. “cut and polished Diamonds and Precious Stones”, seized vide Seizure Memo dated 26.05.2022, which were actually valued at **Rs.4,36,01,886/- (Rupees Four Crore, Thirty Six Lakh, One Thousand, Eight Hundred and Eighty Six Only)**, and which were illegally brought into the Customs area for the purpose of export, should be confiscated under Section 113 (d) of the Customs Act, 1962;
- (x) Whether penalty should be imposed upon M/s. Maahi Jewellery Exim Private Limited (SEZ Unit) under Section 112(a) & (b); Section 114AA; Section 114A; Section 117 of the Customs Act, 1962;

(C)

- (i) Whether the penalty should be imposed upon the persons as detailed in Column No. (2) of Table T-1-A below, under penal provisions of the Customs Act, 1962 as mentioned from Column Nos. 4 to 7 of the said Table-T-1-A hereunder against respective Noticee(s) for their acts of commission and omissions as detailed above:

TABLE T-1-A'						
S. No.	Name M/s or S/Shri	In the capacity of	Penal provisions / Sections of Customs Act, 1962			
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Shri Suresh Ratanlal Jagetia	Mastermind/Co-Conspirator/ controller/ beneficial Director of M/s. Europea Makeour Jewel Pvt. Ltd.	112 (a) & 112(b)		114AA	117
2	Shri Ram Raj Choudhary	Mastermind/Co-Conspirator/ controller/ beneficial Director of M/s. Maahi Jewellery Exim Pvt. Ltd	112 (a) & 112(b)		114AA	117

3	Shri Navratan Singh Jain	Mastermind/Handler/controller/Co-Conspirator	112 (a) & 112 (b)	114AA	117
4	Shri Om Prakash Vanjani	Co-Conspirator /Director of M/s. Belstar Techno Solutions (OPC) Bank Pvt. Ltd,	112 (a) & 112(b)	114AA	117
5	Shri Vikram Singh Kachchawa	Mastermind/Handler/controller/Co-Conspirator/Hawala Handler	112 (a) & 112(b)	114AA	117
6	Shri Ravindra Kumar, CA,,	Chartered Accountant/ Co-Conspirator	112 (a) & 112(b)	114AA	117
7	Shri Kamlesh Nagda	Handler/Co-Conspirator/Hawala Handler	112 (a) & 112(b)	114AA	117
8	Shri Deepak Kumar	Director, M/s Subhang Enterprises, Mumbai/ Co-Conspirator	112 (a) & 112 (b)	114AA	117
9	Shri Vimal Nahar	Prop. M/s Swastik Impex/ Co-Conspirator	112 (a) & 112 (b)	114AA	117
10	Shri Nitesh Kumar	Prop., M/s Visual Birds Technology/ Co-Conspirator	112 (a) & 112 (b)	114AA	117
11	Shri Surendra Mali <i>alias</i> Shankar Mali	Mastermind/Handler/controller/Co-Conspirator	112 (a) & 112 (b)	114AA	117
12	Shri Rajendra Jangid	Mastermind/Handler/controller/Co-Conspirator	112 (a) & 112 (b)	114AA	117

(D)

- (i) Whether the value of whole consignment of goods i.e. 485.23 Carat Cut and polished diamonds found un-accounted/ excess during search at M/s. Kavish Gems, (Proprietor Sh. Uday Shah), DE-3250, Bharat Diamond Bourse, Bandra Kurla Complex, G Block, Bandra(E), Mumbai-400 051 and later on same were detained and seized should be determined as **Rs.2,11,43,901/-** as per the valuation report of Government approved valuer, as there was no invoice pertaining to the said goods, in terms of sub-rule (4) of Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962;
- (vii) Whether the Diamonds detained/seized, vide detention memo dated 29/30.04.2022 valued at Rs.2,11,43,901/- should be confiscated under the provisions of Section 111 of the Customs Act, 1962;
- (viii) Whether penalty should be imposed upon M/s. Kavish Gems, (Proprietor Sh. Uday Shah), DE-3250, Bharat Diamond Bourse, Bandra Kurla Complex, G Block, Bandra(E), Mumbai-400 051 under Section 112(a) & 112(b); Section 114 AA; Section 114A; Section 117 of Customs Act, 1962;
- (ix) Whether the BG No.1217NDDG00000223 dated 20.10.2022 executed by M/s Kavish Gems, (Proprietor Sh. Uday Shah), DE-3250, Bharat Diamond Bourse, Bandra Kurla Complex, G Block, Bandra(E), Mumbai-400 051 for provisional release of the goods

should be encashed in favour of exchequer against any liability arisen on this account.

(E)

- (i) Whether Penalty under Section 112(a) & 112(b); Section 114 AA; Section 114A; Section 117 of Customs Act, 1962 should be imposed upon the following noticees:

M/s. Alentraa Multi Trading Pvt. Ltd., 114, Floor, G-Plot, 80/84, Swadeshi Mill Building, Amrit Diamond Trade Centre Bldg, P.L. Jagannath Shankar Sheth Marg, Central Plaza Cinema, Charni Road, Mumbai	M/s. Centre Core Multitrade Pvt. Ltd., Floor MEZ, M-19, Pearl Plaza, Tata Road No. 2, Roxy Cinema, Opera House, Girgaon, Mumbai
M/s. Gehna Trading LLP, Somnath Mahadev NI Sheri, SY No. 1105-1107, 1st Floor, 110, Tulsi Blding, Mahidharapura, Surat	M/s. Jamna Gems Pvt. Ltd., 1st Floor, 15 Plot No. 302, Guru Niwas, Vittal Bhai Patel Road, Girgoan, Mumbai
upon M/s. Kevin Diam Pvt. Ltd., Shop no 130, Ostwal Shopping Centre CHSL, Opp Bhayander Station, Jesal Park Road, Bhayander East, Thane, Maharashtra	M/s. Lakshita Exports, 68/A, 4, Popular Arcade, Tata Road No. 1, Roxy Cinema, Opera House, Girgoan, Mumbai
M/s. Nivedita Diam Pvt. Ltd., 111, Floor - 1st, Plot - 83, Sadbhavana, Sitara M, Poddar Marg, Fanaswadi Thakurdwar, Kalbadevi, Mumbai	M/s. R K Diam, 305, Panchvati Dham B, Shiv Vallabh Raad, Ashokvan Dahisar E, Mumbai
M/s. Swastik Impex, 127, GR Floor, Plot No. 80/84, Amrut Diamond Trade Centre Pl, JSS Marg, Central Plaza, Girgoan, Mumbai	M/s. Zhaik Enterprises Pvt. Ltd., 2nd Floor, 7/A, Plot No. 192/194, Kalbadevi Road, Bhuleshwar, Kalbadevi, Mumbai
M/s. Komal Exim Pvt. Ltd., B-6/2497, Ground Floor, Balaji Metllar, Limbu Sheri, Mahindrapura, Surat	M/s. Pangat Impex, M 12, 10/25, Flox Chamber, Tata Road No. 1, Roxy Cinema, Opera House, Girgaon, Mumbai
M/s. Nakoda Gemsstar, 303, 3-11/15, Fatma Faizan Kharwala, Regal Arcade Building, Tata Road No. 2, Roxy Cinema, Opera House, Girgoan, Mumbai	M/s. Hetvi Trading LLP (Mumbai), MB-7, 7, Flox Chambers, First Floor, Tata Road No. 1, Ambewadi, Mumbai
M/s. Prayag Gems Pvt. Ltd., Offc No. 101C, 1st Floor, Amrut Diamond House, Roxy Cinema, Opera House, Mumbai	M/s. Rapid Stones Pvt. Ltd., Off No. 332, Amrut Diamond House, 3rd Floor, Tata Road No. 1, Mumbai
M/s. Pratham Exports, M 12, 10/25, Flox Chamber, Tata Road No. 1, Roxy Cinema, Opera House, Girgaon, Mumbai	

Initiation and outcome of the investigation:

115.1 I find that letters dated 12.10.2021 from UCO Bank, Vishakhapatnam indicated that M/s. Belstar Techno Solutions (OPC) Private Limited, 31A/1, Sai Path, Keshav Vihar, Gopalpura Bypass, Jaipur, having IEC Number AAJCB5667L, have remitted **USD 2,40,09,950/-** in the name of

"obtaining the services (Non-Physical Imports)" from overseas suppliers located at Hong Kong and UAE, within a short span of six months, during the period from April, 2021 to September, 2021. I further find that the UCO Bank, Johari Bazar, Jaipur, vide letter dated 09.11.2021, also informed that M/s.Visual Birds Technology, 31A/1, Sai Path, Keshav Vihar, Gopalpura Bypass, Jaipur, having IEC Number BJBP6941D, has remitted the funds of **USD 66,27,300/-** during the period from 26.03.2021 to 02.09.2021 to their overseas suppliers located at Hong Kong and UAE, in the name of "obtaining the services (Non-Physical Import)".

115.2 Based on the above information, the Customs Commissionerate (Preventive) Jodhpur Headquarter at Jaipur has initiated investigation. The addresses of both the above companies were found at the same premises i.e. 31, A/1, Keshav Vihar, Gopalpura Bypass, Jaipur-302019. One Shri Nitesh Kumar, resident of Surat was the proprietor of M/s.Visual Birds Technology. The owner of the premises 31, A/1, Keshav Vihar, Gopalpura Bypass, Jaipur-302019 confirmed in her statement recorded under Section 108 of the Customs Act, 1962 that the basement of the premises was given on rent in November, 2020 and the premises was vacated in 3-4 months, which indicated that no such firm existed thereafter. M/s Belstar Techno Solutions (OPC) Pvt. Ltd. was also registered at Orissa and Andhra Pradesh and it was confirmed by the jurisdictional Customs authorities that both the firms were non-existent / non-operational at the registered addresses. It was further emerged during the investigation that in the UCO Bank Accounts of M/s Belstar Techno Solutions (OPC) Pvt. Ltd., (Account Number 01180210003350) and M/s Visual Birds Technology, (Account No. 00110210005224), huge amounts of money had been transferred through RTGS by various firms. As per GST registration details, such firms were engaged in trading of Gold and Diamond.

115.3 It was revealed from the GSTR-1 Returns [GST Return showing outwards supplies (sells) of a registered person] of M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology that they had shown supplies amounting to Rs.10 Crore to M/s.Shreeji Infotech, Jaipur during the period from May 2021 to September 2021. However, as per GST Returns of M/s.Shreeji Infotech, Jaipur, they have filed "NIL" Returns and no further supplies have been made by M/s.Shreeji Infotech, Jaipur. M/s. Shreeji Infotech has its address at Jaipur with GST registration and also address at Mumbai without GST registration. It was further emerged in the investigation that M/s.Shreeji Infotech had made payment of Rs.205,05,93,846/- (Rs.162,27,75,785/- in the account of M/s.Belstar Techno Solutions (OPC) Pvt. Ltd. + Rs.42,78,18,061/- in the account of M/s.Visual Birds Technology) in the Bank Accounts of M/s.Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s.Visual Birds Technology, Jaipur, through their bank account No. 200001394029 (in Equitas Small Finance Bank). Another non-existent firm named M/s.DNB Trading, shown registered in Jaipur at the same address where M/s.Shreeji Infotech is registered had also transferred Rs.60,00,000/- to M/s. Belstar Techno Solutions (OPC) Pvt. Limited on 07.09.2021 & Rs.49,30,000/- in the bank account of M/s Visual Birds Technology, but had filed NIL GST Returns. Proprietors/Directors of these firms have categorically denied having opened any firm or bank account in such names. Thus, it emerged that these firms were being operated only on paper with the motive to raise invoices and transfer / receive payments in bank accounts of M/s. Belstar Techno Solutions (OPC)

Pvt. Ltd. and M/s Visual Birds Technology for remitting the amount further in foreign countries as per requirement of a person approaching them.

115.4 Bank Account statements of M/s.Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s.Visual Birds Technology, Jaipur revealed that various other firms have also deposited huge amounts in accounts of M/s.Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s.Visual Birds Technology. During the course of investigation, these firms were found non-existent firms as detailed in the SCN under adjudication. It was emerged from the preliminary investigation that M/s.Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s.Visual Birds Technology, are non - existent company / firm which had been created only on papers and they factually never made any import of services. From the investigation, it was also revealed that M/s.Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s.Visual Birds Technology had received payments in their respective Bank Accounts from the firms which were dealing in Diamond and Gold, though they never made any purchase from the said firms / companies.

115.5 From the investigation conducted, it emerged that, to defraud the exchequer, a racket / gang was formed, which adopted a novel *modus operandi* under which several bogus / fake companies / firms were created and several bank accounts were opened to fraudulently remit amounts of high magnitude to Hong Kong and UAE based firms by showing the same to be payments against import of services (which were never actually imported and were mere paper transactions without any actual supply of service) with the ulterior motive of using the fraudulent remittances. In order to show the transactions genuine, required certificates from Chartered Accountant were obtained.

115.6 Searches were conducted at various premises of the persons found involved in the racket to unearth the link of entire chain. During the course of search at one of the premises i.e. Hotel Vatika Inn, Gulab Bag Road, Old City Brahmpuri, Udaipur, Rajasthan, the premises of Shri Vikram Singh Kachchawa and Shri Kamlesh Nagda, who were present during the course of search, total 28 invoices, as detailed in the SCN under adjudication, pertaining to M/s.Europea Makeour Jewel Pvt. Ltd. were also recovered. These Invoices were showing sale of Diamond by M/s.Europea Makeover Jewel Pvt. Ltd. to M/s.Subhang Enterprise Private Limited, Mumbai and to M/s.Swastik Impex, Mumbai. Both of these firms / companies to whom sales were shown were found non-existent during searches at their premise. Proprietor / Director of M/s. Shubhang Trading Company, Shri Deepak Sharma, in his statement recorded under Section 108 of the Customs Act,1962 confirmed that M/s.Europea Makeour Jewel Pvt. Limited, M/s.Maahi Jewellery Exim Pvt. Limited had sold the Gold and Diamond elsewhere and Bills were raised in the name of M/s. Subhang Enterprises Private Limited. Shri Deepak Sharma has also confirmed that the Diamond/precious stones/gold were sold in cash, which after rotating in different bank accounts, was deposited in the Bank account of his above two firms.

115.7 In view of the facts emerged during the course of investigation, enumerated above, the investigation was extended to **M/s. Europea Makeour Jewel Pvt. Ltd. and M/s.Maahi Jewellery Exim Private Limited (Earlier known as M/s. Burton Jewellery Exim Pvt Ltd.)**. Detailed investigation carried out in respect of M/s Europea (DTA Unit)

and M/s. Maahi (DTA Unit) revealed that two firms with same name i.e. M/s Europea Makeover Jewel Pvt. Ltd. and M/s Maahi Jewellery Exim Private Limited are located at SEZ, Sachin, Surat. These firms belong to same persons i.e Shri Suresh Jagetia, Director of M/s Europea Jewel Pvt Ltd and Shri Ram Raj Choudhary, Director of M/s Maahi Jewellery Exim Private Limited and thus, investigation extended to M/s Europea Jewel Pvt Ltd (SEZ Unit of Sachin SEZ) and M/s Maahi Jewellery Exim Private Limited (SEZ Unit of Sachin SEZ).

115.8 M/s. Europea Makeour Jewel Pvt. Limited, Surat Special Economic Zone, Sachin, Surat (Import Export Code No. AAFCE4412Q) [M/s.Europea (SEZ Unit)] and M/s. Maahi Jewellery Exim Private Limited, (earlier known as M/s Burton Jewellery Exim Pvt Ltd.), Surat Special Economic Zone, Sachin, Surat (Import Export Code No. AAHCB4517D) [M/s. Maahi (SEZ Unit)] are having Letter of Approval No. SSEZ/II/04/2019-20/143 dated 01.5.2019 and Letter of Approval (LoA) No. SSEZ/II/025/2019-20/1201 dated 18.3.20-respectively for manufacturing of Gold & Silver Plain and Studded Jewellery with Diamond and Precious & Semi Precious Stone.

115.9 Investigation revealed that M/s. Europea (SEZ Unit) and M/s. Maahi (SEZ Unit) had imported Cut and Polished Diamonds and Precious Stones from Hong Kong and UAE under various Bills of Entry as tabulated in Annexure-A and Annexure-B to the SCN under adjudication. The imported Precious Stones, Diamonds and Silver were raw material/inputs to manufacture studded jewellery by them. The Customs duty applicable on these imports had been forgone as the imports were made in the SEZ. Investigation carried out and detailed in the SCN under adjudication indicated that M/s. Europea (SEZ Unit) and M/s. Maahi (SEZ Unit) had diverted all these imported Cut and Polished Diamonds and Precious Stones to Domestic Tariff Area (DTA) and evaded due Customs duty payable thereon.

115.10 The investigation indicated that M/s. Europea (SEZ Unit) has imported Cut and Polished Diamonds and Precious Stones (detailed in Annexure-A to the show cause notice) amounting to **Rs.2631,46,66,966/- (Rupees Two Thousand Six Hundred Thirty One Crore, Forty Six Lakh, Sixty Six Thousand, Nine Hundred and Sixty Six Only)** during the period from 2019-20 to 2022-23, wherein total duty (Basic Customs Duty + IGST + Cess) amounting to **Rs.212,27,82,674/- (Rupees Two Hundred Twelve Crore, Twenty Seven Lakh, Eighty Two Thousand, Six Hundred and Seventy Four only)** had been forgone on these imports as the imports were made in the Special Economic Zone (SEZ). The investigation further indicated that M/s. Europea (SEZ Unit) had diverted all these imported Cut and Polished Diamonds and Precious Stones to Domestic Tariff Area (DTA) and evaded Customs duty liable to be paid thereon, in contravention of Provisions of Section 46 of the Customs Act, 1962 and Sections 26 and 30 of the Special Economic Zones Act, 2005 read with Rule 25 of the Special Economic Zones Rules, 2006. Further, the investigation also revealed that M/s. Europea (SEZ Unit) had replaced the said imported superior quality Cut and Polished Diamonds and Precious Stones with locally/domestically procured inferior quality Diamonds and semi-precious stones to fulfil the export obligation and to show the positive Net Foreign Exchange (NFE) as required under the provisions of the SEZ Act and Foreign Trade Policy.

115.11 The investigation indicated that M/s. Maahi (SEZ Unit) has imported Cut and Polished Diamonds and Precious Stones (details in Annexure-B to the show cause notice) amounting to **Rs.1892,60,19,327/- (Rupees One Thousand Eight Hundred Ninety Two Crore, Sixty Lakh, Nineteen Thousand, Three Hundred and Twenty Seven Only)** during the period from 2020-21 to 2022-23, wherein total duty (Basic Customs Duty + IGST + Cess) amounting to **Rs.148,96,97,902/- (Rupees One Hundred Forty Eight Crore, Ninety Six Lakh, Ninety Seven Thousand, Nine Hundred and Two only)** had been forgone on these imports as the imports were made in the SEZ. The investigation further indicated that M/s. Maahi (SEZ Unit) had diverted all these imported Cut and Polished Diamonds and Precious Stones to DTA and evaded Customs duty liable to be paid thereon, in contravention of Provisions of Section 46 of the Customs Act, 1962, Sections 26 and 30 of the SEZ Act, 2005 read with Rule 25 of the SEZ Rules, 2006. Further, the investigation also revealed that M/s. Maahi (SEZ Unit) had replaced the said imported superior quality Cut and Polished Diamonds and Precious Stones with locally/domestically procured inferior quality Diamonds and semi-precious stones to fulfil the export obligation and to show the positive Net Foreign Exchange (NFE) as required under SEZ Act and Foreign Trade Policy.

116. Now, I proceed to decide the contentions raised by the noticees against the allegations upon them in the SCN under adjudication. I find that the noticees have commonly contested on issues viz.- evidences in the case; jurisdictions of officers; cross examination of witnesses, co-noticees, valuer and officers who have recorded the statements; Duty liability on the diverted Diamonds and precious stones and imposition of penalties on the noticees. Therefore, first of all I proceed to decide these common issues.

Evidences in the case: Whether the confessional statements are corroborated with the evidences gathered during the course of investigation and the revenue has discharged its burden to prove that the duty free imported Diamonds and precious stones had been diverted from SEZ:

117.1 I find that the crux of arguments advanced by the noticees regarding evidences and corroboration thereof is that the allegation in the SCN are based on third party statements recorded under Section 108 of the Customs Act, 1962 without adducing any evidence for such allegations; department miserably failed to bring on record recipient of huge quantity of imported goods said to have been diverted, its movement, receipt of payments; there is no proof of diversion of goods as well as substitution of imported goods with inferior quality goods and export of such inferior quality goods; the Show Cause Notice merely alleged diversion of the goods in the local market, however, not a single purchaser has been identified who had procured such diverted goods.

117.2 I find that in the case in hand M/s.Europea Makeour Jewel Pvt. Limited, Surat Special Economic Zone, Sachin, Surat and M/s.Maahi Jewellery Exim Private Limited, (earlier known as M/s Burton Jewellery Exim Pvt Ltd.), Surat Special Economic Zone, Sachin, Surat were indulged in diversion of duty free imported Diamonds / precious stones in local market through their DTA units, which they opened in the same name and style. It was a well-planned conspiracy hatched by the group of people involved at different

stage starting from taking out the duty free imported superior quality Diamonds/precious stone from Strong-Room of SEZ to sending money overseas as elaborated in the SCN under adjudication. The syndicate has adopted novel modus operandi to execute the conspiracy and the persons involved have played their role as per part of the plan.

117.3 I find that the conspiracy emerged in the investigation indicated a lot. The findings with reference to the allegations in the SCN under adjudications are supported with the confessional statements duly backed by documented proofs I discuss the same here as under:

- M/s. Europea Makeour Jewel Pvt. Limited, and M/s Maahi Jewellery Exim Pvt. Ltd. SEZ units situated in Surat Special Economic Zone, Sachin, Surat engaged in manufacturing of studded jewellery which is made of Precious Stones, Diamond and Silver and the companies are also engaged in manufacturing of lab grown Rough Diamonds. They had imported Precious Stones, Diamonds and Silver to use them as raw material to manufacture studded jewellery. The duty payable on such imports have been forgone as the imports were made in the Special Economic Zone (SEZ);
- In addition to establish SEZ units in Surat Special Economic Zone, Sachin, Surat in the name of M/s.Europea Makeour Jewel Pvt. Ltd. at Unit No. 401, Plot No. 247, Surat Special Economic Zone, Sachin, Surat Gujarat and M/s Maahi Jewellery Exim Pvt. Ltd. at Unit No 407, Plot No. 248, Surat Special Economic Zone, Surat, Gujarat, they had also opened two firms in the name of M/s.Europea Makeour Jewel Pvt. Ltd. at Unit 410, 2nd Floor, Poddar Plaza, Ghod Dod Road, Surat, Gujarat and M/s Maahi Jewellery Exim Pvt. Ltd. at No. 104, RT Apartment Co-op. Housing Society, Dalgiya Street, Mahidhar Pura, Surat, Gujarat and took separate GST registrations to operate these companies as DTA units;
- Shri Kailash Chaudhary, Dummy Director of Maahi Jewellery Exim Private Limited, has taken actual delivery of Cut and Polished Diamonds and Stones imported by the above two SEZ firms along with Shri Deepak or Shri Vivek from the Strong-Room of SEZ. However, every time while taking the delivery from Strong-Room, either Shri Deepak or Shri Vivek used to sign on the Register. After taking the delivery of the imported Diamonds and Precious Stones by Shri Kailash Choudhary, the said parcels were given to Shri Suresh Jagetia (Director of M/s Europea Jewel Pvt Ltd) or Shri Ram Raj Choudhary (other Director of M/s Maahi Jewellery Exim Private Limited) as directed by them and in return, every time they used to give other parcel to Shri Kailash Choudhary which was of inferior quality of Diamonds and Precious Stones. The interchanged parcels of inferior quality of Diamonds and Precious Stones were taken to the manufacturing process of SEZ units and then studded jewellery were made out of the replaced Diamonds/previous stone of inferior quality which were exported in guise of studded jewellery made of the imported superior quality of Diamonds /precious stone. This fact emerged during investigation and the confession in this regard by Shri Suresh Jagetia and Shri Kailash Choudhary is duly corroborated with valuation report carried out by Government approved valuer in respect of stock of the Cut and Polished Diamonds and Precious Stone Ruby found at the SEZ premises of these two SEZ units;

- The investigation further indicated that Diamond / Precious Stones of inferior quality were purchased from the domestic market for adjustment of the diverted quantity to put into use as raw material in the studded jewellery manufactured by these two SEZ units. It is confession on record that the purchases were shown from local market but only the bills were taken from local market, whereas goods were actually not purchased. These bills are fake and issued to adjust the diverted Diamond / Precious Stones from SEZ. The diverted Diamond / Precious Stones were sold in the local market in cash and the entries of cheque were taken. The purchase shown in the GST Return is not the actual purchase. This explanation and confession is corroborated with the GSTR-1 and GSTR-2A returns wherein the buyer and sellers appeared were found non-existent;
- The suppliers appeared in their respective GSTR-2A, were found non-existent, which indicated that the inferior quality Diamonds and precious stones were also purchased from local market and to give a legal look, invoices were raised in their favour from such non-existent firms. Diversion of imported duty free Diamond/precious stones by these SEZ units and replacing with locally procured inferior quality Diamond/precious stones further corroborated with the stock found at the premises of these SEZ units, wherein the declared value of the stock of the Cut and Polished Diamonds and Precious Stone Ruby found much higher in documents compared to the actual value arrived by the Government approved valuer, which indicated that the quality of the stock of the Cut and Polished Diamonds and Precious Stone Ruby was inferior than to the quality stock of the Cut and Polished Diamonds and Precious Stone Ruby declared in documents. The actual value of the Cut and Polished Diamonds and Precious Stone was around only 2.5% of the value declared in respect of the stocks of M/s Europea Jewel Pvt Ltd. (SEZ Unit) and that of was around only 2.5% of the value declared in respect of the stock of M/s.Maahi Jewellery Exim Private Limited (SEZ Unit);
- They had opened common bank accounts for both the units operated in SEZ as well as in DTA in the name of M/s.Europea Makeour Jewel Pvt. Ltd. and M/s Maahi Jewellery Exim Pvt. Ltd. and got the funds transferred in those accounts from various on paper buyer of M/s. Europea (DTA Unit) and M/s. Maahi (DTA Unit) with a malafide intention to rotate the funds generated through DTA units showing trading of Diamonds and other precious stones which was mere paper transaction and without carry physical trading;
- Shri Kailash Chaudhary who has signed the Rent Agreement for DTA unit (M/s.Mahi-DTA), confirmed that the said unit was operative only on paper and there was no actual working in the said DTA unit. During the course of search at the premises of M/s.Mahi-DTA Unit, the same was found non-existent. M/s.Europea Makeour Jewel Pvt. Ltd. (DTA Unit) has no transaction other than issuance of invoices for sell of diamonds and precious stone, however, the buyer and sellers were found non-existent during the course of investigation, therefore, it indicated that M/s.Europea (DTA Unit) and M/s.Mahi (DTA Unit) were operated merely for paper transactions to raise invoices for the diverted Diamonds and precious stones imported duty free by their units situated at Sachin SEZ;
- As per GST returns, M/s. Europea (DTA Unit) (non SEZ unit) has made purchase and sale of Rs.1844.67 Crore and Rs.1213.47 Crore,

respectively. Similarly, M/s Maahi (DTA Unit) (non SEZ unit) has made purchase and sale of Rs.1060.03 & Rs.901.03 Crore respectively, since their inception, whereas the buyers appeared in periodical GSTR-1 returns [*the GST return showing outward supplies (sells) by a registered person*] and suppliers appeared in periodical GSTR-2A returns [*(the GST return showing inward supplies (purchases) by a registered person*] of these two DTA units- M/s. Europea (DTA Unit) and M/s. Maahi (DTA Unit) were found non existing / non-functional except two firms, viz. M/s Sheth Gems Star LLP and M/s Sheth Star LLP;

- DTA units of M/s. Europea Makeour Jewels Pvt. Ltd., (DTA Unit outside SEZ Surat) and M/s Maahi Jewellery Exim Pvt. Ltd Surat (DTA Unit outside SEZ Surat) did not deal in any other business, except mere issuing invoices for adjustment entries in respect of the diverted Diamonds and Precious Stone from both their SEZ units M/s. Europea (SEZ Unit) and M/s Maahi (SEZ Unit), without any actual supply of Diamonds and Precious Stones to such firms. The DTA units had also shown purchases from non-existent firms to justify their sale activities in GST returns, though no such purchases were made by them in actual which is proved with the fact that the suppliers appeared in respective GSTR-2A returns were found non-existent. Also, non-payments against such reported purchases could be established from their respective bank account. Sale - Purchase bills of various non-existent firms for the said M/s. Europea (DTA Unit) and M/s. Maahi (DTA Unit) were merely book-adjustments and no amount was paid by M/s. Europea (DTA Unit) and M/s. Maahi (DTA Unit) for such purchases;
- A web / layers of fake firms have been created to give a legal look to the fraudulent transactions of illicit sale of diverted Diamond / Precious Stones by a gang of fraudsters with ulterior motive to defraud the exchequer and to escape from the eyes of various government agencies. Such fake firms were registered with GST department for short period, just to issue bogus invoices showing supply of Diamond and Precious Stones, which were closed either suo-motu or by the department for non - filing of GST Returns;
- The imported Diamond & Precious Stones of superior quality by M/s Europea (SEZ Unit) & M/s Maahi (SEZ Unit), were diverted /sold in local market to real customers and thereafter GST bills / invoice (mere paper transactions) were raised from domestic units of M/s. Maahi Jewellery Exim Pvt. Ltd. and M/s. Europea Makeour Jewel Pvt. Ltd. to various non-existent firms, without actual supply of Diamonds and Precious Stones. In this manner, the amount received from the sale of diverted imported Diamond and Precious Stones was brought in to the common bank account of both the units, M/s. Maahi Jewellery Exim Pvt. and M/s. Europea Makeour Jewel Pvt. Ltd.. The confession in this regard is duly corroborated with the facts emerged from analysis of the GSTR-1 returns and GSTR-2A returns of these two DTA units. The major buyer/suppliers appeared in the GSTR-1 and GSTR-2A returns were found non-existent during the course of searches. Transactions in bank accounts, despite no actual/physical trading activities, also corroborate the confession;
- M/s Subhang Enterprise Private Limited, Mumbai and M/s Swastik Impex, Mumbai, to whom sales were shown by M/s Europea Makeour Jewel Pvt. Ltd. (DTA unit) and M/s Maahi Jewellery Exim Private

Limited (DTA Unit) were non-existent companies and the Directors of these units have confessed that M/s Europea Makeour Jewel Pvt. Ltd. and M/s Maahi Jewellery Exim Private Limited had sold diamond to some other buyers and had only issued invoices to their units M/s Subhang Enterprise Private Limited and M/s Swastik Impex;

- As per Letter of Permissions LoPs of both the SEZ units, they are not allowed to do any DTA sales / job work in DTA (condition number XIV of the letter dated 01.05.2019 of the Development Commissioner, SEZ, Surat). Activities of their respective DTA units were found mere paper transactions for the purpose of adjustment in books of accounts. Despite this fact, huge amount was received in their respective common bank accounts from various DTA units. This credited amount in the common bank accounts is nothing but the amount they received as consideration against diversion of imported Diamond / Precious Stones by SEZ units through their DTA units. The noticees have failed to rebut the findings of the investigation with any cogent documentary evidence. The confession of Shri Suresh Ratanlal Jagetia regarding diversion of imported Diamonds and precious stones also corroborated with these facts emerged during the investigation;
- Value of the imported superior quality Diamond / Precious Stone by M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and M/s Maahi Jewellery Exim Pvt. Ltd. (SEZ Unit) as declared in the Invoice / Bill of Entry and was much higher compared to the replaced diamonds and precious stones of inferior quality which were studded in Silver Jewellery exported by the said SEZ units, however, value thereof in export documents was declared as if the studded jewellery were made of the imported superior quality Diamond / Precious Stone, though actual value of exported Jewellery (of Diamond / Precious Stones) was very less in comparison to the declared value. Therefore, the foreign remittances equal to the declared value in Invoice was not realized. The foreign remittances against such exports was either not received or received in negligible amount;
- The Audited Balance Sheet for 2019-2020 and 2020-2021 of M/s. Europea Makeour Jewel Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd. indicated that they have made payment for the imported goods, whereas, funds in lieu of export was either not realized or less realized. The difference was explained and confessed by Shri Suresh Ratanlal Jagetia, who was also looking after/managing activities of M/s. Maahi Jewellery Exim Pvt. Ltd. (SEZ as well as DTA Unit), stating that they had imported Superior Quality Diamonds / Precious Stone at their company M/s. Europea Makeour Jewel Pvt. Ltd (SEZ Unit) and the value of the goods is as declared in the Invoices / Bills of Entry. They diverted the imported Diamonds / Precious Stone in the local market and from local market they purchased inferior quality Diamonds / Precious Stones. These inferior quality Diamonds / Precious Stones were studded in Silver Jewellery at their SEZ unit and thereafter, exported. This explanation and confessions is also corroborated with the valuation report by a Government Approved Valuer in respect of Diamonds & Precious Stones found at the time of searches at the premises of these two SEZ units which indicated that the quality of the stock of the Cut and Polished Diamonds and Precious Stone lying at the premises to use as raw material to manufacture studded jewellery, was of inferior quality than the quality stock of the

Cut and Polished Diamonds and Precious Stone imported duty free by them;

- In the audited balance sheet of M/s.Mahi Jewellery Exim Pvt. Ltd., the difference between the purchase value during 2019-20 and 2020-21 and the sundary creditors during 2020-21, is due to not able to arrange purchase bills for book adjustment. Such difference in audited books of account and the explanation and confession of Shri Suresh R Jagetia in the statement recorded under Section 108 of the Customs Act,1962 indicated that they sold the diverted Diamond and Precious Stone from M/s. Maahi Jewellery Exim Pvt. Ltd. (domestic unit) as well from some other domestic firms which are created and operated by him and Shri Ram Raj Choudhary. The amount so received from these units was transferred in the common bank accounts of M/s. Europea Makeour Jewel Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd. (both SEZ and DTA units), and for adjustment in books of accounts, M/s.Maahi Jewellery Exim Pvt. Ltd. had issued bills for such diversion. This confessional statement duly corroborated with the fact emerged during the course of investigation that these firms were created merely for the purpose of paper transaction to arrange invoices for adjustment entries in books of accounts and were utilized for issuance of invoices showing sale of Diamond and Precious Stones, diverted from SEZ Units of M/s. Europea Makeour Jewel Pvt. Ltd. and M/s.Maahi Jewellery Exim Pvt. Ltd.. In this manner, the omission and commission of the noticees are also backed by the statutory audited Balance Sheet besides other documentary evidences discussed herein.
- As per the audited Balance Sheets of M/s.Europea Makeour Jewel Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd. (SEZ Units) for the period 2019-20 and 2020-21, the export proceeds / amount was not received and accordingly the export obligation were also not fulfilled for which the SEZ authorities had reminded the above firms several times. As per Rule 53 of the SEZ Rules,2006, SEZ Unit shall achieve Positive Net Foreign Exchange (NEF), therefore, both the above SEZ Units were under legal obligation to achieve positive NEF. Units with negative Net Foreign Exchange (NFE) in 1st and 2nd year are placed under Watch List to watch their performance and if a Unit continues to be NFE negative by the end of 3rd year, penal action are initiated as provided under rule 25 of the SEZ Rules. Therefore, they were under pressure to arrange funds to fulfil the export obligation, otherwise the functioning of these SEZ firms could have been stopped, and thus, they started arranging funds to meet the export obligation. This explanation and confession is duly corroborated with the correspondences dated 12.01.2023 by the Specified Officer, SEZ, Sachin and e-mail correspondence dated 12.01.2023 of RBI, Jaipur stating that very small amount of funds were realized against exports made by both these SEZ units despite the provision under Rule 71 of the SEZ Rules,2006 that export value of goods may be realized and repatriated as per instructions of the Reserve Bank of India issued from time to time;
- Pending realisation for the year 2020-21 amounting to Rs.730.41 Crores against export by M/s. Europea Makeour Jewels Pvt. Ltd is seen from correspondence dated 12.01.2023 by the Specified Officer, SEZ, Sachin. Similarly, failure to submit Annual Performance Report by that M/s. Maahi Jewellery Exim Pvt. Ltd. is also reported under the same correspondence; From the e-mail correspondence of RBI, Jaipur it is

found that very small amount of funds were realized against exports made by both these SEZ units. Large amount was pending for realization against the exports made by SEZ units of M/s. Europea Makeour Jewels Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd. due to inferior quality material supplied by them and due to several reminders from RBI and SEZ authorities, they were under extreme pressure to clear their pending dues for obtaining positive NFE as required under rule 71 of the SEZ Rules,2006;

- Those firms in foreign countries to whom the export was made did not have sufficient funds to transfer the remittances against export as per the declared value which was very high as the studded jewellery was made of inferior quality, therefore, funds from India to Hong Kong was sent to regularize the duty free imports and to obtain positive NFE;
- In order to make arrangements for sending money abroad in Hong Kong for receiving the amount back in the form of export proceeds, Shri Suresh Ratanlal Jagetia contacted his known persons namely, Shri Tonu (Dilkush Babel) and Shri Navratan Jain, who took him to one Shri Vikram Singh Kachchawa, who was in the business mainly related to money transfer and was expert in sending money abroad through his fake companies;
- A web of fake firms with multiple layers was created to facilitate the illicit sale of diverted Diamond / Precious Stones and to escape the eyes of various Government agencies. This is corroborated with outcome of analysis of Bank Statements which revealed that financial transactions were made by creating a maze of multiple layers of units to fraudulently remit amounts of high magnitude to Hong Kong and UAE based firms, by showing the same to be payments against import of services (which were never actually imported and were mere paper transactions without any actual supply of service). Non-existence of the firms- M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s.Visual Birds technology, stood as importer in the entire episode of fraud, further corroborate the same. Also, the buyers appeared in the GST returns of these so-called importers were also found non-existent.
- One of the members of the entire racket of fraudsters, Shri Vikram Singh Kachchawa had confessed in his statement recorded under Section 108 of the Customs Act,1962 that he himself created the several dummy firms including M/s.Shreeji Infotech, and also had purchased dummy companies from market and did the business of transaction / rotation of money for which he received commission @ .02 % on the turnover value. He revealed that there are agents in market, who, after opening the company and its bank account, provide all the documents and information related to net banking, phone no., SIM etc. to him by which he can easily transfer funds from one company to another company through RTGS;
- The amount received by Shri Suresh Ratanlal Jagetia in cash against diversion of imported Diamond / Precious Stones was given to Shri Vikram Singh Kachchawa. On receipt of cash, Shri Vikram Singh Kachchawa, through various fake firms used to operate, vide RTGS / Cheque, after rotation in various banks, and at the end through M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology, transferred the money to Hong Kong and UAE which was received back as export remittance through banking channel against the exports made by M/s.Europea (SEZ unit) and M/s.Mahi (SEZ Unit);

- Shri Suresh Ratanlal Jagetia informed Shri Vikram Singh Kachchawa about the foreign buyers so that he (Vikram Singh Kachchawa) would transfer money through units namely, M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technologies, Jaipur. The chain of these transactions' web starts by the cash amount (earned through illegal sale of Diamond / Precious Stone, which was imported without paying duty in SEZ units) given by Shri Suresh Ratanlal Jagetia to Shri Vikram Singh Kachchawa (the person who creates and operates dummy firms for rotation of illicit money) with directions to send this money to foreign units as informed by Shri Suresh Ratanlal Jagetia. Then, Shri Vikram Singh Kachchawa creates a web of multiple firms to ultimately send this money to their overseas companies through fake importer firms -M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology. The purpose of this rotation is to remit the money back to SEZ units as export proceeds and to fulfil the statutory requirement of Positive Net Foreign Exchange.
- From the analysis of the bank statements uniform pattern of transactions is emerged, wherein at first, the funds from dummy domestic firms were transferred in the bank account of SEZ units of M/s. Europea Makeour Jewel Pvt. Ltd. and M/s Maahi Jewellery Exim Pvt. Ltd. towards the payment against supplies made by the DTA units of M/s. Europea Makeour Jewel Pvt. Ltd. and M/s Maahi Jewellery Exim Pvt. Ltd. and these amounts were then remitted overseas for the payment towards import of goods i.e. precious / semi-precious rough stones, through the bank account of SEZ units. It is also emerged that the funds received on a particular day from various domestic firms were then transferred in the bank accounts of exporters located in Hong Kong on the same day or at the maximum on next day by these SEZ units, which cannot be a mere coincidence, rather it established the entire chain of incidences;
- As part of the conspiracy, M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology, were shown to be the importer of Services from Hong Kong and UAE based units. Both of these firms i.e. M/s Visual Birds Technology and M/s Belstar Techno Solutions (OPC) Pvt. Ltd. were shown as IT companies and claimed to deal in content procurement, IT services like Animations, Graphics, Designs, 2D, 3D and Multimedia Audio Visuals which are published for private subscription channels, Educational Channels and Infomercials on various internet, OTT channels and mobile applications;
- These imports were shown to be done from firms located in Hong Kong and UAE so that fund could be sent there and then that fund could be rotated back to SEZ units. However, no supply / import of services was made by such created firms- M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology and entire import / supply process was done only on paper. Various fake companies / firms were created and several bank accounts were opened for remitting amounts of high magnitude to Hong Kong and UAE based firms against these non-existent imports of Services for sending money to abroad to receive back as export remittances against the exports made by M/s. Europea (SEZ) and M/s. Maahi (SEZ);
- Shri Ravindra Kumar, who is a Chartered Accountant, had issued certificates to various banks regarding confirmation of receipt of Animation and Graphical Services by M/s. Belstar Techno Solutions (OPC) Pvt. Limited and M/s. Visual Birds Technology. Form 15CB, a

certificate certified by CA that the foreign remittances made by the party are not taxable under Income Tax Act, in respect of above firms / Companies as required under Income Tax Law was also issued by Shri Ravindra Kumar for consideration of Rs. 500/- per Certificate from M/s DNB Trading and M/s Shreeji Infotech for providing Certificates to M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology. No bill of fees was raised by him upon the above firms. No service had been imported by M/s. Belstar Techno Solutions (OPC) Pvt. Ltd., M/s Bluefield Technology Pvt. Ltd. and M/s Visual Birds Technology, however, on the pretext that some parties based in Gujarat and Mumbai imported Gold, such remittance was made against payment for the same, Form 15CB and other forms required under Income Tax law were also issued;

- Investigation in connection with the firms who had transferred the money in the accounts of M/s Belstar Techno Solutions (OPC) Pvt. Ltd and M/s Visual Birds Technology like M/s. Shreeji Infotech, M/s. Shreeji Infotech; M/s. DNB Trading; M/s. Spenta Trading; M/s. Beetel Shine Multimedia; M/s. Spice Enterprises; M/s. Kwik Creation, revealed that no firm was found in existence at the registered addresses. Many such firms were registered at the same premises, though all were found non-existent during the course of investigation. Proprietors / Directors/ partners of such firms, interrogated during investigation had categorically denied having opened any such firm or bank account in the name of such firms, which clearly indicated that the documents / IDs of those persons were used by the persons of the syndicate to open bank accounts and to create fake firms with some ulterior motive. The conclusion of the investigation is also corroborated with the recovery of Stamps of various firms, Name-plates of various firms, 51 SIM cards, 9 laptops Passbooks, Passport-size Photographs, Cheque Books, Debit / Credit Cards of various banks during the search at the premises of Shri Vikram Singh Kachchawa. In the whats app chats of Shri Vikram Singh Kachchawa with 'K. Bhai' and 'Me', many incriminating chats were found. While explaining such recoveries Shri Vikram Singh Kachchawa has confessed that he has opened about 200 Bank accounts in the name of various companies and persons. In order to open the bank accounts, PAN Card and Aadhar Card are obtained from the persons, who were either known to him or were in need of money. He used 51 mobile phones (resumed under Panchanama) for receiving OTP for the bank accounts opened by him. All the 9 laptops (resumed under Panchanama) were used for operating bank accounts, transactions and keeping accounts. Debit Cards were used for Net Banking of various Bank Accounts maintained by him;
- GST Returns of M/s.Belstar Techno Solutions (OPC) Pvt. Ltd, M/s.Visual Birds Technology and M/s.Shreeji Infotech revealed that as per GSTR-1 Returns [*the GST return showing outward supplies (sells) by a registered person*] of M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. (Orissa & Andhra Pradesh) and M/s Visual Birds Technology, Jaipur, they had shown supplies amounting to Rs. 10 Crore to M/s Shreeji Infotech, Jaipur at Nil rated / Exempted @ 0% and few supplies were shown to be made @ 18% GST rate. However, as per GST Returns of M/s Shreeji Infotech, Jaipur, they have filed "NIL" Returns and no further supplies have been made by M/s Shreeji Infotech, Jaipur. The firms were found non-existent at the given addresses and therefore, it was nothing but an attempt by the

- syndicate to give a legal look to their illegal activities and they fraudulently filed GST Returns of the companies, without conducting any business;
- M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology, are non - existent company / firm which had been created only on papers and they factually never made any import of services. M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology had received payments in their respective Bank Accounts from various non-existent firms which were dealing in Diamond and Gold, though they never purchased any services from the said firm / company. These non-existent firms were operated only on paper with the motive to raise invoices and transfer / receive payments in their bank accounts for remitting the amount further in foreign countries through M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology;
 - Multiple layers of bank accounts / firms were created wherein at first layer, there were the importer firms /companies (M/s.Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology), at the second layer, there are various local trading firms (who were shown to be the service recipients of above mentioned importer firms and were shown to be engaged in business of Jewellery / Diamond/ Gold) and at the last layer, there are various local firm;
 - Analysis of the Bank account Statements of importer firms /companies -M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology, bank account statements of various local trading firms /companies, at second layer, who were shown to be the service recipients of above mentioned Importer Firms, and bank account statements of local firms, at third layer, which were engaged in Precious Metals and Stones business, established the flow of goods and money. The firms/companies engaged in the flow were found non-existent during the course of investigation as has been summed up in the notice;
 - in order to execute the conspiracy and to carry out the above diversion of duty free imported goods and to regularize it in illegal manner, Shri Suresh Ratanlal Jagetia, alongwith S/Shri Om Prakash Vanjani, Ravindra Kumar, CA, Vikram Singh Kachchawa, Kamlesh Nagda, Deepak Kumar, Navratan Jain, Vimal Nahar, Ram Raj Choudhary, Nitesh Kumar, Surendra Mali *alia* Shankar Mali, Rajendra Jangid and other accomplices had hatched a conspiracy to defraud the exchequer by sending fraudulently huge amounts to foreign based firms in Hong Kong and UAE, in the guise of payment towards non-existent import of Services, for funding the Hong Kong and UAE based companies to make payments to M/s. Eurpea Makeour Jewel Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd. against export of studded jewellery;
 - The chain of these transactions' web started by cash amount (earned through illegal sale of Diamond / Precious Stone, which was imported without paying duty in SEZ units) given by Shri Suresh Ratanlal Jagetia to Shri Vikram Singh Kachchawa (the person who created and operated dummy firms for rotation of illicit money) with directions to send this money to foreign units created by Shri Suresh Ratanlal Jagetia. Then, Shri Vikram Singh Kachchawa creates a web of multiple firms to ultimately send this money through fake importer firms (M/s Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology);

- The newly opened units in the name of dummy persons were either registered under GST or registered with Maharashtra Shops and Establishments (Regulations of Employment and Conditions of Service) Act, 2017 for opening of bank accounts and showing the existence of firm. Dummy firms / companies in the name of individuals, using their Aadhar, PAN were opened with ROC and these firms / companies opened bank accounts and fraudulently received and transferred huge amounts into several bank accounts;
- Transactions of business adopted by the racket/ gang of fraudsters were not legitimate but were only a large scale attempts to camouflage illegal fund transfer by way of a noble *modus-operandi*. By showing enormous volumes, as well as value of trade flows the racket/ gang of fraudsters had made the transactions complicated to hide a specific transactions to delink it and to make the transaction difficult to describe with mathematical precision. There is a clear attempt to disguise the origin and movement of funds, as well as the origin and movement of goods, by using multiple levels of firms / companies, bank accounts, paper sales / purchases, imports / exports, etc.;
- Part of the diverted consignment of imported Diamonds and precious stones - 485.23 Carat Cut and polished diamonds was recovered during the course of investigation from the premises of M/s Kavish Gems, (Proprietor Sh. Uday Shah), Mumbai;
- Unaccounted stock of 485.23 Carat Cut and polished diamonds valued at Rs.2,11,43,901/- (as per valuation done by the Govt. approved valuer during search) were found during search at the premises of M/s Kavish Gems, (Proprietor Sh. Uday Shah), Mumbai. Shri Uday Shah failed to produce any legitimate document claiming ownership of any proof regarding the import/procurement of same in India as emerged from the panchanama drawn in the presence of independent Panchas which was also confessed by Shri Uday Shah in his statement recorded under Section 108 of the Customs Act,1962;
- The documents/couchers (commonly known as Jhanghad) furnished by Shri Uday Shah during recording of his subsequent statement were to have been issued to third party agent and name of M/s.Kavish was not there. One invoice furnished on which name of M/s. Kavish Gem was there, but the same was not available with them on the day of search which is corroborated with the panchnama;
- He could not rebut the confession of Shri Akshay Pannalal Doshi, Proprietor of M/s Ragee Gems, Mumbai wherein Shri Akshay Pannalal Doshi did not confirm or claim that the diamonds detained at the premises of M/s Kavish Gems belong to Shri Akshay Pannalal Doshi, whereas Shri Uday Hasmukhlal Shah in his statement dated 19.05.2022 stated that out of excess stock of 485.31 Carat diamond, found at his premise during search, 32.89 carat belonged to M/s Ragee Gems and same was brought there as Jhanghad or sale on approval basis vouchers. Once Shri Uday Shah said to produce copies of 'Jhnaghs' (Vouchers) and lateron altered his version. In this manner, Shri Uday Shah kept changing his versions in the statements recorded under Section 108 of the Customs Act,1962 instead of producing legitimate documents to justify the unaccounted stock found at the time of search;
- It was evident from the records /ledgers that M/s Kavish Gems and Shri Uday Shah has made many purchase sales/transactions from many non-existing firms. All these firms were either found non-

- existent at their locations or indulged in supplying the goods diverted from SEZ units- M/s. Europea Makeour Jewels Pvt. Ltd. and M/s. Maahi Exim Pvt. Ltd., and were part of a web of fake/bogus firms/companies to facilitate remittances to foreign locations to fund illegal import of Gold, diamond and other precious metals. Shri Uday could not explain the same with any supportive evidence;
- Such firms made purchases / procurements from M/s. Maahi Exim Pvt. Ltd., Surat & M/s. Europea Makeour Jewels Pvt. Ltd., Surat. M/s. Swastik Impex is amongst the firms which showed purchase/procurement of goods i.e. diamonds from the DTA units of M/s Europea Makeour Jewel Pvt. Limited and M/s Maahi Jewellery Exim Private Limited and thereafter supplied to M/s Kavish Gems, Mumbai; Shri Uday Shah changed to his versions in the statements recorded under the provisions of the Customs Act, 1962 instead of producing legitimate documents to justify the unaccounted stock found at the time of search and also failed to give any logical explanation for these transactions with the non-existent firms. All these facts leads to reasonable belief that excess stock of 485.23 Cts diamond having value of Rs. 2,11,43,901/- found at business premises of M/s Kavish Gem during search on 29/30.04.2022 was part of the Diamonds, which have been removed from these two SEZ units, by Shri Suresh Ratanlal Jagetia, through his DTA units M/s Europea Makeour Jewel Pvt. Ltd., and M/s Maahi Jewels Exim Pvt. Ltd. to M/s Swastik Impex and other non-existing firms, who has further diverted these diamonds to M/s Kavish Gem, Mumbai and thus, the unaccounted stock was placed under seizure;
 - In addition to the confessional hand written statements of Shri Suresh Ratanlal Jagetia, he has submitted a handwritten letter dated 30.5.2022, wherein he has categorically stated that he had diverted the imported Diamond / Precious Stones to evade the Customs Duty and out of the total evaded Customs Duty, he wanted to deposit some amount of duty willingly. Accordingly, under this letter he had submitted two cheques - (i) Cheque No. 748444 (SBI, Surat Branch) dated 30.05.2022 for the amount of Rs.2,00,00,000/- towards payments of Customs Duty for M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and (ii) Cheque No. 819910 (SBI, Surat Branch) dated 30.05.2022 for the amount of Rs.1,00,00,000/- towards payments of Customs Duty for M/s Maahi Jewellery Exim Pvt. Ltd. (SEZ Unit). Under the same letter it was assured to pay the remaining amount of duty in due course;
 - Thereafter, Shri Suresh Ratanlal Jagetia submitted another handwritten letter dated 30.05.2023 stating that there was insufficient balance in his account of State Bank of India, Surat Branch, from which he had issued Cheques dated 30.05.2022 to deposit Customs Duty and again, submitted a Cheque No.748446 (SBI, Surat Branch) dated 31.05.2022 towards payment of Customs Duty amounting to Rs.40,00,000/- for M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) Form TR-6 in respect of said Cheque was generated to deposit the duty in the Government Account and accordingly duty amounting to Rs. 40,00,000/- was deposited in the account of Government Exchequer. Shri Suresh Ratanlal Jagetia also submitted one more Cheque No. 748447 (SBI, Surat Branch) dated 02.06.2022 towards payment of Customs Duty amounting to Rs.1,60,00,000/- for M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit). Form TR-6 in respect of

said Cheque was generated to deposit the duty in the Government Account but the amount could not be deposited as there was no sufficient balance in the account;

- Submission of cheque by Shri Suresh Ratanlal Jagetia towards payment of customs duty evaded on account of diversions of duty free imported Diamonds and precious stones by M/s Maahi Jewellery Exim Pvt. Ltd. (SEZ Unit) further corroborate the statement of dummy Director of M/s Maahi Jewellery Exim Pvt. Ltd. (SEZ Unit) that Shri Suresh Ratanlal Jagetia had control over M/s Maahi Jewellery Exim Pvt. Ltd. Alongwith Shri Ram Raj Choudhary;
- The confession of the offence of diversion of duty free imported Diamonds / Precious Stones and voluntary payment towards customs duty evaded on this account, effectively resulted in recovery of Rs.40,00,000/- (Customs Duty – Rs.34,69,963, IGST – Rs.3,46,996/-, SWS- Rs.1,83,041/-) vide Form TR-6 dated 31.05.2022 towards payment of evaded duty by M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit);

117.4 From the findings of the investigation and evidences discussed herein above, it is established that M/s. Europea Makeour Jewel Pvt. Limited, and M/s Maahi Jewellery Exim Pvt. Ltd. SEZ units situated in Surat Special Economic Zone, Sachin, Surat, engaged in manufacturing of studded jewellery which is made of Precious Stones, Diamond and Silver and the companies are also engaged in manufacturing of lab grown Rough Diamonds. They had imported Precious Stones, Diamonds and Silver to use them as raw material to manufacture studded jewellery. The Diamond / Precious Stones imported by the above said two SEZ units without paying any Customs duty were diverted into the Domestic Market through their DTA units and Diamond / Precious Stones of inferior quality were procured from the domestic market through their DTA units for adjustment of the diverted quantity of superior quality precious Stones. Diamond imported by them were replaced and brought to SEZ Units. These inferior quality Diamond / Precious Stones were studded in Silver Jewellery at the above SEZ units and thereafter exported the same to their own companies in foreign countries/overseas declaring the value very high, as if the exported studded jewellery is made of the imported superior quality precious stones, diamonds and silver, with the intent to show export against duty free imports in SEZ units. Since the exported studded jewellery were made off with the Diamonds and precious stones of inferior quality, they had not been able to receive the export proceeds as per the declared value, and accordingly both the above SEZ Units were at the point of default to comply with the provisions of the SEZ Act and rules made thereunder. As per Rule 53 of the SEZ Rules, 2006, SEZ Unit shall achieve Positive Net Foreign Exchange (NFE), therefore, both the above SEZ Units were under legal obligation to achieve positive NEF. Rule 54 of the SEZ Rules provides monitoring of performances of SEZ Units and if found that a Unit has not achieved positive Net Foreign Exchange Earning [or stipulated Value Addition as specified in rule 53] or failed to abide by any of the terms and conditions of the Letter of Approval or Bond-cum-Legal Undertaking, penal action are required to be initiated as provided under rule 25 of the SEZ Rules. Therefore, they had to receive the export remittances in any manner to escape action under the provisions of the SEZ Act, the Customs Act as well as under the provisions of FEMA. On the one hand the firms in foreign countries to whom the export was made did not have the sufficient funds to transfer to them against export declared value and on the other hand

M/s.Europea (SEZ Unit) and M/s.Mahi (SEZ Unit) had generated huge cash in India by way of diversion of imported superior quality Diamonds and Precious Stones, therefore, conspiracy was hatched to send the funds from India to Hong Kong and UAE, in the manner discussed herein above, to regularize the duty free imports to show the fulfilment of export obligations/ to obtain Positive Net Foreign Exchange (NEF) and also to adjust the cash they had generated here in India. In this manner, the noticees had defrauded the exchequer by adopting a novel *modus-operandi* discussed above.

