प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडियो के पास, नवरंगपुरा ,अह्मदाबाद 380009
दुर भाष (079) 2754 46 30 **फैक्स** (079) 2754 23 43
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.
फा. सं./ **F. No.: VIII/10-20/Commr./O&A/DRI/2012/Pt-I**
DIN- 20250271MN000000200C

आदेश की तारीख/Date of Order : 27.02.2025
जारी करने की तारीख/Date of Issue : 27.02.2025

द्वारा पारित :- **शिव कुमार शर्मा, प्रधान आयुक्त**
Passed by :- Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या **:**

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-68-2024-25 dtd. 27.02.2025 in the case of M/s. Hindalco Industries Limited, Dahej & others.

1 जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.

3. उक्त अपील प्रारुप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियोँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)□ अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियोँ में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलगन की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमा शुल्क 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 पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act,1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरूद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारे मे विवाद है उसका भुकतान करके अपील की जा शकती है।

7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice No. DRI/AZU/INQ-03/2010 dated 05.11.2012 issued by the Additional Director General, DRI, Ahmedabad Zonal M/s. Hindalco Industries Ltd, Dahej and others & Hon'ble Tribunal order No. A/10520/2020 dated 11.02.2020 & A/10956/2022 dated 10.08.2022.

BRIEF FACTS OF THE CASE:

Information was gathered by the officers of the Directorate of Revenue Intelligence, Ahmedabad (DRI, Ahmedabad) that certain Duty Entitlement Pass Book (DEPB) / Vishesh Krishi and Gram Udyog Yojana (VKGUY) licences used by M/s. Hindalco Industries Limited, Dahej, hereinafter referred to M/s. Hindalco, at Dahej port towards payment of Customs Duty at the time of importation, were forged licences. The intelligence input had further indicated that the forged licences were sold to M/s. Hindalco by one Padmavati Agencies Pvt Ltd, Ahmedabad – (PAPL) a broker and that the said forged licences were supplied to the said PAPL by one Shri Piyush Viramgama of M/s. Bansi Overseas, 302, Somnath Centre, Rajkot.

2. Acting on the above information, DRI, Ahmedabad called for from Dahej Customs all original documents in respect of the DEPB/VKGUY licences alongwith the Release Advises (RA) used by M/s.Hindalco Industries Ltd, Dahej (HIL) at Dahej during the period from January, 2009 to till date i.e. 05/04/2010. In the meantime, M/s. Hindalco called upon to submit details of the duty free licences/Release Advices procured by them from different sources. Accordingly, M/s. Hindalco submitted details of the licences procured by them from different licence brokers/traders during the period from January, 2009 to March, 2010. Subsequently, M/s. Hindalco was also called upon vide letter dtd.16/04/2010 to submit details of the duty free licences/Release Advices procured by them from different sources.

3. On examination of the original Licences and their corresponding Release Advices forwarded by Dahej Customs revealed that some of the licences, were, prima-facie, of dubious nature and consequently, these were immediately taken up for further investigation. These licences indicated that the same were purportedly issued by DGFT, Bangalore, Trivandrum and Chennai and the port of registration as per the said licences shown to be Mangalore Sea. The Release Advices in the case of these licences were shown to have been issued to M/s. Hindalco Industries Limited for use at Dahej Port. Therefore, the Commissioner of Customs, New Custom House, Mangalore requested to forward the details of the licences registered with Custom House, Mangalore during the period from 2008 and 2009 along with the Release Advices issued in favour of M/s. Hindalco Industries Limited for use at Dahej Port. Copies of the register/s of licences and Release Advices were also simultaneously called for and officers of DRI, Ahmedabad visited New Custom House, Mangalore for collecting the documents called as mentioned above. The Additional Commissioner of Customs, New Custom House, Mangalore vide letter No.S-12/8/2009 Apprg.I Pt.II dtd.20/4/2010 was forwarded a list of all Release Advices issued by Mangalore Customs in favour of M/s. Hindalco Industries Ltd for the period from 01/01/2008 to 31/3/2010 for use at Dahej Port. Copies of the registers for the said period were also forwarded. It was also indicated in the aforesaid letter of Additional Commissioner of Customs, New Custom House, Mangalore that though Licences bearing No.0710060736, 0710060737 and 0710060173 was registered at their

port, and no Release Advices were issued in favour of M/s. Hindalco Industries Ltd for clearance at Dahej port. Copies of the Release Advices issued in respect of these licences were also forwarded by Customs Mangalore which indicated that the same were issued in favour of M/s. Reliance Industries Ltd for use at Magdalla port.

4. Scrutiny of the original Licences and their corresponding Release Advices forwarded by Dahej Customs with the details of the Release Advices issued by New Custom House, Mangalore in favour of M/s. Hindalco Industries Ltd, Dahej for use at Dahej port revealed that 78 licences used by M/s. Hindalco at Dahej port and purported to have been registered at New Custom House, Mangalore and Release Advices shown to have been issued by Mangalore Customs were, in fact, neither registered with Mangalore Customs and nor were any Release Advices issued by Mangalore Customs. Further, though 07 licences were registered with Mangalore Customs, the Release Advices in respect 06 said licences were issued in favour of M/s. Reliance Industries Ltd for use at Magdalla port and Release Advice in respect 01 licence was issued in favour of M/s.Mirc Electronics for use at Chennai Sea. It, therefore, emerged that the 85 licences and their corresponding Release Advices used by M/s. Hindalco at Dahej were not genuine documents and were fake/forged documents. The details of the 85 licences and their corresponding Release Advices which were used by M/s. Hindalco at Dahej port at the time of import for debiting the Customs duty, are as under :-

Sr. No.	**Licence No.**	**Date**	**Duty Amount of Licence (Rs.)**	**RA No.**	**Date**
1	710057647	30.05.08	7123471	1665	28.08.2008
2	710057375	13.05.08	5097978	1693	18.09.2008
3	710057530	22.05.08	4174117	1708	29.09.2008
4	710057639	29.05.08	5371995	1709	29.09.2008
5	710058005	19.06.08	5628582	1710	29.09.2008
6	710058085	24.06.08	4022044	1711	29.09.2008
7	710057638	29.05.08	4059297	1720	03.10.2008
8	710057493	21.05.08	4680410	1721	03.10.2008
9	710059325	27.08.08	1584203	1725	16.10.2008
10	710059272	21.08.08	4387551	1726	16.10.2008
11	710058726	25.07.08	6918371	1733	30.10.2008
12	710058485	14.07.08	5752191	1734	30.10.2008
13	5310006554	07.10.08	2542897	1736	30.10.2008
14	5310006586	10.10.08	2052749	1737	30.10.2008
15	5310006718	21.10.08	9331817	1738	30.10.2008
16	410099033	06.10.08	9394430	1740	31.10.2008
17	410099030	06.10.08	9273703	1741	31.10.2008
18	410099029	06.10.08	6982738	1742	31.10.2008
19	5310006702	20.10.08	9126709	1743	31.10.2008
20	5310006661	20.10.08	7335173	1783	20.11.2008
21	5310006671	20.10.08	7485061	1784	20.11.2008
22	5310006672	20.10.08	5004478	1785	20.11.2008
23	5310006694	20.10.08	8254315	1786	20.11.2008
24	5310006698	20.10.08	6666201	1787	20.11.2008

25	5310006706	20.10.08	3993732	1788	20.11.2008
26	5310006726	21.10.08	6944244	1789	20.11.2008
27	710060736	27.10.08	4086584	1809	02.12.2008
28	710060737	27.10.08	4900580	1812	03.12.2008
29	710060173	26.09.08	3726014	1813	03.12.2008
30	5310006878	11.11.08	5073945	1814	03.12.2008
31	5310006885	11.11.08	5023350	1815	03.12.2008
32	5310006869	11.11.08	5005100	1816	03.12.2008
33	5310006910	11.11.08	4833716	1817	03.12.2008
34	5310006884	11.11.08	4596457	1818	03.12.2008
35	5310006876	11.11.08	4399075	1819	03.12.2008
36	5310006906	11.11.08	4379309	1820	03.12.2008
37	5310006874	11.11.08	8300303	1858	09.01.2009
38	5310006867	11.11.08	8150713	1859	09.01.2009
39	5310006896	11.11.08	7696239	1860	09.01.2009
40	5310006883	11.11.08	7667008	1861	09.01.2009
41	5310006825	05.11.08	6979498	1862	09.01.2009
42	5310006882	11.11.08	6740954	1863	09.01.2009
43	5310006893	11.11.08	6313154	1864	09.01.2009
44	5310006880	11.11.08	5681619	1865	09.01.2009
45	5310006873	11.11.08	4771165	1903	17.02.2009
46	5310006856	11.11.08	6273237	1904	17.02.2009
47	5310006892	11.11.08	3882931	1905	17.02.2009
48	5310006894	11.11.08	5099797	1906	17.02.2009
49	5310006898	11.11.08	4294243	1907	17.02.2009
50	5310007004	24.11.08	6268780	1908	17.02.2009
51	5310006911	11.11.08	5480267	1909	17.02.2009
52	5310006973	24.11.08	5903697	1910	17.02.2009
53	5310006811	05.11.08	5459158	1911	17.02.2009
54	5310006861	11.11.08	5063013	1912	17.02.2009
55	5310006829	05.11.08	6191243	1913	17.02.2009
56	5310007345	16.01.09	5838663	1953	25.03.2009
57	5310007349	16.01.09	5666976	1954	25.03.2009
58	5310007337	16.01.09	5461698	1955	25.03.2009
59	5310007265	05.01.09	5690966	1956	25.03.2009
60	5310006391	11.09.08	6210199	1957	25.03.2009
61	5310007404	20.01.09	7557528	1958	25.03.2009
62	5310007194	22.12.08	4927875	1959	25.03.2009
63	5310007301	09.01.09	4993935	1960	25.03.2009
64	5310007180	19.12.08	4963862	1961	25.03.2009
65	5310007309	09.01.09	6701782	1962	25.03.2009
66	5310007353	16.01.09	7008360	1964	25.03.2009
67	5310007391	20.01.09	4742336	1965	25.03.2009
68	5310007387	20.01.09	4834592	1966	25.03.2009
69	5310007361	19.01.09	5538470	1967	25.03.2009
70	5310007372	19.01.09	5656451	1968	25.03.2009
71	5310007384	20.01.09	4602610	1969	25.03.2009
72	710063262	25.02.09	7098890	1970	25.03.2009
73	5310007379	19.01.09	4081003	1999	06.04.2009
74	5310007406	20.01.09	4183166	2000	06.04.2009
75	5310007402	20.01.09	4671811	2001	06.04.2009
76	5310007305	09.01.09	4375823	2002	06.04.2009
77	5310007276	09.01.09	3870740	2003	06.04.2009
78	5310007407	20.01.09	3197361	2004	06.04.2009