117.5 I find that the findings of the investigation, backed by several documentary evidences clearly established that there was no legitimate transactions of business as claimed by the noticees, which has been carried out by them adopting dubious practices. The enormous volumes, as well as value of trade flow complicated transactions had made difficult to outline these dubious transactions with mathematical precision. The multifaceted on paper transactions reported in GST returns as well as rotation of fund in bank accounts of non-existent entities, as emerged during the course of investigation, suggest that there was a clear attempt to disguise the origin and movement of funds, as well as the origin and movement of goods. Besides the confessional statements of the noticees, several other evidences gathered during the course of investigation are on record which established the diversions of duty free imported Diamonds and precious stones by these SEZ Units. Even in the present time of advance technology, in civil cases, it is quite difficult and at times impossible for the investigation to prove the facts which are specifically within the knowledge of the noticees. The investigation can bring the best possible evidences on record which show the motive, mala fide intention, transactions beyond bonafide and culpability of the persons involved in such activities. In the present case in hand, the *modus operandi* of all the noticees proved to be mala fide due to various dubious practices adopted and secret arrangements made by them through fake and non-existent entities which is busted by the investigation. Confessions of the persons who had committed such offence further strengthen the evidences that could be gathered by the investigation. Statement is binding on the person who has deposed it and the confession in a statement recorded under Section 108 of the Customs Act,1962 has got evidentiary value. I find that in the present case the investigation has discharged its burden by adducing the evidences discussed herein above and also find that it is not the case merely based on the confessional statements of the noticees, as contested by the noticees. I find that the confessional statements deposed by the noticees under section 108 of the Customs Act,1962 and findings of the investigation duly corroborated with evidences like non-existence of firms used for transaction in this entire episode; GST returns; audited books of accounts; bank transactions; valuation report carried out by the Government valuer in respect of physical stock of Diamonds / Precious Stones found during the course of searches at the premises of M/s.Europea Makeour Jewel Pvt. Ltd. (Surat SEZ unit) and M/s. Maahi Jewellery Exim Pvt. Ltd. (Surat SEZ Unit), which were nothing but the inferior quality Diamonds / Precious Stones which were procured locally to use in place of imported Diamonds / Precious Stones in studded jewellery; correspondence by SEZ, and RBI regarding pending realisation towards exports made by M/s.Europea Makeour Jewel Pvt. Ltd. (Surat SEZ unit) and M/s. Maahi Jewellery Exim Pvt. Ltd. (Surat SEZ Unit), remittances to overseas on the pretext of import of services by M/s.Belstar Techno Solutions (OPC) Bank Pvt. Ltd. and M/s Visual Birds Technology and many more as discussed exhaustively hereinabove in the foregoing paras.

117.6 I find that in the present case in hand the issues relating to huge economic offence of stealthily and fraudulently diversion of duty free imported superior quality Diamonds and precious stones in domestic market from SEZ without payment of duty and replacing it with the inferior quality Diamonds and precious stones to put into use in studded jewellery for export as if the jewellery are made of the imported superior quality Diamonds and precious stones resulting into huge loss to the exchequer. The noticees had also undertaken money laundering by way of sending the remittances overseas to receive it back as export proceeds as established in the findings of the investigation with the chain of money rotations in bank accounts of entities opened by the syndicate merely for paper transaction and no actual business had been carried out by such shell firms belong to the persons of the syndicate. Economic offence, driven by greed and planned meticulously for financial benefit, is always committed by a person with a well orchestrated conspiracy, executed in a secret manner without leaving any evidence behind to escape from the eye of law. Therefore, proving each and every transaction in such offences with direct evidences is not warranted, as has been observed and held by different judicial authorities, including the Hon'ble Supreme Court of India in series of judgments.

117.7 The case in hand involved large scale organized fraud and the same was carried out by various persons who acted in the capacity of mastermind, conspirator, controller, handler, facilitators, and others which resulted in defrauding the government exchequer. There are reasonable grounds in the present case in hand as discussed herein above, to find that the duty free imported Diamonds and precious stones by M/s. Europea (SEZ Unit) and M/s.Mahi (SEZ unit) had not been utilized for the authorized operation and the same has been diverted to local market and thus, customs duty has been evaded. It needs to be appreciated that in proceedings under tax legislation like the Customs Act, the prosecution is not required to adhere to the principles of burden of proof beyond reasonable doubt. It is a settled principle of law that the department is not required to prove their case with mathematical accuracy but the theory of preponderance of probability holds good in such cases where the assessee have acted in an unscrupulous manner. My above finding is aptly supported by the following judicial pronouncements:

- a) **M/s Ramachandra Rexins P Ltd.** reported at **2013 (295) ELT 116 (T)** which was upheld by the Hon'ble Supreme Court as reported at **2014 (302) ELT A61 (SC)**. The Hon'ble Tribunal had held as under:

"7.2 In a case of clandestine activity involving suppression of production and clandestine removal, it is not expected that such evasion has to be established by the Department in a mathematical precision. After all, a person indulging in clandestine activity takes sufficient precaution to hide/destroy the evidence. The evidence available shall be those left in spite of the best care taken by the persons involved in such clandestine activity. In such a situation, the entire facts and circumstances of the case have to be looked into and a decision has to be arrived at on the yardstick of 'preponderance of probability' and not on the yardstick of 'beyond reasonable doubt', as the decision is being rendered in quasi-judicial proceedings."

- b) **M.P Goenka reported at 2015 (318) ELT 409 (Del)** which has been affirmed by the Hon'ble Supreme Court as reported at 2015 (324) ELT A81 (SC). The Hon'ble High Court of Delhi had held as under:

"19. Here, this Court notes that proceedings under tax legislation such as the FCRA or the Customs Act do not require the prosecution to discharge the criminal-law burden of proof beyond reasonable doubt. Under such proceedings, a balance of probabilities is satisfactory. In Radheyshyam Kejriwal v. State of West Bengal, (2011) 3 SCC 581 = 2011 (266) E.L.T. 294 (S.C.) the Supreme Court held :

"A person held liable to pay penalty in adjudication proceeding can not necessarily be held guilty in criminal trial. Adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case entire burden to prove beyond all reasonable doubt lies on the prosecution... it is trite that standard of proof required in criminal proceedings is higher than that required before adjudicating authority."

- c) **In a quasi judicial proceedings**, the CESTAT, Bangalore bench in the case of **Carpenter Classic Exim Pvt. Ltd. Versus Commissioner of Cus., Bangalore**, reported at **2006 (200) E.L.T. 593 (Tri. – Bang.)** was concerned more with a pre-ponderance of probability rather than proof beyond reasonable doubt, holding that:

"....It should be borne in mind in the case of undervaluation like this, it is extremely difficult to attain mathematical precision. DRI officers do not possess a magic wand which would unfold the entire events which had taken place. On the basis of the available documents and the statements recorded during investigation, they have to come to a conclusion. In a quasi-judicial like this, we are concerned more with a pre-ponderance of probability rather than proof beyond reasonable doubt, as held by various judicial fora."

- d) In the case of **Commissioner of Central Excise, Chandigarh Versus Vinay Traders**, reported at, **2016 (340) E.L.T. 521 (Tri. - Del.)**, Hon'ble tribunal observed that:

"7.....Strict proof is essential in criminal proceedings. But the evidence demonstrating probability is enough to draw inference in fiscal proceeding."

117.8 I find that the evidences retrieved during the course of investigation are very well explained to and admitted by the Director of M/s.Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and all the statements recorded during investigation are corroborative of each other. Further, the other documentary evidences, as discussed herein above lending further corroboration to charges of clandestine removals in the present case. By this way the department has discharged its onus to prove that the diversion of imported goods and evasion of customs duty had taken place in this case. The documentary evidences gathered by the investigation discussed exhaustively herein above in the foregoing paras have not been rebutted by the noticees by producing any positive and tangible documentary evidence, which counters the evidences on record. No contrary evidence were furnished by the noticees before the adjudicating authority. I further find that the allegation made in SCN backed by confession of the Director of M/s. Europea

Makeour Jewel Pvt. Ltd., the beneficiary and the confession itself is enough to prove the case of department. My above view are supported with the findings of the Hon'ble Tribunal in the case of **M/s Windson Chem Industries Vs. Commissioner of Central Excise, Daman**, reported at **2012 (2) ECS (118) (Tri-Ahd)**, wherein it is held that:

"if the proprietor of the appellant-assessee who is the main beneficiary of any illegal/legal activities of the firm, admits, in his statement that there was clandestine removal of the finished goods, further corroboration, if any, may not be necessary."

117.9 The confession of the Director is corroborated with the confessions of other co-noticees and also backed by several incriminated documents retrieved during the course of investigation. Therefore, no further investigation was required when it was admitted by the concerned persons dealing with the clandestine removal of the goods. Reliance is placed on the decision in the case of **Gopal Industries Limited** reported at **2007 (214) ELT 0019 (Tri.-Larger Bench)** wherein it was held that impugned charge established beyond doubt by the oral evidence of managing partner and supervisors and positive documentary evidence recovered from the factory of appellants, oral and documentary evidences being of clinching nature, further corroboration is not required.

"18.1.....We find ourselves in complete agreement with the reasoning and findings of the learned Commissioner in holding that the charge of clandestine removal of tin containers by the appellants was established beyond doubt. No further corroboration was required in view of the clinching nature of the oral and documentary evidence establishing clandestine production and removal of tin containers by the appellant. It is evident that Shri Yogesh Garg, noticee No. (2), partner of the appellant, was in charge of the unit and was having overall control of the affairs of the unit. It was, therefore, rightly held that he was aware that the goods clandestinely manufactured and removed in the name of his partnership firm were liable to be confiscated."

117.10 I find that it is settled law that the Customs Officer under the Customs Act is not a police officer within the meaning of Section 25 of the Evidence Act. The proceedings taken by a Customs Officer are for the purpose of holding an enquiry into suspected cases of smuggling or duty evasion and that the Customs Officer is for all purposes an officer of the Revenue. As the Customs Officer under the Act is not a police officer, the statement made before him by a person, who is arrested or against whom an enquiry is made, are admissible evidence against the person who deposed the statement. Reliance is placed on the following judgments:

- a) The Hon'ble Supreme Court of India in the case of **Union of India Versus Padam Narain Aggarwal**, reported at **2008 (231) E.L.T. 397 (S.C.)**, held that:

"59. *It is thus clear that statements recorded under Section 108 of the Act are distinct and different from statements recorded by Police Officers during the course of investigation under the Code."*

- b) The Hon'ble Supreme Court of India in the case of **Naresh J. Sukhawani Versus Union of India**, reported at **1996 (83) E.L.T. 258 (S.C.)**, held that:

"4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine."

- c) The Hon'ble Supreme Court of India in the case of **K.I. Pavunny Versus Asstt. Collr. (Hq.), C. Ex. Collectorate, Cochin**, reported at **1997 (90) E.L.T. 241 (S.C.)**, held that:

"26.....As noted, the object of the Act is to prevent large-scale smuggling of precious metals and other dutiable goods and to facilitate detection and confiscation of smuggled goods into, or out of the country. The contraventions and offences under the Act are committed in an organised manner under absolute secrecy. They are white-collar crimes upsetting the economy of the country. Detection and confiscation of the smuggled goods are aimed to check the escapement and avoidance of customs duty and to prevent perpetration thereof. In an appropriate case when the authority thought it expedient to have the contraveners prosecuted under Section 135 etc., separate procedure of filing a complaint has been provided under the Act. By necessary implication, resort to the investigation under Chapter XII of the Code stands excluded unless during the course of the same transaction, the offences punishable under the IPC, like Section 120B etc., are involved. Generally, the evidence in support of the violation of the provisions of the Act consists in the statement given or recorded under Section 108, the recovery panchnama (mediator's report) and the oral evidence of the witnesses in proof of recovery and in connection therewith. This Court, therefore, in evaluating the evidence for proof of the offences committed under the Act has consistently been adopting the consideration in the light of the object which the Act seeks to achieve."

117.11 I find that the present case is merely not based on statements of different persons as argued by the noticees. The investigation has clearly brought out various tangible and corroborative evidences as discussed herein above, therefore, the contention of the noticees that the case is based on statements without documentary evidence are factually incorrect. The investigation has clearly proved the case of the revenue beyond any reasonable doubt. Further, it is settled in law that the direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act. In the present case so many evidences, as mentioned and discussed in SCN, were on the record to prove that the clandestine transactions and entire evidences are against the noticees. Also, it is important to understand that in the cases of fraudulent or clandestine

removal/transaction, the players hatch conspiracy and execute well-crafted modus operandi, so as not to leave any evidences which can be tallied one to one directly. In the present case, there are numerous evidences gathered during the investigation which prove the case of revenue. The Hon'ble Supreme Court of India in the case of **Collector of Customs, Madras and others versus D. Bhoormull**, reported at **1983 (13) E.L.T. 1546 (S.C.)**, held that "the Department would be deemed to have discharged its burden, if it adduces so much evidence, circumstantial or direct, as is sufficient to raise a presumption in its favour with regard to the existence of the fact sought to be proved.":

"30., This is a fundamental rule relating to proof in all criminal or quasi-criminal proceedings, where there is no statutory provision to the contrary. But in appreciating its scope and the nature of the onus cast by it, we must pay due regard to other kindred principles, no less fundamental, or universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously puts it-"all exactness is a fake". El Dorado of absolute Proof being unattainable, the law, accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus legal proof is not necessarily perfect proof often it is nothing more than a prudent man's estimate as to the probabilities of the case.

31. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered to use the words of Lord Mansfield in *Blatch v. Archar* (1774) 1 Cowp. 63 at p. 65 "According to the Proof which it was in the power of one side to prove and in the power of the other to have contradicted". Since it is exceedingly difficult, if not absolutely impossible for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden."

32. Smuggling is clandestine conveying of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the Preventive Department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the person concerned in it. On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned : and if he fails to establish or explain those facts, an adverse inference of facts may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result prove him guilty. As pointed out by Best in *Law of Evidence* (12th Edn. Article 320, page 291), the "presumption of innocence is, no doubt, *presumptio juris* : but every day's practice shows that it may be successfully encountered by the presumption of guilt arising from the recent (unexplained) possession of stolen property," though the latter is only a presumption of fact. Thus the burden on the prosecution or the Department may be

considerably lightened even by such presumption of fact arising in their favour. However, this does not mean that the special or peculiar knowledge of the person proceeded against will relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue. It will only alleviate that burden to discharge which very slight evidence may suffice.

44.....the Department would be deemed to have discharged its burden, if it adduces so much evidence, circumstantial or direct, as is sufficient to raise a presumption in its favour with regard to the existence of the fact sought to be proved."

The above observations of the Hon'ble Apex Court referred and relied in various cases by different courts/tribunals including by the **CESTAT, Ahmedabad** in the case of **Prakash Sancheti Versus Commissioner of Customs, Ahmedabad** reported at **2013 (292) E.L.T. 273 (Tri. – Ahmd)**, and by the Hon'ble **High Court of Gujarat**, in the case of **Maganlal Gulabchand Shah Versus Union of India** reported at **1992 (59) E.L.T. 235 (Guj.)**. and observed that it's enough if the department furnishes prima-facie proof.

117.12 In the peculiar facts and circumstances of this case, I would like to rely the judgment of the Hon'ble Double Bench of the Tribunal in the case of **K.I. International Ltd. Versus Commissioner of Custom, Chennai**, reported at **2012 (2) ECS (126) (Tri-Chen)** equivalent to 2012 (282)ELT(0067), categorically observed and held that:

"10.1 Evidence gathered by Revenue unambiguously and succinctly proved that the TRAs used by the importer appellants were fake, false, forged and fabricated for discharge of customs duty and caused prejudice to Revenue. Similarly, the traders, brokers and sub-brokers supplying such instruments were conduit and instrumentality in commitment of offence of causing loss to Revenue consciously and deliberately having intimate connection to each other. Neither the importer appellants nor the conduits could demolish the evidence gathered by Revenue making enquiry from DGFT Authority. Their ill-design was unearthed by investigation.

10.2 It is established principle of law that fraud and justice do not dwell together. An assessee acting in defiance of law has no right to claim innocence when he fails to exercise due care and diligence.
..... Findings of the learned Adjudicating Authority do not appear to have been made suspiciously or under surmise but seems to have been based on cogent evidence.

*10.4 The observations of the former Lord Chief Justice of England, Sir Edward Coke, more than three centuries ago, that "fraud avoids all judicial acts, ecclesiastical or temporal", noticed by the Supreme Court in *S. P. Chengalvaraya Naidu v. Jagannath*, AIR 1994 SC 853, are apt for the instant case. The Apex Court has also observed that an act of deliberate deception with the design of securing something by taking unfair advantage of another is a "fraud". "Fraud" is a cheating intended to get an advantage. A person whose case is based on falsehood has no right to seek relief in equity. In *Commissioner of Customs v. Essar Oil Ltd.*, (2004) 11 SCC 364 = 2004(172) E.L.T 433 (S.C.), their Lordships of the Supreme Court have observed that it is a*

fraud in law if a party makes representations, which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. Being the ultimate beneficiaries of the fake TRAs, the importer Appellants were not innocent. Claim at the threshold was based on fake TRAs. Therefore, Revenue has rightly invoked extended period under Section 28 of the Customs Act, 1962 to adjudicate the matter.

11 Hon^{ble} Supreme Court in the case of S. P. Chengalvaraya Naidu V. Jagannath reported in (1994) 1 SCC 1 laid down the law that the principle of "finality of litigation" cannot be pressed to the extent of such and absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation. Thus plea of these appellants are baseless and being misconceived are devoid of merit and they are liable to penalty under law for the unlawful act.....

12.3 Evidence Act does not insist on absolute proof for the simple reason that perfect proof in this imperfect world is seldom to be found. That is why under Section 3 of the Evidence Act, a fact is said to be "proved" when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This definition of "proof" does not draw any distinction between circumstantial and other evidence. Thus, if the circumstance listed aforesaid establish such a high degree of probability that a prudent man ought to act on the supposition that there was abetment to the offence of use of fake, false, forged and fabricated DEPB scrips and TRAs to clear imports duty free in contravention of the law. Thus, without detaching themselves from the deal of aforesaid ill-designed deal to defraud Revenue entire conduit is liable to consequences under law.

13.1 It is cardinal principle of law which is enshrined in Section 17 of Limitation Act that fraud nullifies everything. Nothing demonstrated that the Authority below merely acted on imagination while the adjudication was based on cogent evidence. All the adjudications were done following due process of law on the basis of evidence establishing loss of revenue caused by the appellants supplying and using the false, forged and fabricated TRAs covering the DEPB scrips not acquired legitimately for use in clearance of imports at Chennai port. Such instruments were non est in the eyes of law at all times and were void. The importer appellants did not acquire any title over the same. Accordingly, the importer appellants were bound to compensate Revenue for the losses they caused due to use of fraudulently acquired scrips to discharge customs duty. Similarly, the traders, brokers and sub-brokers being conduit to make the

questionable instruments available to the appellants were equally liable in abetting the commitment of the offence of dealing with fake and false DEPB scrips and TRAs.

13.2 When fraud was established that has unraveled all. Revenue's stand is fortified from the Apex Court judgment in the case of UOI v. Jain Shudh Vanaspati Ltd. – 1996 (86) E.L.T 460 (S.C). So also fraud nullifies everything as held by Apex Court in CC v Candid Enterprises- 2001 (130)E.L.T. 404 (S.C) and in the case of Delhi Development Authority v. Skipper Construction Company (P) Ltd. AIR 1996 (SC) 2005. Cheating was done to claim undue claim of DEPB credit and Revenue was defrauded.

14.1 Enactments like Customs Act 1962, and Customs Tariff Act 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained un-discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. No evidence gathered by Revenue were demolished by appellants by any means."

117.13 I find that by adducing the direct and circumstantial evidences, discussed hereinabove in the foregoing paras, the department has discharged the burden of proof regarding diversion of duty free imported Diamonds and precious stone in this case and thus, the onus shifts to the noticees to establish that the arguments advanced by them are valid. They have to come with clean hand with documentary evidences. In the present case, the noticees at no stage could produce any evidence, except argument to drag the adjudication and to divert the attention from merits of the case. The documentary evidence gathered by the investigation could not be rebutted by noticees by producing any positive and tangible documentary evidence, which counters the findings of investigation and based on that any other conclusion could be arrived. The Hon'ble High Court of Himachal Pradesh in the case of **Commr. of Central Excise Versus International Cylinders Pvt. Ltd.**, reported at **2010 (255) E.L.T. 68 (H.P.)**, held that:

"10. Once the department proves that something illegal had been done by the manufacturer which prima facie shows that illegal activities were being carried, the burden would shift to the manufacturer. It was impossible for the department to prove how many cylinders were being carried in the trucks. However, if the department proves that the trucks crossed the barriers carrying some cylinders for which no record was maintained in the factory nor any excise duty was paid then the presumption can be drawn that the trucks were carrying cylinders as per the capacity of the trucks. The approach of the Tribunal that it was for the department to prove what

was the quantity of goods carried in each truck which crossed the barrier and of which there is no entry in the records of the Company is totally illegal. Once the illegal activity was proved, the burden shifted upon the assessee.

11. *No law can be interpreted in a manner so as to give premium to illegal and criminal activities. It is a basic common sense that no person will maintain authentic records of the illegal activities or manufacture being done by it. In the present case, there are certain facts which the department has proved and which have been upheld by the Tribunal itself; (i) that a large number of trucks belonging to the company crossed the octroi/sales tax/excise/police barriers for which there is no record or explanation by the respondent-company, and (ii) in the records of the barriers, all these trucks are shown to be carrying LPG cylinders, empty cylinders and/or scrap. The department has also proved that about 70 metric tonnes of LPG sheets used for the manufacture of cylinders were imported without payment of excise duty. All these facts indicate that illegal activities were going on in the premises of the respondent-company."*

The above decision of the Hon'ble High Court of Himachal Pradesh also relied upon by the CESTAT Ahmedabad bench in the case of **Shreeji Aluminum Pvt. Ltd. Versus Commissioner of Central Excise, Vapi**, reported at **2012 (282) E.L.T. 234 (Tri. - Ahmd.)**, and observed as under:

"47.5. *In this case of CCE v. International Cylinders Pvt. Ltd. - 2010 (255) E.L.T. 68 (H.P.), Hon'ble High Court of Himachal Pradesh observed that once the department proves something illegal being undertaken, the burden shifts to manufacturer. It was also observed that the department need not prove quantity of goods carried in each truck for which there was no entry made in company records. Hon'ble High Court also observed that no person will maintain authentic records of illegal activities. The decision of Hon'ble High Court is squarely applicable to this case also since the quantum of production has been estimated.*

70. *In the context of clandestine activity, Hon'ble Member (Technical) has opined that he is not able to agree that clandestine removal must be established beyond doubt. He has relied upon the judgments in the following cases :*

- 1. Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi & Ors. - (1991) 2 SCC 716.*
- 2. D. Bhoormull - 1983 (13) E.L.T. 1546 (S.C.)*
- 3. Gulabchand Silk Mills v. CCE, Hyderabad-II [2005 (184)] E.L.T. 263 (Tri. - Bang.)*
- 4. Carpenter Classic Exim Pvt. Ltd. v. CC Customs [2006 (200) E.L.T. 593 (Tri. - Bang.)*
- 5. CCE v. International Cylinders Pvt. Ltd. [2010 (255) E.L.T. 68 (H.P.)]*
- 6. State of Rajasthan v. Mohan Lal [2009 (237) E.L.T. 435 (S.C.)]*
- 7. Gopaldas Udhavdas Ahuja v UOI [2004 (176) E.L.T. 3 (S.C.)]*
- 8. T. Shankar Prasad v. State of Andhra Pradesh [2004 (164) E.L.T. 143 (S.C.)]*

71. *On going through the various judgments as cited above, I find*

that the contention of the appellants that the case has to be established beyond doubt is not according to the settled law. However, there is no denial of the fact that there should be more than 50% chance that the proposition is true and on the basis of the set of facts and evidences available it should be possible to arrive at a conclusion that the case is proved beyond reasonable doubt. As per the facts on record I am unable to agree with the findings of the Hon'ble Member (Technical) that "under the circumstances, based upon the evidences available on record, documents, statements and analysis of the same and taking into account all the facts and circumstances, the obvious conclusion is that the demand of duty of Rs. 2,25,82,462/- has to be sustained." The penalties imposed by the Hon'ble Member (Technical) in his order, I find mainly due to unsustainability of the major portion of demand is disproportionate."

117.14 I find that once the Revenue has discharged the burden that M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and M/s. Maahi Jewellery Exim Pvt. Ltd. (SEZ Units) had diverted the duty free imported Diamonds and precious stones; inferior quality of Diamonds and precious stones were used in the exported studded jewellery to show as if the imported superior quality of Diamonds and precious stones were used therein, then the onus is on the noticees to prove that they have utilised the duty free imported superior quality Diamonds and precious stones for the intended purpose as per the scheme of SEZ. That onus cannot be countenanced on the ground of hardship or inconvenience. In the present case, the noticees have failed to substantiate their denial of allegation made in the SCN. The Hon'ble Supreme Court of India in the case of **Shah Guma Mal v/s. State of Andhra Pradesh**, reported at **1983 (13) E.L.T. 1631 (S.C.)**, observed that:

"8. *In a later decision of this Court in the case of Commissioner of Income-tax, Madras v. Best & Co. (P) Ltd., (1966) 2 SCR 480, this Court observed as follows :-*

"When sufficient evidence, either direct or circumstantial, in respect of its contention was disclosed by the Revenue, adverse inference could be drawn against the assessee if he failed to put before the Department material which was in his exclusive possession. The process is described in the law of evidence as shifting of the onus in the course of a proceeding from one party to the other."

It is true that this case arose under the provisions of the Income-tax Act but the principles laid down by this Court would apply equally to the facts of the present case...."

CESTAT, Kolkata bench in the case of **Bengal Hammer Industries (P) Ltd. Versus Commr. of C. Ex., Kolkata-II**, reported at **2009 (240) E.L.T. 257 (Tri. – Kolkata)** held that:

"9. *We are also of the view that if credit is made available on forged/fake documents, then the same is non-est and there is no valid document conveying right to Modvat credit, following the ratio laid down by Hon'ble High Court of Calcutta holding as under in the case of ICI India Ltd. v. Com. of Customs (Port), Calcutta - 2005 (184) E.L.T. 339 (Cal.) and on appeal by Assessee, Hon'ble Supreme Court dismissed such Appeal - 2005 (187) E.L.T. A31 (S.C.). It is an elementary principle of jurisprudence that Legal Fraud vitiates,*

everything even judgments and orders of the Court. If a transaction has been founded on fraud, the vice will continue to taint it, and not only is the person who has committed fraud is precluded from deriving any benefit under it, but also who derive advantage of it.

11. *It may be stated that when forgery/fraud renders a document itself to be null and void having no effects whatsoever due to its non-existence to seek duty credit, that shall no way grant relief to the claimant. Following the decision of the Hon'ble Supreme Court in the case of New India Assurance Co. v. Kalma & Others - (2001) 4 SCC 342, it may be stated that the documents used by the Appellants to seek duty credit if proved to have been obtained under fraud that shall not confer title on the Respondent for no title such document ever had. Once no delivery is proved at the end of the suppliers, merely making a book entry by the claimant in statutory record as to receipt of the input that shall not ipso facto grant benefit of Modvat credit to the claimant."*

117.15 I find that the judicial pronouncements and the settled law positions by the Hon'ble Supreme Court of India in such cases cannot be ignored, merely because the noticees took different view and contested against the findings of investigation. In the present case, so many evidences as discussed herein above, are available on the record to prove the case of the revenue. The case stands established against the noticees with reference to the direct and circumstantial evidences adduced by the investigations and observations by different courts while delivering judgments in such cases. Reliance is further placed on the decision of Madras High Court in the case of **Lawn Textile Mills Pvt. Ltd. Versus CESTAT, Chennai**, reported at **2018 (362) E.L.T. 559 (Mad.)**, wherein the Hon'ble High Court held that:

"30. The above facts will clearly show that the allegation is one of clandestine removal. It may be true that the burden of proving such an allegation is on the Department. However, clandestine removal with an intention to evade payment of duty is always done in a secret manner and not as an open transaction for the Department to immediately detect the same. Therefore, in case of clandestine removal, where secrecies involved, there may be cases where direct documentary evidence will not be available. However, based on the seized records, if the Department is able to prima facie establish the case of clandestine removal and the assessee is not able to give any plausible explanation for the same, then the allegation of clandestine removal has to be held to be proved. In other words, the standard and degree of proof, which is required in such cases, may not be the same, as in other cases where there is no allegation of clandestine removal."

In the case of **Gulabchand Silk Mills v. CCE, Hyderabad-II**, reported at **2005 (184) E.L.T. 263 (Tri.-Bang.)** the Tribunal observed that:

"10. clandestine activity at best can be established only by circumstantial evidence. It should also be borne in mind that it will be humanly impossible to establish every link in the chain of clandestine activity. It would be too much to expect that the Investigating Officers should establish by what transport on which dates and where the supposed non-duty paid goods were sent and who received them, when and how they were distributed and all the financial dealings etc. We are very sure that humanly it would be

impossible to establish all the links of clandestine activity without any break. When a fact is admitted it doesn't need further corroboration. We have no reason to believe that the statements have been taken under duress. We also hold that the retraction made after two months is an afterthought. The denial of cross-examination of the two persons does not vitiate the proceedings. These people have not retracted their statements also."

This judgment has been referred in many subsequent decisions of Tribunal and High Courts including the CESTAT, Ahmedabad bench in various cases.

117.16 The noticee argued that the Show Cause Notice merely alleges diversion of the goods in the local market, however, not a single purchaser has been identified who had procured such diverted goods. So also, not a single goods have been seized, which were allegedly imported by the importer. As I have already discussed that in the case of clandestine removal, everything is done with proper planning in a secret manner so to leave no trail of the offence. The department has discharged its onus with confessional statements and documentary evidences in the present case by bringing on record that the diversion of imported duty free goods had taken place and customs duty had been evaded thereon. During the course of search at the premises of M/s. Kavish Gems, a part of the diverted diamonds had also been recovered by the investigating agency. During the course of investigation, Shri Suresh Ratanlal Jagetia had revealed that the diverted Diamonds and precious stones were sold in local market in cash and invoices were raised upon some other parties without supply of goods, just for adjustment of such diversion. Such firms have also been interrogated who had also stated the same. Shri Suresh Ratanlal Jagetia had not revealed the name of actual persons to whom he and his team had sold the diverted Diamonds and precious stone to interrogate and for this, investigation cannot be faulted with. I rely upon the judgment of the Hon'ble CESTAT, Ahmedabad in the case of **C.C.E., & S.T., AHMEDABAD-II V/s. M/s. PARAS STEEL INDUSTRIES**, reported at **2014 (4) ECS (106) (Tri. - Ahd.)**, wherein the Hon'ble tribunal held that:

"4.....When respondents did not give details of the buyers of the goods clandestinely removed, Revenue can not be faulted with for not investigating the area of extra raw materials purchased or extending investigation into the buyers of the goods clandestinely removed etc....."

117.17 I find that in the present case in hand, the evidence placed on record could not be reasonably countered by noticees and they have simply raised doubt on the veracity of the investigation. Finding the suppliers and buyers of M/s. Europea Makeour Jewel Pvt.Ltd. (DTA Unit) and M/s. Mahi Jewellery Exim Private Limited (DTA Unit) appeared in their respective GSTR-1 and GSTR-2A as non-existent; arranging invoices without physical movement of goods; banking transactions for rotation of fund to send overseas on the pretext of import of services whereas no such import of services have taken place; finding lower quality of diamond and precious stones at the premises of M/s.Europea Makeour Jewel Pvt.Ltd. (SEZ Unit) and M/s.Mahi Jewellery Exim Private Limited (SEZ Unit) during the course of searches proves the diversion of imported superior quality of Diamond and precious stone by M/s.Europea Makeour Jewel Pvt.Ltd. (SEZ Unit) and M/s.

Mahi Jewellery Exim Private Limited (SEZ Unit) as alleged in the show cause notice. Reliance is placed on the judgment of the Hon'ble High Court of Himachal Pradesh in the case of Commr. of Central Excise Versus International Cylinders Pvt. Ltd., reported at 2010 (255) E.L.T. 68 (H.P.) (*supra*) wherein it was held that no law can be interpreted in a manner so as to give premium to illegal and criminal activities. It is a basic common sense that no person will maintain authentic records of the illegal activities being done by it. Once the department proves that something illegal had been done by the noticees which prima facie shows that illegal activities were being carried, the burden would shift to the noticees. Reliance is also placed on the judgment of the CESTAT Ahmedabad bench in the case of Shreeji Aluminum Pvt. Ltd. Versus Commissioner of Central Excise, Vapi, reported at 2012 (282) E.L.T. 234 (Tri. - Ahmd.) (*supra*) wherein it was held that the contention of the appellants that the case has to be established beyond doubt is not according to the settled law. In the present case, the noticees have neither before the investigating agency nor before the adjudicating authority produced any evidences which prove that the confession by the Director of M/s. Europea Makeour Jewel Pvt. Ltd. is not true. On the contrary there are other confessional statements of the persons involved in this case which further fortify the confession of the Director of M/s. Europea Makeour Jewel Pvt. Ltd. Moreover, the confessions are backed by several independent documentary evidences discussed herein above and the revenue has proved its case. Every case of clandestine removal has to be adjudged in the light of the evidence available in that case. Ample evidences on record, as discussed exhaustively herein above in the foregoing paras, only leads to one inevitable conclusion of the diversion of duty free imported Diamonds and precious stones into local market without payment of duty, resulted in evasion of customs duty saved by both the above SEZ units at the time of imports in terms of the special fiscal provisions for special economic zones. Thus, I do not find merit in contentions of the noticees in this regard.

117.18 In a case of similar nature, where the adjudicating authority upon considering the relevant material and the submissions advanced by the noticees (*in that case*) ordered finding the noticees (*in that case*) accused, was maintained by the Hon'ble Tribunal and also by the Hon'ble High Court of Bombay. The Hon'ble High Court of Bombay in the case of **Sailash Amulakh Jogani Versus Union of India**, reported at **2009(04)LCX0199**, Equivalent 2009 (241) ELT 0348 (Bom.) has held inter-alia as under:

"25. In the ultimate analysis we are of the view that the concurrent finding of fact recorded by the authorities below does not call for interference. In this connection, we may again refer to Bhoormull's case. In that case, the Division Bench of the High Court felt that the circumstantial evidence was not adequate enough to establish the smuggled character of the goods, beyond doubt and, hence, it interfered with it in its jurisdiction under Article 226 of the Constitution of India. Disapproving the High Court's approach, the Supreme Court observed as under:

'37. Even if the Division Bench of the High Court felt that this circumstantial evidence was not adequate enough to establish the smuggled character of the goods, beyond doubt, then also, in our opinion that was not a good ground to justify interference with the Collectors order in the exercise of the writ jurisdiction

under Article 226 of the Constitution. The function of weighing the evidence or considering its sufficiency was the business of the Collector or the appellate authority which was the final tribunal of fact. "For weighing evidence and drawing inferences from it", said Birch, /. in R. v. Madhub Chunder (1873) 21 WR Cr. 13, 19, "there can be no canon. Each case presents its own peculiarities and in each common sense and shrewdness must be brought to bear upon the facts elicited". It follows from this observation that so long as the Collector's appreciation of the circumstantial evidence before him was not illegal, perverse or devoid of common sense, or contrary to rules of natural justice, there would be no warrant for disturbing his finding under Article 226. The Collector's order was not of this kind.'

26. In this case, the Collector's appreciation of evidence appears to us to be unassailable. It is neither illegal, nor perverse or devoid of common sense or contrary to rules of natural justice. It is confirmed by the CEGAT. Concurrent finding of fact deserves to be upheld. In our opinion, the petitioners have made out no case warranting our interference with the impugned orders. Hence, the petition is dismissed."

Jurisdiction of officers: Whether the investigation and issuance of SCN is within the domain of jurisdiction of the officers:

118.1 I find that the noticees have challenged the jurisdiction of investigation and issuance of SCN and contested that the Commissioner of Customs, Jaipur and his officers have no jurisdiction to carry out investigation, search and seizure/ recording of statements etc. in the SEZ unit of M/s. Europea situated at SEZ, Surat without being authorized to do so under the SEZ Acts; referred the Notification No. S.O. 2667(E) dated 05.08.2016 issued under Section 22 of the SEZ Act, 2005 and submitted that as per the said Notification, the jurisdictional Customs Commissioner in respect of offences under the Customs Act, 1962 and notified under the SEZ Act, 2005 is authorized by the Central Government, so as to carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit but before that he has to record the reasons in writing and with prior intimation to the Development Commissioner, concerned; section 52 of the SEZ Act also spells out that the Customs Act is not applicable in respect of units situated in SEZ unit; investigation caused without authority of law, consequently Show Cause Notice based on such investigation is without jurisdiction; the entire investigation has been carried out by officers of Customs (Preventive), without jurisdiction and any legal authority by such Officers, who is not of the rank of 'Additional Director General of DRI', or the Jurisdictional Customs Commissioner, therefore in exfacie contravention of S.O. 2666(E)] dated 5th August 2016, and S.O.2667(E) dated 5th August, 2016 issued by Central Government, in exercise of powers conferred by sub-section 2 of Section 21 and second proviso to Section 22 of the Special Economic Zones Act, 2005.

118.2 The factual backgrounds and circumstance of the case which has constrained the authorities to initiate action against noticees including M/s. Europea Makeour Jewel Pvt.Ltd. and M/s. Maahi Jewellery Exim Private Limited both SEZ units are exhaustively detailed and discussed hereinabove

in the foregoing para. I find that the investigation was initiated based on the letters received from UCO Bank which indicated huge transfer of money overseas by Jaipur based firms M/s.Belstar Techno Solutions (OPC) Bank Private Limited and M/s.Visual Birds Technology and the detailed investigation trailed to M/s.Europea Makeour Jewel Pvt. (SEZ Unit) and M/s. Maahi Jewellery Exim Private Limited (SEZ Unit). The money was transferred overseas by way of rotation amongst group of non-existent firms opened and operated merely for paper transactions linked to the diversion of duty free imported Diamonds and precious stone undertaken by M/s.Europea Makeour Jewel Pvt. (SEZ Unit) and M/s. Maahi Jewellery Exim Private Limited (SEZ Unit). To elaborate it specifically, I find force in reiterating the brief, in the following tabular format, that how the involvement of Noticees in the evasion of was unearthed, who had initiated the inquiry of the Noticees, how it was further developed by the respective authority, who had carried out the search proceedings, who had investigated the case further and by whom the present Show Cause Notice is issued.

Sl. No.	Brief of the actions taken	The details of officers authorized by the Central Government/Board/ jurisdictional authority.
1.	The office of the Commissioner of Customs (Preventive), Jodhpur, Hqrs- Jaipur, received a letter dated 12.10.2021 from the UCO Bank, Vishakhapatnam informing that M/s Belstar Techno Solutions (OPC) Private Limited have remitted USD 2,40,09,950/- in the name of obtaining the services (Non-Physical Imports) from overseas suppliers located at Hong Kong and UAE, within a short span of six months, during the period from April, 2021 to September, 2021. Whereas, the UCO Bank, Johari Bazar, Jaipur, vide letter dated 09.11.2021 informed that M/s. Visual Birds Technology has remitted the funds of USD 66,27,300/- during the period from 26.03.2021 to 02.09.2021 to their overseas suppliers located at Hong Kong and UAE, in the name of obtaining the services (Non-Physical Import) which had further revealed that huge amounts of money had been transferred through RTGS by various firms, which were shown in their GST Registration details, to be engaged in trading of Gold and Diamond. From the investigation conducted, it was evident that total amount of Rs. 400,57,91, 176/- (Rs. 334,79,04,720/- + Rs. 65,78,86,456/-) had been remitted by M/s. Belstar Techno Solutions (OPC) Private Limited and M/s. Visual Birds Technology, Jaipur against the illegal import of Gold, Diamond & other Precious Metals.	The details of the Inquiry are exhaustively detailed and discussed hereinabove in the foregoing para that the office of the Commissioner of Customs (Preventive), Jodhpur, Hdqrs., Jaipur had initially carried out the inquiry in the entire case.

2.	From the investigation conducted, it appeared that, to defraud the exchequer, a racket / gang was formed, which adopted a novel modus operandi under which several bogus / fake companies / firms were created and several bank accounts were opened to fraudulently remit amounts of high magnitude to Hong Kong and UAE based firms by showing the same to be payments against import of services (which were never actually imported and were mere paper transactions without any actual supply of service) with the ulterior motive of using the fraudulent remittances for funding illegal imports of Gold, Diamonds and other Precious Stones / Metals.	The Commissioner of Customs (Preventive), Jodhpur, Hdqrs., Jaipur had reason to believe on the basis of cogent evidences available with them.
3.	The name of the Noticees were first appeared during the search conducted by the officers of Customs, Jaipur on 13/14.01.2022 at the premises located at Udaipur, Rajasthan where, total 28 invoices pertaining to M/s. Europea Makeour Jewel Pvt. Ltd. were also recovered. These Invoices were showing sale of Diamond by M/s Europea Makeover Jewel Pvt. Ltd. to M/s. Subhang Enterprise Private Limited, Mumbai and to M/s. Swastik Impea, Mumbai. Both these firms / companies to whom sales were shown were found non-existent during searches at their premise and the Directors of these units have stated in their statements that M/s. Europea Makeour Jewel Pvt. Ltd. and M/s. Maahi Jewellery Exim Private Limited have sold diamond to some other buyers and have only issued invoices to their units.	During the investigation only, the officers of the Commissioner of Customs (Preventive), Jodhpur, Hdqrs., Jaipur had found the names of said two units
4.	During the investigation, it revealed that M/s. Europea Makeour Jewel Pvt. Ltd. having their registered business place at Unit 410, 2nd Floor, Poddar Plaza, Ghod Dod Road, Surat and M/s. Maahi Jewellery Exim Private Limited having their registered business places at office No. 104, RT Apartment Co-op. Housing Society, Dalgiya Street, Mahidharpura, Surat accordingly, the searches were carried out at the said two DTA units on 25-05-2022. The search at the premises of M/s. Europea (DTA Unit) was carried out at 2.15 pm of 25-05-2022 whereas, search at the premises of M/s. Maahi (DTA unit) was carried out at 12.00 hours of 25-05-2024 by the jurisdictional officers of Customs, Surat. However, both the DTA units were found non-existent / non-functional during searches conducted on 25.05.2022 as no details relating to the activities were found at the premises.	The search was carried out by the Inspectors of Customs Division, Surat working under the Customs Commissionerate, Ahmedabad and having the jurisdiction over the said units.

	However, as per GST records, M/s.Europea (DTA Unit) (non SEZ unit) has made purchase and sale of Rs.1844.67 Crore and Rs.1213.47 Crore, respectively. Similarly, M/s. Maahi (DTA Unit) (non SEZ unit) has made purchase and sale of Rs.1060.03 & Rs.901.03 Crore respectively, since their inception.	
5.	Searches at both the said SEZ units i.e. at M/s. Europea (SEZ Unit) and at M/s. Maahi were carried during the period 25-05-2022 to 27-05-2022 by Inspector of Customs, Surat with the other officers of Customs Preventing Wing of Jodhpur Commissionerate under the Authorization for search dated 25.05.2022 issued by the Deputy commissioner, SIIB, Customs, Surat under his signature and office seal authorizing the respective Inspector of Customs Division, Surat to search the said premises under Section 105 of the Customs Act, 1962.	The searches were carried out by the Inspectors of Customs SIIB, Division, Surat working under the Customs Commissionerate, Ahmedabad and having the jurisdiction over the said units.
6.	The statements of the concerned persons including the directors of the said firms were recorded under Section 108 of the Customs Act, 1962.	The statements were recorded by the Customs Preventive Wing, Jodhpur in pursuance of ongoing inquiry as discussed above.
7.	Issuance of Show Cause Notice on the basis of investigation carried on the basis of documents seized during the searches carried out at the premises of both the units and the statements recorded under Section 108 of the Act.	Show Cause Notice No. GEN/ADJ/COMM/342/2 023-TECH, dated 20-05-2023 was issued by the Commissioner of Customs, Ahmedabad having the jurisdiction over the units.

118.3 The investigation had finally observed that M/s. Europea and M/s Maahi have diverted the superior quality imported Diamonds / Precious Stones (Ruby) into the domestic market; that they have arranged inferior quality Diamonds / Precious Stones (Ruby) from the domestic market as replacement and exported the same after studding in the silver rings and pendants. It also appeared that the goods (Diamonds / Precious Stones), which were seized vide Panchnama dated 26/27.5.2022 were arranged / procured illegally from DTA to the Customs Area i.e. SEZ, without any documents, without following any procedure and without any permission from the Specified Officer of the SEZ, in contravention of various provisions of law, for use in the future exports.

118.4 The relevant provisions of Special Economic Zone Act, 2005, SEZ Rules as well as of Customs Act, 1962 stipulate as under:

Relevant Provisions of the Special Economic Zone Act,2005:

SECTION 21. Single enforcement officer or agency for notified offences. –

(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.

(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence or offences committed in a Special Economic Zone.

(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection, search or seizure as is provided under the relevant Central Act in respect of the notified offences.

SECTION 22. Investigation, inspection, search or seizure. - The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation, inspection, search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone:

Provided that no investigation, inspection, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or sub-section (3) of section 21 without prior approval of the Development Commissioner concerned:

Provided further that any officer or agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.