79	5310007120	17.12.08	3789985	2005	06.04.2009
80	5310007389	20.01.09	3039898	2006	06.04.2009
81	5310007393	20.01.09	3597633	2007	06.04.2009
82	5310007401	20.01.09	3682816	2008	06.04.2009
83	5310007364	19.01.09	3710439	2009	06.04.2009
84	5310007357	16.01.09	6847571	2010	06.04.2009
85	710063439	05.03.09	5161612	2011	06.04.2009

5. Scrutiny of the details of licences procured by M/s. Hindalco during the period from January, 2008 to March, 2010 furnished by Shri Bikas Pilaniwala of M/s. Hindalco vide letters dated 12/4/2010 and 16/4/2010 and the details of the licences procured by M/s. Hindalco from different brokers/traders forwarded by M/s. Hindalco indicated that the above said 85 licences were sold to them by one M/s. Padmavati Agencies Pvt Ltd, Ahmedabad (hereinafter reffered to as "PAPL" or "M/s PAPL" for the sake of brevity). Specific information gathered by DRI indicated that forged licences were supplied to M/s. PAPL by one Shri Piyush Viramgama of M/s. Bansi Overseas, Rajkot. Enquiries caused also brought on record that M/s. Hindalco not having any Custom House Agent (CHA) for their Customs clearances at Dahej Port and all the clearances were on Self basis but M/s. Kshitij Marine Services Pvt Ltd, Surat (KSMPL) handling their Customs related work.

6. In pursuance of the specific information gathered, simultaneous searches were conducted at the various office premises of M/s. Padmavati Agencies Pvt Ltd, Ahmedabad, M/s. Bansi Overseas, Rajkot and M/s. Kshitij Marine Services Pvt Ltd, Surat on 21/4/2010 under separate panchnama and during the course of the search operation various incriminating records, documents, computers, pen drives (external storage devices) etc. were withdrawn for further investigation. In the course of the search at the office premises of M/s.Bansi Overseas, 302, Somnath Complex, Rajkot Shri Piyush Viramgama was not available. The search was carried out in the presence of Shri Bharatbhai Badarkiya, who was found occupying the said premises. In the course of the search at the said premises various incriminating evidences were recovered. The evidences recovered inter alia contained one forged VKGUY licence, in original, bearing No. 0710059272/0/24/00 dated 21/8/2008 which appeared to be issued by the Director General of Foreign Trade (DGFT), Bangalore to M/s.General Commodities Private Limited, Bangalore for duty credit of **Rs.43,87,551/-**. The port of registration of the said licence was mentioned as Mangalore Sea. The said licence also contained endorsements purportedly made by the Superintendent of Customs, Mangalore. The search also resulted in recovery of a list of 85 VKGUY licences as well as one Release Advice (RA) purportedly issued by Mangalore Customs to Navlakhi Port. It also gathered during the course of search that Shri Piyush Viramgama having a new office in the name of M/s.Krish Overseas located at 302, Krish Business Planet, Panchnath Plot, Limbda Chowk, Street No.2, Rajkot. The details of the residential address of Shri Piyush Viramgama were also gathered in the course of the search.

7. Consequently, searches were carried out in the office premises of M/s. Krish Overseas, situated at 302, Krish Business Planet, Panchnath Plot, Limbda Chowk, Street No.2, Rajkot under panchnama dated 22/4/2010 as well as at the residential premises of Shri Piyush Viramgama located at 'Ashiyana' Fulwadi Park, Rajkot under panchnama dated 22/4/2010. During the course of the searches at the above said premises various incriminating evidences were recovered and withdrawn for further investigations.

8. During the course of investigation, searches were conducted at various premises which resulted in recovery of incriminating documents/evidences. Further, statements of various individuals were recorded by DRI under Section 108 of the Customs Act, 1962 during the course of investigation. Scrutiny of evidences gathered during the course of investigation brought on record that 98 VKGUY and 08 DEPB licences and the Release Advices and documents corresponding to these licences were forged. Further, out of these, 85 forged VKGUY and 08 DEPB licences were sold to M/s. Hindalco, Dahej. The documents in original in respect of the 85 fake/forged VKGUY licences and 08 fake/forged DEPB licences used by M/s. Hindalco were obtained from Customs, Dahej. The documents in original in respect of the corresponding 85 genuine VKGUY and 08 DEPB licences were obtained from the Customs authorities concerned as well as the importers who had purchased and used the same. These forged licences and release advices were utilised by M/s. Hindalco Industries Ltd, Dahej at Dahej port. The entire scheme of forgery of licences and their subsequent utilization involved:-

1) Forgery of the licences and its related documents.
2) Sale of the forged licences to the end-user.
3) Receipt of the sale proceeds of the forged licences and its disbursal amongst the persons involved in the forgery and sale.

9. Summons were issued to Shri Dharmesh Gathani, Director of M/s.PAPL, Ahmedabad, Shri Praveen Dikshit, Director of M/s.Kshitij Marine Services Pvt Ltd, Surat, Shri Lakir Desai, Manager and Shri David Abraham, Shipping Assistant of M/s.Kshitij Marine Services Pvt Ltd, Surat. Statements of the said persons were recorded on 22/4/2010 under the provisions of Section 108 of the Customs Act, 1962.

9.1. In the course of his statement recorded was on 22/4/2010 under the provisions of Section 108 of the Customs Act, 1962, Shri Dharmesh Gathani, inter alia, stated that :

- he was one of the Directors of M/s.Padmavati Agencies Pvt. Ltd., B/h Shaishya Kids Campus, Opp.Aryavart-IV, Opp.YMCA Club, S.G.Highway, Ahmedabad;

- that M/s.Padmavati Agencies Pvt. Ltd., was engaged in the trading of DEPB/VKGUY/FMS/FPS/DFIA export incentive licences. All his family members are Directors of the above company viz. His father Shri Ramesh Gathani, his mother Smt.Harsha Gathani, himself, his wife Smt.Bharti Gathani, his younger brother Shri Parag

Gathani, and his wife Smt.Parita Gathani. However, he himself and his younger brother are the active Directors, while others were sleeping Directors of the company.

- that the bank accounts of their firm was maintained with the following banks and the account numbers were mentioned against each bank.

Sr. No.	Name of the Bank	Branch	Account No.
1.	HDFC Bank	Mithakhali	00062320003858
2.	State Bank of India	Memnagar	30033366883
3.	ICICI Bank	Drive-in	006405500047

- that his father Shri Ramesh Gathani initially into import-export consultation since the year 1984. After completion of his studies, he joined his father in this business during 1989. Then his brother Shri Parag joined their family business since the year 1999-2000. During the year 2002, they diversified their business by trading of the export incentive licences.

- that they procured the above export incentive licences from the exporters directly, as well as, traders of such licences and sold them to the importers who utilized the same for duty credit. They approached the interested exporters who were holding licences and who wished to transfer them to others for a consideration and the rates were negotiated. Upon agreement they purchased such export incentive licences and after adding their margin, which varies from 0.25% to 0.75%, they sold them to the interested importers who were looking for taking such credit of export incentives.

- that for sale of export incentive licences, they entered into agreement with the interested importers. Since they were in the business of import-export consultancy, they were in contact with many importers, as well as, exporters. Hence, many importers contacted them for purchase of licences and many exporters contact them for sale/transfer of licences. Apart from trading of export incentive licences, they helped exporters in application, issuance of licence with the office of DGFT and verification/registration of licence with the office of customs.

- that they purchased licences with Release Advices(RAs) when the port of registration was outside Gujarat. In case of licences where port of registration was within the State of Gujarat, they sold the licences to the importers along with RAs to the port of import. For this purpose they had a tie up with agents in Kandla Port, Pipavav Port, etc., who helped them in taking out RAs from the concerned ports where the licences were registered. Sometimes, the exporters transferred the licences along with RAs obtained by them to the concerned port of import as stipulated by them.

- On being asked as to how they ensured the genuineness of the licences/RAs, he stated that they purchased licences which were

issued by DGFT and registered with the concerned Customs Port where there was an endorsement to this effect. They purchased the licences from the traders from Ahmedabad and mostly from Mumbai traders who were into this line of trading of licences, apart from direct purchase from exporters. Since they were into the business of import-export consultancy since the year 1984, they were in contact with many traders of licences in Mumbai who were genuine and hence purchased licences from such traders.

- that the following were the major exporters from whom they directly purchased the export incentive licences

  (a) M/s.Adani Enterprises Ltd.,
  (b) M/s.Sanghi Cements Ltd.
  (c) M/s.N.K. Proteins Ltd.,
  (d) M/s.Keshodwala Foods
  (e) M/s. Silver Sea Foods, etc.

- that the following were the major importers to whom they sold/transferred the export incentive licences

  (a) M/s.Hindalco Industries Ltd.
  (b) M/s.Appollo Tyres
  (c) M/s.Hind Prakash
  (d) M/s.Astral
  (e) M/s.Visakapolyfab etc.

- that he would produce the list of exporters from whom they purchased export incentive licences and list of importers to whom they sold/transferred the licences and also the names and addresses of the traders from whom they purchased the licences next day.

- that upon negotiation of the rates with the exporters/traders who were in possession of the export incentive licences, they made payments by cheque/RTGS/DD to the concerned exporters/ traders and obtained the licences. The licences purchased by them were taken hand delivery within Ahmedabad against payment and in other cases the licences were received by courier and the payment were made by above modes of payment viz. cheque/RTGS/DD. Upon receipt of the licences they instructed the traders/exporters to deposit the cheques/Demand Draft and sometimes the funds were transferred through RTGS. In the same manner, they send the licences/RAs to the importers in Ahmedabad by hand and through courier to the importers outside Ahmedabad. In case of M/s.Hindalco Industries Ltd., mostly the licences were delivered by hand. The payments for such sale/transfer were received in a day or two from such importers.

- On being asked regarding the verification/genuineness of the licences/RAs, he stated that they do the follow up work of getting the genuineness/verification of the licences/RAs by the concerned customs port where the licences/RAs were originally registered. In case of purchase of licences from other traders, they send the request of verification to such traders who followed up for the

verification/genuineness of licences/RAs with the customs authorities.