SECTION 53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc. in certain cases. - A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations.

(2) A Special Economic Zone shall, with effect from such date as Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962) :

Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones.

Section 30. Domestic clearance by Units. — Subject to the conditions specified in the rules made by the Central Government in this behalf: —

(1) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 (51 of 1975), where applicable, as leviable on such goods when imported; and

(2) the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.

RELEVANT PROVISIONS OF THE SEZ RULES, 2006

As per **Rule 2(c)** of the SEZ Rules, 2006, "Authorised Officer" means an Inspector or Preventive Officer or Appraiser or Superintendent of Customs posted in the Special Economic Zone and authorized by the Specified Officer

to discharge any of his functions under these rules.

Rules 22 (2). Terms and conditions for availing exemptions, drawbacks and concessions to every Developer and entrepreneur for authorized operations.— Every Unit and Developer shall maintain proper accounts, financial yearwise, and such accounts which should clearly indicate in value terms the goods imported or procured from Domestic Tariff Area, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in the domestic tariff area or transfer to Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Bio-technology Park Unit, as the case may be, and balance in stock:

Provided that Unit and Developer shall maintain such records for a period of seven years from the end of relevant financial year:

Provided further that the Unit engaged in both trading and manufacturing activities shall maintain separate records for trading and manufacturing activities.

Rule 34. Utilization of goods

The goods admitted into a Special Economic Zone shall be used by the Unit or the Developer only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption:

"Provided that in case a Unit is unable to utilise the goods or services imported or procured from Domestic Tariff Area, it may, -
export the goods; or sell the same to other Unit or to an Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park or Bio Technology Park, without payment of duty; or sell to an Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park or Bio Technology Park – on payment of Integrated Goods and Services Tax as applicable under section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017); and without payment of duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and additional duty, if any, leviable thereon under sub-sections (1), (3) and (5) of section 3 of the said Act and such sale shall also be made without payment of integrated tax and compensation cess leviable thereon under sub-sections (7) and (9) of section 3 of the said Act as per notification issued by the Department of Revenue and such exemptions, as applicable; dispose of the same in the Domestic Tariff Area on payment of applicable duties or taxes on the basis of an import licence submitted by the Domestic Tariff Area buyer, wherever applicable."

Relevant provisions of the Customs Act,1962: -

Section 2(11) "*customs area*" means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities

Section 2(12) "customs port" means any port appointed under clause (a) of section 7 to be a customs port and includes a place appointed under clause (aa) of that section to be an inland container depot.

Section 2(14) "dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid

Section 2(16) "entry" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes the entry made under the regulations made under section 84;

Section 2(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

Section 2(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;

As per **Section 11A** of the Customs Act, 1962 "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.

118.5 As per Ministry of Commerce & Industry (DC), Notification No. S.O.319 (E) dated 14.03.2006, the "Surat Special Economic Zone, Surat" has to be treated as "port" under Section 7 of the Customs Act, 1962. Thus, the SEZ area is to be treated as territory outside the customs territory of India and Surat SEZ to be treated as port. Thus, any local clearance from SEZ into Domestic Tariff Area is to be treated as import and Bill of Entry for Home consumption is required to be filed at Surat SEZ. Further, the unit situated in SEZ is required to carry out authorized operation in SEZ and execute a Bond-cum-Legal Undertaking with regard to its obligations regarding proper utilization and accounting of goods, including capital goods, spares, raw materials, components, and consumables including fuels, imported or procured duty free and regarding achievement of positive net foreign exchange earnings. The Surat SEZ by its nature, purpose and intent, is within the meaning of a Customs Area as defined under Section 2(11) of the Customs Act, 1962. Any attempt to remove or the removal of the goods from Surat SEZ is considered, *ipso facto*, the removal from the Customs area. The instant case involves improper /illicit removal of impugned goods from the SEZ to DTA without declaration/intimation/prior permission of the Authorized/Specified Officer and without proper accounting and payment of Customs Duty knowing very well that it is a contravention of the Customs Act, 1962, SEZ Act, 2005 and the Rules made thereunder and therefore, they completely contravened the provisions of Customs Act, 1962 and rules framed thereunder. Hence, omission and commission of the act of illicitly removing the impugned goods from the SEZ is found to be intentional with full knowledge of the noticees in blatant violation of the relevant laws and is not found to be a technical breach or procedural lapse. Hence the ration of the case laws cited are not found to be relevant to the instant case.

118.6 I have gone through the Section 53 of the SEZ Act, 2005 and Notification No.S.O. 319(E) dated 14.3.2006 of Ministry of Commerce and Industry wherein Surat Special Economic Zone is appointed as a "Customs

Port" under Section 7 of the Customs Act, 1962. Further as per section 30 of the SEZ Act, 2005, any goods removed from a Special Economic Zone to Domestic Tariff Area shall be chargeable to duties of Customs under Customs Tariff Act, 1975 as leviable on such goods when imported. Further, the conditions of Letter of Approval strictly denied the sale of goods in DTA.

118.7 I further find that Hon'ble Supreme Court in the case of Om Prakash Bhatia in a very clear terms lay down the principle that if the importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfilment of such conditions would make the goods fall within the ambit of prohibited goods. The Hon'ble High Court of Gujrat in the case of **Bhargavraj Ramesh Kumar Mehta Versus Union of India -2018(361) ELT 260 (Guj.)** observed that any goods, import/export of which subjected to prohibition under Customs Act or any other law for the time being in force, but does not include any goods in respect of which export/import conditions complied with - It is implied that goods in respect of which import/export conditions not complied with, would also fall within definition of prohibited goods.

118.8 Section 105 of the Customs Act, 1962 has given the powers to the Customs Authorities to search premises. Section 105(1) of the Customs Act provides that if the Assistant Commissioner of Customs or Deputy Commissioner of Customs, or in any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any document or things which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorize any officer of customs to search or may himself search for such goods, documents or things. In the case of **RS Seth Gopikisan Agarwal Versus RN Sen, Assistant Collector of Customs and Central Excise, Raipur & Others – 1967 (1) TMI 39 – Supreme Court**, Hon'ble Supreme Court interpreted Section 105 of the Customs Act. The Supreme Court observed that the object of **Section 105 is to make search for the goods liable to be confiscated or the documents secreted in any place which are relevant to any proceeding under the Act. The legislative policy reflected in this section is that the search must be in regard to the two categories mentioned - goods liable to be confiscated and documents relevant to the proceedings under the Act.**

118.9 The various judiciary forms have relied upon Section 105 of the Customs Act as conferring extensive powers to Customs Officers in relation to the search of premises. This provision has been considered in the past by the judicial forums to cull out its contours. As early as in 1965, the Hon'ble Supreme Court in Durga Prasad case highlighted the scheme of Section 105 to declare that the "object of grant of power under Section 105 is not search for a particular document but of documents or things which may be useful or necessary for proceedings either pending or contemplated" under the Customs law. The Hon'ble Supreme Court in this case further opined that it during the stage of such investigation "it is not possible for the officer to predict or even to known in advance what documents could be found in the search and which of them may be useful or necessary for the proceedings" and accordingly the purpose of Section 105 cannot be frustrated by imposing such limitations. Thereafter in the 1967, the Supreme Court

in Gopikisen case further endorsed that neither there is a requirement for the customs officer to state the specific reasons leading to the investigation nor the particulars and the nature of goods or the documents need be set out. The purpose of highlighting this aspect is that, given the very nature of investigations and the stage at which Section 105 power is exercised, it is evident that it is based on tentative premise and intelligence which may be available to the customs officer.

118.10 From the facts of the present case, I pointed out specifically detailed circumstance which has constrained the authority to initiate action against the Noticees and relevant narration has been made with regard to factual background of the present case in the impugned Show Cause Notice that authority has acted well within the scope of law. To substantiate this, I referred above the relevant provisions of SEZ Act, 2005 as well as Customs Act, 1962 and also notifications issued by the Central Government and thereby observe that it is absolutely within the domain of Customs Authority to proceed against the Noticees when such a racket was unearthed in investigation that a gang was formed, which adopted a novel modus operandi under which several bogus / fake companies / firms were created and several bank accounts were opened to fraudulently evade the Customs Duty. A bare reading of provisions contained under Section 22 of SEZ Act, 2005 would clearly indicate that **any officer or agency who is authorized by Central Government may carry out search and seizure, investigation or inspection in any Special Economic Zone or unit as the case may be,** without even prior intimation or approval of Development officer and to further strengthen I referred above the provisions of Customs Act which also deals with authorization of officers of Customs as proper officer in certain circumstances and thereby by referring the said two provisions, I find that the authorities are empowered to carry out proceedings in SEZ since Central Government has already authorized the officers vide the said referred notification dated 5.8.2016. Thus, the Noticees are under erroneous belief and thereby completely wrongly pleaded that once business of them are carried out through SEZ, the Customs Authority cannot initiate any proceedings. If this meaning which is tried to be canvassed by the Noticees is introduced, then very purpose of the Act or provision would be defeated and same would give license to SEZ unit or to keep themselves away from the rigors of the provisions. Hence, in the absence of any apparent inconsistency between SEZ Act, 2005 and Customs Act, 1962 no case is made out by the Noticees and here in the instant case, before initiating action, Development Commissioner, SEZ had been duly intimated before search and seizure by departmental officers while carrying out process under the provision of Customs Act, 2017.

118.11 I would also like to point out another prime facts referring the Panchnama dated 25-05-2022 drawn at both the DTA units of M/s. Europea Makeour Jewel Pvt. Ltd. having their registered business place at Unit 410, 2nd Floor, Poddar Plaza, Ghod Dod Road, Surat and M/s. Maahi Jewellery Exim Private Limited having their registered business places at office No. 104, RT Apartment Co-op. Housing Society, Dalgiya Street, Mahidharpura, Surat. During the search proceedings by the jurisdictional officers of Customs, Surat, both the DTA units were found non-existent / non-functional at the said declared registered premises. However, as per GST records, M/s. Europea (DTA Unit) (non SEZ unit) has made purchase and sale of Rs. 1844.67 Crore and Rs. 1213.47 Crore, respectively. Similarly, M/s. Maahi

(DTA Unit) (non SEZ unit) has made purchase and sale of Rs. 1060.03 & Rs. 901.03 Crore respectively, since their inception. Thus, the said facts as well as the relied upon documents recovered from the premises of SEZ units clearly stipulates that the the said two DTA units were fake and the modus was operated under the guise of DTA unit from the SEZ unit only and thereby also, the customs authority had correctly carried out the searches under the provisions of Customs Act on the reasonable belief that the said SEZ units had secreted documents for which the investigations were carried out by the office of the Customs (Preventive), Jodhpur and thereby acted well within the scope of the jurisdictional powers.

118.12 I find that vide Notification S.O. 2665 (E) dated 05.08.2016, issued under sub-section (1) of section 21 of the Special Economic Zones Act, 2005, the Central Government has notified the offences contained in the under-mentioned sections of the Customs Act, 1962 as offences under the SEZ Act. Further, as per Section 53(2) of the SEZ Act, 2005, a Special Economic Zone is deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under Section 7 of the Customs Act, 1962. I further find that vide Notification S.O. 2667 (E) dated 05.08.2016, issued under section 22 of the Special Economic Zones Act, 2005, the Central Government authorised the jurisdictional Customs Commissioner, in respect of offences under the Customs Act, 1962 (52 of 1962) and Commissioner of Central Excise in respect of offences under the Central Excise Act, 1944 (1 of 1944) and the Finance Act, 1994 (32 of 1994) and notified under the Act, for the reasons to be recorded in writing, to carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to the Development Commissioner, concerned. Bare reading of the wordings of the said notification indicates that customs officers are authorized to carry out search, inspection, investigation etc. under this notification and therefore, invocation of the respective section of the Customs Act, 1962 automatically becomes inevitable. The reasons to believe existed in this case at the time of initiation of action has been clearly established with the outcome of the investigation and do not require to establish any more. After recording of the reasons in writing, the Commissioner of Customs (Preventive) Jodhpur, Hq at Jaipur vide letter dated 20.05.2022 had requested to Customs Commissionerate, Ahmedabad to conduct follow up searches against the firms and individuals falling under jurisdiction of Customs Ahmedabad. Accordingly, after prior intimation to the Development Commissioner, Surat SEZ, vide letter dated 24.05.2022, issued by the Customs, SIIB, Surat, searches at the premises of both the above SEZ units were conducted by the officers of Customs Ahmedabad. i.e. the jurisdictional Customs Commissionerate. Therefore, I find that the searches at the premises of the above SEZ units were conducted in compliance with the provisions of law and thus, the arguments of the noticees are devoid of merits. I further find that procedural thing, in a quasi-judiciary proceedings, cannot defeat the motive and intention of authorisation. The action taken in this case has been a reasoned act which has been proved as discussed herein above. The Hon'ble High Court of Allahabad in the case of Ahmad Ullah-WRIT- C No. - 25502 of 2019, Citation: 2019:AHC:161006-DB, has emphasised on reasoned order rather than procedural by observing that:

"26. Our procedural law and the established practice, in fact, imposes unqualified obligation upon the Courts to record reasons. There is hardly any statutory provision under the Income Tax Act or under the

Constitution itself requiring recording of reasons in the judgments but it is no more res integra and stands unequivocally settled by different judgments of this Court holding that, the courts and tribunals are required to pass reasoned judgments/orders....."

118.13 I find that in the backdrops of the case as detailed in the SCN and discussed hereinabove in the foregoing paras, diversion of imported diamond and precious stone emerged during the course of investigation and during the course of investigation the source of diversion was reached by way of search, seizure by the jurisdictional customs officer, as emerged from search and seizure panchnamas in respect of premises of M/s. Europea Makeour Jewel Pvt. (SEZ Unit) and M/s. Maahi Jewellery Exim Private Limited (SEZ Unit). I find that all the searches which were conducted at SEZ Surat, were conducted in pursuance of the Search Warrants issued under Customs Act, 1962 by the Jurisdictional Customs Commissionerate and of the due intimation to the jurisdictional SEZ Development Commissioner. The SEZ Authority has never opposed the action on the above SEZ units and the quantification of duty evasion could arrive based on the positive communications from the SEZ Authorities. Name of the above two SEZ Units emerged during the course of already going on investigation initiated by the Customs (Prev.) Jodhpur within their jurisdiction and in such situation, presence of officers of concerned Customs Commissionerate in the searches and seizures alongwith the jurisdictional officers is inevitably required to resume the details and documents relating to the ongoing investigation and to windup the search operation on a positive note. I further find that in relation to a case, booked and being investigated by any Customs Commissionerate, there is no bar under the provisions of Customs Act, 1962 or SEZ Act for carrying out follow-up searches / investigation against persons/entities (who are in any manner connected with the case) located outside the jurisdictional boundary of that Commissionerate. Thus, I find the action of Customs (preventive) Jodhpur Hq at Jaipur within the four corners of law.

118.14 I find that as per the relevant provisions of SEZ Act, 2005 as well as Customs Act, 1962 and also notifications issued by the Central Government the searches, seizure and investigation conducted against M/s. Europea Makeour Jewel Pvt. (SEZ Unit) and M/s. Maahi Jewellery Exim Private Limited (SEZ Unit) is absolutely within the domain of Customs authority in the factual background of the case. Though, in this case, prior intimation was given to the Development Commissioner, SEZ, Sachin vide letter dated 24.05.2022, bare reading of provisions contained under Section 22 of SEZ Act, 2005 would clearly indicate that any officer or agency who is authorized by Central Government may carry out search and seizure, investigation or inspection in any Special Economic Zone or unit as the case may be, without even prior intimation or approval of Development officer. In the view of the above, I find that the Customs authorities are empowered to carry out proceedings in SEZ since Central Government has already authorized the officers vide notification No. S.O. 2667 (E) dated 05.08.2016, issued under section 22 of the Special Economic Zones Act, 2005, and thus, the Customs Officers had acted well within the ambit of law in the present case in hand. Reliance is placed on the follonig judgemnts;

118.14.1 In the case of M/s. **RHC Global Exports Pvt. Ltd. Versus Union Of India**, reported at **2023 (74) G.S.T.L. 385 (Guj.)**, Hon'ble

High Court of Gujarat has observed that reading of provisions of Section 22 of the SEZ Act would suggest that any officer or agency who is authorized by Central Government may carry out search or seizure or investigation or inspection in the special economic zone or units situated therein and it also suggests that authorized officer of Central Government is empowered to carryout such process without any prior approval or intimation and held that:

"17. Now, for this purpose, we may refer to Section 22 of the SEZ Act which deals with investigation, inspection or search or seizure, same reads as under :-

"22. Investigation, inspection and search or seizure. - The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone :

Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or sub-section of section 21 without prior approval of the Development Commissioner concerned.

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner."

Reading of the aforesaid provisions would suggest that any officer or agency who is authorized by Central Government may carry out search or seizure or investigation or inspection in the special economic zone or units situated therein and it also suggests that authorized officer of Central Government is empowered to carry out such process without any prior approval or intimation. So, moment authorization is reflecting, such measure can be undertaken against special economic zone or unit.....

21. At this stage, out of few decisions which are tried to be relied upon by learned Government Pleader, we may observe from one of the decisions in the case of *Essar Steel Limited (supra)* issued by the Coordinate Bench of this Court, wherein provisions of SEZ Act are analyzed to some extent, of-course in background of said facts, but to our conclusion, few observations contained in paragraphs 41.3.2, 41.3.3 and 41.3.4 are of assistance and as such, we quote the same hereunder :—

41.3.2 The movement of goods from the Domestic Tariff Area to the Special Economic Zone has been treated as export by a legal fiction created under the SEZ Act, 2005. A legal fiction is to be restricted to the statute which creates it. Reference is made to the decisions of the Apex Court in the case of *State of West Bengal v. Sadan K. Bormal and another*, (2004) 6 SCC 59, *Meghraj Biscuits*

Industries Limited v. Commissioner of Central Excise U.P., (2007) 3 SCC 780, Moriroku UT India (P.) Limited v. State of Uttar Pradesh and others, (2008) 4 SCC 548. Moreover, such legal fiction should be confined to the purpose for which it has been created. Reference is made to the decisions of the Apex Court in the case of State of Karnataka v. K. Gopalakrishna Shenoy and another, (1987) 3 SCC 655; Mancheri Puthusseri Ahmed and others v. Kuthiravattam Estate Receiver, (1996) 6 SCC 185. As stated above, such movement has been treated as export under the SEZ Act 2005 for the purpose of making available benefits as in the case of actual exports like duty drawback, DEPB benefits, etc. to the Special Economic Zone Unit/ Developer or the Domestic Tariff Area supplier at their option. Construing this movement of goods as entailing a liability of payment of duty runs absolutely counter to the purpose of the legal fiction created under the SEZ Act, 2005.

41.3.3 Section 51 of the SEZ Act, 2005 providing that the Act would have overriding effect does not justify adoption of a different definition in the Act for the purposes of another statute. A non-obstante clause only enables the provisions of the Act containing it to prevail over the provisions of another enactment in case of any conflict in the operation of the Act containing the non-obstante clause. In other words, if the provision/s of both the enactments apply in a given case and there is a conflict, the provisions of the Act containing the non-obstante clause would ordinarily prevail. In the present case, the movement of goods from the Domestic Tariff Area into the Special Economic Zone is treated as an export under the SEZ Act, 2005, which does not contain any provision for levy of export duty on the same. On the other hand, export duty is levied under the Customs Act, 1962 on export of goods from India to a place outside India and the said Act does not contemplate levy of duty on movement of goods from the Domestic Tariff Area to the Special Economic Zone. Therefore, there is no conflict in applying the respective definitions of export in the two enactments for the purposes of both the Acts and therefore, the non-obstante clause cannot be applied or invoked at all.

41.3.4 Similarly, reliance on section 53 of the SEZ Act, 2005 to contend that a Special Economic Zone is a territory outside India, is misconceived. Section 53 provides that the Zone would be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations. The term 'customs territory' cannot be equated to the territory of India and in fact, such term has been defined in the General Agreement of Tariffs & Trade, to which India is a signatory, to mean an area subject to common tariff and regulations of commerce and that there could be more than one customs territory in a country. Moreover such an interpretation would lead to a situation where a Special Economic Zone would not be subject to any laws whatsoever. The entire SEZ Act, 2005 would be rendered redundant since it is stated to extend the whole of India. In any case, various provisions of the SEZ Act would be rendered

redundant and unworkable if the Special Economic Zone was to be considered an area outside India. This is apart from the fact that such a declaration would be constitutionally impermissible.

So from aforesaid discussion and perusal of provisions, as indicated above, we are satisfied that respondent Nos. 4, 5 and 6 authorities are acting not beyond their authorities and facts are such in which we are of the considered opinion that this is not a fit case in which we may exercise our extraordinary jurisdiction, which is equitable in nature, and as such, petition being merit less, deserves to be dismissed.

22. *Since facts in other two petitions connected with lead matter are also similar and for that, no separate arguments were canvassed and submissions of both the sides have been made in the lead petition, present order would govern the connected Special Civil Applications as well.*

23. *In fact, we find that this is an attempt on the part of petitioners by filing these kinds of petitions to thwart and belay the legal proceedings which are initiated by respondent authorities and as such this move of petitioners appears to be an abuse of process of law looking to the manner in which the irregularities alleged to have been committed. Such attempt on the part of petitioners deserves to be dealt with firmly so that litigants may not take disadvantage of situation by bringing such kind of litigation. Record has indicated that after issuance of notice, petitioners appear to have started not cooperating and have indicated to wait for orders from the Court. This conduct on the part of petitioners is not appreciable and as such we find it proper to impose costs upon the petitioners to have adopted such course of action.*

24. *At this stage, we remind ourselves to one of the salutary observations which have been made by Hon'ble Apex Court in paragraphs 13 and 14 in the case of Dnyandeo Sabaji Naik v. Pradnya Prakash Khadekar reported in (2017) 5 SCC 496, which read as under:*

"13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth.

14. Courts across the legal system - this Court not being an exception - are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed

in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behaviour. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner."

25. *Thus, in view of the aforesaid peculiar background of facts and in view of the overall circumstances prevailing on record, we deem it proper to dismiss the petitions with costs of Rs. 10,000/- (Rupees Ten Thousand only) for each petition to be paid to Gujarat State Legal Service Authority within TEN DAYS from today.*

26. *Accordingly, petitions stand DISMISSED with aforesaid amount of costs and it is clarified that non-payment of such costs would be recoverable as arrears of land revenue. Notices stand discharged. Interim relief, if any, stands vacated forthwith."*

118.14.2 Thus, I find that in the aforesaid very important verdict, Hon'ble High Court of Gujrat has observed mainly following;

• **Powers of authorised officers under SEZ Act:**

The HC noted that as per Section 22 of the SEZ Act, 2005, any officer or agency authorised by the CG has the authority to carry

out search, seizure, investigation, or inspection within any SEZ unit, without any prior intimation or approval from the development officer.

- **Powers of authorised officer under GST Act:**

The HC stated that as per Section 6 of the GGST Act, the officers authorised by the CG are empowered to carry out proceedings in a SEZ. Accordingly, it cannot be said that the officers were acting without the authority of law or jurisdiction.

- **SEZ units are not exempt from investigation:**

The HC stated that as per Section 7 of the Integrated Goods and Services Tax (IGST) Act, 2017, the supply of goods and/or services to and from a SEZ unit should be treated as inter-state supply under GST. Therefore, the petitioner believes incorrectly that once a business is conducted through and within a SEZ, it is outside the jurisdiction of the authority of officers. According to the HC, accepting the assessee's contention would defeat the purpose of the Act, and apart from this, there appears to be no visible inconsistency in the SEZ Act or GST Act. Hence, SEZ units are not exempted from any investigation or inspection under GST.

- **Extraordinary equitable jurisdiction cannot be exercised:**

The HC did not find the present case relevant to allow the petitioner to invoke extraordinary jurisdiction. In this regard, the HC referred to the Essar Steel Limited judgement, wherein the provisions of the SEZ Act are analysed to some extent. Accordingly, the HC held that the petition deserves to be dismissed.

- **Disadvantage by petitioner leads to imposing cost:**

The HC noted that by filing a writ petition, the petitioner intended to impede and delay the legal proceedings, which appears to be an abuse of the legal process. The HC further stated that following the issuance of the notice, the petitioner did not cooperate with the officers, which is unacceptable. As a result, the HC decided to impose costs on the petitioner.

118.14.3 In the case of **Union of India Versus Oswal Agricom Pvt. Ltd.**, as reported at **2010(7) TMI 712 – Gujarat High Court**, Hon'ble Gujarat High Court has observed that **the competent authorities under the Customs Act are still empowered to confiscate any goods under Sections 111 and 112 and impose penalty under Sections 113 and 114, in appropriate case, even with regard to the units situated within the Special Economic Zone** and held that:

Whether the customs authorities have jurisdiction to issue any notice or to take any penal under Section 111, Section 113 and Section 114 read with Section 124 of the Customs Act, 1962 against any unit situated within the Special Economic Zone - notified that Section 53 being limited to that extent of 'authorized officer', who was earlier empowered to perform certain jobs under Chapter XA, the power of the Customs authorities under the Customs Act, including the power to confiscate and impose penalty under Sections 111 to 114, as enumerated in Chapter XIV of the Customs Act, is not taken away - Thus, we hold that the competent authorities under the Customs Act are still empowered

to confiscate any goods under Sections 111 and 112 and impose penalty under Sections 113 and 114, in appropriate case, even with regard to the units situated within the Special Economic Zone.

118.14.4 Further, in the case of **Shri Jatin Arora Versus C.C, New Delhi**, as reported at **2017(11) TMI 1119- CESTAT, New Delhi**, Hon'ble Tribunal has observed that the Customs Authorities had the jurisdiction to adjudicate cases originating within a SEZ even for the period prior to the amendment in the SEZ Rules and held that:

SEZ unit - penalties - jurisdiction of customs authorities - Held that: - Customs Authorities had the jurisdiction to adjudicate cases originating within a SEZ even for the period prior to the amendment in the SEZ Rules. To this extent the impugned order cannot be held to be passed without jurisdiction.

Whether penalty can be imposed on Sh. Jatin Arora, partner in as much as penalty has already been imposed on the a SEZ unit? - Held that: - The investigation further established that Sh. Jatin Arora, partner, was the main person who was instrumental in planning and carrying out the systematic diversion of duty-free imported good - the impugned order has clearly brought out the fact that Sh. Jatin Arora, partner, has indulged in acts of commission leading to evasion of customs duty by M/s Global Partners (India) - for the acts of omission and commission on the part of Sh. Jatin Arora leading to the evasion of customs duty by M/s Global Partners (India), he will be liable for penalty both under section 114 A as well as section 114AA - penalty upheld.

118.14.5 Further, in the case of **Shri Chetan Mayach and M/s. Tarkesh Art Jewellery Veruss Commissioner of Customs, Jaipur**, as reported at **2020(7) TMI 654 – CESTAT, New Delhi**, Hon'ble Tribunal has held that:

Clandestine Removal - Absolute Confiscation - Silver - Gold - shortage of goods - notification no.GO 2665 (E) in the Gazette - contravention of the provisions of SEZ Act, 2005 read with the provisions of Customs Act, 1962 - demand based on statement of various persons - corroboration of statements - HELD THAT:- Prior to 9.8.2016 when vide notification no.GO 2665 (E) in the Gazette, the Government in exercise of the powers under sub-section (1) of Section 21 of the SEZ Act, notified the offences contained in Sections 111, 113 and 115 etc of the Customs Act, 1962, as offence under the SEZ Act. Thus, prior to 9.8.2016, Section 111 of the Customs Act is not attracted, when admittedly, the incidence of seizure and inspection was on 3/4th August, 2016.

However, in the cotext of the present case, the said judgment of Hon'ble Tribunal can be interpreted, in pursuance to notification no.GO 2665 (E) in the Gazette - contravention of the provisions of SEZ Act, 2005 read with the provisions of Customs Act, 1962, that since the search was carried out on 25-05-2022 - demand based on statement of various persons - corroboration of statements is already made after 09.8.2016 when vide Notification No. GO 2665 (E) in the Gazette, the Government in exercise of the powers under sub-section (1) of Section 21 of the SEZ Act, notified the offences contained in Sections 111, 113 and 115 etc of the Customs Act, 1962, as offence under the SEZ Act

and therefore, Section 111 of the Customs Act is attracted. Notification Nos. 2665(E) and 2667(E) dated 05.08.2016 reads as under;

- i. *In exercise of the powers conferred by section 22 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government by Notification No. 2667(E) dated 05.08.2016 issued by the Ministry of Commerce & Industry, has authorized the jurisdictional Customs Commissioner, in respect of offences under the Customs Act, 1962 (52 of 1962) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to the Development Commissioner, concerned. Under Section 21(1) of the SEZ Act, 2005, the Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.*
- ii. *The Central Government, by the Notification 2665(E) dated 05.08.2016 has notified offences contained in Sections 28, 28AA, 28AAA, 74, 75, 111, 113, 115, 124, 135 and 104 of the Customs Act, 1962 (52 of 1962) as offences under the SEZ Act, 2005.*

118.14.6 It is also important to note the judgment of the Hon'ble High Court of Delhi in the case of **Indo International Tobacco Ltd. Versus Additional Director General, DGGI** reported at **2022 (67) G.S.T.L. 403 (Del.)**, wherein the Hon'ble High Court has observed as under:

"75. *We are not agreeable to such an argument without limitation. In the course of investigating of a tax entity, a situation may arise where the investigation may have to be carried out from entities which are not within the territorial jurisdiction of the Officer appointed under the Notification dated 19-6-2017 and/or such State Notifications appointing an Officer with the limited territorial jurisdiction. It cannot be said that in every such case, the 'proper officer' having limited territorial jurisdiction must transfer the investigation to the 'proper officer' having pan India jurisdiction. In our opinion, it would depend on the facts of each case as to whether such transfer is warranted or not. To lay down the indefeatable rule in this regard may not be feasible or advisable, and certainly not acceptable."*

118.15 I find that the noticees have raised issue of jurisdiction contesting that the investigation was carried out outside the jurisdiction by the officers of Customs, Jaipur and therefore, issuance of SCN is not proper. I find no merit in such contention of the noticees in light of Section 110AA of Customs Act, 1962. Section 110AA of the Customs Act, 1962 reads as under:

Section 110AA. Action subsequent to inquiry, investigation or audit or any other specified purpose

Where in pursuance of any proceeding, in accordance with Chapter XIIA or this Chapter, if an officer of customs has reasons to believe that

- (a) any duty has been short-levied, not levied, short-paid or not paid in a case where assessment has already been made;*
- (b) any duty has been erroneously refunded;*
- (c) any drawback has been erroneously allowed; or*
- (d) any interest has been short-levied, not levied, short-paid or not paid, or erroneously refunded,*

then such officer of customs shall, after causing inquiry, investigation, or as the case may be, audit, transfer the relevant documents, along with a report in writing'

(i) to the proper officer having jurisdiction, as assigned under section 5 in respect of assessment of such duty, or to the officer who allowed such refund or drawback; or

(ii) in case of multiple jurisdictions, to an officer of customs to whom such matter is assigned by the Board, in exercise of the powers conferred under section 5,

and thereupon, power exercisable under sections 28, 28AAA or Chapter X, shall be exercised by such proper officer or by an officer to whom the proper officer is subordinate in accordance with sub-section (2) of section 5.]

118.16 It is clear from the provisions of the Section 110AA of the Customs Act, 1962 that where any duty has been short-levied, not levied, short-paid or not paid in a case where assessment has already been made, then such officer of customs shall, after causing inquiry, investigation, transfer the relevant documents along with report in writing to the proper officer having jurisdiction, as assigned under Section 5 in respect of assessment of such duty or to the officer. Thus, in the instant case goods were alleged to have been imported and assessed at SEZ, Surat. Therefore, proper authority would be Customs Commissionerate having jurisdiction over SEZ, Surat, where the goods were allegedly imported and assessed. As the SEZ, Surat falls under the jurisdiction of Customs Commissionerate, Ahmadabad, thus the proper authority to issue SCN would be the jurisdictional officer of Customs Commissionerate, Ahmedabad. Accordingly, I find that the contention of the noticees is not tenable.

118.17 The Customs Act, 1962 empowers the officers of the Customs by terming them as 'Proper Officers', duly appointed by the Central Board of Indirect Taxes and Customs to exercise the powers entrusted to them under the Act and to discharge the duties and functions conferred or imposed upon them under the Act. The Act was enacted and subsequently amended by various Acts for the objects and reasons stated therein, depending on the change in the scenario and the contingencies which demanded such amendments time and again. One of the main amendments which came to be introduced in the context of defining the expression 'proper officer', happened in the year 2011 by way of the Amendment Act 14 of 2011 and thereafter in 2019, by the corresponding Amending Act. The Act in sub-section (34) of Section 2 defines 'proper officer'. The said definition is reproduced herein below for ready reference:-

" 'proper officer', in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs;"

In the present case, all the procedures in terms of the provisions of Customs Act/ SEZ Act, 2005 were followed. There was no violation of any of the constitutional provisions. There is no discrimination at all. The investigation was carried out by the officers of Customs, Jaipur and the statements were recorded under Section 108 of the Act. There is no dispute about the fact that the object of recording the statement under Section 108 of the Act was to collect information in relation to the contravention of the provisions of the Act. These proceedings are judicial proceedings and the inquiry contemplated therein is only for the purpose of preventing the contravention or detection of offences and the legislative intention behind it is to safeguard the revenue. It is also to be seen that it is not a solitary case of the Noticees that they have been investigated by the Customs officers of Jaipur to give their evidences. All the companies and the persons involved in the scam were summoned by the said authority to give their evidence and their confessional statements were recorded under Section 108 of the Customs Act. It is also relevant consideration to decide the issue that there is serious allegation against the Noticees to the effect that they are consciously involved in the diversion of the duty free imported goods and the cogent evidences against the Noticee clearly lead the investigation that they were involved in huge evasion of Customs Duty. It is, therefore, not feasible for the Customs to carry all the records to each and every place to record the evidences of various persons involved in the investigation. Thus, now to challenge the investigation only on the jurisdictional grounds is devoid of any merits.

The fact that the Noticees had chosen to appear itself on the basis of cogent evidences against them is indicative of the intention of the Noticee that they had accepted the ongoing investigation process and procedure without any jurisdictional issue. It cannot be even expected that the department should adopt a system or practice of going to different places for the purposes of recording the statements of the persons under Section 108 of the Act during the course of investigation especially when the accused are functioning their *modus operandi* to evade the government revenue under different jurisdictional areas. For all these reasons, I am of the clear view that the authority had correctly investigated the Noticees and rightly collected the cogent evidences against the Noticee under the provisions of Customs Act and thereby, the jurisdictional arguments of the Noticees are not tenable.

118.18 I also find that if interpretation as canvassed by the Noticees to the effect that Special Economic Zone shall be deemed to be a territory outside the custom territory of India and to be considered an area outside India, such interpretation would lead to a situation where specific economic zone would not be subjected to any laws whatsoever and object of SEZ Act 2005 would be frustrated and therefore there is hardly any justification for the Noticees to contend that there is no scope with the Customs Authorities to proceed ahead against petitioners in any form.

118.19 Additionally, I also hold that apart from this hyper technicality of lack of authority which is not sustainable, even facts on hand are revealing certain shocking figures of the irregularities which have taken place at the behest of Noticees and for that purpose the charges framed and the investigation carried out as discussed in detail in the Show Cause Notice are clearly indicate that as to in what manner, the Noticees have tried to indulge in activity and just by contending hyper-technicality tried to shield such activity which is impermissible and as such apart from the point of jurisdiction which is otherwise not available to the Noticees, facts are of such nature, which require the Noticees rather to desist from invoking

extraordinary equitable jurisdiction, hence contended that petition being merit-less deserves to be dismissed.

Accordingly, I find that the contention of the noticees is devoid of merits.

118.20 I further find that the noticees had also contested that the SCN has been issued without jurisdiction, as the SCN has not been issued by the proper officer. The Noticee have submitted various case laws in support of their assertion. The noticee has relied on the decision of Hon'ble Supreme Court in the matter of M/s. Canon India Private Limited V/s. Commissioner of Customs (Civil Appeal No. 1827 of 2018) and few other orders of High Courts based on the above order of Hon'ble Supreme Court, wherein it was held that the DRI officers were not the 'Proper Officers' hence, are not eligible to issue SCN under section 28 of the Customs Act, 1962. The noticees has submitted that the legislature has affirmed the findings of the Hon'ble Supreme Court in the case of Canon India and has accordingly inserted section 110AA of the Act, clarifying that officer of Customs after carrying out investigation in the cases specified therein, will have to transfer the proceeding to the proper officer who have been assigned assessment under section 5 of the Act; Commissioner is not the officer who could had assessed the bills of entry in light of Canon India. Hence, the Show Cause Notice is without jurisdiction and the same deserves to be dropped. It is a settled legal proposition that when action on the basis of which the primary proceeding stands vitiated, all subsequent and consequential proceeding would fall.

118.21 I have gone through the submissions of the noticees and also gone through the judgment of the Hon'ble Supreme Court, relied by the noticees and find that the order of the Hon'ble Supreme Court in the matter of M/s. Canon India Private Limited V/s. Commissioner of Customs (Civil Appeal No. 1827 of 2018) pertains to the issue of DRI officers being proper officer or not, under the Customs Act, 1962. It was held vide the above order that the DRI officers were not the 'Proper Officers' hence, are not eligible to issue SCN under section 28 of the Customs Act, 1962.

118.22 I find that the issue dealt with by the Hon'ble Supreme Court in the above case of M/s. Canon India Private Limited pertains to the issue of DRI officers being proper officer or not, under the Customs Act, 1962, whereas in the present case in hand, SCN has been issued by the Commissioner of Customs, Ahmedabad who is the proper officer under the Customs Act, 1962 to issue Show Cause Notice in the instant case. Hence, taking shelter of the judgment of the Hon'ble Supreme Court in the case of M/s. Canon India Private Limited, supra, is not helping them in the present case.

118.23 Against the arguments, I also refer the provisions of Section 28(11) of the Customs Act, 1962, as amended w.e.f. 16-09-2011, which stipulates as under;

"(11) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the 6th day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section."

Accordingly, as per the amended Section 28 of the Customs Act, 1962, Show Cause Notices issued prior to 6-7-2011 by officers of Customs, which

would include officers of Commissionerates of Customs (Preventive), Directorate General of Revenue Intelligence (DRI), Directorate General of Central Excise Intelligence and similarly placed officers stand validated since these officers are retrospectively recognized as 'proper officers' for the purpose of Sections 17 and 28 of the said Act.

118.24 The Show Cause Notice has been prescribed to be issued by the officer competent to adjudicate the Show Cause Notice. The Central Board of Indirect Taxes and Customs, by issuing Circulars/instruction has prescribed monetary limits, normally in terms of amount of duty involved, for different adjudicating authorities. The Board, Vide Circular No. 23/2009-Customs, dated 1.9.2009 as amended vide Circular No. 24/2011-Customs, dated 31/5/2011 reviewed the monetary limits prescribed for adjudication of cases and decided that henceforth, cases where SCNs are issued under section 28 of the Customs Act, 1962, these will be adjudicated as per following norms:

Level of Adjudication officer	Nature of cases	Amount of duty involved
Customs Commissioner	All cases	Without limit
ADC/JC	All cases	Upto Rs. 50 lakhs
AC/DC	All cases	Upto Rs. 5 lakhs

118.25 In light of the above it is evident the Pr. Commissioner/Commissioner of Customs is the proper officer for issuance of SCN in the instant case and SCN has rightly been issued by the Commissioner of Customs, Ahmedabad (jurisdictional Customs Commissioner). Hence, I find the contention of the noticees that the SCN has not been issued by the proper officer is baseless.

118.26 Therefore, legality of investigation and issuance of the SCN in hand is not in contravention of any provision of law and sustainability of the SCN is not questionable in the facts and circumstances of the case. The Hon'ble Supreme Court of India in the case of **Special Director Versus Mohd. Ghulam Ghouse** reported at **2004 (164) E.L.T. 141 (S.C.)**, has also given its judgment observing that:

"5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court....."

Cross Examination of witnesses, co-noticees, valuer and officers who have recorded the statements: Whether the cross examination of co-noticees/witnesses/valuer/officers warranted and the principle of natural justice is complied with in the case:

119.1 I find that the following noticees in their preliminary reply to SCN and *inter-alia* stated to allow cross examination of witnesses and co-noticees and Customs Officers who have recorded the statements:

M/s.Europea Makeour Jewel Pvt. Limited (Noticee No.1 to SCN dated 23.05.2023)	Shri Suresh Ratanlal Jagetia Director of M/s.Europea Makeour Jewel Pvt. Limited (notice No.3 to SCN dated 23.05.2023)
Shri Navratan Singh Jain, (Noticee No.5 to SCN dated 23.05.2023)	Shri Om Prakash Vanjani, Director of M/s. Belstar Techno Solutions (OPC) Bank Pvt. Ltd, (noticee No.06 to SCN dated 23.05.2023):
Shri Vikram Singh Kachchawa, (noticee No.07 to SCN dated 23.05.2023)	Shri Kamlesh Nagda, (Noticee No.09 to SCN dated 23.05.2023)
Shri Deepak Kumar, (Noticee No.10 to SCN dated 23.05.2023)	Shri Vimal Nahar, (Noticee No.11 to SCN dated 23.05.2023)
M/s.Kavish Gems, (Noticee No.1 to Supplementary SCN dated 24.04.2024)	M/s.Gehna Trading (Noticee No.4 to the Supplementary SCN

Shri Surendra Mali alias Shankar Mali, (Noticee No.13) and Shri Rajendra Jangid, (Noticee No.14), had mentioned in their respective submissions that the statements are required to be examined by a court as per Section 138 of the Customs Act,1962. I find that these noticees did not honour the summons issued under the provisions of the Section 108 of the Customs Act,1962 and did not appear before the investigation to depose their stand.

119.2 I find that the noticees have advanced the arguments that statements recorded under Section 108 of the Customs Act,1962 are subject to Section 138B and insisted upon that examination / cross examination of all witnesses referred in Annexure-C to SCN and other statements referred in the SCN, as provided under sub-section (2) of Section 138 of the Customs Act, 1962, as the entire case is based merely on statements recorded under Section 108 of the Customs Act,1962. I further find that the Noticee No.03, Noticee No.05 had also made request for cross examination of customs officers who have recorded the statements. I find the provisions of Section 138B as under:

"Section 138B. Relevancy of statements under certain circumstances

(1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,-

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an

amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court."

119.3 On perusal of Section 138B of the Customs Act, 1962, I find that Section 138B(2) of the Act Ibid, has used the word "*shall so far as may be*" which suggest that as far as possible, examination /cross examination may be permitted by adjudicating authority, however, it is explicit that it is not a mandatory provision. The civil proceedings is distinguished from criminal proceedings from degree of evidence as former proceeds on preponderance of probability and later on standard degree of evidence, so in strict sense applicability of Section 138B(2) is found not plausible in all cases in quasi judiciary proceedings. This interpretation of the Act has also been supported with plethora of judicial pronouncement including the judgment of the Hon'ble Calcutta High Court in the case of **Commissioner Versus M/s. Ashirwad Foundries Private Limited and Anothers**, reported at **2022(12) LCX0059**, wherein the Hon'ble High Court has observed that:

"9..... The issue has been well settled and is no longer res integra. The statement recorded from the Director of the respondent is admissible in evidence and the provisions of Section 164 of the Criminal Procedure Code are not applicable. Further it has been held that a confession statement made before the Customs Officer though retracted within the period of 6 days is an admission and binding since the customs officers are not police officers, and also as could be seen from the language of Section 108 of the Customs Act. Further, under the scheme of the Act the right to cross examination is not absolute and denial of cross examination was held to be valid upon sound logic and if the same had been done such orders of adjudication have been upheld. Further it has been pointed out that natural justice must not be strained to become artificial justice; procedural justice according to statutes or under statutory rules are different from concepts of natural justice and the procedure under the statute or the rule must governed and if the customs officers (or the Central Excise Officers) were to conduct himself to a regular court of law hearing formal cross examination and applying Evidence Act and Civil and Criminal Procedure Code then it will be physically and literally impossible for him to function as an adjudicating authority....."

119.4 I observe that in adjudication proceedings under Customs law, highest regard is given to the Principles of Natural Justice under which cross examination is covered. It means adjudicating authority in the interest of justice is required to see whether the same is absolute necessity, so that miscarriage of justice could be avoided to the Noticee or permitting cross examinations would unnecessarily protract the litigation and will not serve

any purpose. Further, it is observed that cross examination also becomes necessary in such situation wherein the outcome of the case only rests upon the statement of the person whose cross examination has been sought for. But when there are other evidences available which proves the guilt of the person (Noticee) then even denial of cross examination would neither cause any injustice nor affect the outcome of the case. Following cited cases have applicability when the person whose cross examination has been sought has given statement under Section 108 of the Customs Act during the investigation and adjudication proceedings, then no purpose would be served to allow cross examination of such person as same would only unnecessarily protract the proceedings.

In the case of **Shri Naresh J. Sukhawani Versus Union of India**, as reported at **1996 (83) E.L.T. 258 (S.C.)**, Hon'ble Supreme Court of India had held that :

"Evidence - Statement of co-accused whether usable without other corroborative evidence - Attempt to export foreign exchange out of India - Carrier naming Shri Subhash Dudani who has given such foreign exchange to him for delivery at Hong Kong - Statement of Shri Dudani under Section 108 of the Customs Act, 1962 named Shri Sukhawani who has given the foreign exchange to him - Statement of co-accused (Shri Dudani) can be used as a substantive evidence connecting the Petitioner with contravention of illegal export of foreign exchange - Section 30 of the Evidence Act - Section 161 of the Criminal Procedure Code, 1973."

In another case of **Shri K.I. Pavunny Versus Assistant Collector, Central Excise Cllectorate, Cochin**, as reported at **1997(90) E.L.T. 241 (S.C)**, Hon'ble Supreme Court has held as under ;

"Prosecution - Customs - Evidence required to prove offence - Supreme Court has consistently been keeping in view the object of Customs Act, 1962 viz. to safeguard duty and prevent evasion and smuggling which are organised white collar crimes committed under absolute secrecy - Section 135 ibid - Section 9 of Central Excise Act, 1944.

- Generally, the evidence in support of the violation of the provisions by the Act consists in the statement given or recorded under Section 108, the recovery panchnama (mediator's report) and the oral evidence of the witnesses in proof of recovery and in connection therewith. [1996 (83) E.L.T. 258 (S.C.) and 1997 (89) E.L.T. 646 (S.C.) referred to]. [para 26]"

119.5 Further, as far as the existence of legal provisions are concerned, as per Section 124(b) of the Customs Act, which deals with- issue of show cause notice before commencing any proceedings for violation of provisions of the Act, Noticee is required to submit his reply as he is bounded by the said provision. Section 124 reads as under;

SECTION 124. Issue of show cause notice before confiscation of goods, etc. - No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

- (a) is given a notice in 40[writing with the prior approval of the officer of Customs not below the rank of 41[an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;
- (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and
- (c) is given a reasonable opportunity of being heard in the matter :

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

119.5.1 Bare perusal of Section 124 indicates that it has ingredients of principle of natural justice. Thus, denial of request for cross-examination has been held as not violating the principles of natural justice during quasi-judicial proceedings in following case laws;

(i) In the case of **M/s. Suman Silk Mills Pvt. Ltd. Vs. Commissioner of Customs & C.Ex., Baroda, as reported at 2002 (142) E.L.T. 640 (Tri.-Mumbai)**, Tribunal observed at Para 17 that-

"Natural Justice – Cross-examination – Confessional statements – No infraction of principles of natural justice where witnesses not cross-examined when statements admitting evasion were confessional."

(ii) In the case of **Commissioner of Customs, Hyderabad V. Tallaja Impex, as reported at 2012(279) ELT 433 (Tri.)**, it was held that-

"In a quasi-judicial proceeding, strict rules of evidence need not to be followed. Cross examination cannot be claimed as a matter of right."

(iii) Hon'ble Tribunal in its decision in **Sridhar Paints v/s Commissioner of Central Excise, Hyderabad**, as reported at **2006(198) ELT 514 (Tri-Bang)**, has held that:

"..... denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, we find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized" (Para 9)

(iv) Hon'ble Punjab and Haryana High Court in its decision in the case of **M/s. Azad Engg Works v/s Commissioner of Customs and Central Excise**, as reported at **2006(2002) ELT 423**, held that;

"..... It is well settled that no rigid rule can be laid down as to when principles of natural justice apply and what is their scope and extent. The said rule contains principles of fair play. Interference with an order on this ground cannot be mechanical. Court has to see prejudice caused to the affected party. Reference may be made to judgment of Hon'ble the Supreme Court in K.L. Tripathi v. State Bank of India and others, AIR 1984 SC 273"

(v) Hon'ble Tribunal in the case of **P Pratap Rao Sait v/s Commissioner**

of Customs, as reported at **1988 (33) ELT (Tri)** has held in Para 5 that:

"..... The plea of the learned counsel that the appellant was not permitted to cross-examine the officer and that would vitiate the impugned order on grounds of natural justice is not legally tenable.

(vi) Similarly in **A.L Jalauddin v/s Enforcement Director**, as reported at **2010(261) ELT 84 (Mad HC)**, the Hon High court held that;

".... Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons. We may refer to the paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)"

119.6 It is a settled position that proceedings before the quasi-judicial authority is not at the same footing as proceedings before a court of law and it is the discretion of the authority whether request of cross examination to be allowed in the interest of natural justice. The following case-laws are relevant and supports the above view.

(i) **M/s. Poddar Tyres (Pvt) Ltd. v. Commissioner – reported at 2000 (126) E.L.T. 737**: – Wherein it has been held that cross-examination not a part of natural justice but only that of procedural justice and not a 'sine qua non'

(ii) **Kumar Jagdish Ch. Sinha v. Collector – reported at 2000 (124) E.L.T. 118 (Cal H.C.)**: – In this case it has been held that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.

(iii) **A.K. Hanbeen Mohammed vs. Collector – reported at 2000 (125) E.L.T. 173 (Mad HC)**: wherein it has been held that the strict rule of burden of proof applicable to criminal prosecution may not be applicable to proceedings before Customs authorities.

(iv) **Shivom Ply N-Wood Pvt. Ltd. Vs Commissioner of Customs & Central Excise Aurangabad- 2004(177) E.L.T 1150(Tri. -Mumbai)**: – wherein it has been held that cross-examination not to be claimed as a matter of right

119.7 Further, I also hold in view of the following decisions that request for cross-examination, who has made voluntary statements during investigation explaining facts (where there is no dispute about facts) is not acceptable;

(I) In the case of **Union of India Vs. Rajendra Bajaj, as reported at 2010(253) E.L.T.165 (Bom.)**, Hon'ble Bombay High Court, stated in Para 6, which is reproduced herein below –

"the Supreme Court held in K.L. Tripathi v. State Bank of India (1984) 1 SCC 43 that where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases and does not vitiate the decision."

(II) In the case of **Jagdish Shanker Trivedi Vs. Commissioner of Customs, Kanpur**, as reported at **2006 (194) E.L.T. 290 (Tri.-Del.)**, Tribunal observed at Para 7.2 that ;

"Confessional statements of noticee – Retraction thereof, which was otherwise unacceptable, would not entitle them to claim cross-examination of witnesses on aspects which were confessed by them – There is no violation of natural justice principles in such a course..."

119.8 Further, I also find that for cross-examination of Pancha witness and officers who recorded statements / investigating officer is not acceptable in view of following case laws:

(i) Hon'ble CESTAT, Delhi in its decision in the case of **M/s. Om International vs CC, New Delhi**, as reported at **2007 (217) ELT 88 (Tri. Del.)** held that;-

".....appellants have not been prejudiced in any manner by denial of Cross-examination of seizing officer, panch witnesses and officers, who recorded statement. contents of these statements fully reproduced in show cause notice itself and appellants have been granted ample opportunities to reply the same.

(ii) In the case of **Liyakat Shah Vs. Commissioner of C.Ex., Indore-II(Bhopal)**, as reported at **2000(120) E.L.T.556(Tribunal)**. Relevant portion of the above judgment contained in Para 12, is reproduced herein below –

"Natural justice – Cross-examination is not a mandatory procedure to be allowed in all cases – When the adjudicating authority took the view that cross-examination of seizing officer, where goods seized from godown of assessee when no allegation that officers had not followed proper procedure for effecting seizure, was sought only by way of delaying tactics to avoid justice, his order refusing to allow cross-examination not violative of the principles of natural justice..."

(iii) Hon'ble Punjab High Court in the case **Shri Ranchodbhai M. Patel vs. Central Board of Revenue, New Delhi**, as reported at **2000 (125) ELT 281 (Punj.)** has held that:

"Natural justice – Petitioner himself having signed the panchnama made in his presence, production of panchas before him for cross-examination not necessary – Principles of natural justice not violated – Section 122 of the Customs Act, 1962."

119.9 Thus, in view of the above facts, I find that statements recorded by the customs officers (Gazetted officers) are relevant for proving the facts it contains in prosecution proceedings in customs matter. Criminal Court proceedings contain examination of witness, cross- examination and re-examination of witness. This provision has been extended to adjudication proceedings also as far as possible. Adjudicating authority decides the request of cross examination or its denial in the interest of justice and depending on the facts of the case. When case is solely depending upon the statement and no other corroborative evidences are available then in that case, cross-examination appeared necessity, but when the case has other corroborative evidences which alone prove the offence then in such case denial does not cause prejudice to the Noticee. Further, adjudicating authority has to see whether it was solely for the purpose of delaying the adjudication proceedings and case can be proved by other evidences, it is not imperative to allow cross- examination as same would not violate the principle of natural justice.

119.10 It is well settled by various judicial foras that Customs Officers are not police officers and therefore statements given before Customs Officers are valid as substantive evidence. I further find that statements made before the customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973 and therefore, it is a material piece of evidence collected by the customs officials under Section 108 of the Customs Act. Further, all the evidences in the present case have been made available to the Noticees and nothing is being sought to be used behind his back. In the facts and circumstances of the case, the request for cross-examination merits rejection. I also hold that Cross-examination cannot be claimed as a matter of right and the request for cross-examination has to be examined in the context of facts and circumstances of that particular case. In the present case, the Noticees have fully availed the opportunity of examining the veracity of the entire set of documentary and oral evidences sought to be relied upon by the Revenue. Therefore, no evidence is sought to be used against the said Noticee behind his back and the principles of natural justice have been duly followed. Therefore, cross-examination is not warranted in the instant case since the cause of the Noticees is not vitiated for want of such cross-examination.

119.11 Further, even the mere fact that the persons who have tendered their statements have retracted the same, does not automatically give rise to the necessity of cross-examination. The said principle has been laid down by the Hon'ble Supreme Court in the case of **Surjeet Singh Chhabra reported at 1997 (89) ELT 646 (SC)** wherein it has been held as under:

"But in view of confession made by him, it binds him and, therefore, in the facts and circumstances of this case the failure to give him the opportunity to cross-examine the witnesses is not violative of principle of natural justice. It is contended that the Petitioner had retracted within six days from the confession. Therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence. We find no force in this contention. The Customs officials are not police officers. The confession, though retracted, is an admission and binds the Petitioner. So there is no need to call Panch witnesses for examination and cross-examination by the Petitioner."

119.12 Another question arises whether the sequence of cross-examination of a witness is to be determined solely on the basis of the pleadings as raised or whether the stand taken by that party till the stage his evidence is to be recorded has to be taken into consideration?

In this regard, the Hon'ble Bombay High Court in Kalpana Navneet Samarth and Ors. Vs. Seema Arun Mankar and Ors. [Writ Petition No. 7537/2019, decided on: 15.11.2019] has held that the sequence of cross-examination cannot be determined solely on the basis of the pleadings and that other factors which take place during the course of trial till the stage the evidence is recorded also have to be taken into consideration. Neither the provisions of Section 138 of Evidence Act, nor the provisions of Order 18 Rule 2 of CPC restrict the consideration only to the pleadings of the parties. All factors which have come on record during the trial are liable to be taken into consideration to determine as to who an adverse party while is determining the sequence of cross-examination.

119.13 In the present case lots of evidences are there as discussed herein above which established the allegations in the notice in

addition to the confessional statements. The findings of the investigation duly corroborated with evidences like non-existence of firms used for transaction in this entire episode; GST returns; bank transactions; valuation report carried out by the Government valuer in respect of physical stock of Diamonds / Precious Stones found during the course of searches at the premises of M/s. Europea Makeour Jewel Pvt. Ltd. (Surat SEZ unit) and M/s. Maahi Jewellery Exim Pvt. Ltd. (Surat SEZ Unit), which was nothing but inferior quality Diamonds / Precious Stones which was procured locally to use in place of imported Diamonds / Precious Stones in studded jewellery, correspondence by SEZ, and RBI regarding pending realisation towards exports made by M/s. Europea Makeour Jewel Pvt. Ltd. (Surat SEZ unit) and M/s. Maahi Jewellery Exim Pvt. Ltd. (Surat SEZ Unit).

119.14 In the present case in hand for adjudication, I find that the Diamond / Precious Stones imported by M/s. Europea Makeour Jewel Pvt. Ltd. (Surat SEZ unit) and M/s. Maahi Jewellery Exim Pvt. Ltd. (Surat SEZ Unit) without paying any Customs duty were diverted into the Domestic Market through their DTA units opened by them with the same name i.e. M/s. Europea Makeour Jewel Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd.. Diamonds / Precious Stones of inferior quality were purchased from the domestic market through these DTA units for adjustment of the diverted quantity of superior quality precious Stones, Diamond and Silver imported by them. These inferior quality Diamond / Precious Stones were studded in Silver Jewellery at the above SEZ units and thereafter exported the same to their own companies in foreign countries declaring the value very high, as if the exported studded jewellery were made of the imported superior quality precious stones, diamonds and silver, with the intent to show export against duty free imported in SEZ units. The firms in foreign countries to whom the export was made did not have sufficient funds to transfer to them against export declared value, therefore, funds from India to Hong Kong were sent by showing other business transactions to regularize the duty free imports and to show the fulfillment of export obligations/ to obtain Positive Net Foreign Exchange (NEF). The entire racket has orchestrated a unique modus operandi and had defrauded the exchequer and the facts confessed by the different persons in their respective statements recorded under Section 108 of the Customs Act, 1962 are duly corroborated with the documentary evidences gathered and discussed in the statement. During the course of searches at the premises of M/s. Europea Makeour Jewels Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd., SEZ units, the inferior quality of Diamond and precious stone were found which were other than the quality imported by them duty free. Further, mere paper transactions with non-functional units are also established with the GST returns, and bank transactions etc. as discussed herein above. Analysis of Bank Statements revealed that financial transactions were made by creating a maze of multiple layers of units to fraudulently remit amounts of high magnitude to Hong Kong and UAE based firms, by showing the same to be payments against import of services (which were never actually imported and were mere paper transactions without any actual supply of service) and was actually payments they send to receive back as payment against export to show fulfilment of export obligation. The noticees have confessed these transactions in their respective statement which is duly corroborated with the banking transaction.

119.15 I further find that non realisation against all the exports made by M/s. Europea Makeour Jewels Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt.

Ltd., SEZ units also established from the correspondences by SEZ authorities and Reserve Bank of India, Jaipur, which shows huge pending realization against the exports made by SEZ units of M/s. Europea Makeour Jewels Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd. due to inferior quality material supplied by them. In order to clear their pending dues for obtaining positive NFE, they have adopted this unique modus operandi to send money abroad and receive it back as payment against export to show fulfilment of export obligation. The confessional statement of Shri Suresh Ratanlal Jagetia in this regard is also corroborated with these documentary evidences.

119.16 Analysis of Bank statements of M/s. Europea Makeour Jewels Pvt. Ltd. and M/s. Maahi Jewellery Exim Pvt. Ltd., revealed that the bank accounts were opened by M/s. Europea (SEZ Unit) and M/s. Maahi (SEZ Unit) with their respective GSTN. As per LOPs of both the SEZ units, they are not allowed to do any DTA sales / job work in DTA (condition number XIV of the letter dated 01.05.2019 of the Development Commissioner, SEZ, Surat). Whereas, both the SEZ units have received huge amounts in their accounts from various DTA units (almost all of these units are non-functional). On investigation, it has been revealed that this money has been received in consideration of Diamond / Precious Stones diverted by SEZ units. Confession by Shri Suresh Ratanlal Jagetia in his statements recorded under Section 108 of the Customs Act, 1962, regarding receipt of funds from DTA units also corroborated with the above fact. No document or evidence has been produced by the noticees before the adjudicating authority, which prove the findings of investigation otherwise.

119.17 It is emerged from the investigation that the transaction are not the legitimate transactions of business but are only a large scale attempts to camouflage illegal fund transfer through the methods described in the notice. The enormous volumes, as well as value of trade flows obfuscate specific transactions, and it is difficult to delineate these transactions with mathematical precision. There is a clear attempt to disguise the origin and movement of funds, as well as the origin and movement of goods, by using multiple levels of firms / companies, bank accounts, paper sales / purchases, imports / exports, etc.

119.18 Therefore, the contention of the noticees that the entire case is based merely on the confessional statements recorded under Section 108 of the Customs Act, 1962 is factually incorrect. The quasi-judicial proceedings in hand involve adjudication of a Show Cause Notice so as to examine the diversion of the imported Diamonds and precious stones and such proceedings are very much different from that involving conducting a trial in a criminal case. In such cases which are not in the nature of trial in a criminal case, do not warrant cross-examination and it is for the defendant to establish by placing evidence that the charges are not sustainable. Therefore, denial of opportunity of cross-examination does not vitiate the adjudication proceedings. My above views have ample supported with findings of the Hon'ble High Court of Madras in the case of **M/s Erode Annai Spinning Mills (Pvt.) Ltd. Vs. Commissioner of Central Excise, Salem**, reported at **2019 (366) ELT 647 (Mad)**, which has been maintained by the Hon'ble Supreme Court as reported at **2019 (368) ELT A155 (SC)**, wherein it has been observed that:

"12 Every case, where opportunity of cross examination was not allowed, will not vitiate the entire proceedings. The Adjudicating Authority was not conducting a trial of a criminal case, but was adjudicating a show cause notice as to whether there has been clandestine removal of excisable goods without payment of excise duty. In such cases, preponderance of probabilities would be sufficient. On examining the extensive factual details set out in the adjudicating order dated 20-6-2005, we have no hesitation to hold that the initial burden of proof has been discharged by the department and thus, the burden of proof shifts to the assessee to establish by independent evidence that there was no clandestine removal and the assessee cannot escape from the rigour of law by picking loopholes in the evidence placed by the department.....".

119.19 The issue of cross examination of Co-Noticees/ accused is no longer res integra. When Noticee failed to provide any cogent and valid reason for the cross-examination of person, who are co-noticees, then request is not acceptable. The following judicial pronouncements also supports my above view:

a) The Principal Bench of the Hon'ble Tribunal in the case of **Jagdish Shanker Trivedi Versus Commissioner Of Customs, Kanpur**, reported at **2006 (194) E.L.T. 290 (Tri. - Del.)** observed that:

7.1 *The question as to whether there was any contravention of natural justice by the customs authorities when the persons whose statements were recorded were not produced to enable their cross-examination, came up for consideration by the Supreme Court in Kanungo's case (supra) in the context of the provisions of confiscation made under Section 167(8) of the Sea Customs Act read with Section 3(2) of Imports and Exports (Control) Act, 1947 and the Supreme Court in paragraph 12 of the judgment rejected that contention in the following terms:*

"12. We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show cause notice issued on August 21, 1961, all the material on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly, we hold that there is no force in the third contention of the appellant."

The decision in Kanungo & Co. was followed by the Calcutta High Court in Tapan Kumar Biswas v. Union of India (supra) in paragraph 17 of the judgment and it was held that in a proceeding under the Customs Act the proceedees are not entitled to cross-examine the witnesses.

The decision in Ashutosh Ghosh and Another v. Union of India and Others reported in 1977 Criminal Law Journal N.O.C. 67, was also relied upon and it was observed in paragraph 20 of the judgment that the Supreme Court in Ashutosh Ghosh's case has categorically held that a proceedee is not entitled to cross-examine the witnesses. The decision of the Division Bench of the Calcutta High Court in Kishan Lal case (supra) was also referred in paragraph 18 of the judgment and it was held to be laying down the proposition that cross-examination of the witnesses (in the matter under the Sea Customs Act) was not comprehended. Referring to all these decisions, the Court held, that a proceedee was not entitled to cross-examination of any witnesses under Section 124 of the said Act which lays down the extent of applicability of the principles of natural justice and under which a proceedee was not entitled to cross-examine any witnesses (para 11). Thus in view of the decisions of the Hon'ble Supreme Court in Kanungo & Co., Ashutosh Ghosh and of the Calcutta High Court, in the above two decisions, it is abundantly clear that a noticee cannot claim a right to cross-examine under Section 124 of the said Act.

9. *As noted above, all the noticees including the appellants were informed about all the material which was sought to be relied on against them along with the relevant documents and statements as stated in the detailed show cause notices issued to them, and they sent their replies to the show cause notices. Some of the appellants were represented by consultants. The appellants remained absent on various dates resulting delay in the proceedings. Statements of the two drivers of the vehicles from which contraband silver was recovered, the employee of the appellant Ashish Kumar Chaurasia and the statements of the persons who were travelling in the vehicles for taking the contraband silver to Delhi as also the statements of Ram Avatar Singhal, and the statements of independent persons before whom seizures were made clearly establish that all the appellants were persons concerned with prohibited silver and were liable to imposition of penalty under Section 112 of the said Act. In such a situation insistence for cross-examining one of them can be purely strategic with a view to raise a contention of violation of principles of natural justice. In almost all the cases such persons dealing in contraband would refuse to be cross-examined on the ground that they are accused of an offence and, had a fundamental right against testimonial compulsion under Article 20(3), and thereby create a situation where each one of them, in the same breath, would ask for cross-examination of the other and refuse to be cross-examined, and then contend that refusal has resulted in failure of proper hearing. Therefore, principles of natural justice do not require that in matters like this, persons who had given information should be allowed to be cross-examined by the co-noticees on the statements made before the customs authorities. If cross-examination is to be allowed as a matter of right then in all cases of conspiracy and joint dealings between the co-noticees in the commission of the offences in connection with the contraband goods, they can bring about a situation of failure of natural justice by a joint strategic effort such co-noticees by each one refusing to be cross-examined by resorting to Article 20(3) of the Constitution and simultaneously claiming cross-examination of the other co-noticees. We, therefore, hold that the appellants, including the appellant Ashish Kumar Chaurasia were not*

entitled to claim cross-examination as a matter of right. The appellant Ashish Kumar Chaurasia had, in fact, cross-examined two official witnesses and at the end, he had only sought for time for further hearing. The cross-examination made by the appellant, Ashish Kumar Chaurasia of two officers, A.K. Chaturvedi and Simon has been set out in the impugned order and it is recorded that, "various dates of personal hearing was given one after the other but neither Ashish Kumar Chaurasia nor his advocate turned up". It is clear from the record that the appellants had been given adequate opportunity of being heard in the matter pursuant to the show cause notice issued under Section 124 of the said Act, and there has not been any violation of the principles of natural justice.

b) In the case of **N.S. Mahesh vs CC, Cochin**, reported at **2016 (331) ELT 402 (Ker.)** Hon'ble High Court upheld denial of cross-examination of co-noticee and custom officers observing that:

"Judgment: The challenge in the writ petition is against Ext.P5 order passed by the respondent, in an application filed by the petitioner seeking cross-examination of various persons, prior to submitting formal objections to Ext.P1 show cause notice that was issued to him under Section 28 of the Customs Act, 1962. It is seen from the averments in the writ petition that, on receipt of Ext.P1 show cause notice, the petitioner had made a request for cross-examination of all the Officers who assessed, audited and examined the impugned Bills of Entry, as also Officers who actually examined the goods and permitted clearance. There was also a request for cross-examination of a co-noticee. The request for cross-examination of the said persons was made before the respondent, who proceeded to pass Ext.P5 order giving detailed reasons as to why he was of the view that a cross-examination of the persons sought for need not be granted to the petitioner.

2. On a perusal of Ext.P5 order, and the reasons given by the respondent to deny the request of the petitioner for cross-examination, I do not find any illegality in the said order that would warrant an interference with the said order in these proceedings under Article 226 of the Constitution of India. The writ petition, in its challenge against Ext.P5 order, therefore fails, and is accordingly dismissed."

c) In the case of **Laxmi v/s. Collector of Customs, Lucknow**, reported at **[2001 (138) ELT 1090 (Tri. Delhi)]** Hon'ble Tribunal held that

"6. Insofar as the cross-examination of Rahul Agarwal and Anil Kumar Agarwal is concerned. I find that they had submitted their replies to the show cause notice. They were the co-noticees, their statements were corroborated by Shri Naveen Kumar Gupta and therefore, denial of permission of cross-examination of these persons has not led to miscarriage of justice."

119.20 The noticees have also advanced the argument that most of the persons had retracted their respective statements as the statements were recorded under duress and threat and as such cannot be relied upon. Perusal of the confessional hand written statements of the noticee however, show that the statements were voluntary in absence of any evidence to prove any

threat or coercion by the department. I find that the noticee's contention is purely an afterthought and I have not found anything on record to substantiate their claim. By putting such contentions, the noticees are trying to play the victim-card for portraying innocence and gaining sympathy of the adjudicating authority taking undue benefit by trying to raise doubts about the sanctity and legality of the Statements recorded under Section 108 of the Customs Act, 1962. Shri Suresh Jagetia has even submitted a hand written letter dated 30.05.2022 wherein he has accepted the diversion of duty free imported goods and evasion of Customs duty and has also voluntarily paid part of evaded duty. The statements retracted by some of the noticees, were duly rebutted by the investigating agency at the material time before the concerned authorities and legal forum and at no stage the authority found any merit in their retractions and allegations thus not granted any relief to them by the courts. I find that in case of one of the noticees, **the Hon'ble Additional Chief City Magistrate, Jaipur in order dated 30.05.2022** observed that:

न्यायालय - अतिरिक्त मुख्य महानगर मजिस्ट्रेट (आर्थिक अपराध),
जयपुर महानगर - द्वितीय
तारीख हुक्म F.No.CUS/ICFS/MISC/613/1021-prev-o/o commr-
cus-prev-jodhpur
भारत संघ बनाम गुंरा रान लाल
हुक्म या कार्यवाही मंत्र इनिशियान्स जज
30.05.2022 परिणामी विभाग की तरफ से जरिये अभियोजन अधिकारी
से अनुसन्धान शेष रहना प्रकट होता है। जहाँ तक अधिवक्ता अभियुक्त का यह कथन है कि अभियुक्त को दिनांक 23.05.2022 को अवैध तरीके से गिरफ्तार किया गया था तो ऐसा पत्रवली के अवलोकन से प्रकट नहीं होता है। अधिवक्ता अभियुक्त द्वारा यह भी कथन किया गया है कि अभियुक्त के बयान द्वारा धमका का जबरन दिये गये हैं। उक्त तथ्य का निर्धारण भी इस स्तर पर नहीं किया जा सकता है, ऐसी स्थिति में प्रकरण के तथ्यों व परिस्थितियों व अपराध की गंभीरता को देखते हुये अभियुक्त की एक दिन की पुलिस अभिरक्षा स्वीकार की जाती है। अभियुक्त को पुलिस अभिरक्षा से दिनांक 31.05.2022 को पेश

Similarly, the Habeas Corpus Petition No.334/2022 filed by another noticee-Shri Navratan Jain before the Hon'ble High Court of Rajasthan was also dismissed by the Hon'ble court vide order dated 22.12.2022 finding no merit in the petition. Further the Medical Examinations conducted by medical officer after arrest of the noticees, also not supporting the false allegations of torture/coercion & abuse against the investigating officer. Therefore, the contentions of the noticees are noting but an attempt to escape from punitive action for their wrong doing.

119.21 I hold that **burden to prove the genuineness of retraction is on the Noticee.** The statement recorded under section 108 of the Customs Act, 1962 has evidentiary value, as provided in the Act itself that it can be used in evidence. The person who has given the statement can retract from the same if he can establish that (i) the statement was given under duress, coercion or under some other adverse circumstances; (ii) the statement was given under misconception of facts and law; (iii) the statement was not correct in the view of facts or material/evidence on record; and (iv) such other facts, material/evidence that come to light at a later stage show that the statement was not correct. Merely because a statement is retracted, it cannot become as given unvoluntarily or unlawfully obtained. For any retraction to be successful in the eyes of law, the concerned has to show as to how earlier recorded statements do not state the true facts or that there was coercion, inducement or threat while recording his earlier statements. Though in the present case the retractions were found lack of merit at the material time of investigation by the

authorities including courts, however, it is also settled law that mere fact that a statement has been retracted does not imply that the statement loses its evidentiary value. This principle has been enunciated by the judicial fora including the Hon'ble Supreme Court in various cases discussed under:

a) Hon'ble Supreme Court in the case of **Vinod Solanki Versus Union Of India, reported at 2009 (13) S.T.R. 337 (S.C.)**, categorically observed that:

"35.....mere retraction of a confession may not be sufficient to make the confessional statement irrelevant for the purpose of a proceeding in a criminal case or a quasi criminal case....."

b) In the case of **Surjeet Singh Chhabra** reported at **1997 (89) ELT 646 (SC)** the Hon'ble Supreme Court has observed that:

"3. in view of confession made by him, it binds him and, therefore, in the facts and circumstances of this case the failure to give him the opportunity to cross-examine the witnesses is not violative of principle of natural justice. It is contended that the petitioner had retracted within six days from the confession. Therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence. We find no force in this contention. The Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner. So there is no need to call Panch witnesses for examination and cross-examination by the petitioner."

c) Hon'ble double bench of the tribunal in the case of **Surinder Kumar Bhatia Versus Commissioner of Customs, New Delhi**, reported at **1999 (111) E.L.T. 549 (Tribunal)**, held that:

"7. As regards the admissibility of the said statements on the grounds they were subsequently retracted, we are in agreement with the Id. Departmental Representative that the Hon'ble Supreme Court as in Surjit Singh Chhabra case (supra) had held that statements given to Customs Officials will be admissible in evidence as they were not Police Officials. Having regard to the detailed nature of the statements given by the three appellants and their corroborative nature in relevant particulars, we also find that the failure to cross examine the Panch witness or seizing officers have not resulted in any failure on the part of the lower authority to observe principles of nature justice."

d) Hon'ble High Court of Patna in the case of **Commissioner of Customs, Patna versus Ram Nath Sah**, reported at **2011 (263) E.L.T. 188 (Pat.)**, held that:

*".....Confessional statements in terms of Section 108 of Customs Act, 1962 is substantive evidence - Such evidence reliable to pass orders of confiscation and penalty under provisions of Act *ibid.*"*

The above judgment of the Hon'ble Patna High Court has been maintained by the Hon'ble Supreme Court, reported at **Ram Nath Sah v. Commissioner - 2011 (263) E.L.T. A46 (S.C.)**, observing that:

"We find no merit in these petitions for Special Leave. They are dismissed"

e) In the case of **Rajesh Kumar** reported at **2016 (333) ELT 256 (Del)**, the Hon'ble High Court of Delhi has observed as under:

"6. Learned counsel for the appellant strenuously argued that a substantial question of law regarding the admissibility of the confessions allegedly made by the Sh. Kishori Lal and Sh. Rajesh Kumar arises for our consideration. We regret our inability to accept that submission. The statements made before the Customs Officers constitute a piece of evidence available to the adjudicating authority for passing an appropriate order of confiscation and for levy of penalty. Any such confessional statement even if retracted or diluted by any subsequent statement had to be appreciated in the light of other circumstances and evidence available to the adjudicating authority while arriving at a conclusion whether the goods had been cleared without payment of duty, misdeclared or undervalued....."

f) In the case of **K. P. Abdul Majeed** reported at **2017 (51) STR 507 (Ker)**, the Hon'ble High Court of Kerala has observed as under:

"14. Having regard to the legal implications evolved from the aforesaid factual situation, it is clear that confession statement of co-accused can be treated as evidence, provided sufficient materials are available to corroborate such evidence. As far as retraction statement is concerned, it is for the person who claims that retraction has been made genuinely to prove that the statements were obtained under force, duress, coercion, etc., otherwise, the materials indicate that statements were given voluntarily. When the statute permits such statements to be the basis of finding of guilt even as far as co-accused is concerned, there is no reason to depart from the said view. It is a question of appreciation of evidence. In light of the above judicial pronouncements, the argument of Noticee the effect that retracted statement has no evidentiary value is not maintainable."

119.22 I find their defence has an afterthought and is nothing but feeble effort to cover up their liabilities. Their defences lack any logic and legality as no supportive documents are placed by them to rebut the findings of the investigation. Therefore, I fully agree with the finding of the investigation. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Commissioner of C. Ex., Madras Versus Systems & Components P. Ltd.**, reported at **2004 (165) E.L.T. 136(S.C.)** where in it held that:

"Once it is an admitted position by the party itself, that these are parts of a Chilling Plant and the concerned party does not even dispute that they have no independent use there is no need for the Department to prove the same. It is a basic and settled law that what is admitted need not be proved."

119.23 As regard to above, the facts have already been narrated in detail in the impugned Show Cause Notice. Further, during recording of the statements, the concerned persons were shown entire set of documentary evidences. Thus, I hold that it is totally baseless and complete afterthought arguments that the statements were recorded under coercion and threat. The facts of the case indicate that all the statements of the Noticees contain the explanations are in relation to the details contained in the various

documents shown to respective Noticee. Comparison of the actual documents shown to concerned vis-à-vis the factual details stated by him in this regard clearly indicate that the averments made in the respective statement are very much in consonance to the details contained in the said documents. In such facts and circumstances, it is not understood as to how the statements can be said to have been recorded forcefully and un-voluntarily. In addition to the same, the facts recorded in the statements were also found to be tallying with the details mentioned in the referred documents which were seized during the investigations. It is clearly evident on records that the statements recorded under Section 108 of the concerned persons are nothing but a version of the documents shown to him and is voluntary in nature. The fact that the statement has been tendered voluntarily is forthcoming from the above discussions. In the facts and circumstances of the case, the statements of the concerned do not lose its evidentiary value for the sole reason that it has been retracted.

119.24 The Noticees argued that the Show Cause Notice is based upon confessional statements, which are vitiated due to duress and coercion, and were subsequently retracted. It is a trite law that evidences brought on record by way of confession which stood retracted must be substantially corroborated by other independent and cogent evidences, which would lend adequate assurance to the adjudicating authority/judiciaries that it may seek to rely thereupon. Mere retraction of a confession may not be sufficient to make the confessional statements irrelevant for the purpose of a proceeding in a criminal case or a *quasi-criminal* case but there cannot be any doubt whatsoever that the concerned judiciary is obligated to take into consideration the pros and cons of both the confession and retraction made by the concerned accused.

In the case of **Gulam Hussain Shaikh Chougule Versus S. Reynolds**, as reported at **(2002) 1 SCC 155**, Hon'ble Supreme Court had held that :

"The ban contained in section 25 of the Evidence Act is an absolute ban. But it must be remembered that there is no ban in regard to the confession made to any person other than a police officer, except when such confession was made while he is in police custody. The inculpatory statement made by any person under Section 108 is to non-police personnel and hence it has no tinge of inadmissibility in evidence if it was made when the person concerned was not then in police custody. Nonetheless the caution contained in law is that such a statement should be scrutinized by the court in the same manner as confession made by an accused person to any non-police personnel."

In the case of **Shri M.P. Goenka Versus Commissioner Of Customs in C.M. No. 687-688/2015**, Hon'ble High Court of New Delhi where the appellant had mainly argued that the impugned order of penalty was based entirely on his retracted confession. In the said issue Hon'ble High Court had held as under;

".. The confessional statement of Sanjay Maheshwari, directly implicating the appellant b. Statements of the godown keeper and manager of M/s. Prakash Transport c. Documentary evidence, such as the panchnama drawn for recovery of delivery register and delivery slips of MIs.

The Commissioner (Preventive) found that all these pieces of evidence were mutually corroborative, and on that ground, imposed the penalty order upon the appellant.

Here, this Court notes that proceedings under tax legislation such as the FCRA or the Customs Act do not require the prosecution to discharge the criminal-law burden of proof beyond reasonable doubt. Under such proceedings, a balance of probabilities is satisfactory. In Radheyshyam Kejriwal vs State of West Bengal, (2011) 3 SCC 581, the Supreme Court held:

"A person held liable to pay penalty in adjudication proceeding can not necessarily be held guilty in criminal trial. Adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case entire burden to prove beyond all reasonable doubt lies on the prosecution... it is trite that standard of proof required in criminal proceedings is higher than that required before adjudicating authority."

It is not the task of this Court, exercising its appellate power in cases involving substantial questions of law, to review or second- guess (or even third guess, at times) the factual findings based on evidence considered by the lower authorities, but only to correct an order if it is based on irrelevant or manifestly incorrect construction of the facts or if based on mis-appreciation of law or on non- application of mind. In the present case, this Court sees no reason to interfere with the concurrent findings of the Commissioner (Preventive) and the CESTAT which are both reasoned, correctly stating the law, and citing relevant evidence and reasoning in order to arrive at their conclusions. Resultantly, the appeal fails and is dismissed along with the pending applications."

In the case of **K. Rahuman Sait Versus Commissioner of Customs, Trichi**, as reported at **2021 (376) E.L.T. 476 (Mad.)**, Hon'ble High Court of Madras had held that ;

"Confession - Reliance on - Retraction beyond three months from confession, rejected based on other statements and evidences recorded during search and seizure operations - Retraction not established to be obtained by threat, duress or promise - HELD : Reliance on confessional statement to establish guilt was proper - Section 108 of Customs Act, 1962. -Upon examination of the evidence, the Adjudicating Authority found that the confessional statement is true. Furthermore, the appellant could not establish that the statement recorded from him on 11-3-1998 was obtained by threat, duress or promise. The burden of proof to show that the statement was recorded under threat, duress was on the appellant, which he had failed to discharge. Therefore, the Adjudicating Authority, having done a proper exercise in examining the statements and all other evidences, which were available before him, adjudicated the case and held the appellant's statement dated 11-3-1998 to be true. Furthermore, the appellant was present when the search and seizure operations were conducted. The statement of the other two persons, who were employed by the appellant clearly implicate the appellant with regard to the attempt to export prohibited items. Furthermore, it has been established that the appellant was aware of the fact that sandalwood is a prohibited item for export. Therefore, we find that there is no procedural error committed by the Adjudicating Authority and the Adjudicating Authority, after analysing the statement recorded from the independent witnesses, has rightly held that the appellant is guilty."

In the case of **Amad Noormamad Bakali Versus State of Gujarat**, as reported at **2011 (274) E.L.T. 17 (Guj.)**, Hon'ble High Court of Gujarat, referring to the observations made by the Hon'ble Apex Court in a judgment reported in case of K.I. Pavunny v. Assistant Collector, (HQ), Central Excise Collectorate, Cochin decided by the bench of three Judges on very this point

with regard to the statements recorded under Section 108 of the Customs Act, has held as under;

"...Therefore, in light of this clear discussion with regard to the admissibility of the statements recorded under Section 108 of the Customs Act and also contention raised with regard to the coercion or threat have also been considered and have not been accepted. It is required to be mentioned as observed that it is the duty of the accused prima-facie to establish by evidence that such statement was recorded under such compulsion or coercion or threat then burden would shift on the prosecution to discharge that it was recorded voluntarily."

In the case of **MD. Akhtar Versus Commissioner of C.Excise, Customs and Service Tax, Patna**, as reported at **2015 (323) E.L.T. 136 (Pat.)**, Hon'ble High Court of Patna had held as under ;

Evidence - Statement before Customs Officer being in nature of substantive evidence, culpability of concerned person can be based on same - Section 108 of Customs Act, 1962. [para 8]

Confiscation — Seizure of gold — High Court order of upholding absolute confiscation of smuggled seized gold and penalty on appellant, maintained (2) Penalty — Confiscation of gold — No interference in order of High Court maintaining penalty on appellant on confiscation of gold recovered from him

The **Supreme Court larger Bench dismissed the Petition for Special Leave to Appeal (Civil) Nos. CC 21933-21934 of 2014 filed by Md. Akhtar** against the Judgments and Orders dated 2-8-2013 and 9-9-2011 of Patna High Court in Review Petition No. 11 of 2013 and Miscellaneous Appeal No. 393 of 2009 respectively **as reported in 2015 (323) E.L.T. 136 (Pat.) (Md. Akhtar v. Commissioner)**. While dismissing the petition, the Supreme Court passed the following order :

"Dismissed both on the ground of delay and merits."

The Patna High Court in its impugned order had held that there was no dispute in the recovery of seized gold from shoes worn by appellant. It was substantiated in his statements recorded under Sections 107 and 108 of Customs Act. Department had discharged its onus in form of substantive evidence of statements which appellant failed to rebut. Purported receipt of procurement of seized gold from a dealer also found to be bogus. Accordingly, absolute confiscation of gold and penalty on appellant was upheld."

In the case of **A.L. Jalaludeen Versus Dy. Director of Enforcement Directorate, Chennai**, as reported at **2010 (261) E.L.T. 84 (Mad.)**, Hon'ble High Court of Madras had held as under ;

"Natural justice - Cross-examination of witnesses - Confiscation of Indian currency - Violation of Foreign Exchange Regulation Act, 1973 - Case does not rest on statement of appellant alone but it receives strength from the statement of witnesses - Principles of natural justice not violated by not allowing the appellant to cross-examine those two witnesses - Retraction by appellant not genuine and bald retraction and confessional statements are credible and voluntary - Questions raised are purely questions of facts and questions of law. "

In the case of **Ramesh Khatnani Versus Union of India**, as reported at **2008 (226) E.L.T. 183 (Raj.)**, Hon'ble High Court of Jaipur had held that :

"Confiscation - Smuggling - Confiscation of gold biscuits, foreign and Indian currencies - Petitioner failed to discharge burden of proof that goods being notified items, not smuggled - Statements though retracted subsequently, considered and matter examined in totality by

adjudicating authority - No error apparent in impugned order containing findings on facts and hence, sustainable - Sections 108 and 111 of Customs Act, 1962. - Respondents in the present case discharged their burden by establishing circumstances from which a prudent man, acting prudently, may infer that in all probability the seized articles and the currency notes were smuggled goods and their sale proceeds.

Evidence - Statement - Retraction of statement - Evidentiary value - Customs officer is not police officer - Recording of statement from person in custody not makes statement unacceptable - Section 108 of Customs Act, 1962. - A person arrested by a Customs Officer in such circumstances when asked to make a statement, is not an accused of offence within the meaning of Article 20(3) of Constitution of India because Customs Officer is not a police officer within the meaning of Section 24 of Indian Evidence Act, 1872. Statement of a person under Section 108 ibid in adjudicatory proceedings against him cannot be discarded just because he has later retracted it. [para 19]

Evidence - Confessional statement - Appellant failed to establish that said statements were extorted from them by threat, coercion, force or assault - Medical report also does not support the allegation of assault by any officer of Customs - Retraction rightly rejected.

In the case of **Shri S.N. Ojha Versus Commissioner of Customs**, as reported at **2016 (331) E.L.T. 33 (Del.)**, Hon'ble High Court of Delhi had held as under;

"...Statement of co-noticee - Evidentiary value - Strict requirements of Evidence Act, 1872 not to apply to investigations conducted by Customs Department or DRI - Voluntary statement of a co-noticee, not taken under threat or coercion, can be relied as evidence - Even if such statement is retracted subsequently on allegation of it having obtained under threat or coercion, burden is on maker of statement to prove said allegations - However, in such cases, other independent corroborative evidence also required.

119.25 In light of the above judicial pronouncements, the argument of the Noticees to the effect that retracted statement has no evidentiary value is not maintainable. Apart from the above, in light of the retraction, it is of utmost importance to ascertain whether the statements were voluntary or otherwise. For the purpose of ascertaining the same, the contents of the statements need to be analyzed. The facts of the case indicate that the entire statements contain the explanations rendered by the concerned persons were in relation to the details contained in the various documents shown to him. Comparison of the actual documents shown vis-à-vis the factual details stated by the concerned in this regard clearly indicates that the averments made in the statement of the accused were very much in consonance to the details contained in the said documents. In such facts and circumstances, it is not understood as to how the statements can be said to have been recorded forcefully. Thus, it is observed that the statements are nothing but a version of the documents shown to respective accused and is voluntary in nature.

119.26 I find that in the present case in hand for adjudication, several documentary evidences were gathered during the course of investigation, as discussed in detail in the show cause notice, which established the allegations levelled in the notice and the statements recorded under Section 108 of the Customs Act, 1962 are corroborated with documentary evidences, therefore the contentions of the notices that the entire case is based merely on statements is incorrect. Additionally, the statements recorded under Section 108 of the Customs Act, 1962 are *ex facie* admissible as evidence as has been held by various judicial authorities including the Hon'ble Supreme

Court, some of them are relied herein above and, therefore, cross-examination of witnesses is not necessary in each and every case as the provisions of Evidence Act apply only to judicial proceedings and have no strict application in quasi-judicial proceedings. Even then, in the interest of justice, the requests of the noticees for cross examination were looked into and I find that the requests were vague and not specific. The noticees have simply stated that they want cross examination of all the co-noticees and other persons whose statements are referred in SCN. Therefore, considering their requests, the noticee were given proper opportunity for cross-examination of witnesses, and the Noticee No.5 (Shri Navratan Singh Jain), Noticee No.07 (Shri Vikram Singh Kachchhawa), Noticee No.09 (Shri Kamlesh Nagda), Noticee No.10 (Shri Deepak Kumar) and Noticee No.11 (Shri Vimal Nahar) vide letter dated 26.03.2024 were asked to give person wise detailed point(s) with reasons on which he wants cross examination of that particular person(s). Similar opportunity was given to Noticee No.3 (Shri Suresh Ratanlal Jagetia) and was asked vide letter dated 01.04.2024 to give person wise detailed point(s) with reasons on which he wanted cross examination of that particular person(s).

119.27 The outcome of the opportunities given to the noticees is as under:

119.27.1 Noticee No.10 and Noticee No.11 did not revert back.

119.27.2 Noticee No.05 under submission dated 27.03.2024 has given name of **5 co-noticees** (including himself) for cross examination, mentioning portions of statement of respective and also given name of **5 Customs officers** who have recorded statements for cross examination.

119.27.3 Noticee No.07 under submission dated 31.03.2024 has given name of **8 persons** including co-noticees for cross examination. He has also raised objection for demand of providing specific points for cross examination stating that he cannot be compelled to disclose his points. Cross examination is his fundamental right and most ingredient of natural justice. Relied upon SC judgment [Andaman Timber Industries Vs. CCE, CA No.4228/2006 dated 02.09.20215], adjudicating authority cannot indulge into guise work as to the purpose for which cross examination is sought for.

119.27.4 Noticee No.09 under submission dated 31.03.2024 has given name of **9 persons** including co-noticees for cross examination. He has also raised objection for demand of providing specific points for cross examination stating that he cannot be compelled to disclose his points. Cross examination is his fundamental right and most ingredient of natural justice. Relied upon SC judgment [Andaman Timber Industries Vs. CCE, CA No.4228/2006 dated 02.09.20215], adjudicating authority cannot indulge into guise work as to the purpose for which cross examination is sought for.

119.27.5 Notice no.03 under submission dated 19.04.2024 stated that:

- (i) cross examination is enshrined in the provisions of the Customs Act,1962 and is a statutory right of the noticee;
- (ii) it is mandatory on the part of the adjudicating authority to allow cross-examination of witnesses and the noticee is not required to provide any reasons for cross-examination;

- (iii) By asking for specific points or reasons, a decision regarding allowing cross-examination is likely to be taken, which is against the mandate of the law;
- (iv) The noticee had sufficient reasons for asking the cross-examination. The entire Show Cause Notice is based on the statements of persons listed as noticee No. 4 to 13 and himself;
- (v) cross examination of noticee No. 4 to 14 is required (Eleven co-noticees);
- (vi) Referred the para 14.9 of CBEC Circular No.1053/2/2017-CX., dated 10.03.2027, regarding corroborative evidence and cross examination, and submitted that it is obligatory to allow cross examination of the person whose statement has been relied upon in the SCN.

119.27.5.1 I further find that the noticee under submission dated 29.04.2024 has given list of **17 persons** including co-noticees for cross examinations:

(i) Shri Ram Raj Choudhary	(ii) Shri Navratan Singh Jain
(iii) Shri Om Prakash Vanjani	(iv) Shri Vikram Singh Kachchawa
(v) Shri Ravindra Kumar	(iv) Shri Ravindra Kumar
(vii) Shri Karnlesh Nagda	(viii) Shri Deepak Kumar
(ix) Shri Vimal Nahar	(x) Shri Nitesh Kumar
(xi) Shri Surendra Mali	(xii) Shri Rajendra Jangid
(xiii) Shri Paresh U Sheth (RUD-63)	(xiv) Shri Mehulbhai Arjunbhai Kakadiya (RUD-65)
(xv) Shri Vikasraj fihkraj Juneja	(xvi) The Custom Officer who seized the goods in the premises of M/s Europea (SEZ)
(xvii) Shri Kailash Choudhary (RUD-60)	

119.28 I find that the noticees who have demanded for cross examination had to have specific reasons for it and in the present case in hand for adjudication, I find that none of the noticees had come forward to the adjudicating authority with specific reasons for cross examination, and simply given list of numbers of persons including co-noticees for cross examination, though they cannot claim as a matter of right. My above view is supported with legal pronouncement by the Hon'ble Tribunal in the case of **Fortune Impex Vs. Commissioner of Customs, Calcutta**, reported at **[2001(138) E.L.T.556 (Tri. -Kolkata)]**, wherein it has been held that:

12."...it is not required that in each and every case, cross-examination should necessarily be allowed. There is no absolute right of cross-examination provided in the Customs Act. The Advocate had given a list of 26 persons for cross-examination without indicating the specific reasons for cross-examining it cannot be said that there was violation of principles of natural justice by not allowing the cross-examination of the persons sought by him."

The above view taken by the Tribunal has been affirmed by Hon'ble Supreme Court – **2004 (164) E.L.T. 4 (S.C.) & 2004 (167) E.L.T. 134 (S.C.)**.

In this context, the ratio of the case reported in **Harinder Pal Singh Shergill v. Commissioner** reported at – **2010 (259) E.L.T. A19 (S.C.)**, is also relevant in which Hon'ble Supreme Court has dismissed the Petition for Special Leave to Appeal (Civil) No. 26940 of 2010 filed by Harinder Pal Singh Shergill against the Judgment and Order dated 12-5-2010 in GCR No. 3/2006 of Punjab & Haryana High Court as reported in 2010 (255) E.L.T. 188 (P & H) (Harinder Pal Singh Shergill v. Registrar, CEGAT) by observing that:

".....mere fact of filing long list of 14 witnesses for cross-examination was sufficient to prove that disposal of matter intended to be delayed. The Court also observed that while proceedings were delayed by petitioner under one pretext or the other, appellant and his advocate failed to appear despite hearing memos being sent to them."

119.29 Further, it is also a settled legal stand that cross-examination cannot be claimed as a matter of right and the request for cross-examination has to be examined in the context of facts and circumstances of that particular case. In the present case, the Noticees have fully availed the opportunity of examining the veracity of the entire set of documentary and oral evidences sought to be relied upon by the Revenue. Therefore, no evidence is sought to be used against the said assessee behind their back and the principles of natural justice have been duly followed. Therefore, cross-examination is not warranted in the instant case since the cause of Noticee is not vitiated for want of such cross-examination. The said conclusion is supported by the following case laws:

a) **M/s Kanungo & Co.** reported at **1983 (13) ELT 1486 (SC)** wherein it has been held as under:

"12. We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show cause notice issued on August 21, 1961, all the materials on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly, we hold that there is no force in the third contention of the appellant."

b) In the case of **G. Subramanian**, reported at **2002 (142) ELT 224 (G.O.I.)**, it has been held as under:

"7. Govt. observes that through sustained and well directed investigation, the Deptt. was able to crack the organized gang which specialized in illegal exportation of foreign currency and import of foreign goods. The role of Shri G. Subramanian in this organized activity is established by the investigation carried out. It has been held by the Hon'ble Supreme Court of India that customs officers are not police officers and therefore statements given before customs officers are valid as substantive evidence. It has been categorically held that the statements made before the customs officials is not a statement

recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by the customs officials under Section 108 of the Customs Act. Hon'ble Supreme Court had also held that the statements made before customs officers though retracted within six days is an admission and binding because it has been made before a customs officer and not a police officer. These aspects have been dealt with in detail by the Hon'ble Supreme Court in the following judgments (i) Surjit Singh Chhabra v. Union of India reported in 1997 (89) E.L.T. 646, Naresh J. Sukhawani v. Union of India - 1996 (83) E.L.T. 258 (S.C.) etc. It has also been held that cross-examination is not compulsory. Procedural requirements as to cross-examination of witnesses etc. governing enquiry under Article 311 of the Constitution of India are not equally applicable to proceedings under Section 112 of the Customs Act, 1962. Cross-examination is not a mandatory procedure to be allowed in all cases- Liyakat Shah v. Commr. - 2000 (120) E.L.T. 556 (T). Hon'ble Tribunal has also held that the plea that no opportunity of cross-examination was afforded is not tenable and when confessional statements are given, non-tendering of witnesses for cross-examination is not violative of principles of natural justice. Cross-examination is not a part of the natural justice but only that of procedural justice and not a 'Sine qua non' Poddar Tyres Pvt. Ltd. v. Commissioner - 2000 (126) E.L.T. 737 (Tri.). In Akai Impex v. Commissioner - 2000 (118) E.L.T. 610 (T), Hon'ble Tribunal held that cross-examination of witnesses cannot be demanded as a matter of right."

c) In the case of **Dipu Das v/s Commissioner of Customs Kolkata** reported at **2010(261) ELT 408 (Tri-Kol)**, Hon'ble CESTAT Kolkata held that:

"7. At any rate, the request for cross-examination was made without giving any reasons. In adjudication proceedings, cross-examination cannot be claimed as a matter of right on mere asking for it, without furnishing reasons for the same....."

119.30 In the present case in hand for adjudication, I find that the noticees have neither filed their reply to the Notice nor they appeared before the adjudicating authority during personal hearing. Noticee no.4, 12, 13 and 14 also did not appear before the investigation. I find that the group of persons involved in the present case are attempting to delay the adjudication by advancing such arguments. They are taking shelter of Principles of natural justice which I do not find bonafide in the present case. I rely upon the following case laws:

a) The Hon'ble Madras High Court in the case of **Stalin Joseph versus commissioner of customs (airport), chennai**, reported at **2021 (377) E.L.T. 13 (Mad.)** held that:

"30. With regard to the plea that the appellant should be permitted to cross examine every person, the Adjudicating Authority, in our view, rightly pointed out that such request has to be considered based on facts and circumstances of each case. After referring to the factual matrix, the Adjudicating Authority concluded that the request for cross examination was a mere ploy and to scuttle and delay the adjudication process. The conduct of the appellant is clearly brought out in the

adjudication order that he has been evading the summons and absconding and not availing the opportunity of personal hearing. After elaborately discussing all the factual matrix, the Adjudicating Authority held that the other co-noticees have not retracted their statements given under Section 108 of the Act and the plea made by the appellant for cross examination is only for dragging on the proceedings and therefore, there are enough and valid grounds to deny such request. The facts, which have been brought out by the Adjudicating Authority in the Order-in-Original, clearly expose, the appellant's role.

31. We agree with the finding of the Adjudicating Authority that the plea raised by the appellant demanding cross examination is only with a view to drag on the matter. In fact, in the reply/representations, which the appellant had sent, he has not been specific as to why he requires cross examination because, the appellant has not brought out any independent facts or evidence as his defence to the allegation made against him in the show cause notice. The reply is a bald denial of the entire allegations stating that the appellant is not involved in the import of the said items. However, during the course of investigation and while considering the entire matter, the Adjudicating Authority has been able to bring out the facts as to how the appellant has impersonated himself, opened bank account in the name of a fictitious person, remitted customs duty by effecting cash payment in dummy bank accounts, opened in the name of an Enterprise and one Shri Rakesh Upadhaya. Therefore, we are of the view that the facts and circumstances of the case would clearly show that the request for cross examination is devoid of merits, lacks bona fide and rightly denied by the Adjudicating Authority."

The above judgment of the Hon'ble Madras High Court has been affirmed by the Hon'ble apex court - **Stalin Joseph v. Commissioner** reported at **2022 (381) E.L.T. A37 (S.C.)**, observing that:

"We see no reason to interfere. The Special Leave Petitions are dismissed.

Pending applications, if any, shall stand disposed of."

b) Hon'ble CESTAT, Delhi in its decision in the case of **Om International vs CC, New Delhi** reported at **2007 (217) ELT 88 (Tri. Del.)** held that:

".....appellants have not been prejudiced in any manner by denial of Cross-examination of seizing officer, panch witnesses and officers, who recorded statement. contents of these statements fully reproduced in show cause notice itself and appellants have been granted ample opportunities to reply the same.

c) Hon'ble High Court of Kerala in the case of **N.S. Mahesh Vs Commissioner of Customs, Cochin**, reported at **2015(11)LCX0049**, held that:

"i. Cross-examination of all officers who assessed, audited, examined the impugned consignments:

The investigating unit has developed the case on the basis of documents recovered during investigation and other evidences and not relied on statements of any officers who examined/audited/assessed the consignment. Moreover said officers have discharged these functions as part of their official duty, based on documents provided by the importer. Accordingly the request for cross-

examining all officers who assessed/audited/examined the impugned consignments cannot be acceded to.

2. On a perusal of Ext.P5 order, and the reasons given by the respondent to deny the request of the petitioner for cross-examination, I do not find any illegality in the said order that would warrant an interference with the said order in these proceedings under Article 226 of the Constitution of India. The writ petition, in its challenge against Ext.P5 order, therefore fails, and is accordingly dismissed.

119.31 In view of the above discussions, I find that demanding of cross examination of witnesses/ co-noticees /officers in the present case is solely for the purpose of delaying the adjudication proceedings and the request of Noticees for cross-examination is not imperative in the facts and circumstances of the case and as such I reject the request for cross-examination.