- that one original licence along with 2 sets of RAs were received by them. Out of the 2 sets of RAs one was for Customs purposes, which was in sealed pack and the other was for party which was open.

- On being asked as to whether he was in DRI in connection with any other investigation, he stated that he appeared before DRI authorities in connection with a licence matter previously.

- that their turnover their firm was approximately Rs.400 Crores for 2009-10.

10. As agreed upon by him in the course of his statement above said statement, Shri Dharmesh Gathani, Director of M/s.PAPL, Ahmedabad vide letter dtd.23/4/2010 furnished the list of exporters from whom they purchase export incentive licences and also the list of importers to whom they sell/transfer the licences and the names and addresses of the traders from whom they purchase the licences. On scrutiny of the details it was found that they were purchasing licences from, among others, M/s.Sunkkalp Creations Pvt Ltd (hereinafter reffered to as "SCPL" or "M/s SCPL" for the sake of brevity), M/s. Accurate Multi Trade, M/s.R.R.Impex, M/s.Hindustan Continental Ltd, M/s.Vani Exports and M/s.MPG International. The contact person for all these firms was one Shri Kalpessh Daftary and Shri Vishalbhai.

11. A statement of Shri Praveen Dikshit, Director of M/s.Kshitij Marine Services Pvt Ltd, Surat was recorded on 22/4/2010 under the provisions of Section 108 of the Customs Act, 1962, and in the course of his statement he interalia stated that :

- he was one of the Directors of M/s.Kshitij Marine Services Pvt. Ltd., and M/s.Peevee Marine Associates Pvt. Ltd., Surat and he was a partner of M/s.Peevee Associates. The address of all the above three firms was at O-2, Madhulika Apartments, Surat.

- that his above firm M/s.Kshitij Marine Services Pvt. Ltd., was engaged in steamer agency. Apart from himself, the other Directors of this firm were Shri Rajesh Sajnani and his wife Smt.Archana Dikshit.

- that M/s.Kshitij Marine Services Pvt. Ltd., and M/s.Peevee Marine Associates Pvt. Ltd., were appointed by M/s.Hindalco Industries Ltd., Dahej, as an agency for aiding them in the customs procedures for their import and export purposes. Apart from himself, the other Directors of this firm are Shri Rajesh Sajnani, his wife Smt.Archana Dikshit, his elder brother Dr.V.K.Dikshit and Shri Diren Pandya son of Capt.H.P.Pandya of M/s.Peevee Associates.

- that they were offering the services for M/s.Hindalco Industries Ltd., since 1999 after commission of their plant at Dahej. M/s.Hindalco had entered into a contract with their firm

M/s.Kshitij Marine Services Pvt. Ltd., since the year 1999 and M/s.Peevee Marine Associates Pvt. Ltd., Surat, around 2007-2008.

- that M/s.Hindalco were importing and exporting their goods on self basis without appointing any CHA for the purposes. The Assistant Commissioner of Customs, Surat, was in charge of Magdalla Port and Dahej Port and his office was situated in Surat. For the Bills of Entry and Shipping Bills filed in Dahej Port, they were in need for a liaisoning person to look after the work with customs department. Accordingly, they appointed their firm to look after the customs work.

- they had entered into a contract with M/s.Hindalco which was renewed every year; that they did the liaisoning work for M/s.Hindalco Industries Ltd., Dahej, and their subsidiary companies alone and at Magdalla Port they undertake the liaisoning work of M/s.Agarwal Coal Corporation Pvt. Ltd., Indore.

- that before the arrival of the vessel carrying imported goods, M/s.Hindalco furnishes copies of provisional documents such as commercial invoice, bill of lading, certificate of origin, load port Assay Report, weight report, Export Incentive Scheme licences such as DEPB, FPS, FMS, VKUY, Advance authorization, etc. were given to them.

- that on the basis of these documents, Bill of entry prepared by their firm under various export incentive schemes as the case may be for availing credit of duty. The Bill of Entry and other documents were sent back to M/s. Hindalco Dahej for their signature and presentation before the customs authorities.

- that the export incentive scheme licences were procured by M/s.Hindalco and handed over to their firm prior to the arrival of the vessel; that these licences were handled by Commercial and Logistics Department of M/s.Hindalco.

- that they got these licences, RAs, etc., verified by the Superintendent of Customs, at Dahej for its genuineness, before the filing of Bill of Entry. The Superintendent of Customs, accordingly addresses the concerned port authorities where the licences were registered and RAs issued seeking its genuineness. Once, the licences/RA's were verified, the credit of duty mentioned therein in the licences/RAs were availed/debited by M/s.Hindalco at the time of import.

- that after obtaining the signatures of the authorized signatory of M/s.Hindalco viz. Shri Navinkumar, Vice-President or Shri Bikas Pilaniwala, General Manager, they filed the Bill of entry along with other documents such as commercial invoice, bill of lading, etc., and the export incentive licences with the customs authorities for their assessment. Once, the assessment was over, M/s.Hindalco made the payment of duty, wherever required, through Real Time Gross Settlement (RTGS) a banking transaction. After the duty payment, if any, they obtained the out of charge endorsement from the customs authorities and handed over the same to

M/s.Hindalco for their record and kept one set of the above documents (copy) for their record as well.

- that his employees Shri David Abraham and Shri Fahad Neterwala handled the work of their firm at Dahej. M/s.Hindalco handed over the above mentioned documents to either of these employees and confirmed the same by e-mail to his firm. His above employees, upon collection of the documents from M/s.Hindalco handed over the same in the office at Surat.

- that they send the customs import documents through his above two employees to M/s.Hindalco for obtaining the signatures of the authorized signatory for filing with the customs authorities.

- that apart the above two employees, there were other employees viz.Shri Lakir Desai, Shri Pritesh Patel, Kum.Jyoti Mangalani, Shri Chirag Prajapati, Shri Mohammed Irfan, Shri Hitesh Doriwala, Shri N.K.Athi his father-in-law and one peon Shri Yogesh Solanki and a Driver Shri Bakul Patel, who looks after the work in all the above firms.

- that Shri Lakir Desai supervised the work in the office. Shri Pritesh Patel and Kum.Jyoti Mangalani, prepared the inventory of the licences received from M/s.Hindalco, prepared the Bill of Entry for submission to customs authorities. Shri Chirag Prajapati and Shri Mohammed Irfan look after the field work with the customs and port authorities at Surat. Shri Hitesh Doriwala and Shri N.K.Athi look after the accounts of the firm.

- On being asked regarding the export incentive licences, he stated that these were procured by M/s.Hindalco through the vendors appointed by them. That after procurement of the licences/RAs by M/s.Hindalco, the same were handed over them a copy of which was submitted by them to the customs authorities at Dahej for verification. The licences/RAs were got verified by the customs authorities and the genuineness of the licences/RAs were informed to them by the Customs authorities at Dahej or Magdalla by providing a copy of such letters received from the other customs port. Sometimes, the genuineness of the licences/RAs was received by them from M/s.Hindalco by e-mail/fax. They submit the genuineness of the licences/RAs, a copy of which was received by them, to the customs authorities along with the import documents for necessary debit entries.

- that in all cases the genuineness of the licenses were got verified by the Customs authorities prior to allowing imports against the same.

- On being asked whether they had in any way indulged in any correspondence with the respective license/RAs issuing ports in an event of non-receipt of the genuineness from the concerned customs authority of the issuing port, he stated that he does not recall of any such instance since the RA/ Licenses were got verified well in advance, and the imports were made only against the verified licenses/ R.A.s.

12. A statement of Shri David Abraham, Shipping Assistant of M/s.Kshitij Marine Services Pvt Ltd, Surat was recorded on 22/4/2010 under the provisions of Section 108 of the Customs Act, 1962 in the course of which he stated inter alia that :

- he joined M/s.Kshitij Marine Services Pvt. Ltd., Surat on 1st May' 2006 as Shipping Assistant and he given the work at their branch office at Bharuch. Shri Pravin Dikshit is Director of M/s.Kshitij Marine Services Pvt. Ltd., Surat.

- that M/s.Kshitij Marine Services Pvt. Ltd., were appointed by M/s.Hindalco Industries Ltd., Dahej, as an agency for aiding them in the customs procedures for their import and export purposes.

- that since the day he joined the said company, they were doing the services for M/s.Hindalco Industries Ltd., Dahej. However, he came to know from other employees of the company that M/s.Hindalco have entered into a contract with their firm M/s.Kshitij Marine Services Pvt. Ltd., since the year 1999.

- that M/s.Hindalco were importing and exporting their goods on self basis without appointing any CHA for the purposes. The Assistant Commissioner of Customs, Surat, in charge of Magdalla Port and Dahej Port and his office situated in Surat.

- that for the Bills of Entry and Shipping Bills filed in Dahej Port, M/s Hindalco were in need for a liaisoning person to look after the work with customs department. Accordingly, they appointed their firm to look after the customs work. He also came to know from other employees of their company that they had entered into a contract with M/s. Hindalco which was renewed every year.

- that they did the liaisoning work for M/s.Hindalco Industries Ltd., Dahej, That before the arrival of the vessel carrying imported goods, M/s. Hindalco furnished copies of provisional documents such as commercial invoice, bill of lading, certificate of origin, load port Assay Report, weight report, Export Incentive Scheme licences such as DEPB, FPS, FMS, VKUY, Advance authorization, etc..

- that on the basis of these documents, Bill of entry was prepared by their firm under various export incentive schemes as the case may be for availing credit of duty. The Bill of Entry and other documents were sent back to M/s. Hindalco Dahej for their signature and presentation before the customs authorities through him.

- that the export incentive scheme licences were procured by M/s.Hindalco and handed over to their firm prior to the arrival of the vessel. That these licences were handled by Shri Jigar Shah-Officer and Shri Bikas Pilaniwala- Manager of Commercial and Logistics Department of M/s.Hindalco.

- that they got these licences, RAs, etc., verified by the Superintendent of Customs, at Dahej for its genuineness, before

the filing of Bill of Entry. The Superintendent of Customs, accordingly addressesed the concerned port authorities where the licences were registered and RAs issued seeking its genuineness.