119.32 It is a settled position that proceedings before the quasi-judicial authority is not at the same footing as proceedings before a court of law and it is the discretion of the authority whether request of cross examination to be allowed in the interest of natural justice. In a quasi-judicial proceeding like the present one, where corroborative evidences are in existence in addition to the admission/ confession, denial of cross-examination does not violate the principles of natural justice in each and every case. Denial of cross examination in such cases would neither cause any injustice nor affect the outcome of the case. It depends on the peculiar facts and circumstances of each case. I rely upon the following case laws in this regard:

a) The Hon'ble Bombay High Court in the case of **M/s Patel Engineering Ltd., V/s Union of India**, reported at **2014 (307) ELT 862 (Bom)** held that:

"23. Therefore, we are of the opinion that it will not be correct to hold that irrespective of the facts and circumstances and in all inquiries, the right of cross examination can be asserted. Further, as held above which rule or principle of natural justice must be applied and followed depends upon several factors and as enumerated above. Even if there is denial of the request to cross examine the witnesses in a inquiry, without anything more, by such denial alone, it will not be enough to conclude that principles of natural justice have been violated. Therefore, the judgments relied upon by Shri Kantawala must be seen in the factual backdrop and peculiar circumstances of the assessee's case before this Court..."

Above findings of the Hon'ble High Court has been affirmed by the Hon'ble apex court, reported at **Patel Engineering Ltd. v. Union of India - 2015 (323) E.L.T. A73 (S.C.)**, wherein the apex court observed that:

"3. We have heard learned counsel for the appellant and carefully perused the material available on record. In our considered opinion, we do not see any good ground to interfere with the judgment and order passed by the High Court. Accordingly, the Civil Appeal is dismissed."

b) In the case of **Kanungo & Co. Vs. Collector of Customs, Calcutta & Others** reported at **1993(13) E.L.T. 1486 (S.C.)**, wherein it was

unequivocally held that for proceedings under Customs Act, the right to compliance to the principles of natural justice does not cover the right to cross examination of witnesses:

"12. We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show cause notice issued on August 21, 1961, all the materials on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly, we hold that there is no force in the third contention of the appellant."

c) In the case of **Sudhir Sharma Versus Commissioner of Customs**, reported at **2015 (319) E.L.T. 450 (Del.)**, the Hon'ble Delhi High Court held that accused were not prejudiced by denial of cross-examination and principles of natural justice were not violated. Law did not insist on impossible threshold of proof to establish allegations in Customs proceedings. If on probabilities statutory authorities can establish evasion, legal standards were adequately met with:

"37. Bhoormul (supra) is also authority for the view that the law does not insist upon an impossible threshold of proof to establish allegations in Customs proceedings and that if on probabilities the statutory authorities can establish evasion, the legal standards are adequately met with. Here, each of the appellants were implicated for their complicity not on the basis of solitary evidence only, such as confessional statement of R.N. Zutshi, but also other materials: phone call records during the various past occasions when the passenger couriers had landed; the presence and role of the concerned appellants in helping the clearance of consignments, corroboration through statement of others, etc. The chain of circumstances to prove the allegations they had to answer, therefore, had been explained. The appellants, significantly did not seek cross-examination for over 5 years, though they were aware that the statements were to be used during the proceedings that had been put to them in the SCNs....."

d) In the case of **Poddar Tyres (Pvt) Ltd. v. Commissioner**, reported at **2000 (126) E.L.T. 737 (Tribunal)**, the Hon'ble Division Bench observed that:

"15. As far as the question of cross examination is concerned, it has already been held by the Hon'ble Supreme Court and High Courts that in quasi-judicial adjudication proceedings, cross examination is not a 'sine qua non'. It is not a part of natural justice but only that of procedural justice and the Tribunal has held in a series of cases that it may or may not be allowed depending upon as to whether it was essential for arriving at a correct and fair judgment in the facts and circumstances of a given case."

119.33 The noticees have advanced arguments in their preliminary reply that after allowing of cross examination they would be in position to file reply to the SCN. As per the legal provisions under Section 124(b) of the Customs Act, which deals with- issue of show cause notice before confiscation of goods, etc., Noticee is required to submit his reply as he is bound by the said provision. Section 124(b) reads as under;

SECTION 124. Issue of show cause notice before confiscation of goods, etc. — No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person –
(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

119.34 Bare perusal of Section 124 indicates that it has ingredients of Principles of Natural Justice, but it has no such condition which says that only after cross examination written reply would be filed. Section 122 of the Customs Act which deals with adjudication and its procedure thereof does not say that reply would be filed only after grant of opportunity of cross examination during adjudication proceedings. Following case laws supports the aforesaid view:

a) Hon'ble High Court Allahabad in the case of **Kanpur Cigarettes Ltd. Versus Union of India**, reported at **2016 (344) E.L.T. 82 (All.)** has held that there is no right, procedurally or substantively or in compliance with natural justice and fair play, to make available the witnesses whose statements were recorded, for cross-examination before the reply to the show cause notice is filed". It also held that "the petitioner cannot insist that the petitioner be first permitted to cross-examine the witnesses and thereafter it would submit its reply.

"23. From a perusal of the proceedings of various dates before the respondent No. 3, it is evident that the respondent No. 3 has been requiring the petitioner to submit its final reply to the show cause notice so that the matter could proceed further. However, the petitioner has been insisting that the petitioner be first permitted to cross-examine the witnesses whose statements had been recorded during the proceedings by the authority concerned, and thereafter, the petitioner would submit its final reply.

24. In our view, the insistence of the petitioner that the petitioner be first permitted to cross-examine the witnesses, and thereafter, it would submit its reply, is not correct. The petitioner is first required to submit its reply to the show cause notice putting its defence. The petitioner has already been provided photostat copies of the relevant documents relied upon against the petitioner. Therefore, there is no question of any prejudice to the petitioner in submitting its reply to the show cause notice.

b) The Hon'ble Principal bench of the Tribunal of Delhi in the case of **Miraj Products Pvt. Ltd. versus Commr. of C. Ex. & Service Tax, Udaipur**, reported at **2019 (369) E.L.T. 1147 (Tri. – Del.)** held as under:

"14. We follow the adjudication of Allahabad Tribunal in Kanpur Cigarette (supra) case that the question of cross-examination of witnesses would arise only when the adjudication proceedings

commence after the stage of filing reply to the Show Cause Notice. Neither statutory nor any principle of natural justice requirement exists for allowing cross-examination at a stage of receiving the mere Show Cause Notice”.

c) The Hon’ble High Court of Madras in the case of **Kibs Hoisery Mills P. Ltd. versus Spl. Dir., Dte. of Enforcement, New Delhi**, reported at **2016 (344) E.L.T. 24 (Mad.)** has held that:

“15. Therefore, the petitioners are bound to submit their reply to the show cause notice and the representation made by them dated 12-7-2010 is misconceived and the respondents rightly rejected the same. The petitioners cannot device their own procedure as per their whims and fancies and they are bound to follow the procedure contemplated under the Act and Rules. Hence, no grounds are made out to interfere with the impugned order.”

119.35 In view of the above provisions under the Customs Act and the judicial pronouncement, the contention of the noticees that they would be able to file reply after allowing cross-examination of different persons including co-noticees and Customs Officers, is not tenable.

119.36 In the peculiar facts and circumstances of this case, plea to comply with the principles of natural justice taken by the noticees cannot be based for allowing their unreasonable demands. It is established principle of law that fraud and justice do not dwell together. The Hon’ble double bench of the Tribunal in the case of **K.I. International Ltd. Versus Commissioner of Custom, Chennai**, reported at **2012(2)ECS(126)(Tri-Chen)** categorically observed and held that:

“10.1 Evidence gathered by Revenue unambiguously and succinctly proved that the TRAs used by the importer appellants were fake, false, forged and fabricated for discharge of customs duty and caused prejudice to Revenue. Similarly, the traders, brokers and sub-brokers supplying such instruments were conduit and instrumentality in commitment of offence of causing loss to Revenue consciously and deliberately having intimate connection to each other. Neither the importer appellants nor the conduits could demolish the evidence gathered by Revenue making enquiry from DGFT Authority. Their ill-design was unearthed by investigation.

10.2 It is established principle of law that fraud and justice do not dwell together. An assessee acting in defiance of law has no right to claim innocence when he fails to exercise due care and diligence. Failing to cause enquiry with the issuing authority of DEPB scrips/TRAs crippled the importer appellants to claim bona fide. Findings of the learned Adjudicating Authority do not appear to have been made suspiciously or under surmise but seems to have been based on cogent evidence.”

119.37 I find that the noticees have relied upon various judgments pronounced by various appellate foras, wherein the Hon’ble appellate foras has allowed cross-examination. I have gone through the facts and circumstances of such cases and find quite different from the facts and circumstances of the present case. The ratio of case laws relied upon by the noticees in support of their contentions are not squarely applicable to the facts and circumstances of the present case. In the present case, the

circumstances are not found to allow cross-examination, despite that the noticees were given sufficient opportunities to come forward with specific reasons for cross examination, however, either the noticees did not respond or they did not give any cogent reason. I therefore, find that the ratio of the case laws relied upon by the noticees are not squarely applicable to the facts and circumstances of the present case.

- In the case of Kallatra Abbas Haji Vs. Government of India – 1994 (69) ELT 212 (ker.), there was denial at stage of initial investigation and later on confession was there. Contradictory stand occurred. Whereas in the present case in hand for adjudication no such contradiction in the confessed statements which are also corroborated with independent evidences as discussed herein above are there on record;
- In the case of Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkata-II – 2015-TIOL-255-SC-CX, the statement of the two witnesses was the only basis of issuing the Show Cause Notice. Whereas in the present case in hand for adjudication, in addition to the confessional statements recorded under Section 108 of the Customs Act, 1962, other documentary evidences are also there on record;
- In the case of Flevel International Vs. Commissioner of Central Excise – 2016 (332) ELT 416 (Del), the matter dealt with pertaining to manufacturing of Air Conditioners and the observations of the Hon'ble High Court are based on the records like RG1 register etc. on that basis manufacturing was accounted for, whereas in the present case, the noticee have failed to prove that the duty free imported Diamonds and precious stones ever utilised for the intended purpose as per the scheme of SEZ. Moreover, the present case is not merely based on the statements but also backed by various documents;
- In the cases of Jindal Drugs Pvt. Ltd. and another Vs. Union of India and another – 2016 (340) ELT 67 (P&H); Ambika International & Others Vs. Union of India and another- 2018 (361) ELT 90 (P&H); G-Tech Industries Vs. Union of India – 2016 (339) ELT 209 (P&H)/2016-TIOL-2749HC-P&H-CX, the judgments are pronounced in the case of evasion of central excise duty, which are on different footings in as much as the evasion of customs duty in the present case involve misuse of special fiscal provisions meant for SEZ by the Government and breach of trust. The case is established with other independent documents and hence, statements are not merely relied upon in the case in hand. The statements recorded under Section 108 of the Customs Act, 1962 are *ex facie* admissible in evidence as has been held by the Supreme Court in the case of Asstt. Collr. Of C. Ex., Rajamundry Vs. Duncan Agro Industries Ltd., reported at 2000 (120) E.L.T. 280 (S.C.), wherein the Hon'ble Apex court observed that:

"11. *In this context we bear in mind that a confession made to a police officer can be recorded by him without any of the constraints incorporated under Section 164 of the Code. But the safety of the confessor who makes such confession to the police officer is that the same is forbidden from use in evidence. The ban contained in Section 25 of the Evidence Act is an absolute ban. But it must be remembered that there is no ban in regard to the confession made to any person other than a police officer, except when such confession was made while he is in police custody. The inculpatory statement made by any person under Section 108 is to non-police personnel and hence it has no tinge of inadmissibility in evidence if it was made when the person*

concerned was not then in police custody. Nonetheless the caution contained in law is that such a statement should be scrutinised by the court in the same manner as confession made by an accused person to any non-police personnel.....”

and, therefore, such statements are not covered by the principle of exclusion of hearsay evidence and cross-examination of witnesses is not necessary in each and every case. Even then, in the interest of justice, opportunity for cross-examination, to the extent possible has been given, by the adjudicating authority in the instant quasi-judicial proceedings under the Act, however, the noticees have not come forward with the point required to be cross examined. These statements, relied upon in the impugned case, are primarily based on documentary evidences collected/seized during investigations and, therefore, are relevant also in terms of provisions under Section 32(2) of the Evidence Act. The facts stated therein do not necessarily require the test of cross-examination;

- Para 12 of Judgment of the Hon’ble High Court of Delhi in the case of J.K. Cigarettes Ltd. Vs. CCE, 2009 (242) ELT 189 (Del) relied upon by the Noticee no.1 which I find that in the above judgment upto para 21 the Hon’ble court has mentioned the submissions made by the counsels of petitioner as well as respondent. The observation and findings of the Hon’ble court in the matter are recorded in the paras subsequent to para 22, which is clear from the wordings of para 22, reproduces as under:

22. *We have given our due consideration to the submissions made by both the learned counsel.*

I further find that in the same judgment, the Hon’ble Court has held that:

24..... at the same time under certain circumstances, this right of cross-examination can be taken away. Of course, the circumstances have to be exceptional.

119.38 I find that the noticees have also relied upon case laws in support of their claim regarding evidences and jurisdiction. I find that the ratio of the case laws referred and relied upon by the noticees are not squarely applicable to the facts and circumstances of the present case and can be distinguished on facts. In the present case in hand, in addition to the confessional statements, other independent corroborative evidences as discussed herein above, are available on record. On perusal of such independent documentary evidences, the confession of the noticees remain unquestionable.

- In the case of Nathu vs. State of Uttar Pradesh AIR (1956) SC 56, the matter of Criminal Appeal was dealt with wherein in the present case commercial fraud is involved. Also, in that case the statements were not corroborated;
- In the case of Union of India Vs. Kisan Ratan Singh and Ors [2020 (372) ELT 714 (Bom.), the judgment is pronounced for want of any corroboration by an independent and reliable witness;
- In the case of Sudarsan Jana Vs. Commissioner of Customs (P), Kolkata 2017 (357) ELT 656 (Tri.-Kolkata), nothing appears to have been commented on reliance upon statement recorded under Section 108 of the Customs Act, 1962;

- In the case of Vinod Solanki Vs. UOI [MANU/SC/8446/20C)8 : 2009 (233) ELT 157 (SC)], the Hon'ble apex court observed that the initial burden to prove that confession was voluntary is on Department, which has been proved in this case. The contentions raised in this regard by the noticees before the court has also been addressed by the court finding no merit in their contentions. The Hon'ble apex court observed in this case that mere retraction of confession not sufficient to make confessional statement irrelevant, implications of both confession and retraction are to be considered and the evidence brought by confession if retracted must be corroborated by other independent and cogent evidences. In the present case, the confessional statements are duly corroborated with other independent and statutory documents as discussed herein above;
- In the case of A.L. Jalaludeen Vs. Dy. Dir. Of Enforcement Directorate, Chennai, 2010 (261) ELT 84 (Mad.), the Hon'ble High court has categorically observed that case does not rest on statement of appellant alone but it receives strength from the statement of witnesses. Principles of natural justice not violated by not allowing the appellant to cross-examine those two witnesses. Retraction by appellant not genuine and bald retraction and confessional statements are credible and voluntary. Even my findings in the present case are supported by this judgment;
- In the case of Sachin Kumar Vs. Commissioner of Customs, Mangalore, 2020 (374) ELT 775 (Tri.-Bang.) No corroborative evidence was on record to pinpoint that appellant are having knowledge of illegal activities of exporter company, whereas in the present case it has been clearly established that the noticees have knowingly indulged in the offence for their personal gain;
- In the case of Rajendra Prasad Vs. Commissioner of Customs, Patna [2001 (136) ELT 925 (Tri.Kolkata) matter of smuggling and transportation of goods was dealt with and statements were without corroboration which is not the case here;
- In the case of Union of India vs. Abdulkadar Abdulgani Hasmani 1991 (55) E.L.T 497 (Gla.), the Hon'ble court has observed delay in recording of statement therefore, has drawn inference that the statements may not be voluntary, whereas in the present case no such abnormal delay in recording of statement is ever seen on record;
- In the case of Divine Chemtee Ltd. and Ant. v. Principal Commissioner of Customs and Others, [W.P. No. 13794 of 2020, matter dealt with was pertaining to the period prior to 05.08.2016, i.e. the date prior to issuance of S.O. 2667(E) dated 05.08.2016 issued under Section 22 of the SEZ Act, 2005 where under the jurisdictional Customs Commissioner in respect of offences under the Customs Act, 1962 and notified under the SEZ Act, 2005 is authorized by the Central Government, so as to carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit;
- In the case of Commissioner of Central Excise, Bangalore Vs. Brindavan Beverages (P) Ltd. and Ors., [(2007) 5 SCC 388], the matter was regarding non specific allegation in SCN against the petitioner, which is not the issue in the SCN in hand;
- In the case of Vikash Kumar Singh, Shashank Shekhar Jtta v. Commissioner Of State Tax, State Of Jharkhand, Deputy Commissioner Of State Tax, Jharkhand Goods And Service Tax, Godda & Dumka, Godda, [2023 (4) TMI 402], the ground of petition was that the show-

cause notice does not strike out the relevant particulars and does not even enumerate the contravention which the petitioners have been called upon to reply and thus, Summary of Show-Cause Notice cannot be a substitute of a proper show, which is not the issue in the SCN in hand. The SCN under adjudication is served to the noticees elaborating the modus operandi and role of each noticee in detail;

- In the case of Aggarwal Dyeing and Printing Works Vs. State Of Gujarat & 2 Others, [2022 (4) TMI 8641 and Amit Chandrakant Shah v. State Of Gujarat, [2023 (1) TMI 979, the Hon'ble Court has dealt with issues arising due to the technical glitches during transitional phase of GST implementation, which is not the case here;
- The noticees have relied upon on the following cases laws based on the Judgment of the Hon'ble apex court in the case of M/s. Canon India Private Limited V/s. Commissioner of Customs (Civil Appeal No. 1827 of 2018):

Quantum Coal Energy (P) Ltd., reported in 2021-TIOL-711-HC-MAD-CUS; Shri Mohan C Suvarna Vs. Principal Commissioner of Customs & Anr, Hon'ble High Court of Karnataka, reported in 2021-TIOL-1614-HC-KAR-CUS; Kitchen Essentials & Ors. vs. The Union of India & Ors. 2021 (10) TMI 1267-Bombay High Court = 2021-TIOL-2105-HC-MUM-CUS; M/s. Steelman Industries vs. Union of India and Others reported in 2021-TIOL-2046-HC-P&H-CUS; COMMISSIONER OF CUSTOMS (EXPORT), RAIGAD VERSUS RELIANCE INDUSTRIES LIMITED, reported in 2021 (12) TMI 859 - BOMBAY HIGH COURT; M/s BERIWALA IMPEX PVT LTD reported in 2022-TIOI,- 183-CESTAT-KOL; Commissioner of Customs, Kandla Versus Agarwal Metal and Alloys, reported in 2021 SCC OnLine SC 1164; Toyota Material Handling India Pvt Ltd, reported in 2022-TIOL-114-CESTAT-DEL; C. Magudapathy vs. Commissioner of Customs (Seaport-Export) , reported in 2021-TIOL-562-CESTATMAD; Arun Kumar Agarwal Vs. Principal Commissioner of Customs (Import), New Delhi, reported in 2022-TIOL-65-CESTAT-DEL; M/s Sree Krishna Enterprises reported in 2022-TIOL107-CESTAT-MAD

The issue dealt with by the Hon'ble Supreme Court in the above case of M/s. Canon India Private Limited pertains to the issue of DRI officers being proper officer or not, under the Customs Act, 1962, whereas in the present case in hand, SCN has been issued by the Commissioner of Customs, Ahmedabad who is the proper officer under the Customs Act, 1962 to issue Show Cause Notice in the instant case, therefore, the ratio of these case laws are not squarely applicable to the facts and circumstances of this case;

- In the cases of Assistant Collector of Customs and Superintendent, Preventive service Customs, Cacus and other Vs. Charan Das Malhotra - 1983 (13) ELT 1477 (SC); Rao, Assistant Collector of Customs Vs. Bibhuti Bhushan Bagh - 1989 (42) ELT 338 (SC); Harbans Lal Vs. Collector of Central Excise & Customs- 1993 (67) ELT 20 (SC); Amit Harishkumar Doctor Vs. Union of India - (2023) 2 CENTAX 302 (Guj), the matter dealt with pertain to non-extension of period for seized goods as per proviso to sub-section 2 of Section 110 of the Customs Act, 1962, which is not the case here. In the present case, the competent authority has granted the required extension as

per the provisions and the SCN has been issued within such extended period.

Therefore, I find that the judgments were on different matrix and quite different from the facts and circumstances involved in the case in hand and it is settled law that each and every case has to be seen with its own facts and circumstances, therefore, I am unable to hold that the ratio of the various decision as relied upon by the noticees would apply in this case.

119.39 I also find that the noticees have referred and relied multiple case laws on the same issue and more or less findings of the order passing authorities are same which is redundant and therefore, each and every case are not discussed here in length. Almost in all the cases the Hon'ble court has emphasized to look into the facts and circumstances of each case. I find that the ratio of case laws relied upon by the noticees in support of their contentions are not squarely applicable to the facts and circumstances of the present case. There are judicial pronouncements which ruled that each and every case has to be looked into with the facts and circumstances of that particular case. In this regard, I would like to rely on the judgment of the Hon'ble Supreme Court of India in the case of **Escorts Ltd. Versus Commissioner Of Central Excise, Delhi-II, reported at 2004 (173) E.L.T. 113 (S.C.)**, wherein the Hon'ble apex court observed that:

"10. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

Further reliance is placed on the judgment of the Hon'ble Apex court in case of '**Collector of Central excise, Calcutta Vs Alnoori Tobacco Products' (2004(170)ELT 135 SC)**, where it was observed by the Hon'ble Apex Court-

*"11. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. **Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.** In London Graving Dock Co. Ltd. v. Horton (1951 AC 737 at p. 761), Lord Mac Dermot observed :*

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

*12. In Home Office v. Dorset Yacht Co. [1970 (2) All ER 294] Lord Reid said, "Lord Atkin's **speech..... is not to be treated as if it was a statute definition. It will require qualification in new circumstances.**" Megarry, J in (1971) 1 WLR 1062 observed: "**One must not, of course, construe even a reserved judgment of***

Russell L.J. as if it were an Act of Parliament.” And, in *Herrington v. British Railways Board* [1972 (2) WLR 537] Lord Morris said :

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

13.Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

14.The following words of Lord Denning in the matter of applying precedents have become locus classicus :

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

Duty liability on the diverted Diamonds and precious stones: Whether M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and M/s. Maahi Jewellery Exim Private Limited (SEZ Unit) are liable to pay the amount of Customs Duty, as detailed in Annexure-A and Annexure-B to the Show Cause Notice under Section 28(4) of the Customs Act, 1962:

120.1 SEZ units are allowed duty free import of goods and services for their authorized operations subject to terms and conditions prescribed under the provisions of law. As per Rule 34 of the SEZ Rules,2006, the goods admitted into a SEZ shall be used by the Unit only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit fails to account for the goods as provided under the SEZ rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption. Further, as per the charging Section 30 of the SEZ Act,2005 customs duties on movement of goods from SEZ unit to DTA is leviable, treating the movement as import of goods by DTA. In the present case in hand M/s. Europea (SEZ Unit) and M/s Maahi (SEZ Unit) had misused the special fiscal provisions for special economic zones and evaded the applicable Customs duties payable on the imported Diamond / Precious Stones as well as the applicable IGST and Social welfare Surcharge (SWS) /Cess on the said Customs Duty by way of diversion into domestic tariff area without paying any duty thereon, therefore, Customs duty as well as the applicable IGST and Social welfare

Surcharge (SWS) /Cess on the said Customs Duty, as applicable to such goods when imported into India shall be levied. Thus, the duty is payable by them.

120.2 I find that M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and M/s. Maahi Jewellery Exim Private Limited (SEZ Unit) failed to utilise the good imported in the SEZ Unit for carrying out authorised operations as required under Rule 34 of SEZ Rules, 2006. Both the above SEZ Units are the "beneficial owners" of the imported goods under dispute under this notice as per Section 2(3A) of the Customs Act, 1962 which provides that "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, and therefore, being beneficial owners they are liable for duty amount demanded under the notice. Duties of Customs, beneficial owners are not defined in the SEZ Act, 2005, however, as per Section 2(zd) of the Act, *ibid*, the words and expressions used and not defined in this Act but defined in the Customs Act, 1962 shall have the meanings respectively assigned to them in those Acts.

120.3 In view of the above, I find that there is no dispute about the leviability of Customs duty on the imported Diamonds and precious stones imported by these two SEZ units duty free and diverted to local market and failed to utilize the duty free imported goods for the authorized operations and in manufacture of goods to be exported against fulfilment of their export obligations. Therefore, duty on goods in Annexure-A and Annexure-B to the notice is required to be recovered from M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and M/s. Maahi Jewellery Exim Private Limited (SEZ Unit) respectively inasmuch as they have diverted these goods in the local market clandestinely without payment of duty saved by them at the time of imports.

Invocation of extended period under Section 28(4) of the Customs Act, 1962:

120.4 The Ingredients for invocation of the extended period of five years for demand of duty under the provisions of Section 28 of the Customs Act, 1962 are wilful misstatement, suppression of facts and collusion. The duty free imported Diamonds/precious stones by M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and M/s. Maahi Jewellery Exim Private Limited (SEZ Unit) were not utilised for the intended purpose as specified under the provisions of the SEZ Act and rules made thereunder and had knowingly been diverted to local market to evade the duty. It is also clear from the facts emerged during the course of investigation that Shri Suresh Ratanlal Jagetia and other accomplices in this case have knowingly and deliberately executed the conspiracy/strategy devised by the syndicate resulting in evasion of duty. Diversion of the duty free imported Diamond/precious stones by the noticees was not the result of any bonafide doubt but it was a conscious decision on their part and they have wilfully designed their mode of operation to defraud the revenue. As elaborated herein above paras, the diversion of duty free imported goods in this case has been established. Hence, the duty in this case is correctly demanded under Section 28(4) of the Customs Act, 1962. It is well settled legal positions that extended period of limitation is invocable when clandestine removal and evasion of duty is established on the grounds of wilful misstatement, suppression of facts etc.

Imposition of Penalty on the noticees: Whether penal action under the provisions of the Customs Act,1962 warranted against the noticees:

120.5 I find that in the case in hand, economic offence has been committed by the noticees, which is a white-colored offence. A white-colored offence is committed by a group of people profiting themselves regardless of the consequences to the community which reflect a deliberate disregard for ethical norms and societal well-being, posing significant threats to economic security and public welfare. White-colored offence /economic offence, having deep rooted conspiracies and involving huge loss to public exchequer, needs to be viewed seriously and has to be considered as grave offence, affecting the economy of the Nation as a whole and thereby posing serious threat to the financial health of the Country. Further, in the instant case I observed that huge customs Duty/revenue have been evaded by adopting novel modus and various provisions of Customs Act, 1962, SEZ Act and Rules made thereunder, as discussed above, have been violated by the importers and various other involved firms/persons. Therefore, I am of the view that stringent penal action under the provisions of law is warranted against the noticees in this case. This view is supported by the observations made by different judicial authorities in series of judgments in the case of commercial and economic offences.

120.6 The persons who has defrauded the revenue does not deserve any mercy and appropriate penalty under the provisions of the Customs Act, 1962 is required to be imposed upon him as the penal provisions are enacted to suppress the evils of defrauding Revenue which is an anti-social activity, adversely affecting the public revenues, the financial stability and the economy of the country.

120.7 As per Section 53(1) of the SEZ Act, 2005, a Special Economic Zone is deemed to be a territory outside the customs territory of India and if the goods has to be cleared into local market (Domestic Tariff Area) then the same has to be cleared with payment of applicable duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 (51 of 1975), as provided under Section 30 of the SEZ Act,2005. Procedure for sale in Domestic Tariff Area (local market) is governed under Rule 48 of the SEZ Rules,2006, which provides that the DTA buyer or the SEZ unit on behalf on the basis of authorisation from DTA buyer shall file Bill of Entry with the Authorised Officers for home consumption. In the present case the good were imported in SEZ, and the exemption under section 26 of the SEZ Act, is meant for the authorized operations, however, the noticee failed to fulfil the condition since the imported Diamonds and precious stones were not utilized to carry out the authorised operations as required under Rule 34 of SEZ Rules, 2006. Therefore, it was violation of the conditional exemption available to a SEZ Unit in terms of the special fiscal provisions for special economic zones and thus, the goods imported by these two SEZ Units in contravention to the conditional exemption, are liable for confiscation under Section 111(j), Section 111(m) of the Customs Act, 1962 and therefore, tantamount to improper import and illegal import / smuggling as per Section 2(39) of the Customs Act, 1962, which defines "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, and, thus, penal action as provided under the provisions of the Customs Act,1962 is

warranted against the noticees. Accordingly, the noticees are liable for penalties provided for improper imports.

120.8 Further, as per Section 53(2) of the SEZ Act, 2005, a Special Economic Zone is deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under Section 7 of the Customs Act, 1962. Thus, goods must be cleared from Customs area after payment of applicable duty and following the due process prescribed under the SEZ Act and Customs Act. In the present case, the goods under dispute had been removed by the SEZ Units without payment of appropriate duty and without any proper documents and following the prescribed procedures, for this reason also the goods under dispute is liable for confiscation under Section 111(j) and Section 111(m) of the Customs Act, 1962 and thus, tantamount to improper and illegal import / smuggling as per Section 2(39) of the Customs Act, 1962, which defines "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, and, thus, penal action as provided under the provisions of the Customs Act, 1962 is warranted against the noticees.

120.9 For every wrong doing in taxation, penalty is absolute and penalty is leviable irrespective of intentions. Once the factum of contravention is found, the offence is complete and the persons who have committed the acts of omission or commission in relation to violation of the provisions of the Customs Act, 1962, are liable to penalty as stipulated under the respective provisions of the Act *ibid* without any requirement to establish their *mens rea*. Presence of element of *mens rea* is not a criterion for the imposition of penalty under the provisions of the Customs Act, as has been held in several judicial pronouncements, however, in the present case, mala-fide intention or *mens rea* of the beneficiaries/noticees have been brought on record in the findings of the investigation.

Now, I discuss the case of noticees individually:

121.1 Whether M/s. Europea Makeour Jewel Pvt. Limited & Shri Suresh Ratanlal Jagetia, Mastermind/Co-Conspirator/controller/beneficial Director of M/s. Europea Makeour Jewel Pvt. Ltd. had evaded customs duty resorting to diversion of duty free imported Diamonds and precious stones:

121.1.1 As discussed in foregoing paras, the noticees - M/s. Europea Makeour Jewel Pvt. Limited & Shri Suresh Ratanlal Jagetia, Director of M/s. Europea Makeour Jewel Pvt. Limited had not come out of clean hand in the entire episode of evasion of customs duty by way of diversion of duty free imported diamonds and precious stones. I have gone through different submissions made by them and found that there is no consistency in their submission. They kept changing their unwanted demands in every letter of submission they made before the adjudicating authority. The allegations labelled upon them under the SCN under adjudication, are based on the relied upon documents served to them alongwith SCN, however, the evidence placed on record could not be reasonably countered by the noticees and they have simply raised doubt on the veracity of the investigation by making superfluous correspondences with the ulterior motive to drag the adjudication. I find that the submissions of the noticees is devoid of

substances and not backed by any supporting legal documents. The noticees did not come out with clean hands to prove without leaving any doubt against the diversion of duty free imported diamonds and precious stones resulted in evasion of Customs Duty.

121.1.2 I find that in the very first submission they made vide letter dated 17.06.2023, just after receiving the SCN, they did not point out about non-receipt of Relied upon documents, except the imported documents, whereas later on they pleaded about non-receipt of legible copies of RUDs, certified copies of RUDs, CCTV footage etc. In their submission itself wherein they mentioned that many of the RUDs are not legible, such contentions of the noticees are an afterthought and devoid of their bonafide regarding co-operation in the adjudication proceedings. They could not find material to counter the findings of the investigation based on the numerous documentary evidences which were very well made available to the noticees as RUD at the time of service of SCN, and thus, the noticees have played trick by making such arguments to derail the adjudicating proceedings. Regarding the imported Bills of Entry based on which the evasion have been quantified in the case in hand, I find that the duty demanded under the SCN under adjudication was arrived at on the basis of data provided by Special Economic Zone, Sachin, Surat vide their letter F. No. SSSEZ/D/SIIB/039/2022-23/506 dated 23.09.2022 in respect of imports by M/s. Europea Makeour Jewels Pvt. Ltd. and M/s. Mahi Jewellery Exim Pvt. Ltd., wherein yearwise summary of duty foregone was given as discussed in the SCN and the document listed in the relied upon documents. Details of such imports including Bills of Entry number and date i.e. Thoka/Noting number, Bill of Entry wise duty calculation are very well mentioned in the duty quantification Annexure-A & B to the SCN. Copies of Bills of Entry are the importer's documents and are available with the importers, however, the copies of Bills of Entry available with the investigating agency in the records/documents resumed during the course of searches conducted at the premises of M/s. Europea Makeour Jewels Pvt. Ltd. and M/s. Mahi Jewellery Exim Pvt. Ltd. have been made available to M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) vide letter F. No. CUS/ICFS/MISC/613/2021-Prev-O/o Commr-Cus-Prev dated 21.02.2024 issued by the Deputy Commissioner of Customs, Customs Commissionerate (Prev.), Jodhpur, Hq at Jaipur.

121.1.3 I find that the relied upon documents like GST returns, bank statements are the documents gathered during the course of investigation and belong to them, there is no logic for demanding certified copies of such RUDs. As regard to the panchnamas, confessional statements are concerned, all such relied upon documents were provided in PDF form in a DVD/CD and need not require certified. They could have referred in original before the investigating agency, however, no such requisition was received to investigating agency, instead, they prefer to argue for certified copies, that too vide letter dated 08.05.2024, after lapse of such a long time, which itself show the attitude of the noticees towards adjudicating proceeding. No such demand ever raised by the noticees in the initial submissions made by them vide letter dated 17.06.2023. I find that all these are the tactics of the noticees to delay the adjudication proceedings.

121.1.4 Regarding the contentions and demand of the noticees for CCTV footage, installed in the interrogation room and the room where statements of one of the Directors, Shri Suresh Ratanlal Jagetia and other co-noticees

were recorded, I find that it is clear from the letter dated 01.5.2024 of the investigating agency that during interrogation and recording of statements under 108 of the Customs Act, 1962 the CCTV Camera were well installed in the room and premises of the office of the Commissioner, Customs (Prev), Jaipur as well as in terms of directions of the Hon'ble Supreme Court judgment in the case of Paramvir Singh Saini. It is pertinent to state that the Hon'ble Apex Court itself has considered the boundaries of keeping and maintaining of the data in para 17 of the judgment as under:

"17..... CCTV cameras must then be installed with such recording systems so that the data that is stored thereon shall be preserved for a period of 18 months. If the recording equipment, available in the market today, does not have the capacity to keep the recording for 18 months but for lesser period of time, it shall be mandatory for all states, Union Territories and the Central Government to purchase one which allow storage for the maximum period possible, and, in any case, not below 1 year....."

The Hon'ble Court in the case cited has directed all the agencies which carries out interrogations and has power of arrest to install the CCTV camera under para 19 of the order and directed the authorities as under:

"19 It shall further mention that CCTV footage is preserved for a certain minimum time period, which shall not be less than six months, and the victim has a right to have the same secured in the event of violation of his human rights"

The statements of the noticee were recorded on 27/28/30/31.05.2022 and the noticee has first time demanded the CCTV footage vide their letter dated 10.02.2024 only which is beyond 18 months of time of recording of statements. Therefore, demand for the data of CCTV footage is beyond the higher prescribed timeline by the Hon'ble Court. Such claim for CCTV footage at this stage after more than six hundred days are nothing but an after-thought of the noticees and part of the meticulously orchestrated plan to delay the adjudication proceedings in the case in hand. I find that the noticees had relied upon various case laws and contended that CCTV footage/electronic evidences are considered as "document" under Sec 3 of the Indian Evidence Act, 1872. I have gone through such relied upon case laws and find that the judgments are on different footings. Firstly, the judgment was in criminal proceedings and also in those cases, where the contents of electronic gadgets are relied upon, whereas it is not so in the present case in hand.

121.1.5 All the relied upon documents listed in the annexures of the SCN, had been supplied to the noticees, which is proved with their very first letter itself, wherein they have not pointed out about non-receipt of RUDs. Role of each and every noticees has been discussed in length in the SCN and evidences and documents gathered during the investigation which are relevant to the noticees have been made RUDs in the subject SCN. I find that the noticees were well informed in the SCN itself that the scanned copies of documents not provided in DVD/CD would be available for inspection on requisition made in writing. However, no such requisition was received by the investigating agency, as confirmed by them vide letter dated 16.07.2024. Therefore, the contention of the noticees about non furnishing of relied upon documents at this stage are nothing but an attempt to drag the adjudication.

I find that the case laws relied upon by the noticees are pertaining to those cases where relied upon documents were not supplied, that is not the case here and hence, distinguished.

- In the case of Kothari Filaments Vs Commissioner of Cus. (Port), Kolkata-2009(233)ELT289(SC); Mozart Global Furniture Vs. State Tax Officer (Intelligence), SGST, Deppt., Nilamur - 2020(33)GSTL 3 (Ker.); JVS Food Pvt. Ltd. Vs Union of India - 2018 (10) GSTL 291(Raj); Patron Detective and Security Services Vs. C.C.E. & S.T., Jaipur - 2018 (8) GSTL 133 (Raj) issue dealt with by the Hon'ble Courts was non-supply of seized documents which were relied upon in the SCN;
- In the case of *Silicon Graphics System India Private Limited vs Union of India* [2006(204) E.L. T.247 (Bombay)] delivery of SCN was in dispute, where as in the present case no such dispute is there;
- In the case of Calcutta High Court in the case of *Kayal Bros. (Pvt). Ltd. Ps. Additional Collector of Customs* reported in 2000 (125) E.L. T. 200 (CAL), the Hon'ble Court has observed that Opportunity to inspect all documents to be given to party for a reasonable period of time. In the present case the noticees have never made any request for inspection of document and therefore, question of not allowing inspection does not arise;
- In the case of P. Gopalkrishnan @ Dileep vs State of Kerala, the Hon'ble Supreme Court in the judgment dated 29 Nov., 2019 in Criminal Appeal No 1 794 of 2019 dealt with the matter when the contents of electronic gadgets are relied upon in the case. In the present case RUDs are not in the form of electronic gadget. Moreover, the findings of the Hon'ble apex court was in a criminal case whereas the present case is a commercial fraud case.

Therefore, no violation of principles of natural justice is there in this case.

121.1.6 The noticees had argued that entire imported goods (except goods were lying stock) were exported under Customs Supervision and even foreign exchange realized except for the pending receipt of remittance. There is no dispute of export of imported goods by anyone including the Development Commissioner. I find that the contention is factually incorrect. The correspondences from SEZ authorities and RBI regarding non-realisation of export remittances, as discussed in the foregoing paras, had clearly established that the noticees were at default. I further find that as per Rule 75 of SEZ Rules, 2006 all inward or outward movement of goods into and from the zone by the unit shall be based on self-declaration made and no routine examination of these goods shall be made. As per the provisions under the scheme of SEZ, the SEZ unit had carried out all their activities based on self-declaration as no routine examination was warranted. It was the noticee who should have complied with the provisions honestly without mis-using the special fiscal provisions for special economic zones and maintain the trust shown by the Government for ease of doing business. Therefore, the contention of the noticees is devoid of merit.

121.1.7 The noticees had advanced the arguments that the seizure is totally illegal and without any base, as the provision of Section 110 of the Customs Act, 1962 is not notified for the purpose of SEZ under the notified offences under SEZ Act, 2005. The noticees have also concerned about recording of reasons in writing to carry out the investigation, inspection,

search or seizure in SEZ unit of M/s.Makeour Jewel Pvt. Ltd., SEZ Unit, Surat SEZ, Sachin, Surat and prior intimation to the Development Commissioner of Surat SEZ. I find that vide Notification S.O. 2665 (E) dated 05.08.2016, issued under sub-section (1) of section 21 of the Special Economic Zones Act, 2005, the Central Government has notified the offences contained in the under-mentioned sections of the Customs Act, 1962 as offences under the SEZ Act. I further find that vide Notification S.O. 2667 (E) dated 05.08.2016, issued under section 22 of the Special Economic Zones Act, 2005, the Central Government authorised the jurisdictional Customs Commissioner, in respect of offences under the Customs Act, 1962 (52 of 1962) and Commissioner of Central Excise in respect of offences under the Central Excise Act, 1944 (1 of 1944) and the Finance Act, 1994 (32 of 1994) and notified under the Act, for the reasons to be recorded in writing, to carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to the Development Commissioner, concerned. Bare reading of the wordings of the said notification indicates that customs officers are authorized to carryout search, inspection, investigation, seizure etc. under this notification and thus, invocation of the respective section of the Customs Act, 1962 automatically becomes inevitable. After recording of the reasons in writing, the Commissioner of Customs (Preventive) Jodhpur, Hq at Jaipur vide letter dated 20.05.2022 had requested to Customs Commissionerate, Ahmedabad to conduct follow up searches against the firms and individuals falling under jurisdiction of Customs Ahmedabad. Accordingly, after prior intimation to the Development Commissioner, Surat SEZ, vide letter dated 24.05.2022, issued by the Customs, SIIB, Surat, searches at the premises of both the above SEZ units were conducted by the officers of Customs Ahmedabad. Therefore, I find that the searches at the premises of the above SEZ units were conducted in compliance with the provisions of law and thus, the arguments of the noticees is devoid of merits. Therefore, I do not find any legal backing in the contentions of the noticee. Section 110(1) of the Customs Act, 1962 provides that if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods. The reasons to believe existed in this case has been proved in the investigation as discussed herein above, and therefore, I find that the seizure of goods in this case is legally correct and with proper authority backed by legal provisions of the Customs Act, 1962, read with Section 21 and 22 of the SEZ Act, 2005 and Notification S.O. 2667 (E) dated 05.08.2016 & Notification S.O. 2665 (E) dated 05.08.2016.

121.1.8 The noticees have sought further adjournment in personal hearing. In the present case the adjudicating authority has given sufficient opportunities to the noticees to put their point against the allegation. Four Personal hearing were given and the representatives of the noticees have attended all the four PHs and always argued on different footings. There was no consistency in their arguments and demands. It is nothing but a delaying tactics in adjudication. Firstly, they asked for Bills of Entry, though the summary of the imports undertaken by them were very well mentioned in SCN and copies thereof always remain with importer. They are misleading that legible and certified copies of the RUDs have not been supplied, which was never made in their earlier submissions. On the other side they are insisting for non-RUD, though they have to defend their case based the RUDs, relied upon in the SCN. In 3rd PH held on 18.03.2024 their authorized advocate had agreed and confirmed to file detailed reply by 30.03.2024, however, later on they change their stand in subsequent PH held on

24.04.2024. They do not have any material to counter the findings of the investigation and therefore, they merely raised such issues with a motive to hamper the adjudication proceedings. The adjudicating proceedings are to be completed within a time frame and noticees have failed to give any cogent reason for adjournment except the same repeated things which do not prevent the noticees to counter the findings and documents relied upon in the notice. Therefore, I do not find proper reason to consider the request of the noticees for further adjournment. The noticees have also alleged bias on part of adjudicating authority, which is not true as can be seen from the facts that sufficient opportunities have been given to the noticees to counter the allegation based on the documents relied upon in the notice, however, they did not do so which indicates that they do not have any material to counter the merits of the case.

121.1.9 The noticees are taking plea that seized non-relied upon documents are not released to them. I find that the noticees are taking plea to avoid the adjudications. The relied upon documents have already been served to the noticees and non-furnishing of non-relied upon documents will not be lethal to show-cause notice. The activities and transactions revealed during the course of investigation, which are supported with the relied upon documents, clearly show the evasion of customs duty resorting to diversion of duty free imported Diamonds and precious stones from SEZ units for the purpose other than the authorised operation and therefore, they cannot find fault with the authority regarding the allegation in the SCN on the pretext of non-release of non-relied upon. The noticees were well informed in the SCN itself that the scanned copies of documents not provided in DVD/CD would be available for inspection on requisition made in writing. However, no such requisition was received by the investigating agency, as confirmed by them vide letter dated 16.07.2024. Further, the matter has also been shared with various agencies like ED, DGGI, DRI, SFIO, REIC etc. and they have also asked for these documents and devices and these could be required as evidences in further investigation. Therefore, the noticees are insisting upon to release the same to protect themselves from legal consequences based on findings from such devices and peripherals.

121.1.10 Shri Suresh Jagetia, Noticee No.3 has advanced argument that in the remand order dated 30.5.2022, Hon'ble Addl. Chief Metropolitan Magistrate has also recorded that statement was taken by Customs Officers under threat, coercion and pressure. I find the argumnet factually incorrect. On the contrary the Hon'ble Additional Chief City Magistrate, Jaipur in order dated 30.05.2022 observed as under:

न्यायालय - अतिरिक्त मुख्य महानगर मजिस्ट्रेट (आर्थिक अपराध),
जयपुर महानगर - द्वितीय
तारीख हुक्म F.No.CUS/ICFS/MISC/613/2021-prev-o/o commr-
cus-prev-Jodhpur
मारुत संधू बंताम मुद्रा रतन लाल
हुक्म या कार्यवाही मय इनिशियान्स जयपुर
परिभाषी विभाग की तरफ से जरिये अभियोजन अधिकारी
30.05.2022

से अनुसन्धान शेष रहना प्रकट होता है। जहाँ तक अधिवक्ता अभियुक्त का यह कथन है कि अभियुक्त को दिनांक 23.05.2022 को अवैध तरीके से गैरफ्तार किया गया था तो ऐसा पत्रवली के अवलोकन से प्रकट नहीं होता है। अधिवक्ता अभियुक्त द्वारा यह भी कथन किया गया है कि अभियुक्त के बयान इस धमका का जबरन लिये गये हैं। उक्त तथ्य का निर्धारण भी इस स्तर पर नहीं किया जा सकता है, ऐसी स्थिति में प्रकरण के तथ्यों व परिस्थितियों व अपराध की गंभीरता को देखते हुये अभियुक्त की एक दिन की पुलिस अभिरक्षा स्वीकार की जाती है। अभियुक्त को पुलिस अभिरक्षा से दिनांक 31.05.2022 को पेश

121.1.11 Shri Suresh Jagetia, Noticee No.3 under his submission dated 23.03.2024 stated that during personal hearing (attended on 18.03.2024 by his authorised advocate) request was made for Cross examination of persons whose statement is being relied upon in the SCN for framing case against him. I find from the recording of personal hearing, no such request was ever made by the authorised representative of the noticee. I find that the noticee has nothing to counter the findings of the investigation and to counter the documents relied upon in the SCN, therefore, he has made such frivolous arguments, which is nothing but an attempt to delay the adjudicating proceedings.

121.1.12 The noticees had questioned the value of the seized goods and stated that as to how an exact amount of Rs.5,11,28,910/- was arrived. I find from findings of the investigation that the stock found at the premises of M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) during the course of search was apparently of inferior quality and the valuation thereof was carried out by the Government approved valuer. The noticees has failed to produce any cogent and legitimate argument to defeat the valuation report and simply raised doubt thereon without assigning any reason. There are other voluminous documents including confessional statements recorded under Section 108 of the Customs Act,1962 which further corroborate the valuation report.

121.1.13 The noticee-M/s.Europea (SEZ) have raised concern regarding extension granted by the Chief Commissioner for 1 year for adjudication of SCN dated 20.05.2023. they have also raised concern regarding issuance of supplementary SCN dated 24.04.2024. I find that Customs (Prev.) Jodhpur, Headquarters at Jaipur, vide above letter dated 22.04.2024 informed that M/s Kavish Gems and some other firms are also part of racket formed by Shri Suresh Jagetia, Director of M/s. Europea Makeour Jewel Pvt. Ltd.. The duty forgone on entire import made by these two SEZ units has already been demanded in the SCN dated 20.05.2023, therefore, penal action under Customs Act,1962 has been proposed against them by issuance of a supplementary SCN in terms of above Notification No. 42/2019-Customs (N.T) dated 18.04.2019 to the original SCN dated 20.05.2023 issued to M/s. Europea Makeour Jewel Pvt. Ltd., SEZ, Surat and M/s Maahi Jewellery Exim Private Limited, SEZ, Surat & Others.

121.1.14 Notification No. 42/2019-Customs (N.T) dated 18.04.2019 relating to the 'Customs (Supplementary Notice) Regulations, 2019'. The notification provides Manner and circumstances under which a supplementary notice may be issued. The relevant portion of Regulation 4 is reproduced below —

Regulation 4

"4.Manner and circumstances under which a supplementary notice may be issued.- (1)

"Where a notice has been issued under section 28 or section 124 of the Act, a supplementary notice may be issued by the proper officer in any of the following circumstances:

(a) in case there is a difference in the quantum of duty demanded in such notice including the cases which may necessitate change in adjudicating authority;

(b) for invoking penal action under the provisions of the Act against a person/persons in addition to those charged in such notice;

(c) for invoking additional section/sections of the Act in such notice;

(d) in case there is any additional evidence that may have a significant bearing on the outcome of the case."

121.1.15 Sub-section 7A of the Section 28 of the Customs Act,196 provides that:

Section 28 (7A) - Save as otherwise provided in clause (a) of sub-section (1) or in sub-section (4), the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed, and the provisions of this section shall apply to such supplementary notice as if it was issued under the said sub-section (1) or sub-section (4).

Accordingly, Supplementary SCN dated 24.04.2024 was issued in terms of regulation 4(1)(b) of the 'Customs (Supplementary Notice) Regulations, 2019'

121.1.16 Section 28(9) of the Customs Act,1962 provides that:

(9) The proper officer shall determine the amount of duty or interest under sub-section (8), —

(a) within six months from the date of notice, in respect of cases falling under clause (a) of sub-section (1);

(b) within one year from the date of notice, in respect of cases falling under sub-section (4).

[Provided that where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under which the proper officer was prevented from determining the amount of duty or interest under sub-section (8), extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year:

Provided further that where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued.]

121.1.17 Further, the proper officer has granted extension for adjudication of the above Show Cause Notice dated 20.05.2023 on 23.04.2024 for a period of one year in terms of the first proviso to Section 28(9) of the Customs Act,1962. All the noticees to the original SCN dated

20.05.2023 were informed about extension of time period for adjudication of the SCN dated 20.5.2023 vide letter dated 26.04.2024, forwarding copy of the supplementary SCN dated 24.04.2024 to them.

121.1.18 In the matrix of the case, I find that the extension to adjudicate the SCN dated 20.05.2023 has been granted by the proper officer within the four corners of the law and the supplementary SCN dated 24.04.2024 has also been issued legally. The noticee-M/s.Europea Makeour Jewel Pvt. Ltd. is making such frivolous arguments devoid of merits and also such arguments are not in their support to prove them innocent as far as the allegations in the SCN are concerned.

121.1.19 The noticee Shri Suresh Jagetia, in his submission dated 29.04.2024, has contended that they did not receive copies of certain RUDs. I find that all the RUDs have been served to all the noticees alongwith SCN, he has already received the same as he has not mentioned anything about non-receipt of the same in his earlier submissions including the submission dated 17.06.2023. I find that as I have already recorded that there is no consistency in their submissions and they are always making the list long with a motive to delay the adjudicating proceeding by raising such contentions.

121.1.20 I find that in the submissions made by M/s. Europea (SEZ Unit), they have not come forward in defence to counter that they had not diverted the duty free imported Diamonds and precious stones in DTA units/local market. The investigation agency had brought on record numerous direct and circumstantial evidences which clearly establish that the M/s. Europea (SEZ Unit), has mis-used the special fiscal provisions for special economic zones and contravened the provisions of Section 26 of the SEZ Act, 2005 in as much as the exemption under section 26 of the SEZ Act, read with rule 22 of the SEZ Rules,2006, is conditional and meant for the authorized operations, however, the noticee failed to fulfil the condition since the imported Diamonds and precious stones were not utilized to carry out the authorised operations as required under Rule 34 of SEZ Rules, 2006. M/s. Europea (SEZ Unit), has contravened the provisions of Section 30 of the SEZ Act,2005, in as much as they had clandestinely removed the imported Diamonds and precious stone into DTA, though as per the charging Section 30 of the SEZ Act,2005 customs duties on movement of goods from SEZ unit to DTA is leviable, treating the movement as import of goods by DTA. They had knowingly diverted the goods with a motive to mis use the scheme of SEZ. Rule 35 of the SEZ Rules,2006 provides that the Unit shall account for the entire quantity of goods imported or procured duty free, by way of export, sales or supplies in Domestic Tariff Area or transfer to other Special Economic Zone Unit or Export Oriented Unit or Electronic Hardware Technology Park unit or Software Technology Park Unit or Bio-technology Park Unit or bonded warehouses and the balance held in stock. In the present case, the noticee has diverted the duty free imported goods into domestic market in illegal manner and failed to utilise the same for the authorised operation thereby, they contravened the provisions of Rule 35 of the SEZ Rules,2006. The noticee contravened the provisions of Rule 36 of the SEZ Rules, 2006 in as much as they did not file any document for taking out the duty free imported superior quality of Diamonds and precious stones and for admission (taking in) the inferior quality Diamonds and precious stone before the Authorized Officer of Customs. Further, as per Rule 25 of the SEZ

Rules, 2006 where any SEZ unit does not utilize the goods or services on which exemptions have been availed for the authorized operations or unable to duly account for the same, such SEZ unit shall refund an amount equal to the benefits of exemptions availed without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975. As discussed herein above, it has been established beyond doubt that the noticee – M/s. Europea (SEZ Unit) had not utilized the duty free imported Diamonds and precious stones for the authorized operation and had clandestinely diverted the same in local market without payment of customs duty in contravention of Section 46 of the Customs Act, 1962, despite that the noticee has not brought the document which prove that they had refunded the amount of duty exemption availed by them at the time of imports of the Diamonds and precious stone under dispute, hence, they had contravened the provisions of Rule 25 of the SEZ Rule, 2006. The noticee also breached the terms and conditions of Bond-cum-legal undertaking executed by them in terms of Rule 22 of the SEZ Rules, 2006, whereby they had undertaken for proper utilization and accountal of goods procured duty free and to achieve positive net foreign exchange earning.

121.1.21 In view of the above discussion herein above, I find that the noticee No.01- M/s. Europea (SEZ Unit) diverted the Cut and Polished Diamonds and Precious Stones, imported duty free, during the period from 2019-20 to 2022-23 amounting to **Rs.2631,46,66,966/- (Rupees Two Thousand Six Hundred Thirty One Crore, Forty Six Lakh, Sixty Six Thousand, Nine Hundred and Sixty Six Only)** in to Domestic Tariff Area (DTA) and evaded the duty foregone amount (Basic Customs Duty + IGST + Cess) totally amounting to **Rs.212,27,82,674/- (Rupees Two Hundred Twelve Crore, Twenty Seven Lakh, Eighty Two Thousand, Six Hundred and Seventy Four only)**, as detailed in Annexure-A to the show cause notice. Therefore, I confirm the demand of said Customs duty of **Rs.212,27,82,674/- (Rupees Two Hundred Twelve Crore, Twenty Seven Lakh, Eighty Two Thousand, Six Hundred and Seventy Four only)** under Section 28(4) of the Customs Act, 1962 and hold that the same is required to be recovered from the noticee- M/s. Europea (SEZ Unit) alongwith applicable interest under Section 28AA of the Customs Act, 1962.

121.1.22 I find that the noticee Shri Suresh Ratanlal Jagetia has confessed the diversion and evasion of customs duty, which is also backed by the documentary evidences discussed herein above, and in acceptance of their mistake he had voluntarily deposited **Rs.40,00,000/- (Customs Duty – Rs.34,69,963, IGST – Rs.3,46,996/-, SWS- Rs.1,83,041/-)** vide Challan Form TR-6 dated 31.05.2022 towards payment of evaded duty by M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit). This payment of duty is required to be appropriated against the demand confirmed against M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit).

Whether the goods the “Diamond / Precious Stones”, imported By M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) without payment of duty claiming benefit of the special fiscal provisions for special economic zones which had been diverted into Domestic Market illegally, liable for confiscation under the provisions of the Customs Act, 1962:

121.1.23 As per Section 53 of the SEZ Act, 2005, a Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the Customs territory of India for the purposes of undertaking the authorized operations. Therefore, the diverted diamonds/precious stones are falling under the category of import, as defined under Section 2(o) of the SEZ Act, 2005. As per Section 2(39) of the Customs Act, 1962, "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. The noticee has imported the goods in SEZ, and the exemption under section 26 of the SEZ Act, is meant for the authorized operations, however, the noticee had failed to fulfil the condition since the imported Diamonds and precious stones were not utilized to carry out the authorised operations as required under Rule 34 of SEZ Rules, 2006. I further find that the goods under dispute had been removed by the SEZ Units without payment of appropriate duty and without any proper documents and following the prescribed procedures, and therefore, I find that the noticee has failed to comply with the conditions as stipulated under the scheme of SEZ. Therefore, the "Diamond / Precious Stones", imported without payment of duty claiming benefit of the special fiscal provisions for special economic zones having value of **Rs.2631,46,66,966/- (Rupees Two Thousand Six Hundred Thirty One Crore, Forty Six Lakh, Sixty Six Thousand, Nine Hundred and Sixty Six Only)**, as detailed in **Annexure A** to the SCN under adjudication, are liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962, thereby, the goods are falling under the category of smuggled goods, as elaborated and mentioned in the SCN. Regarding the valuation of the goods under dispute, I find it is the value declared by the noticee in their Bills of Entry at the time of import, hence, there is no dispute in that regard.

121.1.24 I rely on the decision of the Hon'ble Bombay High Court in the matter of **Unimark Remedies Ltd. Vs. Commr. Of Cus. (Export Promotion), Mumbai**, reported at **2017 (355) E.L.T. 193 (Bom.)**, wherein it is held that:

"94. The goods are liable to confiscation when they are imported relying on exemption notification, but that exemption is subject to a condition. If that condition is not observed, the Hon'ble Supreme Court held that the goods are liable to confiscation. The power of the customs authorities is held to be absolute. In these circumstances, we do not find that the appellants can escape from the judgment in the case of Sheshank Sea Foods Pvt. Ltd. [1996 (88) E.L.T. 626 (S.C.)]"

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

"125 Option to pay fine in lieu of confiscation –

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from

whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit..."

121.1.26 I find that the noticee has wrongly availed benefits of the special fiscal provisions for special economic zones. I rely on the decision in the matter of **Weston Components Ltd. v. Collector** reported at **2000 (115) E.L.T. 278 (S.C.)** wherein Hon'ble Supreme Court has held that:

"It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine "

121.1.27 I find that even in the case where goods are not physically available for confiscation, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed *inter-alia* in Para 23 as under:

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

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

"
.....

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

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

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

121.1.29 Contention of the noticee that goods were never seized by the authorities and therefore, cannot be confiscated will not be helpful to them as I find that the ratio of decision rendered by Hon'ble Tribunal Mumbai in case of **Apco Infratech Pvt. Ltd. v. Commissioner** reported as **2019 (368) E.L.T. 157 (Tri.-Mumbai)** affirmed by the Hon'ble Supreme Court reported as **2019 (368) E.L.T. A49 (S.C.)** is squarely applicable to the present case as in the said decision it has been held as under :

"7. It clearly shows that the appellant never complied with the conditions of the exemption notification and has knowingly violated the conditions. We also find that since the conditions of the notification were not complied with and from the facts of the case it is very clear that the same were never intended to be complied with, we hold that the impugned order confirming demand, penalties and confiscation of goods has been rightly passed."

In the present case, it is apparent that the noticee had never complied with the conditions of the exemption stipulated in the scheme of SEZ and had knowingly violated the conditions. The noticee had knowingly diverted the duty free imported goods without observing obligatory condition of the SEZ Scheme i.e. to utilise the duty free imported goods only for authorised operation. In view of the above, I find that redemption fine under Section 125(1) is liable to be imposed in lieu of confiscation of the subject goods

having assessable value of **Rs.2631,46,66,966/- (Rupees Two Thousand Six Hundred Thirty One Crore, Forty Six Lakh, Sixty Six Thousand, Nine Hundred Sixty Six Only)**, as detailed in **Annexure A** to the SCN under adjudication.

Whether the goods "cut and polished Precious Stones, cut and polished Precious Stones studded and cut and polished Diamond", seized from the premises of M/s.Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) during the course of search is liable for confiscation under the provisions of the Customs Act,1962:

121.1.30 It is also proved fact on record that M/s. Europea (SEZ Unit) had diverted the superior quality duty free imported Diamonds / Precious Stones (Ruby) into the domestic market and had arranged inferior quality Diamonds / Precious Stones (Ruby) from the domestic market as replacement and exported the same after studding in the silver jewellery like silver rings and pendants, as if the studded jewellery was made of the imported Diamonds/precious stones. The goods "cut and polished Precious Stones, cut and polished Precious Stones studded and cut and polished Diamond", found at their premises during the course of search, valued at **Rs.5,11,28,910/- (Rupees Five Crore, Eleven Lakh, Twenty Eight Thousand, Nine Hundred Ten Only)** which were seized vide Seizure Memo dated 26/27.5.2022 were arranged / procured illegally from DTA to the Customs Area i.e. SEZ, without any documents, without following any procedure and without any permission from the Specified Officer of the SEZ, in contravention of the provisions of Rule 36 of the SEZ Rules, 2006 in as much as they did not file any document for admission (taking in) of the seized inferior quality Diamonds and precious stone before the Authorized Officer of Customs. They also did not follow the general conditions for procurement of the seized goods envisaged under the provisions of SEZ Act and rules made thereunder. They had never intent to follow the procedure since, the motive behind bringing this inferior quality diamonds and precious stone was to replace with the imported superior quality diamonds and precious stone. As per Section 53 of the SEZ Act, 2005, a Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the Customs territory of India for the purposes of undertaking the authorized operations. Therefore, admission of any good in the SEZ is the entry of goods in a territory outside the Customs territory of India, and they had brought goods in contravention of provisions of SEZ Act for the purpose of being exported in violation of the provisions of Customs Act, 1962. Thus, the above seized goods are liable for confiscation in terms of Section 113(d) of the Customs Act, 1962.

121.1.31 I find that in the case in hand there were no invoices pertaining to the goods, therefore, taking recourse of Rule 9 (Residual method) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for determination of the value of the impugned goods, the valuation done by the independent government approved valuer during the course of investigation is reasonable and found consistent with the principles and general provisions of these rules. Therefore, I find that the value of seized consignment of "cut and polished Precious Stones, cut and polished Precious Stones studded and cut and polished Diamond", found at their premises during the course of search, seizure is determinable as **Rs.5,11,28,910/-**. I

find the noticee has not come forward with any legitimate argument or documents to counter the above determined value.

121.1.32 As the impugned goods are found liable to confiscation under Section 113(d) of the Customs Act, 1962, I find it appropriate to give option to the noticee to redeem the confiscated goods on payment of redemption fine, under the provisions of Section 125 (1) of the Customs Act, 1962;

121.1.33 The noticee M/s.Europea Makeour Jewel Pvt. Ltd. (SEZ) has argued for unconditional release/return of seized goods as provided under Section 110(2) of the Customs Act,1962 as goods were seized on 26.05.2022 and SCN was issued on 20.05.2023 i.e. beyond six months from date of seizure and the noticee has never received any written reasons extending further period of six months before expiry of six months from the Commissioner of Customs, Jodhpur/Ahmedabad. I find that the argument of the noticee is factually incorrect in as much as the the extention under proviso to Section 110(2) of the Customs Act,1962 was granted by the competent authority, and the noticee was informed vide letter dated 23.11.2022, which is duly acknowledged on 24.11.2022 by Shri Rakesh Mantri, (Mobile No.9828096252) authorized representative of M/s.Europea Makeour Jewel Pvt. Ltd. as emerged from the following acknowledgment:

CUS/SIIB/FUP/19/2022-SIIB-CH-SRT-CUS-COMMRTE-AHMEDABAD

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	OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS, SURAT (अपर आयुक्त) सीमा शुल्क का कार्यालय, सूरत CUSTOM HOUSE, ALTHAN BHIMRAD ROAD, ALTHAN, SURAT-395007. Phone: 0261-2990051 सीमा शुल्क सदन, अलथान-भीमराड रोड, अलथान, सूरत - ३९५००७ Email: patoadc-srtcust@gov.in	 आज़ादी का अमृत महोत्सव

By Hand/ E-mail

F.No.CUS/SIIB/FUP/19/2022-SIIB-CH-SRT-CUS-COMMRTE-AHMEDABAD Dated: 23.11.2022

DIN No: 2022 1171 MN 000000 F7A7

To

M/s Europea Makeover Jewels Pvt. Ltd,
Unit No.401,403, Plot No. 247, 248 & 225-B
Surat Special Economic Zone,
Sachin, Surat-394230

Sub: Extension for issuance of Show Cause Notice in the case of M/s Europea Makeover Jewels Pvt. Ltd. Unit No.401,403, Plot No. 247, 248 & 225-B, Surat Special Economic Zone, Surat, under Section 110 (2) of the Customs Act, 1962-m/r

Kindly refer to Panchnama dated 25.05.2022 to 27.05.2022 drawn at the factory premises of M/s Europea Makeover Jewels Pvt. Ltd, Unit No.401, 403, Plot No. 247, 248 & 225-B, Surat Special Economic Zone, Surat and Seizure Memo dated 26.05.2022 wherein Precious Stones(Ruby), Cut and Polished Diamonds and Silver Studded Stones(Ruby) totally weighing 66792.72 carats were placed under seizure under the provisions of Section 110 of the Customs Act,1962.

2. In this matter an extension for a further period of six months for issuance of SCN under Section 124 of the Customs Act, 1962 has been granted by the Commissioner of Customs, Ahmedabad under proviso to Section 110(2) of the Customs Act, 1962.

3. This is for your kind information please.

Yours sincerely

[Abilash K. Sreenivasan]
Additional Commissioner

Signed by Abilash K
Sreenivasan
Date: 23-11-2022 18:06:41
Reason: Approved

प्राप्त/Received
Customs Div. Surat.
24 NOV 2022
सं./No.: 0
हस्ता./Sign:

for: Europea Makeover Jewel Pvt. Ltd.

Rakesh
24/11/2022 E. nator
RAKESH MANTRI
9828096252

Putting forth such frivolous and incorrect arguments by the noticee are nothing but distraction from the merits of the issue and delute the findings of the investigation to get unlawful relief.

Whether the Noticee - M/s.Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) is liable for penalty under the provisions of the Customs Act,1962:

Penalty under Section 114A of the Customs Act,1962:

121.1.34 I find that demand of differential Customs Duty totally amounting to **Rs.212,27,82,674/-** has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the noticee-M/s.Europea (SEZ Unit) under Section 114A of the Customs Act, which

provides for penalty equal to Duty plus interest in cases where the Duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the Duty or interest has been erroneously refunded by reason of collusion or any wilful mis statement or suppression of facts. In the instant case, the ingredient of wilful mis-statement and suppression of facts by the noticee- M/s.Europea (SEZ Unit) has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of penalty equal to the amount of Duty plus interest in terms of Section 114A *ibid*. Also, the appropriate Customs Duty in respect of diverted goods, in the manner aforesaid, was not levied and not paid by reason of willful misstatement and suppression of facts by them and thereby they have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962 in relation to the said goods.

121.1.35 Further, I rely on the ratio of the decision of Honble Tribunal Delhi in case of **Commissioner of Customs Vs. Ashwini Kumar Alia Amanullah** reported as **2021 (376) E.L.T. 321 (Tri. - Del.)** wherein it is held as under:

"39.The last contention of Shri Amanullah in his appeal is that since penalty has been imposed under Section 114A, no penalty should be imposed under Section 114AA also upon them. We find that the ingredients of Section 114A and Section 114AA are different. Section 114A provides for non-levy of duty or short levy of duty due to certain reasons. There is no dispute that no duty was levied or paid on the imported gold concealed in the UPS by mis-declaring the nature of goods. Therefore, Section 114A has been correctly invoked in this case and a penalty has been imposed."

I find that in present case, the noticee with clear intent to evade the payment of Customs duty have wrongly availed the benefit scheme of SEZ and did not fulfill the terms and condition stipulated with the exemptions available to a SEZ Unit and thereby short paid the duty. Therefore, the noticee is liable for penalty under Section 114A of the Customs Act, 1962.

Penalty under Section 112 of the Customs Act,1962:

121.1.36 I find that fifth proviso to Section 114A stipulates that "where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114." Hence, I refrain from imposing penalty on the noticee- M/s. Europea (SEZ Unit) under Section 112 (a) and 112 (b) of the Customs Act, 1962.

Penalty under Section 114AA of the Customs Act,1962:

121.1.37 I also find that the Show Cause Notice proposes to impose penalty on the noticee M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) under Section 114AA of the Customs Act, 1962. I find that the noticee, with an ulterior motive to defraud the exchequer, has been knowingly instrumental in the act of evasion of Customs duty resorting to diversion of the duty free imported Diamonds and precious stones. The imports were made availing duty exemptions available to a SEZ Unit. The duty exemptions to SEZ units are conditional and meant for the authorized operations as stipulated under section 26 of the SEZ Act, read with rule 22 of the SEZ

Rules, 2006. Whereas in the present case, the duty free imported goods were not utilized for the authorized operation. Therefore, the noticee has contravened the provision of Section 46 (4) of the Customs Act, 1962 by making false declarations in the Bill of Entry to the effect that the imported goods are meant for the authorised operation by the SEZ Unit. Further, M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit), in relation to the goods imported (diamonds and precious stones) knew or had reason to believe that the said goods diamonds and precious stones intended for the authorised operation had been diverted to DTA market from SEZ and had been replaced with some other inferior quality diamonds and precious stones procured from domestic market and the said inferior quality diamonds and precious stones were used in the studded jewellery to be exported against fulfilment of export obligation, even though they had submitted the documents and the declarations to claim wrong benefits of SEZ scheme to avoid payment of appropriate Customs Duty and to show fulfilment of export obligation. They had reason to believe that the documents and the declarations submitted by them were false or incorrect in their material particulars. Despite this position, the noticee knowingly made and signed false or incorrect declarations under the said respective Bills of Entry and Shipping Bills and hence, contravened the provision of Section 50(2) of the Customs Act, 1962. Consequently, M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) had also rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962, in relation to the said goods.

Penalty Under Section 117 of the Customs Act, 1962:

121.1.38 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on the notice. From the findings as discussed hereinabove in the foregoing paras, Penalty has been held imposable under Section 112(b)(ii) of the Customs Act, 1962 for consciously dealing with the goods liable for confiscation under Section 111(j) and 111 (m) of the Customs Act, 1962. Further, Penalty has been held imposable under Section 114AA of the Customs Act, 1962 for contravention of Section 46 and 50. Since, specific penalty found imposable under Section 112(b)(ii) and 114AA of the Customs Act, 1962 for contravention of provisions of the Act *ibid*, therefore, penalty under Section 117 of the Customs Act, 1962 is not imposable on the noticee which is for contravention not expressly mentioned.

Whether the Noticee - Shri Suresh Ratanlal Jagetia, Director of M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) is liable for penalty under the provisions of the Customs Act, 1962:

121.1.39 As discussed herein above in the foregoing paras, I find that the noticee - Shri Suresh Ratanlal Jagetia, has been one of the major conspirators in this entire syndicate who has played a vital role in evasion of Customs duty resorting to diversion of duty free imported Diamonds and precious stone in the name of his compnay M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit), adopting a novel *modus operandi* discussed herein above in the foregoing paras. The noticee had also operated M/s. Maahi Jewellery Exim Pvt. Ltd., SEZ Unit alongwith Shri Ram Raj Choudhary. Both the SEZ units have diverted the superior quality imported Diamonds / Precious Stones (Ruby) into the domestic market and he alongwith Shri Ram Raj Choudhary had arranged inferior quality Diamonds / Precious Stones (Ruby) from the

domestic market as replacement and exported the same after studding in the Silver jewellery like silver rings and pendants. He had taken delivery of duty free imported Diamonds and precious stones from Shri Kailash Chaudhary from the strong room of SEZ and taken it out without any document and payment of duty thereon. Actual delivery of Cut & Polished Diamonds and Stones imported by the SEZ Unit was taken by Kailash Chaudhary sometimes with Shri Deepak or sometime with Shri Vivek from the Strong-Room of SEZ, however, every time while taking the delivery from Strong-Room either Shri Deepak or Shri Vivek used to sign on the Register. After taking the delivery of the imported Diamonds or Precious Stones, the said parcel was given to Shri Suresh Jagetia (Director of M/s Europea Jewel Pvt Ltd) or Shri Ram Raj Choudhary (other Director of M/s Maahi Jewellery Exim Private Limited) as directed by them and in return, every time they used to give the other parcel, which at first sight always looked of inferior quality. Thereafter the exchanged parcel of inferior quality was taken to the manufacturing process of their SEZ unit and then studded jewellery was made out of it and the same was exported. Shri Kailash Choudhary a dummy Director of M/s. Mahi Jewellery Exim Private Limited was acting on behest of the noticee- Shri Suresh Ratanlal Jagetia for monthly salary of Rs.50,000/- and the noticee- Shri Suresh Ratanlal Jagetia and Shri Ramraj Chaudhary were responsible for all the irregularities in the SEZ Units. The money received against supply / sale of the diverted imported Diamonds / Precious Stones (Ruby) was obtained in cash by him alongwith Shri Ramraj Chaudhary through angadias and such cash was given to the persons operating fake firms for transferring money into the common bank accounts of their DTA units and SEZ Units. He alongwith Shri Ramraj Chaudhary had planned the game in this manner so that the complete sale proceeds in lieu of the diverted imported Diamonds / Precious Stones (Ruby) could be received by the DTA units in the common bank accounts by way of issuance of sell purchase bills merely for book adjustments. Shri Suresh Jagetia had obtained services of Shri Vikram Singh Kachchawa, an expert in operating fake firms for sending money abroad and gave cash amount to Shri Vikram Singh Kachchawa, who, after rotating money through RTGS and Cheques in the bank accounts of his several fake firms, ultimately sent the money abroad through M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology. Shri Suresh Ratanlal Jagetia conspired with other associates and co-noticees to remove, sell the Smuggled Diamonds and Precious Stones (removing from SEZ in illegal manner) in violation of the provisions of Section 135 of the Customs Act, 1962, as elaborated in the SCN under adjudication and discussed herein above in the foregoing paras. He has been instrumental in fraudulently sending remittances of huge amounts to their own firms established in Hong Kong, by showing the same to be payments against import of services (which were never actually imported and were mere paper transactions without any actual supply of service) with the ulterior motive of using the fraudulent remittances for funding illegally diverted Diamonds and other Precious Stones / Metals which had been imported through SEZ units. The evidences and the investigation suggested that he was the brain behind the transactions of diversion of duty free imported goods resulted in evasion of customs duty thereon and he has emerged as Mastermind/Co-Conspirator/ controller/ beneficial Director of the SEZ Unit. Shri Suresh Ratanlal Jagetia being instrumental in diversion of imported Diamond/ Precious stones from SEZ units to DTA units and sending money abroad illegally through M/s. Belstar Techno Solutions (OPC) Bank Pvt. Ltd. & M/s. Visual Birds Technology Jaipur was arrested on 30.05.2022 under Section 104 of the Customs Act,

1962 for committing offences under Section 132 and 135 of the Customs Act, 1962. He was produced before the Hon'ble Economic Offences Court, Jaipur, who ordered for his Judicial Custody.

Penalty under Section 112(a) and 112(b) of the Customs Act,1962:

121.1.40 I find that the Show Cause Notice proposes to impose penalty on the noticee Shri Suresh Jagetia, Director of M/s.Europea Makeour Jewel Pvt. Ltd.(SEZ Unit) under Section 112(a) and 112(b) of the Customs Act, 1962. I find that Shri Suresh Jagetia, with an ulterior motive to defraud the exchequer, has been knowingly instrumental in the act of evasion of Customs duty resorting to diversion of the duty free imported Diamonds and precious stones. He has been instrumental in taking out the imported superior quality diamonds and precious stones from SEZ and bringing into the SEZ the inferior quality diamonds and precious stone and used such replaced lower quality Diamonds and precious stones in the studded jewellery and exported the same as if the jewellery is made of the imported superior quality diamonds and precious stones. The imports were made availing duty exemptions available to a SEZ Unit to utilise the same for authorised operation, however, the notice did not utilise the goods in SEZ for authorised operation and diverted to domestic market without payment of duty. The noticee in this manner had knowingly did these acts and omissions in relation to the goods under dispute. Further, the noticee, by consciously dealing with the goods under dispute had acquired/removed/sold the goods which he knew or had reasons to believe that the goods were liable to confiscation under Section 111 of the Customs Act, 1962, and hence, Shri Suresh Jagetia, Director of M/s.Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) rendered himself liable for penal action under Section 112(b)(ii) of the Customs Act,1962.

Penalty Under Section 114AA of the Customs Act,1962:

121.1.41 I also find that the Show Cause Notice proposes to impose penalty on the noticee Shri Suresh Jagetia, Director of M/s. Europea Makeour Jewel Pvt. Ltd.(SEZ Unit) under Section 114AA of the Customs Act, 1962. I find that Shri Suresh Jagetia, with an ulterior motive to defraud the exchequer, has been knowingly instrumental in the act of evasion of Customs duty resorting to diversion of the duty free imported Diamonds and precious stones. He has been instrumental in taking out the imported superior quality diamonds and precious stones from SEZ and bringing into the SEZ the inferior quality diamonds and precious stone and used such replaced lower quality Diamonds and precious stones in the studded jewellery and exported the same as if the jewellery is made of the imported superior quality diamonds and precious stones. The imports were made availing duty exemptions available to a SEZ Unit. The duty exemptions to SEZ units are conditional and meant for the authorized operations as stipulated under section 26 of the SEZ Act, read with rule 22 of the SEZ Rules,2006. Whereas in the present case, the duty free imported goods were not utilized for the authorized operation. Therefore, the noticee has contravened the provision of Section 46 (4) of the Customs Act, 1962 by making false declarations in the Bill of Entry to the effect that the imported goods are meant for the authorised operation by the SEZ Unit. Further, M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit), in relation to the goods imported (diamonds and precious stones) knew or had reason to believe that the said goods diamonds and precious stones intended for the authorised operation had been diverted

to DTA market from SEZ and had been replaced with some other inferior quality diamonds and precious stones procured from domestic market and the said inferior quality diamonds and precious stones were used in the studded jewellery to be exported against fulfilment of export obligation, even though they had submitted the documents and the declarations to claim wrong benefits of SEZ scheme to avoid payment of appropriate Customs Duty and to show fulfilment of export obligation. They had reason to believe that the documents and the declarations submitted by them were false or incorrect in their material particulars. Despite this position, the noticee knowingly made and signed false or incorrect declarations under the said respective Bills of Entry and Shipping Bills hence, he contravened the provision of Section 50(2) of the Customs Act, 1962. Hence, for the said act of contravention, Shri Suresh Jagetia, Director of M/s. Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) is liable for penalty under Section 114AA of the Customs Act, 1962, in relation to the said goods.

Penalty Under Section 117 of the Customs Act, 1962:

121.1.42 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on the noticee. From the findings as discussed hereinabove in the foregoing paras, Penalty has been held imposable under Section 112(b)(ii) of the Customs Act, 1962 for consciously dealing with the goods liable for confiscation under Section 111(j) and 111 (m) of the Customs Act, 1962. Further, Penalty has been held imposable under Section 114AA of the Customs Act, 1962 for contravention of Section 46 and 50. Since, specific penalty found imposable under Section 112(b)(ii) and 114AA of the Customs Act, 1962 for contravention of provisions of the Act *ibid*, therefore, penalty under Section 117 of the Customs Act, 1962 is not imposable on the noticee which is for contravention not expressly mentioned.

121.2 Whether M/s. Maahi Jewellery Exim Private Limited & Shri Ram Raj Choudhary, Mastermind/Co-Conspirator/ controller/ beneficial Director of M/s. Maahi Jewellery Exim Pvt. Ltd, had evaded customs duty resorting to diversion of duty free imported Diamonds and precious stones:

121.2.1 As discussed in foregoing paras, the noticees - M/s. Maahi Jewellery Exim Private Limited & Shri Ram Raj Choudhary, Director of M/s. Maahi Jewellery Exim Pvt. Ltd. did not come out of clean hand in the entire episode of evasion of customs duty by way of diversion of duty free imported diamonds and precious stones. M/s. Maahi Jewellery Exim Private Limited (notice No.2) & Shri Ram Raj Choudhary, Director of M/s. Maahi Jewellery Exim Pvt. Ltd (notice No.4) has neither submitted any reply to the SCN nor attended any personal hearing. Shri Ramraj Chaudhary did not appear before the investigation as emerged from the notice in hand, which clearly indicate his involvement in the diversion of imported diamonds and precious stones and evasion of customs duty and thereby he avoided the investigation and also did not join the adjudicating proceedings.

121.2.3 I find that M/s. Mahi (SEZ Unit), have not come forward in defence to counter that they did not divert the duty free imported Diamonds and precious stones. The investigation agency had brought on record numerous direct and circumstantial evidences which clearly establish that the

M/s. Mahi (SEZ Unit), has mis-used the special fiscal provisions for special economic zones and contravened the provisions of Section 26 of the SEZ Act, 2005 in as much as the exemption under section 26 of the SEZ Act, read with rule 22 of the SEZ Rules, 2006, is conditional and meant for the authorized operations, however, the noticee failed to fulfil the condition since the imported Diamonds and precious stones were not utilized to carry out the authorised operations as required under Rule 34 of SEZ Rules, 2006. M/s. Mahi (SEZ Unit), has contravened the provisions of Section 30 of the SEZ Act, 2005, in as much as they had clandestinely removed the imported Diamonds and precious stone into DTA, though as per the charging Section 30 of the SEZ Act, 2005 customs duties on movement of goods from SEZ unit to DTA is leviable, treating the movement as import of goods by DTA. They never had intent to follow the procedure since, they had knowingly diverted the goods with a motive to mis-use the special fiscal provisions for special economic zones. Rule 35 of the SEZ Rules, 2006 provides that the Unit shall account for the entire quantity of goods imported or procured duty free, by way of export, sales or supplies in Domestic Tariff Area or transfer to other Special Economic Zone Unit or Export Oriented Unit or Electronic Hardware Technology Park unit or Software Technology Park Unit or Bio-technology Park Unit or bonded warehouses and the balance held in stock. In the present case, the noticee has diverted the duty free imported goods into domestic market in illegal manner and failed to utilise the same for the authorised operation, thereby they had contravened the provisions of Rule 35 of the SEZ Rules, 2006. The noticee had contravened the provisions of Rule 36 of the SEZ Rules, 2006 in as much as they did not file any document for taking out the duty free imported superior quality of Diamonds and precious stones and for admission (taking in) of the inferior quality Diamonds and precious stone before the Authorized Officer of Customs. Further, as per Rule 25 of the SEZ Rules, 2006 where any SEZ unit does not utilize the goods or services on which exemptions have been availed for the authorized operations or unable to duly account for the same, such SEZ unit shall refund an amount equal to the benefits of exemptions availed without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975. As discussed herein above, it has been established beyond doubt that the noticee – M/s. Mahi (SEZ Unit) did not utilize the duty free imported Diamonds and precious stones for the authorized operation and had clandestinely diverted the same in local market without payment of customs duty in contravention of Section 46 of the Customs Act, 1962, despite that the noticee has not brought the document which prove that they had refunded the amount of duty exemption availed by them at the time of imports of the Diamonds and precious stone under dispute, hence, they contravened the provisions of Rule 25 of the SEZ Rule, 2006. The noticee has also breached the terms and conditions of Bond-cum-legal undertaking executed by them in terms of Rule 22 of the SEZ Rules, 2006, whereby they had undertaken for proper utilization and accountal of goods procured duty free and to achieve positive net foreign exchange earning.

121.2.4 I find that though, the Noticees no.02 and 04, had neither appeared before the adjudication nor filed any submission, however, as I have already discussed in my findings about diversions and evasion of duty by the SEZ unit in the foregoing paras, which I do not put here for sake of repetition. I find that the noticees did not come out with clean hands to prove without leaving any doubt against the diversion of duty free imported diamonds and precious stones resulted in evasion of Customs Duty.

Therefore, I find that the noticee No.02- M/s. Mahi (SEZ Unit) had diverted the Cut and Polished Diamonds and Precious Stones, imported duty free, during the period from 2020-21 to 2022-23 amounting to **Rs.1892,60,19,327/- (Rupees One Thousand Eight Hundred Ninety Two Crore, Sixty Lakh, Nineteen Thousand, Three Hundred Twenty Seven Only)** in to Domestic Tariff Area (DTA) and had evaded the duty foregone amount totally amounting to **Rs.148,96,97,902/- (Rupees One Hundred Forty Eight Crore, Ninety Six Lakh, Ninety Seven Thousand, Nine Hundred Two only)**, as detailed in Annexure-B to the show cause notice. Therefore, I confirm the demand of said Customs duty of **Rs.148,96,97,902/- (Rupees One Hundred Forty Eight Crore, Ninety Six Lakh, Ninety Seven Thousand, Nine Hundred Two only)** under Section 28(4) of the Customs Act, 1962 and hold that the same is required to be recovered from the noticee- M/s.Mahi (SEZ Unit) alongwith applicable interest under Section 28AA of the Customs Act,1962.

Whether the goods the "Diamond / Precious Stones", imported By M/s. Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) without payment of duty claiming benefit of the special fiscal provisions for special economic zones which had been diverted into Domestic Market illegally is liable for confiscation under the provisions of the Customs Act,1962:

121.2.5 As per Section 53 of the SEZ Act, 2005, a Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the Customs territory of India for the purposes of undertaking the authorized operations. Therefore, the diverted diamonds/precious stones are falling under the category of import, as defined under Section 2(o) of the SEZ Act,2005. As per Section 2(39) of the Customs Act, 1962, "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. The noticee has imported the goods in SEZ, and the exemption under section 26 of the SEZ Act, is meant for the authorized operations, however, the noticee had failed to fulfil the condition since the imported Diamonds and precious stones were not utilized to carry out the authorised operations as required under Rule 34 of SEZ Rules, 2006. I further find that the goods under dispute had been removed by the SEZ Units without payment of appropriate duty and without any proper documents and following the prescribed procedures, and therefore, I find that the noticee has failed to comply with the conditions as stipulated under the scheme of SEZ. Therefore, the "Diamond / Precious Stones", imported without payment of duty claiming benefit of the special fiscal provisions for special economic zones having value of **Rs.1892,60,19,327/- (Rupees One Thousand Eight Hundred Ninety Two Crore, Sixty Lakh, Nineteen Thousand, Three Hundred Twenty Seven Only)** as detailed in **Annexure B** to the SCN under adjudication, are liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962, thereby, the goods are falling under the category of smuggled goods, as elaborated and mentioned in the SCN. Regarding the valuation of the goods under dispute, I find it is the value declared by the noticee in their Bills of Entry at the time of import, hence, there is no dispute in this regard.

121.2.6 I rely on the decision of the Hon'ble Bombay High Court in the matter of **Unimark Remedies Ltd. Vs. Commr. Of Cus. (Export Promotion), Mumbai**, reported in **2017 (355) E.L.T. 193 (Bom.)**

(Supra), wherein it is held that the goods are liable to confiscation when they are imported relying on exemption notification, but that exemption is subject to a condition. If that condition is not observed, the Hon'ble Supreme Court held that the goods are liable to confiscation.

121.2.7 As the impugned goods are found liable to confiscation under Section 111(j) and 111(m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 can be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation.

121.2.8 I find that the noticee has wrongly availed the benefits of the special fiscal provisions for special economic zones. I rely on the decision in the matter of **Weston Components Ltd. v. Collector** reported as **2000 (115) E.L.T. 278 (S.C.) (Supra)**.

121.2.9 I find that even in the case where goods are not physically available for confiscation, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) (Supra)**.

121.2.10 I also rely upon the judgment of the Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.) (Supra)**

121.2.11 Contention of the noticee, if any, that goods were never seized by the authorities and therefore, cannot be confiscated will not be helpful to them as I find that the ratio of decision rendered by Hon'ble Tribunal Mumbai in case of **Apco Infratech Pvt. Ltd. v. Commissioner** reported as **2019 (368) E.L.T. 157 (Tri.-Mumbai) (Supra)** affirmed by the Hon'ble Supreme Court reported as **2019 (368) E.L.T. A49 (S.C.)** is squarely applicable to the present case. In the present case, it is apparent that the noticee had never complied with the conditions of the exemption stipulated in the scheme of SEZ and had knowingly violated the conditions. The noticee had knowingly diverted the duty free imported goods without observing obligatory condition of the SEZ Scheme i.e. to utilise the duty free imported goods only for authorised operation. In view of the above, I find that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of the subject goods having assessable value of **Rs.1892,60,19,327/- (Rupees One Thousand Eight Hundred Ninety Two Crore, Sixty Lakh, Nineteen Thousand, Three Hundred Twenty Seven Only)**, as detailed in **Annexure B** to the SCN under adjudication.

Whether the goods "cut and polished Precious Stones, cut and polished Precious Stones studded and cut and polished Diamond", seized from the premises of M/s. Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) during the course of search is liable for confiscation under the provisions of the Customs Act, 1962:

121.2.12 It is also proved fact on record that M/s. Mahi (SEZ Unit) had diverted the superior quality duty free imported Diamonds / Precious Stones (Ruby) into the domestic market and had arranged inferior quality Diamonds / Precious Stones (Ruby) from the domestic market as replacement and

exported the same after studding in the silver jewellery like silver rings and pendants, as if the studded jewellery was made of the imported Diamonds/precious stones. The goods "cut and polished Diamonds and Precious Stones" found at their premises during the course of search, valued at **Rs.4,36,01,886/- (Rupees Four Crore, Thirty Six Lakh, One Thousand, Eight Hundred Eighty Six Only)** which were seized vide Seizure Memo dated 26.05.2022 were arranged / procured illegally from DTA to the Customs Area i.e. SEZ, without any document, without following any procedure and without any permission from the Specified Officer of the SEZ, in contravention of the provisions of Rule 36 of the SEZ Rules, 2006 in as much as they did not file any document for admission (taking in) of the seized inferior quality Diamonds and precious stone before the Authorized Officer of Customs. They also did not follow the general conditions for procurement of the seized goods envisaged under the provisions of SEZ Act and rule made thereunder. They never had intent to follow the procedure since, the motive behind bringing this inferior quality diamonds and precious stone was to replace with the imported superior quality diamonds and precious stone. As per Section 53 of the SEZ Act, 2005, a Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the Customs territory of India for the purposes of undertaking the authorized operations. Therefore, admission of any good in the SEZ is the entry of goods in a territory outside the Customs territory of India, and they had brought goods in contravention of provisions of SEZ Act for the purpose of being exported in violation of the provisions of Customs Act, 1962. Thus, the above seized goods are liable to confiscation in terms of Section 113(d) of the Customs Act, 1962.

121.2.13 I find that in the case in hand there were no invoices pertaining to the goods, therefore, taking recourse of Rule 9 (Residual method) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for determination of the value of the impugned goods, the valuation done by the independent government approved valuer during the course of investigation is reasonable and found consistent with the principles and general provisions of these rules. Therefore, I find that the value of seized consignment of "cut and polished Precious Stones, cut and polished Precious Stones studded and cut and polished Diamond", found at their premises during the course of search, seizure is determinable as **Rs. Rs.4,36,01,886/-**. I find the noticee has not come forward with any legitimate argument or documents to counter the above determined value.

121.2.14 As the impugned goods are found liable to confiscation under Section 113(d) of the Customs Act, 1962, I find it appropriate to give option to the noticee to redeem the confiscated goods on payment of redemption fine, under the provisions of Section 125 (1) of the Customs Act, 1962;

121.2.15 The extention under proviso to Section 110(2) of the Customs Act, 1962 was granted by the competent authority, and the noticee was informed vide letter dated 23.11.2022 serving the letter by way of affixing the letter at the front gate of the premises under panchnama dated 24.11.2022.

Whether the noticee - M/s.Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) is liable for penalty under the provisions of the Customs Act, 1962:

Penalty under Section 114A of the Customs Act,1962:

121.2.16 I find that demand of differential Customs Duty totally amounting to **Rs.148,96,97,902/-** has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the noticee- M/s.Mahi (SEZ Unit) under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in cases where the Duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the Duty or interest has been erroneously refunded by reason of collusion or any wilful mis statement or suppression of facts. In the instant case, the ingredient of wilful mis-statement and suppression of facts by the noticee- M/s.Mahi (SEZ Unit) has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of penalty equal to the amount of Duty plus interest in terms of Section 114A *ibid*. Also, the appropriate Customs Duty in respect of diverted goods, in the manner aforesaid, was not levied and not paid by reason of willful misstatement and suppression of facts by them and thereby they have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962 in relation to the said goods.

121.2.17 Further, I rely on the ratio of the decision of Honble Tribunal Delhi in case of **Commissioner of Customs Vs. Ashwini Kumar Alia Amanullah** reported as **2021 (376) E.L.T. 321 (Tri. - Del.) (Supra)**. I find that in present case, the noticee has with clear intent to evade the payment of Customs duty have wrongly availed the benefit scheme of SEZ and did not fulfil the terms and condition stipulated with the exemptions available to a SEZ Unit and thereby short paid the duty. Therefore, the noticee is liable for penalty under Section 114A of the Customs Act, 1962.

121.2.18 I find that fifth proviso to Section 114A stipulates that "where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114." Hence, I refrain from imposing penalty on the noticee- M/s. Mahi (SEZ Unit) under Section 112 (a) and 112 (b) of the Customs Act, 1962.

Penalty under Section 114AA of the Customs Act,1962:

121.2.19 I also find that the Show Cause Notice proposes to impose penalty on the noticee M/s. Maahi Jewellery Exim Private Limited (SEZ Unit) under Section 114AA of the Customs Act, 1962. I find that the noticee, with an ulterior motive to defraud the exchequer, has been knowingly instrumental in the act of evasion of Customs duty resorting to diversion of the duty free imported Diamonds and precious stones. The imports were made availing duty exemptions available to a SEZ Unit. The duty exemptions to SEZ units are conditional and meant for the authorized operations as stipulated under section 26 of the SEZ Act, read with rule 22 of the SEZ Rules,2006. Whereas in the present case, the duty free imported goods were not utilized for the authorized operation. Therefore, the noticee has contravened the provision of Section 46(4) of the Customs Act, 1962 by making false declarations in the Bill of Entry to the effect that the imported goods are meant for the authorised operation by the SEZ Unit. Further, M/s. Maahi Jewellery Exim Private Limited (SEZ Unit), in relation to the goods

imported (diamonds and precious stones) knew or had reason to believe that the said goods diamonds and precious stones intended for the authorised operation had been diverted to DTA market from SEZ and had been replaced with some other inferior quality diamonds and precious stones procured from domestic market and the said inferior quality diamonds and precious stones were used in the studded jewellery to be exported against fulfilment of export obligation, even though they had submitted the documents and the declarations to claim wrong benefits of SEZ scheme to avoid payment of appropriate Customs Duty and to show fulfilment of export obligation. They had reason to believe that the documents and the declarations submitted by them were false or incorrect in their material particulars. Despite this position, the noticee knowingly made and signed false or incorrect declarations under the said respective Bills of Entry and Shipping Bills hence, they contravened the provision of Section 50(2) of the Customs Act, 1962. Hence, for the said act of contravention, M/s. Maahi Jewellery Exim Private Limited (SEZ Unit) is liable for penalty under Section 114AA of the Customs Act, 1962.

Penalty Under Section 117 of the Customs Act,1962:

121.2.20 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on the noticee. From the findings as discussed hereinabove in the foregoing paras, Penalty has been held imposable under Section 112(b)(ii) of the Customs Act,1962 for consciously dealing with the goods liable for confiscation under Section 111(j) and 111 (m) of the Customs Act, 1962. Further, Penalty has been held imposable under Section 114AA of the Customs Act,1962 for contravention of Section 46 and 50. Since, specific penalty found imposable under Section 112(b)(ii) and 114AA of the Customs Act, 1962 for contravention of provisions of the Act *ibid*, therefore, penalty under Section 117 of the Customs Act, 1962 is not imposable on the noticee which is for contravention not expressly mentioned.

Whether the noticee- Shri Ramraj Chaudhary, Director of M/s. Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) is liable for penalty under the provisions of the Customs Act,1962:

121.2.21 As discussed herein above in the foregoing paras, I find that the noticee- Shri Ramraj Chaudhary, has been one of the major conspirators in this entire syndicate who has played a vital role in evasion of Customs duty resorting to diversion of duty free imported Diamonds and precious stone in the name of his company M/s.Europea Makeour Jewel Pvt. Ltd. (SEZ Unit), adopting a novel *modus operandi* discussed herein above in the foregoing paras. The noticee had operated M/s Maahi Jewellery Exim Pvt. Ltd., SEZ Unit alongwith Shri Suresh Ratanlal Jagetia. The SEZ unit has diverted the superior quality imported Diamonds / Precious Stones (Ruby) into the domestic market and he alongwith Shri Suresh Ratanlal Jagetia had arranged inferior quality Diamonds / Precious Stones (Ruby) from the domestic market as replacement and exported the same after studding in the silver rings and pendants. He had taken delivery of duty free imported Diamonds and precious stones from Shri Kailash Chaudhary from the strong room of SEZ and taken it out without any document and payment of duty thereon. Actual delivery of Cut & Polished Diamonds and Stones imported by the SEZ Unit

was taken by Kailash Chaudhary sometimes along with Shri Deepak or sometime with Shri Vivek from the Strong-Room of SEZ, however, every time while taking the delivery from Strong-Room either Shri Deepak or Shri Vivek used to sign on the Register. After taking the delivery of the imported Diamonds or Precious Stones, the said parcel was given to Shri Suresh Jagetia (Director of M/s Europea Jewel Pvt Ltd) or Shri Ram Raj Choudhary (other Director of M/s Maahi Jewellery Exim Private Limited) as directed by them and in return, every time they used to give the other parcel, which at first sight always looked of inferior quality. Thereafter the exchanged parcel of inferior quality was taken to the manufacturing process of his SEZ unit and then studded jewellery was made out of it and the same was exported. Shri Kailash Choudhary, a dummy Director of M/s.Mahi Jewellery Exim Private Limited was acting on behest of the noticee- Shri Ramraj Chaudhary for monthly salary of Rs.50,000/- and the noticee- Shri Ramraj Chaudhary and Shri Suresh Ratanlal Jagetia were responsible for all the irregularities in the SEZ Units. The noticee- Shri Ramraj Chaudhary alongwith his associate Shri Suresh Ratanlal Jagetia was instrumental in the illegal activities of the SEZ Units as stated by Shri Suresh Jagetia in his statements recorded under Section 108 of the Customs Act,1962. Shri Ramraj Chaudhary had looked all the activities of DTA unit of M/s. Maahi Jewellery Exim Pvt. Ltd. Which was running on papers just to show sale-purchase for the purpose of entries in books of account to adjust the diversion of duty free imported diamonds and precious stones. The money received against supply / sale of the diverted imported Diamonds / Precious Stones (Ruby) was obtained in cash by him alongwith Shri Suresh Ratanlal Jagetia through angadias and such cash was given to the persons operating fake firms for transferring money into the common bank accounts of their DTA units and SEZ Units. He alongwith Shri Suresh Ratanlal Jagetia had planned the game in this manner so that the complete sale proceeds in lieu of the diverted imported Diamonds / Precious Stones (Ruby) could be received by the DTA units in the common bank accounts by way of issuance of sale purchase bills merely for book adjustments. Shri Ramraj Chaudhary and Shri Suresh Jagetia had obtained services of Shri Vikram Singh Kachchawa, an expert in operating fake firms for sending money abroad and gave cash amount to Shri Vikram Singh Kachchawa, who, after rotating money through RTGS and Cheques in the bank accounts of his several fake firms, ultimately sent the money abroad through M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology. Shri Ramraj Chaudhary had conspired with other associates and co-noticees to remove, sell the Smuggled Diamonds and Precious Stones (removing from SEZ in illegal manner) in violation of the provisions of Section 135 of the Customs Act, 1962, as elaborated in the SCN under adjudication and discussed herein above in the foregoing paras. He has been instrumental in fraudulently sending remittances of huge amounts to their own firms established in Hong Kong, by showing the same to be payments against import of services (which were never actually imported and were mere paper transactions without any actual supply of service) with the ulterior motive of using the fraudulent remittances for funding illegally diverted Diamonds and other Precious Stones / Metals which had been imported through SEZ units. The evidences and the investigation suggested that he was the brain behind the transactions of diversion of duty free imported goods resulted in evasion of customs duty thereon and he has emerged as Mastermind/Co-Conspirator/ controller/ beneficial Director of the SEZ Unit. The noticee Shri Ramraj Chaudhary had not appeared before the investigation despite various summons dated 03.06.2022, 21.06.2022,

01.07.2022, 20.07.2022, 09.11.2022, 14.12.2022, 10.01.2023 and 01.03.2023 issued to Shri Ram Raj Choudhary under section 108 of the Customs Act, 1962. Every such enquiry was by a deeming provision to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code. Summons as understood in legal parlance, is an intimation requiring a person to whom it is issued to appear to give evidence and/or produce some documents, etc. It is not an order in the sense that it decides any question or communicates a decision taken. It merely intimates the person concerned that he is required to appear before the named authority for giving evidence and/or to produce a document, etc. Despite repeated summons by the investigation, the noticee failed to appear to depose his statement and his stand on the issue. Thereby, he intentionally did not comply with the provisions of Section 108 of the Customs Act, 1962.

Penalty under Section 112(a) and 112(b) of the Customs Act, 1962:

121.2.22 I find that the Show Cause Notice proposes to impose penalty on the noticee Shri Ramraj Chaudhary, Director of M/s. Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) under Section 112(a) and 112(b) of the Customs Act, 1962. I find that Shri Ramraj Chaudhary, with an ulterior motive to defraud the exchequer, has been knowingly instrumental in the act of evasion of Customs duty resorting to diversion of the duty free imported Diamonds and precious stones. He has been instrumental in taking out the imported superior quality diamonds and precious stones from SEZ and bringing into the SEZ the inferior quality diamonds and precious stone and used such replaced lower quality Diamonds and precious stones in the studded jewellery and exported the same as if the jewellery is made of the imported superior quality diamonds and precious stones. The imports were made availing duty exemptions available to a SEZ Unit to utilise the same for authorised operation, however, the noticee did not utilise the goods in SEZ for authorised operation and diverted to domestic market without payment of duty. The noticee in this manner had knowingly did these acts and omissions in relation to the goods under dispute. Further, the noticee, by consciously dealing with the goods under dispute had acquired/removed/sold the goods which he knew or had reasons to believe that the goods were liable to confiscation under Section 111 of the Customs Act, 1962, and hence, Shri Ramraj Chaudhary, Director of M/s. Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) rendered himself liable for penal action under Section 112(a) and (b)(ii) of the Customs Act, 1962.