- Once, the licences/RA's were verified, the credit of duty mentioned therein in the licences/RAs are availed/debited by M/s.Hindalco at the time of import. After obtaining the signatures of the authorized signatory of M/s.Hindalco viz. Shri Navinkumar Mathur, Vice-President or Shri Bikas Pilaniwala, General Manager, they filed the Bill of entry along with other documents such as commercial invoice, bill of lading, etc., and the export incentive licences with the customs authorities for their assessment. Once, the assessment was over, M/s.Hindalco made the payment of duty, wherever required, through Real Time Gross Settlement (RTGS) a banking transaction. After the duty payment, if any, they obtain the out of charge endorsement from the customs authorities and hand over the same to M/s.Hindalco for their record. They keep one set of the above documents (copy) for their record as well.

- that he and Shri Fahad Neterwala handled the work of their firm at Dahej. M/s.Hindalco handed over the above mentioned documents to them and confirmed the same by e-mail to their firm. They upon collection of the documents from M/s.Hindalco handed over the same to their office at Surat. Their company then submited the customs import documents complete with the bills of entry, import invoices, bills of lading, packing list and the relevant DEPB/VKGUY licences/RA's through him and /or Fahad Neterwala to M/s.Hindalco for obtaining the required signatures of the authorized signatory for filing with the customs authorities.

- that the authorized signatories of M/s Hindalco industries Limited were Shri.Bikas Pilaniwala and Shri.Navin K Mathur.

- that the export incentive licences, were procured by M/s.Hindalco through the vendors appointed by them. That after procurement of the licences/RAs by M/s.Hindalco, the same were handed over to either to him or Shri Fahad Neterwala, a copy of which was submitted by them to the customs authorities at Dahej for verification.

- that the licences/RAs were got verified by the customs authorities and the genuineness of the licences/RAs were informed to them by the Customs authorities at Dahej by providing a copy of such letters received from the other customs port. Sometimes, the genuineness of the licences/RAs was received by them from M/s.Hindalco by e-mail/fax.

- They submit the genuineness of the licences/RAs, a copy of which was received by them, to the customs authorities along with the import documents for necessary debit entries. That in all cases the genuineness of the licenses/RA's were got verified prior to allowing imports against the same.

13. The residential premises of Shri Vijay Gadhiya which was sealed under panchnama on 26/4/2010 was opened and searched under panchnama dtd.27/4/2010 in the presence of independent panchas. In the course of the search various incriminating evidences viz. rubber stamp / round seal of the DGFT, Rajkot, round seal of Mangalore Customs, stamps of different banks were recovered. Also negatives for preparing rubber stamps of the firms whose licence were forged etc. were recovered.

14. The list and details of 91 licences issued by DGFT, Trivandrum and forwarded to DRI, Trivandrum was received from DRI, Trivandrum vide letter dtd.26/4/2010. Scrutiny of the details received from DGFT, Trivandrum revealed that the licences purported to had been registered at Mangalore and which were used by M/s.HIL at Dahej Port were in fact issued by DGFT, Trivandrum wherein the port of registration Cochin, Tuticorin and ICD, Whitefield, Bangalore. Therefore, the Customs at Cochin, Tuticorin and ICD, Whitefield, Bangalore were asked vide letter dtd.28/4/2010 to forward details of the licence registration and the corresponding Release Advices issued.

15. The Additional Commissioner of Customs, New Custom House, Mangalore vide letter No.S-12/8/2009 Apprg.I Pt.II dtd.20/4/2010 had informed that the Licences bearing No.0710060736, 0710060737 and 0710060173 registered at their port, however, no Release Advices were issued in favour of M/s .Hindalco Industries Ltd for clearance at Dahej port. Therefore, Customs Division, Surat was asked to forward the above said licences and their release advices and the same were received vide letter No.CH/Misc./2010 dtd.26/4/2010. On scrutiny of the licences it was seen that the Release Advices in respect of these 03 licences were issued by Customs, Mangalore to M/s. Reliance Industries Ltd for use at Magdalla port. On Comparison of the 03 licences and their release advices used at Magdalla port with the 03 licences and their release advices used at Dahej Port, it was seen that all the particulars were the same. Only the release advice numbers and dates were different. These Release advices, as informed by Mangalore Customs were not issued by them. It therefore, was evident that the licences bearing the same numbers which were presented before Customs, Dahej by M/s.HIL along with the Release Advices purported to had been issued by Customs, Mangalore were fake/forged documents.

16. M/s.Padmavati Agencies Pvt Ltd, Ahmedabad were called upon vide letter dtd.29/4/2010 to submit the payment details in respect of 26 fake/forged licences along with the ledger accounts and the same submitted by them vide their letter dtd.29/4/2010. Further, vide letter dtd.26/05/2010. M/s.Padmavati Agencies Pvt Ltd, Ahmedabad submitted the purchase and payment details in respect of 84 licences. Scrutiny of the details submitted by them indicated that these 26 fake/forged licences were purchased by them from M/s.Vani Exports, Kolkata and M/s.Hindustan Continental Ltd, Kolkata.

17. The office premises of M/s.Vani Exports, 2, Clive Ghat Street, Suite No.7, 2nd Floor, Kolkata was searched by the officers of DRI,

Kolkata on 29/4/2010 under proper panchnama and various documents and records were withdrawn for further investigation.

18. The Additional Commissioner, Custom House, Cochin vide letter No. S32/31/10/GR.VII/Cus dtd.29/04/2010 forwarded the details of licences registered with them and the release advices thereof issued. Scrutiny of the details indicated that 54 genuine licences corresponding to the fake/forged licences purportedly registered with Mangalore Customs and used by M/s.HIL at Dahej were in fact registered with Cochin Customs and the Release Advices in respect of which was issued by them to M/s.Reliance Industries Ltd for use at Magdalla Port, M/s.Universal Chemicals & Industries for use at Nhava Sheva etc. It was further informed vide letter No. S32/31/10/GR.VII/Cus dtd.5/5/2010 that one more licence –genuine- corresponding to the 54 fake/forged licence purportedly registered with Mangalore Customs and used by M/s.HIL at Dahej in fact registered with Cochin Customs and the Release Advice in respect of which issued by them to M/s.Reliance Industries Ltd for use at Magdalla Port. No Release Advice in respect of these 54 licences was issued by Cochin Customs to M/s.HIL for use at Dahej port.

19. Similarly, the Additional Commissioner of Customs, ICD, Whitefield, Bangalore vide letter No.VIII/52/02/2009 ICD Conf dtd.3/5/2010 forwarded the details in respect of 01 licence – genuine- corresponding to the 01 fake/forged licence purportedly registered with Mangalore Customs and used by M/s.HIL at Dahej was in fact registered with Customs, ICD, Whitefield, Bangalore and the Release Advice in respect of which issued by them to M/s. Mirc Electronics for use at Chennai. No Release Advice in respect of this 01 licence issued by Customs, ICD, Whitefield, Bangalore to M/s.HIL for use at Dahej port.

20. The office premises of M/s.Sunkkalp Creations Pvt Ltd, located at Sagarika Co-op Housing Society, Opp. Palm Grove, Juhu Tara Road, Mumbai was searched on 30/4/2010 under proper panchnama and various incriminating records were withdrawn for further investigation. The office premises of M/s. Accurate Multi-Trade Pvt Ltd, located at B-3-41, Singh Ni, Janata Colony, Opp.St. Mary's School, Jogeshwari (East), Mumbai was also searched on 30/4/2010 under proper panchnama. In the course of the search it was found that the declared address was in fact a residential premise. In the course of the search at the office premises of M/s.Sunkkalp Creations Pvt Ltd, Mumbai (SCPL) none of the Directors, including Shri Kalpessh Daftary were available. The residential premises of Shri Kalpessh Daftary located at 302, Subhangan, JVPD, Mumbai was searched on 01/05/2010 under proper panchnama.

21. The Additional Commissioner of Customs, Custom House, Tuticorin vide letters No.VIII/48/305/09-DEEC dtd.6/5/2010 forwarded details in respect of 13 licences registered with Custom House, Tuticorin. Scrutiny and examination of the same revealed that 13 genuine licences corresponding to the 13 fake/forged licences purportedly registered with

Mangalore Customs and used by M/s.HIL at Dahej were in fact registered with Cochin Customs and the Release Advices in respect of which issued by them to M/s. Reliance Industries Ltd for use at Magdalla Port. No Release Advice in respect of these 13 licences was issued by Tuticorin Customs to M/s.HIL for use at Dahej port.

22. As most of the genuine licences corresponding to the fake/forged licences used by M/s.HIL at Dahej were used at Magdalla Port by M/s. Reliance Industries Ltd, Customs Division Surat asked vide letter dtd.10/5/2010 to forward the original licences along with the release advices.

23. The details forwarded by Mangalore Customs did not contain details in respect of 04 licences, therefore, vide letter dtd.08/5/2010, Mangalore Customs was requested to forward the details of the 04 licences listed in the letter. Similarly, it was seen that the details forwarded by Customs Cochin did not contain the details in respect of 09 licences, therefore, vide letter dtd.10/5/2010 Customs, Cochin was requested to forward details of the 09 licences listed in the letter.

24. Shri Piyush Viramgama, Proprietor of M/s.Krish Overseas, Rajkot appeared before the Investigating Officers and his statement was recorded on 11/5/2010 under Section 108 of the Customs Act, 1962, wherein he stated inter alia :-

- that M/s.Bansi Overseas situated at 302, Somnath Complex, B/h S.T. stand, Opp. Samrat Hotel, Rajkot; that Shri Kalpessh Daftary the proprietor of M/s.Bansi Overseas;
- that apart from him Shri Stenly and Shri Nilesh Makwana were also working in M/s.Bansi Overseas and that Shri Nilesh Makwana attended to miscellaneous work;
- that M/s.Bansi Overseas engaged in trading of duty free transferable licences such as Duty Entitlement Pass Book (DEPB), Duty Free Replenishment Certificate (DFRC), etc. Export Promotion Capital Goods Scheme (EPCG), Advance Authorization Scheme, were also entertained by the firm;
- that Shri Kalpessh Daftary had closed his business in Rajkot in the year 2006 and shifted to Mumbai. In Mumbai Shri Kalpessh Daftary doing the same business of trading in licence in the name of M/s. Splendent Sun Overseas and in the name of M/s.Sunkkalp Creations Pvt. Ltd., Mumbai;
- that while he working in M/s.Bansi Overseas, he got full knowledge regarding licensing work with DGFT and sale and purchase of Duty Free Transferable Licence such as DEPB, VKGUY, etc.;
- that he started a proprietary firm in the name of M/s.Krish Overseas at 302, Somnath Complex, Opp. Samrat Hotel, Rajkot, at the address where M/s.Bansi Overseas functioning;
- that his firm M/s.Krish Overseas functioned at the above address for 2 years and thereafter in the year 2009 he shifted his firm's office at 302, Krish Business Planet, Panchnath Plot, Limbda Chowk, Rajkot;