Penalty Under Section 114AA of the Customs Act, 1962:

121.2.23 I also find that the Show Cause Notice proposes to impose penalty on the noticee, Shri Ramraj Chaudhary, Director of M/s. Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) under Section 114AA of the Customs Act, 1962. I find that Shri Ramraj Chaudhary, with an ulterior motive to defraud the exchequer, has been knowingly instrumental in the act of evasion of Customs duty resorting to diversion of the duty free imported Diamonds and precious stones. He has been instrumental in taking out the imported superior quality diamonds and precious stones from SEZ and bringing into the SEZ the inferior quality diamonds and precious stone and used such replaced lower quality Diamonds and precious stones in the studded jewellery and exported the same as if the jewellery is made of the imported superior quality diamonds and precious stones. The imports were made

availing duty exemptions available to a SEZ Unit. The duty exemptions to SEZ units are conditional and meant for the authorized operations as stipulated under section 26 of the SEZ Act, read with rule 22 of the SEZ Rules, 2006. Whereas in the present case, the duty free imported goods were not utilized for the authorized operation. Therefore, the noticee has contravened the provision of Section 46(4) of the Customs Act, 1962 by making false declarations in the Bill of Entry to the effect that the imported goods are meant for the authorised operation by the SEZ Unit. Further, M/s. Maahi Jewellery Exim Private Limited (SEZ Unit), in relation to the goods imported (diamonds and precious stones) knew or had reason to believe that the said goods diamonds and precious stones intended for the authorised operation had been diverted to DTA market from SEZ and had been replaced with some other inferior quality diamonds and precious stones procured from domestic market and the said inferior quality diamonds and precious stones were used in the studded jewellery to be exported against fulfilment of export obligation, even though they had submitted the documents and the declarations to claim wrong benefits of SEZ scheme to avoid payment of appropriate Customs Duty and to show fulfilment of export obligation. They had reason to believe that the documents and the declarations submitted by them were false or incorrect in their material particulars. Despite this position, the noticee knowingly made and signed false or incorrect declarations under the said respective Bills of Entry and Shipping Bills hence, he contravened the provision of Section 50(2) of the Customs Act, 1962. Hence, for the said act of contravention, Shri Ramraj Chaudhary, Director of M/s. Maahi Jewellery Exim Private Limited (SEZ Unit) is liable for penalty under Section 114AA of the Customs Act, 1962, in relation to the said goods.

Penalty Under Section 117 of the Customs Act, 1962:

121.2.24 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on the notice. I find that the noticee had also contravened the provision of Section 108 of the Customs Act, 1962 in as much as he did not appear before the investigation. Since, no express penalty is elsewhere provided for such contraventions or failure, therefore, he is liable for penalty under Section 117 of Customs Act, 1962.

121.3 Whether the noticee- Shri Navratan Singh Jain-Mastermind/Handler/ controller/Co-Conspirator is liable for penalty under the provisions of the Customs Act, 1962:

121.3.1 As discussed herein above in the foregoing paras, I find that the noticee had knowingly played vital role in the evasion of customs duty on duty free imported Diamonds and Precious stones by the SEZ Units – M/s. Europea (SEZ Unit) and M/s. Mahi (SEZ Unit) resorting to diversion thereof into local market without payment of duty saved by the SEZ Units at the time of imports. His association with the syndicate resulted in evasion of duty as discussed exhaustively hereinabove in the foregoing paras. I find that the evidences and the investigation suggested that the said noticee along with other accomplices, had opened fake firms misusing documents and issued/received bills on account of such fictitious firms and the noticee has emerged as Mastermind/Handler/ controller/Co-Conspirator for the role he played in the well orchestrated conspiracy hatched by the persons of the syndicate to execute the modus-operandi cunningly to escape from the eyes of law, as elaborated in the SCN under adjudication and discussed herein

above under foregoing paras. M/s.Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and M/s.Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) could not had succeeded in diversion of the duty free imports without association of the said noticee in this entire case of duty evasion. The acts and commissions by the noticee, as elaborated hereinabove, suggested that he had aided and abetted in the diversion of duty free imported Diamonds and precious stones resulting in evasion of customs duty. Further, the noticee had consciously concerned, in the manner as detailed in the findings of the investigation and discussed hereinabove, with the goods under dispute which he knew or had reasons to believe that the goods were liable to confiscation under Section 111 of the Customs Act, 1962.

121.3.2 Shri Navratan Singh Jain had opened the Companies / firms namely M/s. Gehna Trading LLP and M/s. DNB Multitrade (I) Pvt Ltd. using the documents of Shri Ashok Kumar Jain and Shri Pankaj Paldecha. These companies are being operated by himself and he engaged in issuing and receiving bills (mere paper transactions, without actual supply). They have issued bills amounting to Rs.900 Crore approx. for supply of Diamond. Shri Navratan Singh Jain operated the referred Bank Accounts of both his firms namely, M/s. Gehna Trading LLP and M/s. DNB Multitrade (I) Pvt. Ltd and had made transactions worth INR 1500-1600 Crores in respect of smuggled Gold and Diamonds through these firms / bank accounts. He has transferred money into his wife's Bank Account not only from the PNB Account No. 0067002108006080 and PNB Account No. 0067002108007821 of his firms namely M/s. Gehna Trading LLP and M/s. DNB Multitrade (I) Pvt. Ltd., but also from IndusInd Bank Account Nos. 201000393521 and 201000579246 of M/s. Gehna Trading LLP and M/s. DNB Multitrade (I) Pvt. Ltd., respectively and explained as (1) Rs. 10 Lakh for Booking of Flat, (2) Rs. 23 Lakh for Surat Office; (3) Rs. 7 Lakh for purchase of Land in Kekri; that, he remained silent about rest of the money transactions. The profit earned from trading of smuggled Gold / Diamonds was transferred to his father's firm, namely M/s. Nakoda Enterprises, using Bank Accounts of his firms, namely M/s. Gehna Trading LLP and M/s. DNB Multitrade (I) Pvt. Ltd. Looking into the gravity of the case and role played by the noticee, he was arrested on 28.10.2022 under Section 104 of the Customs Act, 1962 for committing offences under Sections 132 and 135 of the Customs Act, 1962. He was produced before the Hon'ble ACMM (Economic Offence) Court Jaipur-II.

121.3.3 I further find from the letter dated 29.02.2024 of the investigating agency that during the course of investigation in the case relating to fraudulent remittances made abroad in lieu of non-existent imports of services (non-physical imports) by M/s.Belstar Techno Solutions (OPC) Pvt. Ltd., Jaipur, M/s.Visual Birds Technology, Jaipur & others, the name of the noticee Shri Navratan Singh Jain has been referred by many accused in their Statements recorded under Section 108 of the Customs Act, 1962. Summons on 10.02.2022, 15.03.2022, 21.06.2022, 01.07.2022, 29.07.2022, 17.08.2022 and 20.09.2022 were issued to the noticee-Shri Navaratan Singh Jain but, Shri Navratan Singh Jain did not comply with the said Summons and instead made complaints of harassment before the Commissioner of Customs, Jodhpur (HQ at Jaipur) and also the Chief Commissioner of Customs (Preventive), New Delhi & the Chairman, CBIC. He also filed an Anticipatory Bail Application under Section 438 of CrPC before the Hon'ble District & Session Judge, Jaipur Metropolitan, Jaipur-II which was however rejected. He subsequently filed Anticipatory Bail Application before

the Hon'ble High Court of Rajasthan, Jaipur Bench under Section 438 of CrPC which was disposed off as infructuous vide order dated 06.12.2022. Shri Navaratan had also filed a DB Civil Writ Petition No.10377/2022 which has been disposed off by the Hon'ble High Court vide Order dated 25.07.2022. From the confessional statements of the noticee, it emerged that he has habitually opened several firms and closed them within short period. It is on record that the firms created on paper by the noticee only issued Bills for sale of gold and diamond, but in reality no sale-purchase of gold / diamond or any kind of goods was actually made. In view of the above, it is evident that Shri Navaratan Singh Jain is also involved in creating fake firms for supplying the smuggled diamonds & smuggled gold in local market. The firms/ companies and bank accounts opened/created and operated by him are opened and created with sole intent to defraud the exchequer through fake firms which are non-existent and working only on paper. Three Medical Examinations conducted on 29.10.2022, 30.10.2022 and 04.11.2022 clearly indicate that Shri Navaratan has tried to evade punitive action for his wrong doing by making false & malicious allegations of torture/coercion & abuse against the investigating officers. He has tried to play the victim-card for portraying innocence and gaining sympathy of the adjudicating authority taking undue benefit by trying to raise doubts about the sanctity and legality of the Statements recorded under Section 108 of the Customs Act, 1962.

121.3.4 Regarding the contention of the noticee i.e. Shri Navratan Singh Jain in respect of CCTV footage of investigation room, I find from the letter dated 16.07.2024 of the investigating agency that applications filed by the noticee before the Hon'ble Trial Court as well as in the Hon'ble High Court of Jaipur were defended by them and recording of CCTV footage as required by the Hon'ble Court had been provided to Hon'ble court. Nowhere, the Hon'ble Court has directed to provide the same to the noticee. Claim for CCTV footage at this stage after more than six month from the date of recording statements is an after-thought of the noticee and part of the meticulous planning to delay the adjudication proceedings. I further find that Habeas Corpus Petition No.334/2022 filed by Shri Navratan Jain before the Hon'ble High Court of Rajasthan was also dismissed by the Hon'ble court vide order dated 22.12.2022 finding no merit in the petition.

121.3.5 I have gone through the submissions made by the noticee and find that he has mainly emphasised on evidences, jurisdiction, cross examination, duty liability and imposition of penalty. These aspects have already been discussed in this order under foregoing paras, therefore, I do not repeat the same here. Additionally, he has inter-alia argued that: –

- (i) The import of the goods has been carried out in accordance with the statutory provisions and no breach of whatsoever nature has been alleged to have been committed by the importer. Hence, none of the provisions of section 112 would stand attracted;
- (ii) The noticee has not signed any document in relation to the import of goods, hence, no penalty under Section 114AA of the Act is invocable qua him;
- (iii) When penal provision of section 112 and 114 has already been invoked, then section 117 could not have been invoked and goes beyond the very concept of imposing penalty under section 117.

121.3.6 I have already discussed in detail in the foregoing paras, finding that looking to the gravity of the offence committed by the noticees, penal

action under the provisions of the Customs Act,1962 is warranted in this case in hand and here I discuss imposition of penalty on this noticee alone.

Penalty under Section 112(a) and 112(b) of the Customs Act,1962:

121.3.7 I find that the Show Cause Notice proposes to impose penalty on the noticee under Section 112(a) and 112(b) of the Customs Act, 1962. I find that the noticee, with an ulterior motive to defraud the exchequer, has been knowingly instrumental in diversion of the duty free imported Diamonds and precious stones. His knowingly was concerned with the goods under dispute, as elaborated in the findings of the investigation and discussed herein above in the foregoing paras. The omissions and commissions by the noticee, has rendered the duty free imported goods liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962 and thereby the noticee rendered himself liable for penal action under Section 112 (a) and (b)(ii) of the Customs Act,1962.

Penalty Under Section 114AA of the Customs Act,1962:

121.3.8 I also find that the Show Cause Notice proposes to impose penalty on the noticee under Section 114AA of the Customs Act, 1962. I find that Section 114AA provides penalty for use of false and incorrect material. The section speaks that - if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty under this section. From the findings of the investigation, I do not find that the noticee had presented any document or signed any document before the authorized officer of SEZ or Customs authorities in connection with improper imports/exports, therefore, I do not impose penalty on the noticee under Section 114AA of the Act *ibid*.

Penalty Under Section 117 of the Customs Act,1962:

121.3.9 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on the noticee. I find that the noticee had also contravened the provision of Section 108 of the Customs Act,1962 as stated hereinabove. Since, no express penalty is elsewhere provided for such contraventions or failure, therefore, he is liable for penalty under Section 117 of Customs Act, 1962.

121.4 Whether the noticee- Shri Om Prakash Vanjani- Co-Conspirator /Director of M/s. Belstar Techno Solutions (OPC) Pvt. Ltd, is liable for penalty under the provisions of the Customs Act,1962:

121.4.1 As discussed herein above in the foregoing paras, I find that the noticee had knowingly played vital role in the evasion of customs duty on duty free imported Diamonds and Precious stones by the SEZ Units – M/s.Europea (SEZ Unit) and M/s.Mahi (SEZ Unit) resorting to diversion thereof into local market without payment of duty saved by the SEZ Units at

the time of imports. His association with the syndicate in the fraud resulting in evasion of duty has been brought on record in the investigation as discussed exhaustively hereinabove in the foregoing paras. I find that the evidences and the investigation suggested that the said noticee has facilitated the remittance to the Hong Kong and UAE based firms against import of services, said import of services never took place and the money was actually remitted against illegal import of Diamond/Precious Stones and the noticee has emerged as Co-Conspirator for the role he had played in the well orchestrated conspiracy hatched by the persons of the syndicate to execute the modus-operandi cunningly to escape from the eyes of law, as elaborated in the SCN under adjudication and discussed herein above under foregoing paras. Shri Om Prakash Vanjani, in collusion with other accomplices, was instrumental in remittance of amount of Rs.334,79,04,720/- to Hong Kong and UAE as detailed in the SCN. M/s.Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and M/s.Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) could not have succeeded in diversion of the duty free imports without association of the said noticee in this entire case of duty evasion. The acts and commissions by the noticee, as elaborated hereinabove, suggested that he had aided and abetted in the diversion of duty free imported Diamonds and precious stones resulting in evasion of customs duty. Looking into the gravity of the case and role played by the noticee, he was arrested on 26.11.2021 under Section 104 of the Customs Act, 1962 for committing offences under Section 132 and 135 of the Customs Act, 1962 read with Section 104 of the Customs Act, 1962. He was produced before the Hon'ble CMM (Economic Offence) Court on 26.11.2021, who ordered for judicial custody.

121.4.2 I have gone through the submissions made by the noticee and find that he has mainly emphasised on evidences, jurisdiction, cross examination, duty liability and imposition of penalty. These aspects have already been discussed in this order under foregoing paras, therefore, I do not repeat the same here.

121.4.3 Additionally, I find the noticee has also argued that the department did not find sufficient evidence so as to find that the company has been created only on papers and they factually never made any import of service. The submission of the noticee is devoid of merits and during the visit at the registered premises of the company, existence of such firm was not found and the same is very well mentioned in the panchnamas / visit notes. Further, the buyer and sellers appearing in their periodical returns were also found fictitious which proved that the transactions reported in their GST returns were mere paper transaction with a motive to generate fund to transfer overseas.

121.4.4 The noticee has also argued that he has been shown to be the Director of the subject company (M/s.Belstar Techno Solution (OPC) Pvt. Ltd.), however, it has nowhere been shown that the subject company has been arrayed as a party independently therein. I find the noticee has argued on different footings. First of all no duty is demanded from this noticee under the SCN under adjudication. Further, M/s.Belstar Techno Solution (OPC) Pvt. Ltd., being One Person Company (OPC) has limited liability and the noticee-Shri Om Prakash Vanjani is the only Director and he has been made noticee. I therefore, find that the noticee's contention is devoid of merits.

121.4.5 The noticee has also stated in his submission that he has not received complete copy of the SCN including annexure mentioned therein. He has requested to provide complete copy of SCN dated 20.05.2023 alongwith annexures. I find that all the noticees have been made available the copy of SCN alongwith legible copies of RUDs, however, as requested by Shri Om Prakash Vanjani, legible copy of SCN dated 20.05.2023 alongwith RUDs has again been sent to him vide letter dated 23.01.2024.

121.4.6 The noticee has contested that he has not committed any offence whatsoever and he is completely innocent thereby; provision of the Customs Act,1962 are not at all attracted in any manner whatsoever; no seizure of gold or any precious stone has been done by the department; so there is no case made out against him; provisions of Section 112(a), 112(b), 114AA and 117 of the Customs Act,1962 are specifically not made out; therefore, there is no occasion for the noticee to make liable under any of the provisions of the Act,1962;

121.4.7 In view of the role as discussed above played by the noticee, penal action under the provisions of the Customs Act,1962 is warranted as discussed below:

Penalty under Section 112(a) and 112(b) of the Customs Act,1962:

121.4.8 I find that the Show Cause Notice proposes to impose penalty on the noticee under Section 112(a) and 112(b) of the Customs Act, 1962. I find that the noticee, with an ulterior motive to defraud the exchequer, has been knowingly instrumental in diversion of the duty free imported Diamonds and precious stones. The omissions and commissions by the noticee, has rendered the duty free imported goods liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962 and thereby the noticee rendered himself liable for penal action under Section 112 (a) and (b)(ii) of the Customs Act,1962.

Penalty Under Section 114AA of the Customs Act,1962:

121.4.9 I also find that the Show Cause Notice proposes to impose penalty on the noticee under Section 114AA of the Customs Act, 1962. I find that the Section 114AA provides penalty for use of false and incorrect material. The section speaks that - if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty under this section. findings of the investigation, I do not find that the noticee had presented any document or signed any document before the authorized officer of SEZ or Customs authorities in connection with improper imports/exports, therefore, I do not impose penalty on the noticee under Section 114AA of the Act *ibid*.

Penalty Under Section 117 of the Customs Act,1962:

121.4.10 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on the noticee. From the findings as discussed hereinabove in the foregoing paras, Penalty has been held imposable under Section 112(a) and 112(b)(ii) of the Customs Act,1962 for

the act of abettment and concerned with the goods on the part of the noticee which rendered the goods liable for confiscation under Section 111(j) and 111 (m) of the Customs Act, 1962. Since, specific penalty has been found imposable under Section 112(a) and 112(b)(ii) of the Customs Act, 1962 for contravention of Section 111(j) and 111 (m) of the Act *ibid*, therefore, penalty under Section 117 of the Customs Act, 1962 is not imposable on the noticee which is for the contraventions not expressly mentioned.

121.5 Whether the noticee- Shri Vikram Singh Kachchawa-Mastermind/Handler/ controller/Co-Conspirator/Hawala Handler is liable for penalty under the provisions of the Customs Act,1962:

120.5.1 As discussed herein above in the foregoing paras, I find that the noticee had knowingly played vital role in the evasion of customs duty on duty free imported Diamonds and Precious stones by the SEZ Units – M/s.Europea (SEZ Unit) and M/s.Mahi (SEZ Unit) resorting to diversion thereof into local market without payment of duty saved by the SEZ Units at the time of imports. His association with the syndicate resulting in evasion of duty has been brought on record in the investigation as discussed exhaustively hereinabove in the foregoing paras. I find that the evidences and the investigation suggested that the said noticee was the brain behind the transactions to send money overseas by rotating in multilayer accounts of the firms operated on paper. He himself operated numbers of fictitious firms on paper and emerged as Mastermind/Handler/ controller/Co-Conspirator/Hawala Handler for the role he had played in the well orchestrated conspiracy hatched by the persons of the syndicate to execute the modus-operandi cunningly to escape from the eyes of law, as elaborated in the SCN under adjudication and discussed herein above under foregoing paras. He has opened about 200 bank accounts in the name of various companies and individuals. The amount to be sent abroad, after rotating in various bank accounts, was transferred to the bank accounts of M/s. Belstar Techno Solutions (OPC) Pvt. Ltd., M/s Visual Birds Technology and other firms and thereafter remitted overseas. In order to open the bank accounts, PAN Card and Aadhar Card are obtained from those persons, who are either known to him or are in need of money; that from the companies opened by him and from the companies purchased by him from market for rotating money, the total transaction done by him through internet banking is to the tune of Rs.2000 - 2500 Crore for remittance overseas in the name of import of service, as elaborated in the SCN. He has also made payments to Shri Ravindra Kumar CA for the services rendered by Shri Ravindra Kumar being part of the syndicate. M/s.Europea Jewellery Pvt. Ltd. (SEZ Unit) and M/s.Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) could not have succeeded in diversion of the duty free imports without the said noticee in this entire case of duty evasion. The acts and commissions by the noticee, as elaborated hereinabove, suggested that he had aided and abetted in the diversion of duty free imported Diamonds and precious stones resulting in evasion of customs duty. Looking into the gravity of the case and role played by the noticee, he was arrested on 15.01.2022 under Section 104 of the Customs Act, 1962 for committing offences under Section 132 and 135 of the Customs Act, 1962 read with Section 104 of the Customs Act, 1962. He was produced before the Hon'ble ACMM (Economic Offence) Court on 15.01.2022, who ordered for judicial custody.

121.5.2 I have gone through the submissions made by the noticee and find that he has mainly emphasised on evidences, jurisdiction, cross examination, duty liability and imposition of penalty. These aspects have already been discussed in this order under foregoing paras, therefore, I do not repeat the same here.

121.5.3 Shri Vikram Singh Kachchawa in his reply requested for copies of all relied upon documents. I find that though, all the relied upon documents have already been annexed with the SCN in a DVD, however, considering his request, copies of all the relied upon documents were again made available to him vide letter dated 11.03.2024.

121.5.4 Additionally, the noticee has contested that in the present case the burden of proving that the penalty U/s 112, 114AA and 117 are leviable is upon the department and the burden to disprove cannot be said to lie upon the noticee in terms of Section 123 of the Customs Act; it is clear beyond doubt that it comes into operation only when the subject goods are seized; In the present case since no seizure of goods has taken place from the possession of noticee, therefore the provisions of Section 123 do not even prima-facie come into picture; therefore, in light of the facts and circumstances of the case, no penalty whatsoever can be imposed.

121.5.5 In view of the role played by the noticee as discussed above, penal action under the provisions of the Customs Act, 1962 is warranted as discussed below:

Penalty under Section 112(a) and 112(b) of the Customs Act, 1962:

121.5.6 I find that the Show Cause Notice proposes to impose penalty on the noticee under Section 112(a) and 112(b) of the Customs Act, 1962. I find that the noticee, with an ulterior motive to defraud the exchequer, has been knowingly instrumental in diversion of the duty free imported Diamonds and precious stones. The omissions and commissions by the noticee, has rendered the duty free imported goods liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962 and thereby the noticee rendered himself liable for penal action under Section 112 (a) and (b)(ii) of the Customs Act, 1962.

Penalty Under Section 114AA of the Customs Act, 1962:

121.5.7 I also find that the Show Cause Notice proposes to impose penalty on the noticee under Section 114AA of the Customs Act, 1962. I find that the Section 114AA provides penalty for use of false and incorrect material. The section speaks that - if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty under this section. From findings of the investigation, I do not find that the noticee had presented any document or signed any document before the authorized officer of SEZ or Customs authorities in connection with improper imports/exports, therefore, I do not impose penalty on the noticee under Section 114AA of the Act *ibid*.

Penalty Under Section 117 of the Customs Act, 1962:

121.5.8 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on the noticee. From the findings as discussed hereinabove in the foregoing paras, Penalty has been held imposable under Section 112(a) and 112(b)(ii) of the Customs Act, 1962 for the act of abettment and concerned with the goods on the part of the noticee which rendered the goods liable for confiscation under Section 111(j) and 111 (m) of the Customs Act, 1962. Since, specific penalty has been found imposable under Section 112(a) and 112(b)(ii) of the Customs Act, 1962 for contravention of Section 111(j) and 111 (m) of the Act *ibid*, therefore, penalty under Section 117 of the Customs Act, 1962 is not imposable on the noticee which is for the contraventions not expressly mentioned.

121.6 Whether the noticee- Shri Ravindra Kumar, - Chartered Accountant/ Co-Conspirator is liable for penalty under the provisions of the Customs Act, 1962:

121.6.1 As discussed herein above in the foregoing paras, I find that the noticee had knowingly played vital role in the evasion of customs duty on duty free imported Diamonds and Precious stones by the SEZ Units – M/s.Europea (SEZ Unit) and M/s.Mahi (SEZ Unit) resorting to diversion thereof into local market without payment of duty saved by the SEZ Units at the time of imports. His association with the syndicate resulting in evasion of duty has been brought on record in the investigation as discussed exhaustively hereinabove in the foregoing paras. I find that the evidences and the investigation suggested that the said noticee has emerged as Co-Conspirator for the role he had played in the well orchestrated conspiracy hatched by the persons of the syndicate to execute the *modus-operandi* cunningly to escape from the eyes of law, as elaborated in the SCN under adjudication and discussed herein above under foregoing paras. M/s.Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and M/s.Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) could not have succeeded in diversion of the duty free imports without association of the said noticee in this entire case of duty evasion. The certificates issued by the noticee were in support to show that the import of services had taken place, whereas no such import of services had taken place as elaborated in the SCN. Foreign remittance took place because of the certificate issued by petitioner. He had issued 310 Form 15CB, valued at Rs.348,70,33,669/- for M/s. Belstar Techno Solutions (OPC) Pvt. Ltd. and M/s Visual Birds Technology, facilitating the foreign remittance without verification of any Agreement and other relevant documents or Books of Accounts and has issued Form 15CB for greed of money. The acts and commissions, as elaborated hereinabove, suggested that he had aided and abetted in the diversion of duty free imported Diamonds and precious stones resulting in evasion of customs duty. Looking into the gravity of the case and role played by the noticee, he was arrested on 26.11.2021 under Section 104 of the Customs Act, 1962 for committing offences under Section 132 and 135 of the Customs Act, 1962 read with Section 104 of the Customs Act, 1962. He was produced before the Hon'ble CMM (Economic Offence) Court on 26.11.2021, who ordered for judicial custody.

121.6.2 I have gone through the submissions made by the noticee and find that in addition to other submissions, he has emphasised on evidences, duty liability and imposition of penalty. These aspects have already been

discussed in this order in foregoing paras, therefore, I do not repeat the same here.

121.6.3 Additionally, the noticee has argued that 15CB is only an opinion of the Chartered Accountant, therefore, even if it is claimed that the Chartered Accountant has wrongly issued the Certificate, then also Chartered Accountant cannot be charged with any penalty. Even assuming that a Chartered Accountant has wrongly issued a certificate in Form 15CB, then also, the Income Tax Act does not make it an offence. Even if it is assumed that a certificate was wrongly issued by a Chartered Accountant, then the only action can be taken against the Chartered Accountant is to impose penalty under the Income Tax Act itself. A certificate which is essentially issued under the Income Tax Act and which is meant/relevant only for the purpose of Income Tax, if found to have been issued incorrectly, the same and the most can be subjected to penalty U/s 271J of the Income Tax Act. By no stretch of imagination, a Form 15CB can be subject to penalty U/s 112 of the Customs Act, 1962. The present show cause notice is concerned with the alleged evasion of customs duty of a huge quantum by two entities named - (1) M/s EuropeaMakeour Jewel Private Limited, and (2) M/s Maahi Jewellery Exim Pvt. Ltd. he had nothing to do with any of these entities. Admittedly, there is no allegation in entire show cause notice of issuance of Form 15CB to these entities by the noticee. Penalties under Section 112, 114AA and 117 of the Customs Act, 1962 is not leviable upon him. I find that the action of issuance of the certificate proves that the noticee had abetted in the racket, therefore, I do not find any merit in the submissions made by the noticee as far as contravention of provisions of the Customs Act, 1962 are concerned.

121.6.3 The noticee has also contested about retraction of his statements. In this regard I find that the statements recorded under Section 108 of the Customs Act, on 24th and 25th November, 2021 were retracted by the noticee on 06.12.2021 before the Commissioner of Customs, which was rebutted by the authority finding no merit. I find that such retraction after 12 days is an afterthought of the noticee and devoid of merit. As I have already discussed, the statement is binding upon the persons who had deposed the statement under Section 108 of the Customs Act, 1962.

121.6.4 In view of the role played by the noticee as discussed above, penal action under the provisions of the Customs Act, 1962 is warranted as detailed below:

Penalty under Section 112(a) and 112(b) of the Customs Act, 1962:

121.6.5 I find that the Show Cause Notice proposes to impose penalty on the noticee under Section 112(a) and 112(b) of the Customs Act, 1962. I find that the noticee, with an ulterior motive to defraud the exchequer, has been knowingly instrumental in diversion of the duty free imported Diamonds and precious stones. The omissions and commissions by the noticee, has rendered the duty free imported goods liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962 and thereby the noticee rendered himself liable for penal action under Section 112 (a) and (b)(ii) of the Customs Act, 1962.

Penalty Under Section 114AA of the Customs Act, 1962:

121.6.6 I also find that the Show Cause Notice proposes to impose penalty on the noticee under Section 114AA of the Customs Act, 1962. I find that the Section 114AA provides penalty for use of false and incorrect material. The section speaks that - if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty under this section. From the findings of the investigation, I do not find that the noticee had presented any document or signed any document before the authorized officer of SEZ or Customs authorities in connection with improper imports/exports, therefore, I do not impose penalty on the noticee under Section 114AA of the Act *ibid*.

Penalty Under Section 117 of the Customs Act,1962:

121.6.7 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on the noticee. From the findings as discussed hereinabove in the foregoing paras, Penalty has been held imposable under Section 112(a) 112(b)(ii) of the Customs Act,1962 for the act of abettment and concerned with the goods on the part of the noticee which rendered the goods liable for confiscation under Section 111(j) and 111 (m) of the Customs Act, 1962. Since, specific penalty has been found imposable under Section 112(a) and 112(b)(ii) of the Customs Act, 1962 for contravention of Section 111(j) and 111 (m) of the Act *ibid*, therefore, penalty under Section 117 of the Customs Act, 1962 is not imposable on the noticee which is for the contraventions not expressly mentioned.

121.7 Whether the noticee- Shri Kamlesh Nagda- Handler/Co-Conspirator/Hawala Handler is liable for penalty under the provisions of the Customs Act,1962:

121.7.1 As discussed herein above in the foregoing paras, I find that the noticee had knowingly played vital role in the evasion of customs duty on duty free imported Diamonds and Precious stones by the SEZ Units – M/s.Europea (SEZ Unit) and M/s.Mahi (SEZ Unit) resorting to diversion thereof into local market without payment of duty saved by the SEZ Units at the time of imports. His association with the syndicate resulting in evasion of duty has been brought on record in the investigation as discussed exhaustively hereinabove in the foregoing paras. I find that the evidences and the investigation suggested that the said noticee alongwith Shri Vikram Singh Kachchawa had transferred huge amount overseas by rotating in multilayer accounts of the firms operating on paper. He himself operated numbers of fictitious firms on paper and has emerged as Handler/Co-Conspirator/Hawala Handler for the role he had played in the well orchestrated conspiracy hatched by the persons of the syndicate to execute the modus-operandi cunningly to escape from the eyes of law, as elaborated in the SCN under adjudication and discussed herein above under foregoing paras. M/s.Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and M/s.Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) could not have succeeded in diversion of the duty free imports without association of the said noticee in this entire case of duty evasion. The acts and commissions by the noticee, as elaborated hereinabove, suggested that he had aided and abetted in the diversion of duty free imported Diamonds and precious stones resulting in evasion of customs duty.

121.7.2 M/s. Shanti Nath Trading Pvt. Ltd., in which Shri Kamlesh Nagda is one of the director, has transferred an amount of Rs.12 (Twelve) Crore (approx.) to bank account of M/s. Belstar Techno solutions (OPC) Pvt. Ltd. and M/s. Visual Birds Technology. Shri Kamlesh Nagda was also operating several Personal bank accounts in his own name and made huge transactions as detailed below, for which he could not give any legitimate reasons and source:-

Personal Bank accounts held by Kamlesh Nagda			
Bank name	Account no.	Total Debit	Total Credit
Bandhan bank Udaipur	52200033505118	23694631	23698146
Equitas small Finance bank, Udaipur	109680206154	28120906	28120922
ICICI Bank Udaipur	4505011870	47840426	47845464
IDFC Bank Udaipur	10060207692	218532	218538
		99874495	99883070

Looking into the gravity of the case and role played by the noticee, he was arrested on 15.01.2022 under Section 104 of the Customs Act, 1962 for committing offences under Section 132 and 135 of the Customs Act, 1962 read with Section 104 of the Customs Act, 1962. He was produced before the Hon'ble ACMM (Economic Offence) Court on 15.01.2022, who ordered for their judicial custody.

121.7.3 I have gone through the submissions made by the noticee and find that he has mostly emphasised on evidences, jurisdiction, cross examination, duty liability and imposition of penalty. Theses aspects have already been discussed in this order under foregoing paras, therefore, I do not repeat the same here.

121.7.4 Shri Kamlesh Nagda in his reply requested for copies of all relied upon documents. I find that though, all the relied upon documents have already been annexed with the SCN in a DVD, however, considering his request, copies of all the relied upon documents were again made available to him vide letter dated 11.03.2024.

121.7.5 Additionally, the noticee has contested that in the present case the burden of proving that the penalty U/s 112, 114AA and 117 are leviable is upon the department and the burden to disprove cannot be said to lie upon the noticee in terms of Section 123 of the Customs Act; it comes into operation only when the subject goods are seized; In the present case since no seizure of goods has taken place from the possession of noticee, therefore the provisions of Section 123 do not even prima-facie come into picture; therefore, in light of the facts and circumstances of the case, no penalty whatsoever can be imposed against the noticee under the aforesaid provisions.

121.7.6 In view of the role played by the noticee as discussed above, penal action under the provisions of the Customs Act, 1962 is warranted as detailed below:

Penalty under Section 112(a) and 112(b) of the Customs Act, 1962:

121.7.7 I find that the Show Cause Notice proposes to impose penalty on the noticee under Section 112(a) and 112(b) of the Customs Act, 1962. I find that the noticee, with an ulterior motive to defraud the exchequer, has been knowingly instrumental in diversion of the duty free imported Diamonds and precious stones. The omissions and commissions by the noticee, has rendered the duty free imported goods liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962 and thereby the noticee rendered himself liable for penal action under Section 112 (a) and (b)(ii) of the Customs Act, 1962.

Penalty Under Section 114AA of the Customs Act, 1962:

121.7.8 I also find that the Show Cause Notice proposes to impose penalty on the noticee under Section 114AA of the Customs Act, 1962. I find that Section 114AA provides penalty for use of false and incorrect material. The section speaks that - if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty under this section. From the findings of the investigation, I do not find that the noticee had presented any document or signed any document before the authorized officer of SEZ or Customs authorities in connection with improper imports/exports, therefore, I do not impose penalty on the noticee under Section 114AA of the Act *ibid*.

Penalty Under Section 117 of the Customs Act, 1962:

121.7.9 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on the noticee. From the findings as discussed hereinabove in the foregoing paras, Penalty has been held imposable under Section 112(a) and 112(b)(ii) of the Customs Act, 1962 for the act of abettment and concerned with the goods on the part of the noticee which rendered the goods liable for confiscation under Section 111(j) and 111 (m) of the Customs Act, 1962. Since, specific penalty has been found imposable under Section 112(a) and 112(b)(ii) of the Customs Act, 1962 for contravention of Section 111(j) and 111(m) of the Act *ibid*, therefore, penalty under Section 117 of the Customs Act, 1962 is not imposable on the noticee which is for the contraventions not expressly mentioned.

121.8 Whether the noticee- Shri Deepak Kumar, Director, M/s Subhang Enterprises, Mumbai/ Co-Conspirator is liable for penalty under the provisions of the Customs Act, 1962:

120.8.1 As discussed herein above in the foregoing paras, I find that the noticee had knowingly played vital role in the evasion of customs duty on duty free imported Diamonds and Precious stones by the SEZ Units – M/s. Europa (SEZ Unit) and M/s. Mahi (SEZ Unit) resorting to diversion thereof into local market without payment of duty saved by the SEZ Units at

the time of imports. His association with the syndicate resulting in evasion of duty has been brought on record in the investigation as discussed exhaustively hereinabove in the foregoing paras. I find that the evidences and the investigation suggested that the said noticee alongwith Shri Vikram Singh Kachchawa had issued bills without any supply from his firms and has emerged as Handler/Co-Conspirator/Hawala Handler for the role he had played in the well orchestrated conspiracy hatched by the persons of the syndicate to execute the modus-operandi cunningly to escape from the eyes of law, as elaborated in the SCN under adjudication and discussed herein above under foregoing paras. M/s.Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and M/s.Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) could not have succeeded in diversion of the duty free imports without association of the said noticee in this entire case of duty evasion. The acts and commissions by the noticee, as elaborated hereinabove, suggested that he had aided and abetted in the diversion of duty free imported Diamonds and precious stones resulting in evasion of customs duty. Perusal of GSTR-1 of M/s Shubhang Trading Company and Shubhang Enterprises Private Limited revealed that invoices for supply of Diamond and Gold amounting to Rs.167 Crore (approx.) have been issued by both these units / firms. It was also noticed that M/s. Europea (DTA Unit) and M/s. Maahi (DTA Unit) have issued bills / invoices to M/s. Shubhang Enterprises Private Limited. Looking into the gravity of the case and role played by the noticee, he was arrested on 08.05.2022 and produced before the Hon'ble Economic Offences Court, Jaipur, who ordered for his Judicial Custody.

121.8.2 I have gone through the submissions made by the noticee and find that he has mainly emphasised on evidences, jurisdiction, cross examination, duty liability and imposition of penalty. These aspects have already been discussed in the foregoing paras, therefore, I do not repeat the same here.

121.8.3 Additionally, the noticee has contested that penalties under section 112(a) & (b) is not imposable inasmuch as the seizure of goods by the officers of customs is illegal and void ab initio; Section 114AA of the Act which mandates existence of knowledge or intention for use of false and incorrect materials, however, in the instant case, no role of the noticee in making/using/signing any fabricated or manipulated document for the purposes of carrying out transaction/business under the Act; the duty/responsibility, if any, under the said provisions is saddled upon the importer/exporter of goods and not on 'any other' person; therefore, penalty u/s 117 of the Act (a residuary penalty provision for violation of sections 17, 46, and 50 of the Act), in the instant case, is not imposable.

121.8.4 In view of the role played by the noticee as discussed above, penal action under the provisions of the Customs Act, 1962 is warranted in this case as detailed below:

Penalty under Section 112(a) and 112(b) of the Customs Act, 1962:

121.8.5 I find that the Show Cause Notice proposes to impose penalty on the noticee under Section 112(a) and 112(b) of the Customs Act, 1962. I find that the noticee, with an ulterior motive to defraud the exchequer, was instrumental in diversion of the duty free imported Diamonds and precious stones. The omissions and commissions by the noticee, has rendered the

duty free imported goods liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962 and thereby the noticee rendered himself liable for penal action under Section 112(a) and (b)(ii) of the Customs Act, 1962.

Penalty Under Section 114AA of the Customs Act, 1962:

121.8.6 I also find that the Show Cause Notice proposes to impose penalty on the noticee under Section 114AA of the Customs Act, 1962. I find that Section 114AA provides penalty for use of false and incorrect material. The section speaks that - if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty under this section. From the findings of the investigation, I do not find that the noticee had presented any document or signed any document before the authorized officer of SEZ or Customs authorities in connection with improper imports/exports, therefore, I do not impose penalty on the noticee under Section 114AA of the Act *ibid*.

Penalty Under Section 117 of the Customs Act, 1962:

121.8.7 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on the noticee. From the findings as discussed hereinabove in the foregoing paras, Penalty has been held imposable under Section 112(a) and 112(b)(ii) of the Customs Act, 1962 for the act of abettment and concerned with the goods on the part of the noticee which rendered the goods liable for confiscation under Section 111(j) and 111 (m) of the Customs Act, 1962. Since, specific penalty has been found imposable under Section 112(a) and 112(b)(ii) of the Customs Act, 1962 for contravention of Section 111(j) and 111 (m) of the Act *ibid*, therefore, penalty under Section 117 of the Customs Act, 1962 is not imposable on the noticee which is for the contraventions not expressly mentioned.

121.9 Whether the noticee- Sh. Vimal Nahar, Prop., M/s Swastik Impex/ Co-Conspirator is liable for penalty under the provisions of the Customs Act, 1962:

120.9.1 As discussed herein above in the foregoing paras, I find that the noticee had knowingly played vital role in the evasion of customs duty on duty free imported Diamonds and Precious stones by the SEZ Units – M/s. Europea (SEZ Unit) and M/s. Mahi (SEZ Unit) resorting to diversion thereof into local market without payment of duty saved by the SEZ Units at the time of imports. His association with the syndicate resulting in evasion of duty has been brought on record in the investigation as discussed hereinabove in the foregoing paras. I find that the evidences and the investigation suggested that the said noticee has facilitated in the supply of illegally imported and diverted Diamond and Precious Stone by Shri Suresh Ratanlal Jagetia from SEZ units by creating a fake firm with the assistance of Shri Navratan Singh Jain and Vikram Singh Kachchawa and has emerged as Co-Conspirator for the role he had played in the well orchestrated conspiracy hatched by the persons of the syndicate to execute the modus-operandi cunningly to escape from the eyes of law, as elaborated in the SCN under adjudication and discussed herein above under foregoing paras. M/s. Europea (DTA Unit), without supply of Diamonds and Precious Stones have issued bills

/ invoices valued at Rs.16.91 Crore to M/s. Swastik Impex, Mumbai and accordingly, Shri Vimal Nahar has subsequently issued fake bills / invoices for making the supply of Diamonds from his firm M/s. Swastik Impex [GST No. 27APEPN7660J1ZG], the payment used to be credited in the bank account of his firm, which, instead of being transferred in the bank account of that firm (from which the bogus bill showing purchase of Gold Bullion / Diamonds was obtained), was actually transferred in another firm's bank account with which his firm M/s Swastik Impex had not made any purchases. M/s.Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and M/s.Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) could not have succeeded in diversion of the duty free imports without association of the said noticee in this entire case of duty evasion. The acts and commissions by the noticee, as elaborated hereinabove, suggested that he had aided and abetted in the diversion of duty free imported Diamonds and precious stones resulting in evasion of customs duty. Looking into the gravity of the case and role played by the noticee, he was arrested on 23.02.2023 and produced before the Hon'ble Economic Offences Court, Jaipur, who ordered for his Judicial Custody.

121.9.2 I have gone through the submissions made by the noticee and find that he has mainly emphasised on evidences, jurisdiction, cross examination, duty liability and imposition of penalty. These aspects have already been discussed in this order under foregoing paras, therefore, I do not repeat the same here.

121.9.3 Additionally, the noticee has contested that the penalties under section 112(a) & (b) and section 114AA of the Act is not imposable in as much as the investigation carried out and the Show Cause Notice is without authority and jurisdiction and hence seizure of such goods is illegal and void ab initio; Since seizure is void & initio, the same cannot be confiscated inasmuch as the predicate requirement of seizure has not been satisfied; Section 117 deals with the situation where the contravention is committed in relation to any provision of the act for which no express penalty is elsewhere provided for.

121.9.4 In view of the role played by the noticee as discussed above, penal action under the provisions of the Customs Act,1962 is warranted in this case as detailed below:

Penalty under Section 112(a) and 112(b) of the Customs Act,1962:

121.9.5 I find that the Show Cause Notice proposes to impose penalty on the noticee under Section 112(a) and 112(b) of the Customs Act, 1962. I find that the noticee, with an ulterior motive to defraud the exchequer, has been knowingly instrumental in diversion of the duty free imported Diamonds and precious stones. The omissions and commissions by the noticee, has rendered the duty free imported goods liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962 and thereby the noticee had rendered himself liable for penal action under Section 112 (a) and (b)(ii) of the Customs Act,1962.

Penalty Under Section 114AA of the Customs Act,1962:

121.9.6 I also find that the Show Cause Notice proposes to impose penalty on the noticee under Section 114AA of the Customs Act, 1962. I find that Section 114AA provides penalty for use of false and incorrect material

particulars. The section speaks that - if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty under this section. From the findings of the investigation, I do not find that the noticee had presented any document or signed any document before the authorized officer of SEZ or Customs authorities in connection with improper imports/exports, therefore, I do not impose penalty on the noticee under Section 114AA of the Act *ibid*.

Penalty Under Section 117 of the Customs Act,1962:

121.9.7 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on the noticee. From the findings as discussed hereinabove in the foregoing paras, Penalty has been held imposable under Section 112(a) and 112(b)(ii) of the Customs Act,1962 for the act of abettment and concerned with the goods on the part of the noticee which rendered the goods liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962. Since, specific penalty has been found imposable under Section 112(a) and 112(b)(ii) of the Customs Act, 1962 for contravention of Section 111(j) and 111 (m) of the Act *ibid*, therefore, penalty under Section 117 of the Customs Act, 1962 is not imposable on the noticee which is for the contraventions not expressly mentioned.

121.10 Whether the noticee- Shri Nitesh Kumar, Prop., M/s Visual Birds Technology / Co-Conspirator is liable for penalty under the provisions of the Customs Act,1962:

121.10.1 As discussed herein above in the foregoing paras, I find that the noticee had knowingly played vital role in the evasion of customs duty on duty free imported Diamonds and Precious stones by the SEZ Units – M/s.Europea (SEZ Unit) and M/s.Mahi (SEZ Unit) resorting to diversion thereof into local market without payment of duty saved by the SEZ Units at the time of imports. His association with the syndicate resulting in evasion of duty has been brought on record in the investigation as discussed exhaustively hereinabove in the foregoing paras. I find that the evidences and the investigation suggested that the said noticee has facilitated the remittance to the Hong Kong based firms against import of services, said import never took place and the money was actually remitted against illegal import of Diamond/Precious Stones and has emerged as Co-Conspirator for the role he had played in the well orchestrated conspiracy hatched by the syndicate to execute the modus-operandi cunningly to escape from the eyes of law, as elaborated in the SCN under adjudication and discussed herein above under foregoing paras. The noticee, in collusion with other accomplices, was instrumental in remittance of amount of Rs. 65,78,86,456/- to Hong Kong and UAE as detailed in the SCN. M/s.Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and M/s.Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) could not have succeeded in diversion of the duty free imports without association of the said noticee in this entire case of duty evasion. The acts and commissions by the noticee, as elaborated hereinabove, suggested that he had aided and abetted in the diversion of duty free imported Diamonds and precious stones resulting in evasion of customs duty. Summons were issued to Shri Nitesh Kumar under section 108 of the Customs Act, 1962, however, he never appeared for tendering statement before the investigation.

Complaint under section 190 was filed against him with the Metropolitan Magistrate No. 11, Jaipur-First, Jaipur for non compliance of summon. The noticee also did not appear before the adjudicating authority and he did file any reply to the SCN.

121.10.2 In view of the role played by the noticee as discussed above, penal action under the provisions of the Customs Act,1962 as detailed below is warranted in this case:

Penalty under Section 112(a) and 112(b) of the Customs Act,1962:

121.10.3 I find that the Show Cause Notice proposes to impose penalty on the noticee under Section 112(a) and 112(b) of the Customs Act, 1962. I find that the noticee, with an ulterior motive to defraud the exchequer, has been knowingly instrumental in diversion of the duty free imported Diamonds and precious stones. The omissions and commissions by the noticee, has rendered the duty free imported goods liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962 and thereby the noticee rendered himself liable for penal action under Section 112 (a) and (b)(ii) of the Customs Act,1962.

Penalty Under Section 114AA of the Customs Act,1962:

121.10.4 I also find that the Show Cause Notice proposes to impose penalty on the noticee under Section 114AA of the Customs Act, 1962. I find that Section 114AA provides penalty for use of false and incorrect material. The section speaks that - if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty under this section. From findings of the investigation, I do not find that the noticee had presented any document or signed any document before the authorized officer of SEZ or Customs authorities in connection with improper imports/exports, therefore, I do not impose penalty on the noticee under Section 114AA of the Act *ibid*.

Penalty Under Section 117 of the Customs Act,1962:

121.10.5 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on the noticee. I find that the noticee had also contravened the provision of Section 108 of the Customs Act,1962 in as much as he did not appear before the investigation. Since, no express penalty is elsewhere provided for such contraventions or failure, therefore, he is liable for penalty under Section 117 of Customs Act, 1962.

121.11 Whether the noticees- Shri Surendra Mali *alias* Shankar Mali- Mastermind/Handler/ controller/ Co-Conspirator & Shri Rajendra Jangid- Mastermind/Handler/ controller/Co-Conspirator are liable for penalty under the provisions of the Customs Act,1962:

121.11.1 As discussed herein above in the foregoing paras, I find that the noticee had knowingly played vital role in the evasion of customs duty on duty free imported Diamonds and Precious stones by the SEZ Units – M/s.Europea (SEZ Unit) and M/s.Mahi (SEZ Unit) resorting to diversion

thereof into local market without payment of duty saved by the SEZ Units at the time of imports. Their association with the syndicate resulting in evasion of duty has been brought on record in the investigation as discussed in the foregoing paras. I find that the evidences and the investigation suggested that the said noticees- Shri Surendra Mali and Shri Rajendra Jangid have played active part in creation and operation of M/s Belstar Techno Solutions (OPC) Pvt. Ltd. at Jaipur, Vishakapatnam and Bhubaneshwar and M/s Visual Bird Technology, Jaipur, and have emerged as Mastermind/Handler/controller/Co-Conspirator for the role he had played in the well-orchestrated conspiracy hatched by syndicate to execute the modus-operandi cunningly to escape from the eyes of law, as elaborated in the SCN and discussed herein above under foregoing paras. M/s.Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and M/s.Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) could not have succeeded in diversion of the duty free imports without association of the said noticees in this entire case of duty evasion. The acts and commissions by the noticees, as elaborated hereinabove, suggested that they had aided and abetted in the diversion of duty free imported Diamonds and precious stones resulting in evasion of customs duty. Summons were issued to noticees- Shri Surendra Mali and Shri Rajendra Jangid under section 108 of the Customs Act, 1962, however, he never appeared for tendering statement before the investigation. Complaint under section 190 was filed against him with the Metropolitan Magistrate No. 11, Jaipur-First, Jaipur for non compliance of summon.

121.11.2 I have gone through the submissions made by the noticees and find that they have mainly emphasised on evidences, jurisdiction, cross examination, duty liability and imposition of penalty. Theses aspects have already been discussed in foregoing paras, therefore, I do not repeat the same here.

121.11.3 Additionaly, the noticees have stated that ccompany cannot be categorized as a fake one, solely on the ground that it has not been found operating at the concerned address. I find that the /s Belstar Techno Solutions (OPC) Pvt. Ltd. at Jaipur, Vishakapatnam and Bhubaneshwar and M/s Visual Bird Technology, Jaipur were found fictitious during the course of investigation as elaborated in the SCN. Futher, the noticees have nothing produced on record to establish the company/firm were functional and has made genuine transactions. Further, the registered address of a company is the place from there it operates and if the company is not found existed at the registered address, it is but obvious that the company is not operational. Further, non existence of the company is also established from the findings of the investigation as discussed hereinabove in the foregoing paras. The noticees under submission received on 11.06.2024, more or less repeated the submissions already made by them and also contetested about the supplementary SCN, to which they are not made noticees.