- that apart from the above address he had another office of M/s.Krish Overseas at 311, Somnath Complex, Opp.Samrat Hotel, Rajkot;
- that at present a sign board of M/s.Vani Exports placed at 302, Somnath Complex, Rajkot; that M/s.Krish Overseas engaged in the trading of duty free transferable licences such as Duty Entitlement Pass Book (DEPB), Vishesh Krishi and Gram Udyog Yojana, etc., and DGFT licencing work of some licences, as well as, EPCG Scheme and Advance Licence;
- that his employees Shri Nilesh Makwana and Shri Vijay Gadhiya looked after the sales and purchase of licences and Shri Deepesh Viramgama, his brother, Shri Sameer Makwana and Shri Hardik Shah looked after the e-com application in respect of licences, that Shri Mayur Gadhiya looked after the bank work;
- that Shri Nilesh Makwana and Shri Vijay Gadhiya also looked after the work of collection of payment from Brokers and parties;
- that he looked after and searched new licence holders who intended to sell their licences and he also looked after DGFT work in respect of VKGUY licences;
- that he sold DEPB and VKGUY licences to the brokers namely M/s.Padmavati Agencies Pvt. Ltd., Ahmedabad, M/s.Vrinda Agencies, Kolkata, M/s.Madhu Overseas Pvt. Ltd., Mumbai and M/s.Sunkkalp Creations Pvt. Ltd., Mumbai;
- that their major broker M/s.Padmavati Agencies Pvt. Ltd., to whom they have sold 95% of their licences. They never sold any licence directly to the importer and they always sold licence to the brokers;
- that he contacted Shri Dharmesh Gathani or Shri Kalpessh Darji of M/s.Padmavati Agenices and in M/s.Madhu Overseas Pvt. Ltd., he contacted Shri Kunal Pandya and in M/s. Sankkalp Creations Pvt. Ltd., he contacted Shri Kalpessh Daftary;
- that he shown the panchnama dated 21/4/2010 drawn at the premises of M/s.Krish Overseas at 302, Somnath Complex, Rajkot along with annexure A wherein some files were seized;
- that he shown page No.66 to 83 of seized file No.6 seized from his office premises, the said documents from page 66 to 83 were all invoices issued by M/s.Shivangi Enterprise, 909, Centre Point, M.G.Road, Bangalore to M/s.Vani Exports, 2, Clive Ghat Street, Suit No.7, 2nd Floor, Kolkata : 700 001;
- that the invoices were for sale of licences the details of which were mentioned therein and that those invoices were prepared by him on the instructions of Shri Kalpessh Daftary and that the invoice were signed by him as Proprietor;
- that he did not know the actual owner of M/s.Shivangi Enterprises, Bangalore.
- that a firm in the same name of M/s.Shivangi Enterprises with Shri Vijay Gadhiya as Proprietor opened in Rajkot;
- that he got printedd the letter head of M/s.Shivangi Enterprises, Bangalore from M/s.Joystick Printers, Rajputpura Main Road, Rajkot;
- that he had also got printed stationery in the name of M/s.Vani Export, Kolkata, from the same printer;

- that he identified the photographs in Annexure A as Shri Kalpessh Daftary & Shri Bhavesh Kotak, in Annexure B as Shri Niyaz Ahmed owner of M/s Indiyana Shoes, Shri Deepesh Viramgama & Shri Chirag Mehta and in Annexure C as Shri Nilesh Makawana & Shri Vijay Gadhiya attached to his statement.

25. A further statement of Shri Piyush Viramgama, Proprietor of M/s.Krish Overseas, Rajkot was recorded on 12/5/2010 under Section 108 of the Customs Act, 1962, wherein he stated inter alia :-

- that he was shown page No.46 to 50, 55 and 56 of the seized file No.6; that those documents were bank Real Time Gross Settlement (RTGS) fund transfer applications made by M/s.Shivangi Enterprise from HDFC Bank, Kalawad Road Branch, Rajkot A/c. No.03792000002927 to M/s.Indiyana Shoes, Kanpur;
- that at page No.47 was the RTGS application for transfer of funds in favour of Shri Ashok Kumar Gupta;
- that the money transferred to M/s.Indiyana Shoes, Kanpur, was in respect of the payment of forged licences purchased by him; that the said firm belonged to Shri Niyaz Ahmed;
- that he did not know Shri Ashok Kumar Gupta, however, on the directions of Shri Niyaz Ahmed he had transferred money in favour of Shri Ashok Kumar Gupta.The account number was given to him by Shri Niyaz Ahmed;
- that in the course of sale and purchase of licences one broker by name Shri Hiten introduced him to Shri Niyaz Ahmed of M/s.Indiyana Shoes, Kanpur; that he kept in touch with Shri Niyaz and developed good relations with him (Shri Niyaz);
- that Shri Niyaz got confidence in him and during one of their meetings told him that he (Shri Niyaz) could provide forged licences;
- that he was shown page No.7 of the said file No.6 which was an original customs purposes only VKGUY licence bearing No.0710059272/0/24/00 dated 21.8.2008 issued by DGFT, Bangalore to M/s.General Commodities Pvt. Ltd., 604, Queens Corner A, No.3, Queens Road, Bangalore, for duty credit of Rs.43,87,551/-; that the port of registration mentioned in the said licence was Mangalore Sea; that the document Sr.No. was 1A 585144;
- that after going through the reverse side of the said licence he stated that there were two endorsements by the Superintendent of Customs, Mangalore; that the said licence No. 0710059272/0/24/00 dated 21.8.2008 was not a genuine licence issued by the DGFT, Bangalore, but a forged licence, as that licence was provided to him by Shri Niyaz Ahmed;
- that the said licence had been forged using the details of the genuine licence issued by DGFT, Bangalore, to the same firm with the same licence number, file number, name of the licence holder, his IEC and for the same duty credit; that the signature of the issuing authority i.e., the Foreign Trade Development Officer (FTDO) in the said forged licence had been done by him; that the

signature of the Superintendent of Customs, Mangalore, appearing on the obverse side of the said licence had been done by him;

- that the stationery of the licence duly printed supplied to him by Shri Niyaz Ahmed; that the rubber stamps affixed on the said forged licences were got prepared by him locally;
- that he was shown page No.9, 12, 18, 21, 24 and 27 of the said file No.6; that those documents were all letter heads of various firms as detailed below:

(i) Page No.9 – Blank letter head of General Agents for Ignazia Messina & C. SDA Italy

(ii) Page No:12 – Blank letter head of CMA CGM

(iii) Page No.18 – Blank letter head of Maersk Line

(iv) Page No.21 – Blank letter head of Mediterranean Shipping Company

(v) Page No.24 – Bill/Debit Note of M/s.Shivangi Enterprise, Bangalore

(vi) Page No.27 – Blank letter head of M/s.MPG International, Kolkata

- that the letter heads mentioned at Sr.No. (i) to (iv) were got printed by him through computer printer in his office;
- that the letter head of M/s.MPG International, Kolkata and bill/debit note of M/s.Shivangi Enterprises, Bangalore, were got printed by him from M/s.Joystick Printers, Rajputpura Main Road, Rajkot;
- that the letter head of M/s.MPG International, Kolkata, were printed as per the direction of Shri Kalpessh Daftary and sent the same to him (Shri Kalpessh Daftary);
- that some letter heads were left in his office which were recovered by the officers of DRI during search; that those letter heads were printed for the purpose of issuing licence transfer application/letters and for use of billing in respect of sale of the licences by Shri Kalpessh Daftary who was actually controlling the sale/purchase of licences by M/s.MPG International;
- that one of his office staff named Shri Vijay Amrutlal Gadhiya having a firm in the name of M/s. Shivangi Enterprise having address at Kishan Chamber, Shop No. 11, Atika Industrial Area, Rajkot, which was engaged in the job work of iron and steel turning, lathe, etc.; that the said firm became sick;
- that the letter head of the said firm was also recovered by the officers of DRI from his office premises and placed at page No.32 of the file No.6;
- that on the directions of Shri Kalpessh Daftary, he got printed the letter heads and Bill/Debit Note of M/s.Shivangi Enterprise, 909, Centre Point, M.G.Road, Bangalore; that the address was 909, Centre Point, M.G.Road, Bangalore, also provided by Shri Kalpessh Daftary in line with some other firm of Bangalore;
- that they were utilizing the bank account of M/s.Shivangi Enterprise, Rajkot, bearing account No: 03792000002927 with

HDFC Bank Ltd., Kalawad Road Branch, Rajkot; to rotate the funds in respect of sale of forged licences;

- that Shri Vijay Gadhiya signed blank cheques of the said bank account of M/s.Shivangi Enterprise, Rajkot and were handed over to Shri Kalpessh Daftary; that one pre-signed blank cheque book of the said account also retained by him;
- that the incoming and outgoing funds in the said account were controlled by Shri Kalpessh Daftary as per his(Shri Kalpessh Daftary) convenience and sometimes he also utilized funds from the said account;
- that many times as per the requirement of Shri Kalpessh Daftary cash withdrawn from the said account and sent to him (Shri Kalpessh Daftary) through Angadia firm M/s.Dineshkumar Dashrathlal Angadia, Soni Bazaar, Rajkot;
- that the money was booked in the name of 'CHHOTU' Bombay; that Chhotu was the name of a trusted man of Shri Kalpessh Daftary;
- that he was shown page No.3 and 4 of the said file No.6; that those pages contained the list of 85 forged VKGUY licence given to him by Shri Kalpessh Daftary for affixing rubber stamps and forging the signature of the FTDO, DGFT and of the Customs officers on the obverse side of the licences;
- that those 85 forged VKGUY licences were sold through M/s.Padmavati Agencies Pvt. Ltd., Ahmedabad; that for affixing rubber stamps and forging the signatures on the forged licences, Shri Kalpessh Daftary had paid him Rs.1.75 Crores till date;
- that he was shown page No.1 of file No.6 which contained the impressions of the rubber stamps, which were recovered from his office premises situated at 302, Somnath Complex, Rajkot, under panchnama dated 21.4.2010 affixed on it; that those rubber stamps were got prepared by him from M/s.Khodiyar Stamp, Rajkot;
- that he was shown page No.8 and 9 of the seized file No.7 withdrawn under panchnama from his office premises; that the said document was a Release Advice(RA) bearing No.1944 dated 6.3.2009 issued by Mangalore Custom House, in respect of VKGUY Licence No.0710063262 of M/s.General Commodities, Bangalore, for Rs.70,98,890/-; that he was not sure whether that RA genuine or forged;
- that the stamp impressions on page 1 of file No.6 actually pertained to the period when M/s.Bansi Overseas was functioning at their office premises under the Proprietorship of Shri Kalpessh Daftary;
- that he had not used them in his business of M/s.Krish Overseas and was unable to explain the exact utilization of that rubber stamps;
- that he was shown a page bearing impression of various rubber stamps which were recovered from his office premises during the course of search;
- that those rubber stamps were prepared by Shri Vijay Amrutlal Gadhiya as per direction of Shri Kalpessh Daftary and yourself; that those rubber stamps were prepared for the purpose of

carrying out false/forged signature verification of the exporter on their licence transfer letters;

- that the signatures of the bank authorities were forged by Shri Kalpessh or himself;

26. A further statement of Shri Piyush Viramgama, Proprietor of M/s.Krish Overseas, Rajkot was recorded on 13/5/2010 under Section 108 of the Customs Act, 1962, wherein he stated inter alia :-

- that he was shown an import Bill of Entry 232670 dated 17.9.2009 appearing on page No.232 of seized box file No.11 withdrawn under panchnama from his office premises situated at 302, Third Floor, Krish Business Planet, Rajkot;
- that vide the said Bill of Entry of M/s.Krish Computech (IEC No.2409003699) he had imported one Laser stamp Machine, Model HTC M-40 and Rubber Stamp Materials (Rubber parts for machine) under Air Way Bill No.58993020454 dated 13.9.2009 from Alantic (Hong Kong) Ltd., Shenzhen China; that the shipment loaded from Hong Kong under the said Air Way Bill;
- that the said print machine was actually imported under the name of M/s.Krish Computech but imported under his instructions;
- that during his visit to China in the month of July-August, 2009, he placed and confirmed the order with the overseas supplier. He had also paid the price of the machine at China;
- that since M/s.Krish Computech having IEC and hence he decided to import the said item under the name of M/s.Krish Computech; The importer firm was actually a partnership firm between Shri Deepesh S.Viramgama, his younger brother and Shri Chirag Mehta at Rajkot;
- that neither Shri Chirag Mehta nor Shri Deepesh Viramgama were aware regarding the actual use of the imported machine; that the stamp making machine imported to be used by him and Shri Vijay A.Gadhiya for making of various rubber stamps which were to be used for forging of various documents in the entire scheme of utilization of forged licences, unfortunately, the machine did not work and he was unable to use it as the operating manual of the machine in Chinese language; that presently the machine was broken and destroyed in the month of April, 2010;
- that Shri Kalpessh Daftary was having an office at Dubai and that he did not know the address;
- that he was aware that one Shri Niyaz Ahmed of Kanpur, Uttar Pradesh dealing in forged licences. He developed further contact with Shri Niyaz Ahmed and came to know that he(Shri Niyaz Ahmed) was also having a company in the name of M/s.Indiyana Shoes and manufacturing/trading in leather shoes;
- that he discussed the matter with Shri Kalpessh Daftary during December, 2007, who showed his interest in it; that Shri Kalpessh Daftary was also having some debts to be repaid and in need of money;
- that during December, 2007 as asked by Shri Kalpessh Daftary, he arranged a meeting of Shri Niyaz Ahmed and Shri Kalpessh

Daftary at Mumbai.They discussed regarding the business of forged licences and how they could do it;

- that after about five to six months Shri Kalpessh Daftary confirmed to him that he (Shri Kalpessh Daftary) had decided to do the business of utilization of forged licences and asked him to call Shri Niyaz Ahmed at Mumbai and accordingly he called Shri Niyaz Ahmed at Mumbai;
- that Shri Kalpessh Daftary, Shri Niyaz Ahmed and himself met at Mumbai again; that Shri Kalpessh Daftary gave a complete set of utilized VKGUY licence and its documents like VKGUY licence and annexure, transfer authorizations, list of shipping bills;
- that as per his memory the said set pertained to one of the coffee/cashew exporters of South India. He did not remember the name of the company;
- that as per his knowledge Shri Kalpessh Daftary was working as a consultant to the coffee/cashew exporters association of South India; that those exporters were facing a problem of inclusion of their exports under VKGUY Scheme; that initially their exports were not included; that Shri Kalpessh Daftary was having good rapport with DGFT, New Delhi and had taken the work of consultancy for the above association;
- that Shri Kalpessh Daftary was successful in the inclusion of the exports of coffee/cashew under VKGUY and all their original / genuine VKGUY licences were also handled by Shri Kalpessh Daftary; that Shri Kalpessh Daftary having very good knowledge about the actual VKGUY licence utilized by the exporters of coffee/cashew of South India;
- that after getting the complete Xerox set of licence and other documents from Shri Kalpessh Daftary, Shri Niyaz Ahmed did the work of printing Forged licences;
- that after receiving the complete set of forged licences and its documents and RAs at Mumbai, Shri Kalpessh Daftary sent the same to him at Rajkot. He checked and found out the defects in the set of forged documents;
- that he did not remember to have found any defects in any of the set of forged documents and licences;
- that he used to affix the rubber stamps of the customs on the back side of the forged licences and forged the signatures of the customs officers;
- that thereafter the sets were properly arranged and packed and returned by him to Shri Kalpessh Daftary who sent them either to Vadodara or Bharuch as per the directions received from Shri Dharmesh Gathani of M/s.Padmavati Agencies Pvt. Ltd.;
- that Shri Dharmeshbhai sent a special messenger to collect the said set of forged documents; that although he had never sent the documents himself, he was aware that Shri Kalpessh Daftary sent the documents cover through Maruti Courier or directly through the airlines operating between the places. The airlines were having a system of carrying parcels from one place to another and were received by the representative of the receiver personally. The above mode of transfer the fastest as the documents reached the destination within 4 to 6 hours;

- that Shri Niyaz Ahmed informed him that he was finding it difficult to print the release advice in the desired format. Therefore he prepared the release advice in his computer on the basis of actual release advices issued by Mangalore Customs;
- that after affixing the rubber stamp of the customs and forging the signatures he returned the same to Shri Kalpessh Daftary;
- that the DGFT round seal appearing on the forged licences were actually done by Shri Niyaz Ahmed at his(Shri Niyaz Ahmed) place and not by him;
- that he was not aware as to why Port of Mangalore chosen in all the forged licences and release advices, as the port chosen by Shri Kalpessh Daftary;
- that Shri Kalpessh Daftary was having some contact at Mangalore by the names Gangadhar and Ganesh; that he was not aware that the forged licences would be utilized at Dahej by Hindalco as this were decided by Shri Kalpessh Daftary;
- that usually ports with manual form of clearance system were suited for such type of utilization of forged licences; that Shri Dharmesh Gathani of M/s.Padmavati Agencies Pvt. Ltd., Ahmedabad, was very close to Shri Kalpessh Daftary and were having very good friendship;
- that M/s.Padmavati Agencies Pvt. Ltd., was supplying licences to Hindalco in bulk and all the clearances of Hindalco were done at Dahej Port which a manual port (non-EDI);
- that Shri Kalpessh Daftary might have spoken to Shri Dharmesh Gathani of M/s.Padmavati Agencies for utilization of the forged licences and might have decided to use the same at Dahej Port in the clearances made by Hindalco. He was not aware of the commission paid to Shri Dharmesh Gathani;
- that since bulk of licences were used at Hindalco and some bogus licences might be mixed easily among the original licences; that Shri Kalpessh Daftary had utilized the forged licences only at Dahej for clearances made by Hindalco;
- that the negatives and butter paper images of the rubber stamps recovered by the officers from his office premises at Somnath Complex, Rajkot, were actually used to make rubber stamps by his employee Shri Vijay A.Gadhiya as per his instructions;
- that those rubber stamps were further utilized for forging the transfer letters of various parties and also forging the signature verifications by the bank officers; that the signatures of bank officials were usually not verified at any point;
- that the request for genuineness of the forged release advices generated during the course of utilization of the forged licences were faxed by M/s.Padmavati Agencies Pvt. Ltd., to Shri Kalpessh Daftary;
- that the reply to the same prepared by Shri Kalpessh Daftary and mailed/faxed to him; that after receiving the fax, he put the round seal of Custom House, Mangalore, on the same and re-faxed or mailed back to Shri Kalpessh Daftary after scanning the same;
- that thereafter Shri Kalpessh Daftary used to forge the signature of the Custom officer on the genuineness verification report and fax it to M/s.Padmavati;

- that the round seal of Custom House, Mangalore, was recovered from the premises of Shri Vijay Gadhiya;
- that the letters of confirmation of genuineness were received by fax only and the original copies were not moved to the Custom Houses at the point of utilization of the forged licences and forged RAs.Therefore the signature on the letter of confirmation was also scanned by Shri Kalpessh Daftary from some document of customs and the scanned portion affixed on the letter and the print out faxed;
- that he received a commission amount of about Rupees sixty lakhs in his account of M/s.Krish Overseas from M/s.Sankalp Creations Pvt. Ltd. and remaining amounts were received by him in cash from the bank account of M/s.Shivangi Enterprise;
- that the signatures appearing on the debit notes of M/s.Shivangi Enterprise were all forged by him;
- that most of the signatures were forged by Shri Kalpessh Daftary and Shri Niyaz Ahmed and some signatures were also forged by him;
- that he was shown copies of VKGUY licences as detailed below :

1. Licence No.5310006856 dated 11.11.2008 of M/s.Quilon Exports Enterprises, Kollam for Rs.62,73,737.00 showing port of registration as Tuticorin Sea and the release advice No.18402 dated 21.11.2008 for the same amount had been issued to IEC No. 0388066415 for INMDA1; that he was also shown another VKGUY licence with the same number, name of the party and amount, only the port of registration was shown in that licence as Mangalore Sea; that he was also shown the corresponding release advice No.1904 dated 19.2.2009 issued by Mangalore Customs in favour of IEC No.0388147237 at INDAH1; that the licence and release advice shown to him first was the original one and the licence and release advice shown to him later was a forged copy;
2. Licence No.5310006880 dated 11.11.2008 of M/s.John's Cashew Company, Kollam, for Rs.56,81,619/- showing port of registration as Cochin Sea and the release advice No.11112 dated 20.11.2008 for the same amount had been issued to IEC No.0388066415 for INMDA1; that he was also shown another VKGUY licence with the same number, name of the party and amount; that only the port of registration was shown in that licence as Mangalore Sea; that he was also shown the corresponding release advice No.1865 dated 9.1.2009 issued by Mangalore Customs in favour of IEC 0388147237 at INDAH1; that the licence and release advice shown to him first was the original one and the licence and release advice shown to him later was a forged copy;