121.11.4 In view of the role palyed by the noticee as discussed above, penal action under the provisions of the Customs Act,1962 is warranted in this case on the noticees- Shri Surendra Mali and Shri Rajendra Jangid as detailed below:

Penalty under Section 112(a) and 112(b) of the Customs Act,1962:

121.11.5 I find that the Show Cause Notice proposes to impose penalty on the noticee under Section 112(a) and 112(b) of the Customs Act, 1962. I find that the noticees, with an ulterior motive to defraud the exchequer, have been knowingly instrumental in diversion of the duty free imported Diamonds and precious stones. The omissions and commissions by the noticees, have rendered the duty free imported goods liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962 and thereby the noticees rendered themselves liable for penal action under Section 112 (a) and (b)(ii) of the Customs Act, 1962.

Penalty Under Section 114AA of the Customs Act, 1962:

121.11.6 I also find that the Show Cause Notice proposes to impose penalty on the noticee under Section 114AA of the Customs Act, 1962. I find that Section 114AA provides penalty for use of false and incorrect material. The section speaks that - if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty under this section. From the findings of the investigation, I do not find that the noticees had presented any document or signed any document before the authorized officer of SEZ or Customs authorities in connection with improper imports/exports, therefore, I do not impose penalty on the noticees under Section 114AA of the Act *ibid*.

Penalty Under Section 117 of the Customs Act, 1962:

121.11.7 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on the noticees. I find that the noticees had also contravened the provision of Section 108 of the Customs Act, 1962 in as much as they did not appear before the investigation. Since, no express penalty is elsewhere provided for such contraventions or failure, therefore, the noticees- Shri Surendra Mali and Shri Rajendra Jangid are liable for penalty under Section 117 of Customs Act, 1962.

121.12 Whether the goods seized from the premises of M/s.Kavish Gems is liable for confiscation and the noticee- M/s.Kavish Gems are liable for penalty under the provisions of the Customs Act, 1962:

121.12.1 As discussed herein above in the foregoing paras, I find that during the course of search at the premises of M/s.Kavish Gems, a stock of **485.23 Carat** Cut and polished diamonds valued at **Rs.2,11,43,901/-** (as per valuation done by the Govt approved valuer during search) were found unaccounted and there was a difference between stock register and physical goods found during the search and Shri Uday Shah, Proprietor of M/s. Kaish Gems failed to produce any document proving licit procurement of the above unaccounted stock as emerged from the panchnama drawn at their premises. M/s Kavish Gems, (Proprietor Sh. Uday Shah), Mumbai have procured Cut & Polished Diamonds from non-existent firms/companies which were amongst the various firms involved in the case related to evasion of Customs Duty to the tune of several Crores and making fraudulent remittances abroad in the guise of payments against non-existent imports of Services (which were actually not received & were mere paper transactions) by M/s Belstar Techno

Solutions (OPC) Pvt. Ltd. & M/s Visual Birds Technology, Jaipur which was investigated by Customs (Preventive) Commissionerate, Jodhpur (Hqrs: Jaipur). There was no consistency in the narration of Shri Uday Shah during the course of investigation. Records of M/s Kavish Gems revealed that they have made Sale/Purchase transactions with various firms which were either found non-existent at their locations or indulged in supplying the goods diverted from SEZ units- M/s. Europea Makeour Jewels Pvt. Ltd. and M/s. Maahi Exim Pvt. Ltd., and were part of a web of fake/bogus firms/companies to facilitate remittances to foreign locations to fund illegal import of Gold, diamond and other precious metals. M/s. Swastik Impex is amongst the firms which showed purchase/procurement of goods i.e. diamonds from the DTA units of M/s Europea Makeour Jewel Pvt. Limited and M/s Maahi Jewellery Exim Private Limited and thereafter supplied to M/s Kavish Gems, Mumbai. Wherein, it has already been established that the goods (Diamond and precious stones), were the goods which were diverted by them through their SEZ Units without payment of duty thereon. Further, Shri Vimal Nahar, Proprietor of M/s Swastik Impex tendered his statement under section 108 of Customs Act, 1962 on 22.02.2023, wherein, in reply to question Nos. 4,5 and 6, he has admitted to have issued and received fake bills from his firm M/s Swastik Impex without any supply or receipt of any diamonds and gold. These facts, leads to reasonable belief that excess stock of 485.23 Cts diamond having value of Rs.2,11,43,901/- found at business premises of M/s Kavish Gem during search on 29/30.04.2022 are part of the Diamonds, which have been removed from the SEZ units, by Shri Suresh Ratanlal Jagetia, through his DTA units M/s Europea Makeour Jewel Pvt. Ltd., and M/s Maahi Jewels Exim Pvt. Ltd. to M/s Swastik Impex and other non-existing firms, who further diverted these diamonds to M/s Kavish Gem, Mumbai. Many other non-existing firms who were part of syndicate of Shri Suresh Ratanlal Jagetia and/or showed purchases from M/s. Europea Makeour Jewel Pvt. Limited and M/s. Maahi Jewellery Exim Private Limited, have sale/purchase transactions with M/s Kavish Gems.

121.12.2 Shri Uday Hasmukhlal Shah, Proprietor of M/s. Kavish Gems has not been able to explain the un-accounted stock of 485.23 carat diamonds found in his premises during search on 28/29/30.04.2022. At the time of search proceedings, he said the stock belong to his firm M/s Kavish Gems and he said that he would provide documents pertaining to same. Whereas later in his statement dated 19.05.2022, he said that said excess stock was brought under Jhanghad (sell on approval basis voucher) to his premises and it belonged to three firms-(i) M/s V Arvind Kumar & co., (ii) M/s Jeel Impex and (iii) M/s Ragee Gems and that he would provide the said Jhanghads(vouchers) through which this stock was brought. Then in his statement dated 17.05.2023 he again changed his version and said a new story when asked to produce Jhanghad as promised by him in statement dated 19.05.2022; he said that these Jhnaghad are destroyed on mutual agreement with seller immediately once the GST invoice is raised. He was asked to explain such drastic contradictions in his statements wherein he again couldn't provide any explanation for this contradiction. Shri Uday Hasmukhlal Shah has constantly suppressed/altered facts and tried to misguide the department. Shri Akshay Pannalal Doshi, Proprietor of M/s Ragee Gems, Mumbai, has stated that he does not know M/s Kavish Gems; that he has not done any busuiness till date with M/s Kavish Gems and that he has not received any approval from M/s Kavish Gems; that he can not confirm or claim that the diamonds detained at the premises of M/s Kavish

Gems belong to him. Whereas, Shri Uday Hasmukhlal Shah has stated that some diamonds out of total un-accounted stock, belonged to M/s Ragee Gems, Mumbai.

121.12.3 Shri Uday Hasmukhlal Shah has not been able to provide any purchase bills in respect of un-accounted stock of 485.23 carat diamonds, rather he has regularly cooked some fictitious stories in respect of origins/source of these goods. M/s. Kavish Gems are engaged in unexplainable transactions with more than dozen of firms, which were created solely to facilitate illegal diversion of goods(diamonds) from SEZ units M/s Europea Makeour Jewel Pvt. Ltd., and M/s Mahi Jewels Exim Pvt. Ltd..These facts lead to reasonable belief that these excess quantity of 485.23 carat Diamonds are part of the Diamonds, which were removed from the SEZ units, by Shri Suresh Ratanlal Jagetia, through his DTA units M/s Europea Makeour Jewel Pvt. Ltd., and M/s Mahi Jewels Exim Pvt. Ltd.. Based on the above facts, a reasonable belief has been drawn that these are the goods, which have fraudulently been diverted from the SEZ units M/s Europea Makeour Jewel Pvt. Ltd. and M/s Maahi Jewellery Exim Pvt. Ltd., Surat in contravention of the provisions of Special Economic Zones Act, 2005 and Special Economic Zones Rules, 2006 read with provisions of Customs Act, 1962; therefore, these goods are, in effect, improperly imported goods, which makes them smuggled goods as per Sec.2(39) of the Customs Act, 1962; Hence, these goods procured by the noticee / M/s. Kavish Gems, appeared liable for confiscation under Customs Act,1962 and accordingly goods were detained under detention memo dated 29/30.04.2022 and were handed over to Shri Uday Hasmukhlal Shah under Supurdnama dated 29/30.04.2022. Subsequently, the said detained goods were seized by Customs Mumbai and later on request of the noticee/ M/s. Kavish Gems, the goods were provisionally released under Section 110A of the Customs Act, 1962 by Customs Mumbai on submission of Bond and Bank Guarantee No.1217NDDG00000223 dated 20.10.2022 by the Noticee /M/s. Kavish Gems and goods were handed over to the noticee under Acknowledgment of Receipt dated 21.10.2022.

121.12.4 During the course of investigation in the instant case, it revealed that the Diamonds imported under the SEZ scheme by the SEZ Units namely, M/s Europea Makeour Jewel Pvt. Ltd. and M/s Maahi Jewellery Exim Pvt. Ltd., Surat have been fraudulently / illegally removed through their DTA units of the same name, to M/s. Swastik Impex, Surat who in turn supplied the same to M/s. Kavish Gems in contravention of provisions of the Section 29 or the Section 30 of the SEZ Act, read with Rules 47 and 48 of the SEZ Rules, 2006, Section 30, Section 53 of the SEZ Act, 2005 read with the definition of the Domestic Tariff Area given in the Section 2(i) ibid. As per Section 53(1) of the SEZ Act, 2005, a Special Economic Zone is deemed to be a territory outside the customs territory of India and if the goods has to be cleared into local market (Domestic Tariff Area) then the same has to be cleared with payment of applicable duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 (51 of 1975), as provided under Section 30 of the SEZ Act,2005. Procedure for sale in Domestic Tariff Area (local market) is governed under Rule 48 of the SEZ Rules,2006, which provides that the DTA buyer or the SEZ unit on behalf on the basis of authorisation from DTA buyer shall file Bill of Entry with the Authorised Officers for home consumption. In the present case, the goods under dispute had been removed without payment of appropriate duty and

without any proper documents and without following the prescribed procedure, therefore, are liable for confiscation under Section 111(j) and Section 111(m) of the Customs Act, 1962 and thus, tantamount to improper and illegal import / smuggling as per Section 2(39) of the Customs Act, 1962, which defines "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, and, thus, penal action as provided under the provisions of the Customs Act, 1962 is warranted against the noticee. In the present case of the noticee, the goods under dispute had been removed without payment of appropriate duty and without any proper documents and without following the prescribed procedure and accordingly, the unaccounted stock of **485.23 carat** diamonds, valued at **Rs.2,11,43,901/-** are liable for confiscation under Section 111(j) and Section 111(m) of the Customs Act, 1962. As the impugned goods are found liable to confiscation under Section 111(j) and Section 111(m) of the Customs Act, 1962, I find it appropriate to give option to the noticee to redeem the confiscated goods on payment of redemption fine, under the provisions of Section 125 (1) of the Customs Act, 1962.

121.12.5 I find that the evidences and the investigation suggests that the acts of omission and commission on the part of M/s. Kavish Gems, as per the facts and circumstances of the case, indicated that they had consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under Section 111 of the Customs Act, 1962, and hence, they have rendered themselves liable for penalty under the provisions of the Customs Act, 1962. The contentions of the noticee that the unaccounted stock of Diamonds under dispute not liable for confiscation is devoid of merit as they have failed to produce documents in support of their claim that they have procured the goods in licit manner.

121.12.6 I find that in the case in hand there were no invoices pertaining to the goods, therefore, taking recourse of Rule 9 (Residual method) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for determination of the value of the impugned goods, the valuation done by the independent valuer during the course of investigation is reasonable and consistent with the principles and general provisions of these rules. Therefore, I find that the value of whole consignment of goods i.e. 485.23 Carat Cut and polished diamonds found un-accounted/ excess during search and subsequently placed under seizure is **Rs.2,11,43,901/-**. I further find that the valuation of the stock under dispute has never been challenged by the noticee at any stage of proceedings.

121.12.7 I have gone through the submissions made by the noticee- M/s. Kavish Gems and find that they have mainly emphasised on jurisdiction, cross examination, duty liability and imposition of penalty. These aspects have already been discussed in this order under foregoing paras, therefore, I do not repeat the same here. I discuss here on their submissions relating to licit procurement of seized goods, confiscation of seized goods and proposed penalty on the noticee.

121.12.8 The noticee has contested that they were in licit possession of the diamonds as claimed by them with the support of documentary evidences which were duly presented to the officers during the search operations which was however disregarded by them vide their letter dated 03.05.2022 and re-

submitted copies of the documents in support of the above transactions. I have gone thorough the Panchnama and statements of Shri Uday Shah in this regard and find inconsistency in the stand taken by him with reference to procurement of the above seized unaccounted stock. During search he was unable to produce any document to prove licit procurement of the above stock which is mentioned in the panchnama drawn in presence of independent panchas. Shri Uday Shah has also agreed with the same in his statement recorded lateron. I further find that at the time of search, he said that he would provide documents pertaining to same, whereas later in his statement dated 19.05.2022 he said that said excess stock was brought under Jhanghad (sell on approval basis voucher) to his premises and it belonged to three firms-(i) M/s V Arvind Kumar & co., (ii) M/s Jeel Impex and (iii) M/s Ragee Gems and that he would provide the said Jhanghads (vouchers) through which this stock was brought; then in his statement dated 17.05.2023 he again changed his version and said a new story stating that these Jhnaghad were destroyed on mutual agreement with seller immediately once the GST invoice is raised. I also find that Shri Akshay Pannalal Doshi, Proprietor of M/s Ragee Gems, Mumbai, in his statement recorded under Section 108 of the Customs Act,1962 stated that he does not know M/s Kavish Gems; he has not done any busuiness till date with M/s Kavish Gems; he has not received any approval from M/s Kavish Gems; he cannot confirm or claim that the diamonds detained at the premises of M/s Kavish Gems belong to him. Whereas, Shri Uday Hasmukhlal Shah has stated that some diamonds out of total un-accounted stock, belonged to M/s Ragee Gems, Mumbai. I have gone through the documents produced before the adjudicating authority in support of transaction claiming licit procurement of the above stock under dispute and find that none of the document except tax invoice dated 45.04.2022 have name of M/s. Kavish Gems, which indicate that the documents were not raised in the name of M/s.Kavish Gems, hence, it cannot be held that the documents pertain to stock under dispute. None of the challan, invoice existed on the day of search as Shri Uday Shah failed to produce the same at the material time when such unaccounted stock was noticed during search and he was asked by the officers to produce documents, therefore, veracity of such challan/documents are not free from doubt. Such documents are nothing but an outcome of afterthought of the noticee which they have managed and attempted to justify the unaccounted stock of goods under dispute.

121.12.9 All these facts emerged during the course of investigation suggest that the unaccounted stock of 485.23 carat Diamonds were part of the duty free imported Diamonds diverted illegally by M/s.Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) / M/s.Mahi Jewellery Exim Pvt.Ltd., (SEZ Unit) and therefore, in the facts and circumstance of the present case, seized under the provisions of the Customs Act,1962 with proper reason to believe as required under the provisions of law. Further, the case of the noitcee is not the case of any fake invoicing from SEZ unit, rather, the diversion carried out in this case was without any invoices and the chain of supply from the above SEZ Units to M/s.Kavish Gems is linked and established from the findings of the investigation as discussed hereinabove. I find that the noticee himself has accepted that reasonableness of belief has to be judged in light of the facts and circumstances of each case.

121.12.10 The noticee has contested that Supplementary SCN require them to prove negative. I find that in the findings of the investigation as

discussed hereinabove, the unaccounted stock found at the premises of the noticee is the part of diverted stock. The revenue has discharged its onus by adducing the documents and circumstances as elaborated. Now, it is the noticee, who should have come out with clean hand to support their claim. The documents produced by the noticee discussed above also not found in their favour. Therefore, I find the noticee's contention is without merit and therefore, the claim of the noticee that they had acted in good faith and bonafide does not sustain.

121.12.11 The noticee is making unnecessarily allegations of malice and manipulation of documents. Such confrontations and allegations are just to dilute their responsibility. They have no document in support of licit purchase of the goods and at the time of issuance of SCN dated 23.05.2024, investigation was on in the matter of seized goods at the premises of the noticee. Sufficient opportunity was given to the noticee to prove licit procurement of the unaccounted stock under dispute, however, they failed to prove it and found linked with the diverted diamonds by the SEZ units and therefore, the supplementary SCN was issued within the four corners of law. I do not find any violation in issuance of the supplementary SCN dated 24.04.2024.

121.12.12 Regarding the penalties proposed upon them, the noticee has *inter-alia* contested that:

- In the facts of the case and role of the Noticee, both the clauses, clauses (a) and (b) of Section 112 of the Customs Act, 1962, cannot be invoked against them simultaneously. Penalty under Section 112(a) and 112(b) of the Customs Act, 1962 is not imposable on the Noticee inasmuch as ingredients of these clauses are not present and no mens rea has been substantiated against him;
- From a bare reading of Section 114A of the Act it is evident that the said provision contemplates imposition of penalty when the ingredients such as collusion or any wilful mis-statement or suppression of facts etc. are established on the part of the importer liable to pay Customs Duty. In this case, no duty has been demanded from them, therefore penalty amount is indeterminable. On this ground also penalty under Section 114A cannot be imposed on them;
- Provisions of Section 114AA will be applicable only when it is proved with the help of cogent evidence that they had, knowingly or intentionally, made, signed or used, or caused to be made, signed or used, any declaration, statement or document which was false or incorrect in any material particular, in the transaction of the business relating to the impugned goods. They have not filed or caused to be filed any declaration much less false declaration. Penalty under Section 114AA can be imposed on a natural person and not on a legal entity/artificial person because a document can only be made or caused to be made by a natural person. Hence, it is submitted that penalty under Section 114AA of the Act cannot be imposed on them;
- They have not imported the impugned goods and hence, they have not violated the provisions of Section 17 and 46 of the Customs Act, 1962 which, in the facts of the case, was not even their duty to comply with. Therefore, they are not liable to penalty under Section 117 of the Customs Act, 1962. In this case, penalties have been proposed under Section 112(a), 112(b), 114A and 114AA. Therefore, residuary

provisions of Section 117 cannot be invoked to impose further penalty on them;

Penalty under Section 112(a) and 112(b) of the Customs Act,1962:

121.12.13 I find that the Show Cause Notice proposes to impose penalty on the noticee under Section 112(a) and 112(b) of the Customs Act, 1962. I find that the noticee, with an ulterior motive to defraud the exchequer, has been knowingly instrumental in diversion of the duty free imported Diamonds and precious stones. The omissions and commissions by the noticee, has rendered the duty free imported goods liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962 and thereby the noticee rendered himself liable for penal action under Section 112 (a) and (b)(ii) of the Customs Act,1962.

Penalty under Section 114A of the Customs Act,1962:

121.12.14 I find that provisions of Section 114A contemplates imposition of penalty for short levy or non-levy of duty and the quantum of penalty is equivalent to duty or interest so determined, and thus, it is clear the penalty under Section 114A is imposable on the person who is liable to pay Customs Duty. In this case, no duty has been demanded from the noticee-M/s.Kavish Gems, therefore penalty under Section 114A cannot be imposed on them.

Penalty Under Section 114AA of the Customs Act,1962:

121.12.15 I also find that the Show Cause Notice proposes to impose penalty on the noticee- M/s.Kavish Gems under Section 114AA of the Customs Act, 1962. I find that the Section 114AA provides penalty for use of false and incorrect material. The section speaks that - if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty under this section. From the investigation, I do not find that the noticee had presented any document or signed any document before the Customs authorities in connection with improper imports, therefore, I do not impose penalty on the noticee under Section 114AA of the Act *ibid*.

Penalty Under Section 117 of the Customs Act,1962:

121.12.16 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on the noticee. From the findings as discussed hereinabove in the foregoing paras, Penalty has been held imposable under Section 112(a) and 112(b)(ii) of the Customs Act,1962 for the act of abettment and concerned with the goods on the part of the noticee which rendered the goods liable for confiscation under Section 111(j) and 111 (m) of the Customs Act, 1962. Since, specific penalty has been found imposable under Section 112(a) and 112(b)(ii) of the Customs Act, 1962 for contravention of Section 111(j) and 111(m) of the Act *ibid*, therefore, penalty under Section 117 of the Customs Act, 1962 is not imposable on the noticee which is for the contraventions not expressly mentioned.

121.13 Whether, the following non-existing firms, the noticees, are liable for penalty under the provisions of the Customs Act,1962:

121.13.1

M/s. Alentraa Multi Trading Pvt. Ltd.	M/s. Centre Core Multitrade Pvt. Ltd.
M/s. Gehna Trading LLP,	M/s. Jamna Gems Pvt. Ltd.,
M/s. Kevin Diam Pvt. Ltd.,	M/s. Lakshita Exports,
M/s. Nivedita Diam Pvt. Ltd.,	M/s. R K Diam,
M/s. Swastik Impex,	M/s. Zhaik Enterprises Pvt. Ltd.,
M/s. Komal Exim Pvt. Ltd.,	M/s. Pangat Impex,
M/s. Nakoda Gemsstar,	M/s. Hetvi Trading LLP (Mumbai)
M/s. Prayag Gems Pvt. Ltd.	M/s. Rapid Stones Pvt. Ltd.,
M/s. Pratham Exports,	

121.13.2 As discussed herein above in the foregoing paras, I find that the noticees tabulated hereinabove were found non-existent during the searches at their premises however, they have shown sells/purchase transactions with M/s Kavish Gems. The DTA units of M/s. Europea Makeour Jewels Pvt. Ltd., and M/s. Maahi Exim Pvt. Ltd. had issued bills/invoices to these units and as such they are part of the nexus and have abetted in diversion of the duty free imported foods by the SEZ units – M/s. Europea Makeour Jewels Pvt. Ltd., and M/s. Maahi Exim Pvt. Ltd. and also helped in procurement of the goods by M/s Kavish Gems. They have facilitated the supply of illegally imported and diverted diamond and precious stone by Shri Suresh Ratan Lal Jagetia from SEZ units by creating fake firms. They had knowingly played vital role in the evasion of customs duty on duty free imported Diamonds and Precious stones by the SEZ Units – M/s.Europea (SEZ Unit) and M/s.Mahi (SEZ Unit) resorting to diversion thereof into local market without payment of duty saved by the SEZ Units at the time of imports. Their association with the syndicate resulting in evasion of duty has been brought on record in the investigation. I find that the evidences and the investigation suggested that the said noticees had played enough role in the well-orchestrated conspiracy hatched by the persons of the syndicate to execute the modus-operandi cunningly to escape from the eyes of law, as elaborated in the SCN under adjudication and discussed herein above under foregoing paras. M/s.Europea Makeour Jewel Pvt. Ltd. (SEZ Unit) and M/s.Mahi Jewellery Exim Pvt. Ltd. (SEZ Unit) could not have succeeded in diversion of the duty free imports without association of the said noticees in this entire case of duty evasion. The acts and commissions by the noticees, as elaborated hereinabove, suggested that they had aided and abetted in the diversion of duty free imported Diamonds and precious stones resulting in evasion of customs duty.

121.13.3 I find none of the noticees tabulated herein above had come forward to file reply except M/.Gehna Trading. I have gone through the submissions made by M/.Gehna Trading and find that they mainly emphasised on evidences, jurisdiction, cross examination, duty liability and imposition of penalty. Theses aspects have already been discussed in this order under foregoing paras, therefore, I do not repeat the same here. Additionally, they have inter-alia stated that they are not concerned in any manner with the importers and therefore no penalty can be levied under

section 112 of the Customs Act upon him; In the present case, the noticee has not signed any document in relation to the import of goods, hence no penalty under section 114AA of the Act is invocable qua him; Section 117 deals with the situation where the contravention is committed in relation to any provision of the act for which no express penalty is elsewhere provided for; in the present case, when penal provision of section 112 and 114 has already been invoked, then section 117 could not have been invoked.

121.13.4 In view of the role played by the noticees as discussed above, penal action under the provisions of the Customs Act, 1962 is warranted in this case as detailed below:

Penalty under Section 112(a) and 112(b) of the Customs Act, 1962:

121.13.5 I find that the Show Cause Notice proposes to impose penalty on the noticees under Section 112(a) and 112(b) of the Customs Act, 1962. I find that the noticee, with an ulterior motive to defraud the exchequer, has been knowingly instrumental in diversion of the duty free imported Diamonds and precious stones. The omissions and commissions by the noticee, has rendered the duty free imported goods liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962 and thereby the noticee rendered himself liable for penal action under Section 112 (a) and (b)(ii) of the Customs Act, 1962.

Penalty under Section 114A of the Customs Act, 1962:

121.13.6 I find that provisions of Section 114A contemplates imposition of penalty for short levy or non-levy of duty and the quantum of penalty is equivalent to duty or interest so determined, and thus, it is clear that the penalty under Section 114A is imposable on the person who is liable to pay Customs Duty. In this case, no duty has been demanded from the noticees tabulated herein above, therefore penalty under Section 114A cannot be imposed on them.

Penalty Under Section 114AA of the Customs Act, 1962:

121.13.7 I also find that the Show Cause Notice proposes to impose penalty on them under Section 114AA of the Customs Act, 1962. I find that Section 114AA provides penalty for use of false and incorrect material. The section speaks that - if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty under this section. From the findings of the investigation, I do not find that the noticees tabulated herein above had presented any document or signed any document before the authorized officer of SEZ or Customs authorities in connection with improper imports/exports, therefore, I do not impose penalty on the noticees tabulated herein above under Section 114AA of the Act *ibid*.

Penalty Under Section 117 of the Customs Act, 1962:

121.13.8 I also find that Show Cause Notice proposes penalty under Section 117 of the Customs Act, 1962 on the noticees. From the findings as discussed hereinabove in the foregoing paras, Penalty has been held imposable under Section 112(a) and 112(b)(ii) of the Customs Act, 1962 for the act of abettment and concerned with the goods on the part of the noticees tabulated herein above which rendered the goods liable for confiscation under Section 111(j) and 111 (m) of the Customs Act, 1962. Since, specific penalty has been found imposable under Section 112(a) and 112(b)(ii) of the Customs Act, 1962 for contravention of Section 111(j) and 111 (m) of the Act *ibid*, therefore, penalty under Section 117 of the Customs Act, 1962 is not imposable on the noticees tabulated herein above which is for the contraventions not expressly mentioned.

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

::ORDER::

122.1 M/s. Europea Makeour Jewel Pvt. Limited (SEZ Unit)

- a) I hold the subject goods i.e. "cut and polished Diamonds, Precious Stones" illegally diverted in DTA, by M/s. Europea Makeour Jewel Pvt. Limited (SEZ Unit), totally valued at **Rs.2631,46,66,966/- (Rupees Two Thousand Six Hundred Thirty One Crore, Forty Six Lakh, Sixty Six Thousand, Nine Hundred Sixty Six Only)** as detailed in **Annexure-A** to the SCN dated 20.05.2023 liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962. However, I give them the option to redeem the goods on payment of Fine of **Rs.263,00,00,000/- (Rupees Two Hundred Sixty Three Crore only)** under Section 125(1) of the Customs Act, 1962;
- b) I confirm the demand of total Duty (Basic Customs Duty + IGST + Cess) amounting to **Rs.212,27,82,674/- (Rupees Two Hundred Twelve Crore, Twenty Seven Lakh, Eighty Two Thousand, Six Hundred Seventy Four Only)**, as detailed in **Annexure-A** to SCN dated 20.05.2023, and order recovery of the same from M/s. Europea Makeour Jewel Pvt. Limited (SEZ Unit), in terms of the provisions of Section 28(4) of the Customs Act, 1962 read with Section 30 of the Special Economic Zones Act, 2005 and Rule 25 of the Special Economic Zones Rules, 2006, along with the applicable interest under Section 28AA of the Customs Act, 1962
- c) I order to appropriate the duty amount of **Rs.40,00,000 (Rupees Forty Lakhs only)** already deposited voluntarily by M/s. Europea Makeour Jewel Pvt. Limited (SEZ Unit) vide Form TR-6 dated 31.05.2022 towards the duty demanded and confirmed at **(b) of para 122.1** above;
- d) I hold the seized goods *viz.* "cut and polished Precious Stones, cut and polished Precious Stones studded and cut and polished Diamond", seized vide Seizure Memo dated 26/27.05.2022, valued at **Rs. 5,11,28,910/- (Rupees Five Crore, Eleven Lakh, Twenty Eight Thousand, Nine Hundred Ten Only)**, and which were illegally brought into the Customs area for the purpose of

export, as detailed in the SCN dated 20.05.2023 under adjudication liable for confiscation under Section 113(d) of the Customs Act, 1962. However, I give them the option to redeem the goods on payment of Fine of **Rs.1,28,00,000/- (Rupees One Crore and Twenty Eight Lakh only)** under Section 125(1) of the Customs Act, 1962;

- e) I impose a penalty of **Rs.212,27,82,674/- (Rupees Two Hundred Twelve Crore, Twenty Seven Lakh, Eighty Two Thousand, Six Hundred Seventy Four Only)** on M/s. Europea Makeour Jewel Pvt. Limited (SEZ Unit) **plus** penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at **(b) of para 122.1** above under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest payable thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty-five percent of the duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days;
- f) I impose a penalty of **Rs.50,00,000/- (Rupees Fifty Lakh Only)** on M/s. Europea Makeour Jewel Pvt. Limited (SEZ Unit) under Section 114AA of the Customs Act, 1962;
- g) I refrain from imposing penalty on M/s. Europea Makeour Jewel Pvt. Limited (SEZ Unit) under Section 112(a)/112(b) and 117 of the Customs Act, 1962 for the reasons discussed in this OIO;

122.2 M/s.Maahi Jewellery Exim Private Limited (SEZ Unit)

- a) I hold the subject goods i.e. "cut and polished Diamonds, Precious Stones" illegally diverted in DTA, by M/s.Maahi Jewellery Exim Private Limited (SEZ Unit), totally valued at **Rs.1892,60,19,327/- (Rupees One Thousand Eight Hundred Ninety Two Crore, Sixty Lakh, Nineteen Thousand, Three Hundred Twenty Seven Only)** as detailed in **Annexure-B** to the SCN dated 20.05.2023 liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962. However, I give them the option to redeem the goods on payment of Fine of **Rs.189,00,00,000/- (Rupees One Hundred Eighty Nine Crore only)** under Section 125(1) of the Customs Act, 1962;
- b) I confirm the demand of total Duty (Basic Customs Duty + IGST + Cess) amounting to **Rs.148,96,97,902/- (Rupees One Hundred Forty Eight Crore, Ninety Six Lakh, Ninety Seven Thousand, Nine Hundred Two only)**, as detailed in **Annexure-B** to SCN dated 20.05.2023, and order recovery of the same from M/s.Maahi Jewellery Exim Private Limited (SEZ Unit), in terms of the provisions of Section 28(4) of the Customs Act, 1962 read with Section 30 of the Special Economic Zones Act, 2005 and Rule 25 of the Special Economic Zones Rules, 2006, along with the applicable interest under Section 28AA of the Customs Act, 1962

- c) I hold the seized goods viz. "cut and polished Precious Stones, cut and polished Precious Stones studded and cut and polished Diamond", seized vide Seizure Memo dated 26.05.2022, valued at **Rs.4,36,01,886/- (Rupees Four Crore Thirty Six Lakh One Thousand Eight Hundred Eighty Six Only)**, and which were illegally brought into the Customs area for the purpose of export, as detailed in the SCN dated 20.05.2023 under adjudication liable for confiscation under Section 113 (d) of the Customs Act, 1962. However, I give them the option to redeem the goods on payment of Fine of **Rs.1,09,00,000/- (Rupees One Crore and Nine Lakh only)** under Section 125(1) of the Customs Act, 1962;
- d) I impose a penalty of **Rs.148,96,97,902/- (Rupees One Hundred Forty Eight Crore, Ninety Six Lakh, Ninety Seven Thousand, Nine Hundred Two only)** on M/s.Maahi Jewellery Exim Private Limited (SEZ Unit) **plus** penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at **(b) of para 122.2** above under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest payable thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty-five percent of the duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days;
- e) I impose a penalty of **Rs.50,00,000/- (Rupees Fifty Lakh Only)** on M/s.Maahi Jewellery Exim Private Limited (SEZ Unit) under Section 114AA of the Customs Act, 1962;
- f) I refrain from imposing penalty on M/s.Maahi Jewellery Exim Private Limited (SEZ Unit) under Section 112(a)/112(b) and 117 of the Customs Act, 1962 for the reasons discussed in this OIO;

122.3 Shri Suresh Ratanlal Jagetia, Director of M/s. Europea Makeour Jewel Pvt. Limited (SEZ Unit)

- a) I impose a penalty of **Rs.2,00,00,000/- (Rupees Two Crore Only)** on Shri Suresh Ratanlal Jagetia, Director of M/s. Europea Makeour Jewel Pvt. Limited (SEZ Unit) under Section 112(a) & 112(b)(ii) of the Customs Act, 1962;
- b) I impose a penalty of **Rs.50,00,000/- (Rupees Fifty Lakh Only)** on Shri Suresh Ratanlal Jagetia, Director of M/s. Europea Makeour Jewel Pvt. Limited (SEZ Unit) under Section 114AA of the Customs Act, 1962
- c) I refrain from imposing penalty on Shri Suresh Ratanlal Jagetia, Director of M/s. Europea Makeour Jewel Pvt. Limited (SEZ Unit) under Section 117 of the Customs Act, 1962 for the reasons discussed in this OIO;

122.4 Shri Ramraj Chaudhry, Director of M/s.Maahi Jewellery Exim Private Limited (SEZ Unit)

- a) I impose a penalty of **Rs.2,00,00,000/- (Rupees Two Crore Only)** on Shri Ramraj Chaudhry, Director of M/s.Maahi Jewellery Exim Private Limited (SEZ Unit) under Section 112(a) & 112(b)(ii) of the Customs Act, 1962;
- b) I impose a penalty of **Rs.50,00,000/- (Rupees Fifty Lakh Only)** on Shri Ramraj Chaudhry, Director of M/s.Maahi Jewellery Exim Private Limited (SEZ Unit) under Section 114AA of the Customs Act, 1962;
- c) I impose a penalty of **Rs.4,00,000/- (Rupees Four Lakh Only)** on Shri Ramraj Chaudhry, Director of M/s.Maahi Jewellery Exim Private Limited (SEZ Unit) under Section 117 of the Customs Act, 1962;

122.5 Shri Navratan Singh Jain

- a) I impose a penalty of **Rs.1,00,00,000/- (Rupees One Crore Only)** on Shri Navratan Singh Jain under Section 112(a) and 112(b)(ii) of the Customs Act, 1962;
- b) I impose a penalty of **Rs.4,00,000/- (Rupees Four Lakh Only)** on Shri Navratan Singh Jain under Section 117 of the Customs Act, 1962;
- c) I refrain from imposing penalty under Section 114AA of the Customs Act, 1962, Shri Navratan Singh Jain for the reasons discussed in this OIO;

122.6 Shri Om Prakash Vanjani Director of M/s. Belstar Techno Solutions (OPC) Bank Pvt. Ltd.

- a) I impose a penalty of **Rs.1,00,00,000/- (Rupees One Crore Only)** on Shri Om Prakash Vanjani Director of M/s. Belstar Techno Solutions (OPC) Bank Pvt. Ltd. under Section 112(a) and 112(b)(ii) of the Customs Act, 1962;
- b) I refrain from imposing penalty under Section 114AA and 117 of the Customs Act, 1962, Shri Om Prakash Vanjani Director of M/s. Belstar Techno Solutions (OPC) Bank Pvt. Ltd. for the reasons discussed in this OIO;

122.7 Shri Vikram Singh Kachchawa

- a) I impose a penalty of **Rs.1,00,00,000/- (Rupees One Crore Only)** on Shri Vikram Singh Kachchawa under Section 112(a) and 112(b)(ii) of the Customs Act, 1962;
- b) I refrain from imposing penalty under Section 114AA and 117 of the Customs Act, 1962, Shri Vikram Singh Kachchawa for the reasons discussed in this OIO;

122.8 Shri Ravindra Kumar, CA

- a) I impose a penalty of **Rs.50,00,000/- (Rupees Fifty Lakh Only)** on Shri Ravindra Kumar, CA under Section 112(a) and 112(b)(ii) of the Customs Act, 1962;
- b) I refrain from imposing penalty under Section 114AA and 117 of the Customs Act, 1962, Shri Ravindra Kumar, CA for the reasons discussed in this OIO;

122.9 Shri Kamlesh Nagda

- a) I impose a penalty of **Rs.75,00,000/- (Rupees Seventy Five Lakh Only)** on Shri Kamlesh Nagda under Section 112(a) and 112(b)(ii) of the Customs Act, 1962;
- b) I refrain from imposing penalty under Section 114AA and 117 of the Customs Act, 1962, Shri Kamlesh Nagda for the reasons discussed in this OIO;

122.10 Shri Deepak Kumar, Director of M/s Subhang Enterprises

- a) I impose a penalty of **Rs.75,00,000/- (Rupees Seventy Five Lakh Only)** on Shri Deepak Kumar, Director of M/s Subhang Enterprises under Section 112(a) and 112(b)(ii) of the Customs Act, 1962;
- b) I refrain from imposing penalty under Section 114AA and 117 of the Customs Act, 1962, Shri Deepak Kumar, Director of M/s Subhang Enterprises for the reasons discussed in this OIO;

122.11 Shri Vimal Nahar, Prop,M/s Swastik Impex

- a) I impose a penalty of **Rs.75,00,000/- (Rupees Seventy Five Lakh Only)** on Shri Vimal Nahar, Prop,M/s Swastik Impex under Section 112(a) and 112(b)(ii) of the Customs Act, 1962;
- b) I refrain from imposing penalty under Section 114AA and 117 of the Customs Act, 1962, Shri Vimal Nahar, Prop,M/s Swastik Impex for the reasons discussed in this OIO;

122.12 Shri Nitesh Kumar, Prop., M/s Visual Birds Technology

- a) I impose a penalty of **Rs.1,00,00,000/- (Rupees One Crore Only)** on Shri Nitesh Kumar, Prop., M/s Visual Birds Technology under Section 112(a) and 112(b)(ii) of the Customs Act, 1962;
- b) I refrain from imposing penalty under Section 114AA of the Customs Act, 1962, Shri Nitesh Kumar, Prop., M/s Visual Birds Technology for the reasons discussed in this OIO;
- c) I impose a penalty of **Rs.4,00,000/- (Rupees Four Lakh Only)** on Shri Nitesh Kumar, Prop., M/s Visual Birds Technology under Section 117 of the Customs Act, 1962;

122.13 Shri Surendra Mali *alias* Shankar Mali

- a) I impose a penalty of **Rs.1,00,00,000/- (Rupees One Crore Only)** on Shri Surendra Mali *alias* Shankar Mali under Section 112(a) and 112(b)(ii) of the Customs Act, 1962;
- b) I refrain from imposing penalty under Section 114AA of the Customs Act, 1962, Shri Surendra Mali *alias* Shankar Mali for the reasons discussed in this OIO;
- c) I impose a penalty of **Rs.4,00,000/- (Rupees Four Lakh Only)** on Shri Surendra Mali *alias* Shankar Mali under Section 117 of the Customs Act, 1962;

122.14 Shri Rajendra Jangid

- a) I impose a penalty of **Rs.1,00,00,000/- (Rupees One Crore Only)** on Shri Rajendra Jangid 112(a) and 112(b)(ii) of the Customs Act, 1962;
- b) I refrain from imposing penalty under Section 114AA of the Customs Act, 1962, Shri Rajendra Jangid for the reasons discussed in this OIO;
- c) I impose a penalty of **Rs.4,00,000/- (Rupees Four Lakh Only)** on Shri Rajendra Jangid under Section 117 of the Customs Act, 1962;

122.15 M/s Kavish Gems, (Proprietor Sh. Uday Shah),

- a) I determine the value of goods i.e. 485.23 Carat Cut and polished diamonds detained and seized at the premises of M/s.Kavish Gems, (Proprietor Sh. Uday Shah) as **Rs.2,11,43,901/-** as per the valuation report of Government approved valuer, as there was no invoice pertaining to the said goods, in terms of sub-rule (4) of Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of Customs Act, 1962;
- b) I hold the subject goods i.e. 485.23 Carat Cut and polished diamonds seized at the premises of M/s.Kavish Gems, (Proprietor Sh. Uday Shah), totally valued at **Rs.2,11,43,901/- (Rupees Two Crore, Eleven Lakhs, Forty Three Thousand, Nine Hundred and one Only)** as detailed in the Supplementary SCN dated 24.04.2024 liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962. However, I give them the option to redeem the goods on payment of Fine of **Rs.53,00,000/- (Rupees Fifty Three Lakh only)** under Section 125(1) of the Customs Act, 1962;
- c) I impose a penalty of **Rs.1,80,000/- (Rupees One Lakh and Eighty Thousand Only)** on M/s.Kavish Gems, (Proprietor Sh. Uday Shah), under Section 112(a) and 112(b)(ii) of the Customs Act, 1962;
- d) I refrain from imposing penalty under Section 114A; 114AA and Section 117 of the Customs Act, 1962 on M/s.Kavish Gems, (Proprietor Sh. Uday Shah) for the reasons discussed in this OIO;

- e) I order to encash the Bank Guarantee No.1217NDDG00000223 dated 20.10.2022 of **Rs.52,86,000/-** executed by M/s Kavish Gems, (Proprietor Sh. Uday Shah), for provisional release of the goods in favour of exchequer against the above redemption find and penalties imposed upon M/s Kavish Gems, (Proprietor Sh. Uday Shah);

122.15 All other noticees of Supplemantry SCN dated 24.04.24

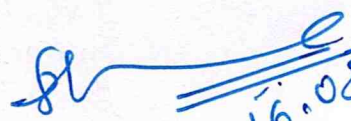
- a) I impose a penalty of **Rs.1,00,000/- (Rupees One Lakh Only)** each on the following persons under Section 112(a) and 112(b)(ii) of the Customs Act, 1962:

M/s. Alentraa Multi Trading Pvt. Ltd.	M/s. Centre Core Multitrade Pvt. Ltd.
M/s. Gehna Trading LLP,	M/s. Jamna Gems Pvt. Ltd.,
M/s. Kevin Diam Pvt. Ltd.,	M/s. Lakshita Exports,
M/s. Nivedita Diam Pvt. Ltd.,	M/s. R K Diam,
M/s. Swastik Impex,	M/s. Zhaik Enterprises Pvt. Ltd.,
M/s. Komal Exim Pvt. Ltd.,	M/s. Pangat Impex,
M/s. Nakoda Gemsstar,	M/s. Hetvi Trading LLP (Mumbai)
M/s. Prayag Gems Pvt. Ltd.	M/s. Rapid Stones Pvt. Ltd.,
M/s. Pratham Exports,	

- b) I refrain from imposing penalty under Section 114A; 114AA and 117 of the Customs Act, 1962, on the persons mentioned in the table above under para **122.15(a)**, for the reasons discussed in this OIO;

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

124 The Show Cause Notice No. No. GEN/ADJ/COMM/342/2023-TECH dated 20.05.2023 and Supplementary Show Cause Notice dated 24.04.2024 are disposed off in above terms.


16.08.2024

(Shiv Kumar Sharma)
Prinncipal Commissioner

BY SPEED POST A.D./E-mail /through Notice Board

F.No.GEN/ADJ/COMM/342/2023-TECH

Date: 16.08.2024

DIN: 20240871MN000000D23C

To,

1. M/s Europea Makeour Jewel Pvt. Limited, Unit No. 401 & 403 on Plot No. 247-248 and 225B, Surat Special Economic Zone, Sachin, Surat - 394230.
2. M/s Maahi Jewellery Exim Private Limited, Unit No. 407 on Plot No. 248, Surat Special Economic Zone, Sachin, Surat - 394230.

3. Shri Suresh Ratanlal Jagetia, Director, M/s Europea Makeour Jewel Pvt. Limited, Unit No. 401 & 403 on Plot No. 247-248 and 225B, Surat Special Economic Zone, Sachin, Surat – 394230.
4. Shri Ram Raj Choudhary, Director, M/s Maahi Jewellery Exim Private Limited, Unit No. 407 on Plot No. 248, Surat Special Economic Zone, Sachin, Surat – 394230.
5. Shri Navratan Singh Jain, S/o Shri Gautam Singh Jain, R/o Ghosi Mohalla, Sadar Bazar, Kekri, District Ajmer, Rajasthan.
6. Shri Om Prakash Vanjani, Teja Chauk, Bijaynagar, Ajmer, Rajasthan.
7. Shri Vikram Singh Kachchawa, 2 KH, 3 Machla Magra Plan, Near Shiv Mandir, Sector 11, Girwa, Udaipur, Rajasthan.
8. Shri Ravindra Kumar, Chartered Accountant, Kumar Ravindra & Co., Near BSNL office, RIICO Industrial Area, Jhunjhunu, Rajasthan.
9. Shri Kamlesh Nagda S/o Shri Badrilal Nagda, Kalu Ram ji ki Badi, Gariyawas, Udaipur Rajasthan.
10. Shri Deepak Kumar, Rajeev Colony, Nakoda Nagar, Ward No. 2 Bijaynagar, Ajmer Rajasthan.
11. Shri Vimal Nahar, Plot No. 24, Muneem Colony, Bijaynagar, Ajmer Rajasthan.
12. Shri Nitesh Kumar S/o Sh. Shanti Lal Nahar, A-803, Rameshwar Heights, Althan, Surat-395017.
13. Shri Surendra Mali *alias* Shankar Mali, Nadi Mohalla, Near Barf factory, Bijaynagar, Ajmer Rajasthan.
14. Shri Rajendra Jangid S/o Kailsh Chand Khati, Plot No. 82, Near Vishwakarma House, Bijaynagar, Ajmer Rajasthan
15. M/s Kavish Gems, (Proprietor Sh. Uday Shah), DE-3250, Bharat Diamond Bourse, Bandra Kurla Complex, G Block, Bandra(E), Mumbai-400 051
16. M/s. Alentraa Multi Trading Pvt. Ltd., 114, Floor, G-Plot, 80/84, Swadeshi Mill Building, Amrut Diamond Trade Centre Bldg, P.L. Jagannath Shankar Sheth Marg, Central Plaza Cinema, Charni Road, Mumbai
17. M/s. Centre Core Multitrade Pvt. Ltd., Floor MEZ, M-19, Pearl Plaza, Tata Road No. 2, Roxy Cinema, Opera House, Girgaon, Mumbai
18. M/s. Gehna Trading LLP, Somnath Mahadev NI Sheri, SY No. 1105-1107, 1st Floor, 110, Tulsi Blding, Mahidharapura, Surat
19. M/s. Jamna Gems Pvt. Ltd., 1st Floor, 15 Plot No. 302, Guru Niwas, Vittal Bhai Patel Road, Girgaon, Mumbai
20. M/s. Kevin Diam Pvt. Ltd., Shop no 130, Ostwal Shopping Centre CHSL, Opp Bhayander Station, Jesal Park Road, Bhayander East, Thane, Maharashtra, 401105
21. M/s. Lakshita Exports, 68/A, 4, Popular Arcade, Tata Road No. 1, Roxy Cinema, Opera House, Girgaon, Mumbai
22. M/s. Nivedita Diam Pvt. Ltd., 111, Floor – 1st, Plot - 83, Sadbhavana, Sitara M, Poddar Marg, Fanaswadi Thakurdwar, Kalbadevi, Mumbai
23. M/s. R K Diam, 305, Panchvati Dham B, Shiv Vallabh Raad, Ashokvan Dahisar E, Mumbai, Maharashtra, 400068
24. M/s. Swastik Impex, 127, GR Floor, Plot No. 80/84, Amrut Diamond Trade Centre Pl, JSS Marg, Central Plaza, Girgaon, Mumbai
25. M/s. Zhaik Enterprises Pvt. Ltd., 2nd Floor, 7/A, Plot No. 192/194, Kalbadevi Road, Bhuleshwar, Kalbadevi, Mumbai

26. M/s. Komal Exim Pvt. Ltd., B-6/2497, Ground Floor, Balaji Metllar, Limbu Sheri, Mahindrapura, Surat
27. M/s. Pangat Impex, M 12, 10/25, Flox Chamber, Tata Road No. 1, Roxy Cinema, Opera House, Girgaon, Mumbai, Maharashtra, 400004
28. M/s. Nakoda Gemsstar, 303, 3-11/15, Fatma Faizan Kharwala, Regal Arcade Building, Tata Road No. 2, Roxy Cinema, Opera House, Girgaon, Mumbai
29. M/s. Hetvi Trading LLP (Mumbai), MB-7, 7, Flox Chambers, First Floor, Tata Road No. 1, Ambewadi, Mumbai
30. M/s. Prayag Gems Pvt. Ltd., Offc No. 101C, 1st Floor, Amrut Diamond House, Roxy Cinema, Opera House, Mumbai
31. M/s. Rapid Stones Pvt. Ltd., Off No. 332, Amrut Diamond House, 3rd Floor, Tata Road No. 1, Mumbai
32. M/s. Pratham Exports, M 12, 10/25, Flox Chamber, Tata Road No. 1, Roxy Cinema, Opera House, Girgaon, Mumbai, Maharashtra, 400004

Copy to:

1. The Pr. Chief Commissioner, Customs Gujarat Zone, Ahmedabad.
2. The Deputy/Assistant Commissioner, (TRC), Customs Commissionerate, HQ, Ahmedabad.
3. The Deputy/Assistant Commissioner, Customs Division, Surat.
4. The Specified Officer, SEZ, Sachin, Surat (Gujrat).
5. The Commissioner of Customs (Preventive), Jodhpur (Hqrs: Jaipur), N.C.R. Building, Statue Circle, C-Scheme, Jaipur-302005.
6. The Director General, CEIB, 6th Floor, B -Wing, Janpath Bhawan, New Delhi -11000.
7. The Pr. Director General, Directorate of Revenue Intelligence (Hqrs.), 7th Floor, Drum Shape Building, D Block, I.P. Bhavan, I.P. Estate, New Delhi- 110002.
8. The Director, Headquarters Office, Directorate of Enforcement, Pravartan Bhawan, APJ Abdul Kalam Road, New Delhi – 110 011.
9. The Pr. Director General, Directorate General of GST Intelligence, (DGGI) Hqrs., 1st & 2nd Floor, Wing Number 06, West Block 08, R K Puram, New Delhi- 110066.
10. The Investigating Officer, Serious Fraud Investigation Office, Regional Office, 6th Floor, MTNL Building No. 1, Fort, Mumbai-400001 with reference to his letter No. SFIO/Mum/Inv./BTSPL/1428/2022-23/389/24868 dated 05.08.2022.
11. The Deputy GM, Foreign Exchange Department, Reserve Bank Of India, Rambagh Circle, Tonk Road Jaipur (Rajasthan).
12. The Deputy General Manager, Reserve Bank of India, Near Gandhi Bridge, Ashram Road, Ahmedabad.
13. Chief Commissioner of Customs, Delhi (Preventive) Zone, New Delhi.
14. The Registrar of Companies, ROC Bhavan, Opp. Rupal Park Society, Behind Ankur Bus Stop, Naranpura, Ahmedabad-380013.
15. The Joint DGFT, 11/A, Govt. M.S. Building, Lal Darwaja, Ahmedabad-380 001.
16. The Joint DGFT, 3rd Floor, Udyog Bhawan, Tilak Marg, Jaipur- 302005 (Rajasthan).
17. President in Office, Disciplinary Committee (Under Section 21D), The Institute of Chartered Accountant of India, ICAI Bhawan, Indraprastha Marg, Post Bag No. 7100, New Delhi- 110002.

- 18.The Superintendent (Systems), Customs Commissionerate, Ahmedabad, for uploading on the website of the Commissionerate/Zone.
- 19.Guard File.