- that he confirmed and admitted that the list of licences found in page No.3 and 4 of file No.6 was withdrawn from his office premises at M/s.Krish Overseas, 302, Somnath Complex, Rajkot, under panchnama were actually pertaining to the forged category of licences as identified by him above;
- that those licences were utilized at Dahej Custom House in the imports of M/s.Hindalco Industries Ltd., supplied to them by M/s.Padmavati Agencies Pvt. Ltd., who in turn had procured through Shri Kalpessh Daftary of Mumbai;

- that Shri Kalpessh Daftary had raised the bills/debit notes in respect of those sales through some firms like M/s.Vani Exports, Kolkata, M/s.Hindustan Continental Ltd., Kolkata, etc.;
- that since the licences were all forged the exemption under Notification No.41/2005-Cus. Dated 9.5.2005 was not available;
- that in the top right corner of the licence it was mentioned as 'CUSTOM PURPOSE ONLY'. In the forged copies the said words were printed after removal of the words 'EXCHANGE CONTROL PURPOSE' and the same visible only after close observation;
- that in the genuine copy of the licence the said words were printed only once and not re-written or over written;
- that most of the forged licences utilized at Dahej Port by Hindalco and supplied by Shri Kalpessh Daftary through M/s.Padmavati Agencies Pvt. Ltd., were of older stationery licences;
- that during that period both the copies 'CUSTOM PURPOSE ONLY' and 'EXCHANGE CONTROL PURPOSE' were of same colour and format; that most of the DGFT's had shifted to the new stationery and in the new stationery the colour of both the copies were different;
- that in the case of forged licences supplied by Shri Kalpessh Daftary to M/s.Padmavati Agencies Pvt. Ltd., the stationery of the old type;
- that he was shown the statements dated 12.5.2010 and 13.5.2010 of Shri Vijay Gadhiya and after going through the same he confirmed the facts stated by Shri Vijay Gadhiya in the said statements were true and correct.

27. A statement of Shri Vijay Amrutlal Gadhiya, Proprietor of M/s.Shivangi Enterprises and employed as Supervisor in M/s.Krish Overseas was recorded on 12/5/2010 under Section 108 of the Customs Act, 1962, wherein he stated inter alia :-

- that he worked on lathe machine as a fitter after completing his studies; that he came to Rajkot and worked in M/s.Jyoti Enterprise as a fitter for seven years during which period he came into contact with Shri Piyush S.Viramgama and further developed his friendship;
- that he left the job and in the year 2006 started doing job work on lathe machine in the name and style of M/s.Shivangi Enterprise but closed down the said business as it not running properly;
- that at the insistence of Shri Piyush Viramgama he joined in his (Shri Piyush Viramgama) firm M/s.Bansi Overseas, situated at 302, Somnath Complex, Behind S.T. Bus Stand, Rajkot;
- that in the said firm Shri Piyush engaged in the work of purchase and sale of DEPB and VKGUY licences of DGFT;
- that he also started learning the same slowly and gradually. He working as Supervisor in M/s.Krish Overseas;
- that he had a bank account No.03792000002927 of his firm M/s.Shivangi Enterprise with HDFC Bank, Kalawad Road, Rajkot, which live;
- that Shri Piyush informed him that he (Shri Piyush Viramgama) wanted to use the said account of his firm for making financial

transaction and accordingly he permitted and handed over the signed cheques to Shri Piyush and Shri Piyush used to spend money as per his requirement;

- that the money deposited in that account generally/mostly from M/s.Vani Exports. The said amount deposited sometime withdrawn in cash, as well as, by cheques as per the verbal instruction of Shri Piyush Viramgama;
- that the bank account of his firm used for the transactions in M/s.Bansi Overseas and M/s.Krish Overseas. The amount deposited in that account towards the licences of DEPB and VKGUY sold by Shri Piyush Viramgama;
- that the details of the cheques issued and withdrawal of cash from the said account and to whom given, could be explained only by Shri Piyush Viramgama;
- that he was shown the panchnama dated 26.4.2010 drawn at his residence. He also shown the articles like Rubber Stamp, negative of Rubber Stamp, Butter Paper Print, etc., seized from his residence under panchnama dated 26.4.2010;
- that the above referred stamps, negative and butter paper were kept at his residence as per the instructions of Shri Piyush Viramgama at the time when the office premises of M/s Krish Overseas being shifted from Somnath Complex to Krish Business Planet;
- that he learnt the process of making of stamps after joining the firm of Shri Piyush Viramgama. He purchased the rubber stamp making machine on the instructions of Shri Piyush Viramgama and used to prepare the stamp on the said stamp making machine on his instructions;
- that Shri Piyush Viramgama used to give him the print of the required stamp on butter paper and he used to prepare the negative from butter paper with the help of the rubber stamp making machine;
- that the negative cleaned by submerging it into Chemicals. The rubber chemical was processed on negative and heated for some time and cleaned with water. There after it was pasted on Plastic Pad to prepare rubber stamp;
- that those stamps were used by Shri Piyush Viramgama for preparing the forged documents. Shri Piyush Viramgama gave him money for purchasing the rubber stamp making machine and raw materials required for making stamps;
- that he was aware that Shri Piyush Viramgama and Shri Kalpessh were engaged in preparing and sale of forged/bogus license of DGFT. He was not aware about how those forged/bogus licenses were prepared by them.

28. A further statement of Shri Vijay Amrutlal Gadhiya, Proprietor of M/s.Shivangi Enterprises and employed as Supervisor in M/s.Krish Overseas was recorded on 13/5/2010 under Section 108 of the Customs Act, 1962, wherein he stated inter alia :-

- that the bank account in the name of M/s Shivangi Enterprise were used by Shri Piyush Viramgama in the

transactions/depositing the amount received on sale of forged/bogus licenses;

- that mostly amount was received from M/s Vani Exports. The details of amount withdrawn and the purpose of the same and amount deposited in the said account could be explained only by Shri Piyush Viramgama as he was unaware of the said details. He handed over the signed Cheques to Shri Piyush Viramgama
- that he was shown page No. 66 to 83 of Miscellaneous File No. 6 withdrawn under panchnama dated 21-04-2010 drawn at 302, Somnath Complex, Rajkot. Those documents were invoices issued by M/s.Shivangi Enterprise to M/s Vani Exports for sale of forged Import licenses;
- that the signature on all the said invoices were not his signature and that Shri Piyush Viramgama signed all the said invoices;
- that he affixed/put rubber stamp on the obverse of forged licenses, the genuineness verification letter of Customs (Release Advise), Letter of Transfer of Licenses, as per the instructions of Shri Piyush Viramgama;
- that he had neither signed any of those forged documents in his name nor in the name of any other person and that the persons who have signed the said forged documents best known to Shri Piyush Viramgama.

29. Shri Piyush Surendrabhai Viramgama was arrested on 13.5.2010 under the provisions of Section 104 of the Customs Act, 1962 and produced before the Magistrate (in-charge) of ACMM Court, Ahmedabad, on 13.5.2010, who remanded him to judicial custody for 7 days which further extended. Being aggrieved by the action of DRI Shri Piyush Viramgama filed an affidavit dated 25/5/2010 seeking bail from the ACMM, Ahmedabad, which opposed by DRI vide affidavit dated 07/06/2010. The Hon'ble ACMM vide order dtd.14/06/2010 rejected his bail application. Being aggrieved Shri Piyush Viramgama approached the Sessions Court, Ahmedabad, vide application dated 25/06/2010 seeking bail, which also opposed by DRI vide affidavit dated 02/07/2010. As Shri Piyush Viramgama in judicial custody for more than 60 days he had withdrawn his bail application and filed an application before the Hon'ble ACMM, Ahmedabad for granting default bail. The Hon'ble ACMM, Ahmedabad vide his order dtd.26/07/2010 granted bail subject to conditions.

30. Shri Vijay A Gadhiya arrested by DRI under the provisions of Section 104 of the Customs Act, 1962, on 13.5.2010 and produced before the Magistrate (in-charge) of ACMM Court, Ahmedabad, on 13.5.2010, who remanded him to judicial custody for 7 days which further extended. Being aggrieved by the action of DRI Shri Vijay Gadhiya filed an affidavit dated 25/05/2010 seeking bail from the ACMM, Ahmedabad, which was opposed by DRI vide affidavit dated 07/06/2010. The Hon'ble ACMM vide order dtd.14/06/2010 rejected his bail application. Being aggrieved Shri Vijay Gadhiya approached the Sessions Court, Ahmedabad, vide application dated 25/06/2010 seeking bail, which was also opposed by DRI vide affidavit dated 02/07/2010. As Shri Vijay Gadhiya was in judicial custody for more than 60 days he had

withdrawn his bail application and filed an application before the Hon'ble ACMM, Ahmedabad for granting default bail. The Hon'ble ACMM, Ahmedabad vide his order dtd.26/07/2010 granted bail subject to conditions.

31. The details of the 04 licences called for from Mangalore Customs was forwarded by them vide letter No.S-12/8/2009-Appg-I (Pt.II) dtd.11/5/2010 . Scrutiny and examination of the same revealed that though the 04 genuine licences corresponding to the 04 fake/forged licences purportedly registered with Mangalore Customs and used by M/s.HIL at Dahej were registered with Mangalore Customs, the Release Advices in respect these 04 genuine licences were issued by them to M/s.Reliance Industries Ltd for use at Magdalla Port and Nhava Sheva, M/s.Ispat Industries Ltd for use at Nhava Sheva and M/s.Mirc Electronics Ltd for use at Chennai Sea Port. No Release Advice was issued by Mangalore Customs to M/s.HIL for use at Dahej port.

32. The details of the 10 licences were forwarded by Cochin Customs vide letter No.S32/31/10/GR.VII/Cus dtd.12/5/2010. Scrutiny and examination of the same revealed that though the 10 genuine licences corresponding to the 10 fake/forged licences purportedly registered with Mangalore Customs and used by M/s.HIL at Dahej were infact registered with Cochin Customs and the Release Advices in respect of these 10 genuine licences were issued by them to M/s.Reliance Industries Ltd, M/s.Ispat Industries Ltd, M/s.Maithan Alloys Ltd, M/s.Universal Chemicals & Industries Ltd and M/s. Johnson Lifts Pvt Ltd for use at Magdalla Port, Nhava Sheva, Kolkata Port, Chennai Sea Port and Mumbai Port. No Release Advice in respect of these 10 licences was issued by Cochin Customs to M/s.HIL for use at Dahej port.

33. The details of the 10 licences were forwarded by Cochin Customs vide letter No.S32/31/10/GR.VII/Cus dtd.12/5/2010. Scrutiny and examination of the same revealed that though the 10 genuine licences corresponding to the 10 fake/forged licences purportedly registered with Mangalore Customs and used by M/s.HIL at Dahej were in fact registered with Cochin Customs and the Release Advices in respect of these 10 genuine licences were issued by them to M/s.Reliance Industries Ltd, M/s.Ispat Industries Ltd, M/s.Maithan Alloys Ltd, M/s.Universal Chemicals & Industries Ltd and M/s. Johnson Lifts Pvt Ltd for use at Magdalla Port, Nhava Sheva, Kolkata Port, Chennai Sea Port and Mumbai Port. No Release Advice in respect of these 10 licences was issued by Cochin Customs to M/s.HIL for use at Dahej port.

34. The office premises of M/s. Hindustan Continental Ltd, Kolkata, M/s.R.R.Impex, Kolkata and M/s.MPG International, Kolkata were searched by the officers of DRI, Kolkata on 13/5/2010 under proper panchnama and relevant records and documents were withdrawn for further investigation.

35. As reported by Customs Cochin the Release Advice in respect of one genuine licence registered with them was issued in favour of M/s.Maithan Alloys Ltd for use at Kolkata Port. Therefore, Customs,

Kolkata Port was asked vide letter dtd.14/5/2010 to forward the said Licence, Release Advice and the letter verifying the genuineness of the Release Advice in original.

36. Similarly Customs, ICD, Whitefield Bangalore, Customs, Cochin and Customs, Mangalore had reported that the Release Advice in respect of three genuine licence registered with them were issued in favour of M/s.Mirc Electronics Ltd and M/s.Johnson Lifts Pvt Ltd for use at Chennai Sea Port. Therefore, Customs, Chennai Sea Port was asked vide letter dtd.17/5/2010 to forward the said Licence, Release Advice and the letter verifying the genuineness of the Release Advice in original.

37. The Release Advice in respect of one genuine licence was issued by Customs Cochin to M/s.Ispat Industries Ltd for use at Mumbai Sea Port. Therefore, Customs, Mumbai asked vide letter dtd.17/5/2010 to forward the said Licence, Release Advice and the letter verifying the genuineness of the Release Advice in original. The Release Advice in respect of one genuine licence was issued by Customs Cochin to M/s.Johnson Lifts Pvt Ltd for use at Chennai Airport/Air Cargo Complex. Therefore, Customs, Chennai Airport/Air Cargo Complex was asked vide letter dtd.17/5/2010 to forward the said Licence, Release Advice and the letter verifying the genuineness of the Release Advice in original. The Release Advices in respect of 05 genuine licences were issued by Customs Cochin and Customs Mangalore to M/s.Universal Chemicals & Industries Ltd, M/s.Ispat Industries Ltd and M/s.Reliance Industries Ltd for use at Nhava Sheva. Therefore, Customs, JNCH, Nhava Sheva asked vide letter dtd.17/5/2010 to forward the said Licence, Release Advice and the letter verifying the genuineness of the Release Advice in original. Further, Customs Cochin was also asked vide letter dtd.17/5/2010 to forward the genuine original licence along with the transfer letter which was registered at Cochin Sea and used by M/s.Apollo Tyres at Cochin Sea.

38. The office premises of M/s. Hindustan Continental Ltd, Mumbai, was searched by the officers of DRI, Mumbai on 18/5/2010 under proper panchnama and various documents and records relevant to the investigations were withdrawn.

39. The evidences gathered in the course of the investigations and the statement of Shri Piyush Viramgama indicated that the licences were being forged by Shri Niyaz Ahmed of M/s.Indiyana Shoes, Kanpur. Therefore, the office and factory premises of M/s.Indiyana Shoes, Kanpur was searched by the officers of DRI, Lucknow on 19/5/2010 under proper panchnama and various documents and records relevant to the investigations were withdrawn. In the course of the search the mobile phone (No.9453044860) of Shri Haseeb Ahmed, Marketing Manager of M/s.Indiyana Shoes was examined. In the Phonebook of the said mobile an entry in the name of 'Vir DEPB' with the numbers 9925034444, 990990344 and Fax number 0281-2228764 was found. On enquiry Shri Haseeb Ahmed explained that these numbers were saved by him on the instructions of Shri Niyaz Ahmed. Further, examination of the Message box of the said mobile phone revealed that there was entry wherein the

bank account of Shri. Niyaz Ahmed bearing no. 01271460004598, HDFC Bank, Civil Lines, Kanpur, Smt. Qumar Jehan bearing No.01271000252560, HDFC Bank, Civil Lines, Kanpur and the bank account of M/s.Indiyana Shoes bearing No.1007, Indian Overseas Bank, Sarvodaya Nagar, Kanpur were found. These details were written by Shri Haseeb Ahmed on a paper which was annexed to the panchnama dtd.19/5/2010.

40. A statement of Shri Kalpesh Darji, Full Time Auditor of M/s. Padmavati Agencies Pvt Ltd, Ahmedabad was recorded on 20/5/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was a Chartered Accountant by profession and his firm's name M/s.V.K.J.D Associates having its office at 808, Span Trade Center, Nr. Paldi Char Rasta, Paldi, Ahmedabad. Their firm the Statutory and Internal Auditors of M/s.Padmavati Agencies Private Limited (PAPL), Shaishya Kids Campus, Opp. Aryavart –IV, Opp. Y.M.C.A Club, Opp. S.G.Highway, Ahmedabad and he mostly work there as a Full time auditor.
- that as a full time auditor of M/s.PAPL, Ahmedabad the work involved audit of the invoices, debit notes, credit notes, bank payments, filing of returns, following up with the parties for payments etc. Since the last couple of years he was also looking after the sales and purchase, coordination with the parties etc.
- that M/s.PAPL was engaged in the trading of various licences viz. DEPB, VKGUY, DFIA etc. M/s.PAPL was also engaged in providing consultancy services in relation of obtaining licences from DGFT, submission of documents for discharge of export obligation etc.
- that M/s.PAPL also had branch offices at Kolkata, Mumbai and Mohali, Punjab. The office of M/s.PAPL in Kolkata was situated at Office No. 764, 7th Floor, 32, Ezra Street, Kolkata and the same looked after by Shri Uttam Rai Chaudhary.
- that in addition there was also another firm in the name of M/s.Vrinda Agencies Private Limited (VAPL), 9, Shakuntal Complex, Opp. C.N.Vidyalaya, Ambawadi, Ahmedabad.
- that this firm was opened by Shri Parag Gathani and Shri Dharmesh Gathani with him and Shri Shrirang Bhatt as the Directors. The said firm was opened for tax purposes. He was only the silent Director in the said firm and Shri Shrirang Bhatt the active Director. In fact all the activities of the firm were carried on under the instructions and orders of Shri Parag Gathani and Shri Dharmesh Gathani.
- that the finances of the said firm M/s.VAPL also provided by and belonged to Shri Parag Gathani and Shri Dharmesh Gathani only. The actual beneficiaries of M/s.VAPL were Shri Parag Gathani and Shri Dharmesh Gathani.
- that neither he nor Shri Shrirang Bhatt were having any share in the profits of the said firm and nor they paid any amount for being the Directors of M/s.VAPL.
- that M/s.VAPL was also engaged in the purchase and sale of Licences. M/s.VAPL also had a branch in Kolkata and the address

of the same was No.Office No.468, 4th Floor, 138, Canning Street, Kolkata. The office at Kolkata was looked after by Shri Subhash Mishra.

- that the Kolkata Office of M/s.PAPL and M/s.VAPL was opened only for the purpose of saving on VAT which was payable in Gujarat @ 4% while VAT was exempted in West Bengal.
- that the employees at the Kolkata Branch office of M/s.PAPL and M/s.VAPL were basically office boys who received mails and forward it to Ahmedabad, deliver mails sent from Ahmedabad to various firms, submitted documents sent from Ahmedabad to the Sales Tax department in Kolkata.
- that though purchases and sales of licences were shown from Kolkata, all the work of purchase, sale, invoicing, banking, payments etc. were undertaken only from the Ahmedabad office. All the bank accounts were at par accounts and they were operated from any place as per the banking facilities.
- that the Invoices issued by M/s Padmavati Agencies Pvt.Ltd,Kolkata and M/s Vrinda Agencies Pvt.Ltd., Kolkata were actually prepared and printed at their office at Ahmedabad only and these were done as per the instructions of Shri.Parag Gathani and Shri.Dharmesh Gathani.
- that M/s.PAPL mainly procured licences from M/s.Silver Sea Food, Porbander, M/s.Aksharchem India Ltd, Kadi, M/s.Salet Sea Foods, Porbander, M/s.Adani Enterpises Ltd, Ahmedabad, M/s.Adani Wilmar Ltd, Ahmedabad M/s.Pradip Enterprises Ltd, Ahmedabad, M/s.N.K.Proteins Ltd, Ahmedabad, M/s.Allanasons Ltd, Mumbai etc.
- that M/s.PAPL sold the licences mainly to M/s. Hindalco Industries Ltd, Dahej, M/s.Apollo Tyres Ltd, Gurgaon, M/s. MIRC Electronics Ltd, Mumbai, M/s.Tata Chemicals Ltd, Okha, M/s.Reliance Industries Ltd, Ahmedabad,M/s Agarwal Coal Corpn., M/s Binani Cement Ltd, M/s Torrent Power etc.
- that they also bought licences from other brokers viz. M/s.Krish Overseas, Rajkot, M/s. Armit Impex, Rajkot, M/s.Kushal Corporation, Ahmedabad, M/s. MPG International, M/s.Vani Exports, M/s.Hindustan Continental Ltd, M/s.Accurate Multi Trade Pvt Ltd, M/s.Merrill Impex, etc.
- that in respect of M/s. MPG International, M/s.Vani Exports, M/s.Hindustan Continental Ltd, M/s.Accurate Multi Trade Pvt Ltd, M/s.Merrill Impex, the actual purchase of licences were from M/s.Sunkkalp Creations Pvt Ltd, Mumbai and they arranged bills from these firms. To be specific, M/s. MPG International, M/s.Vani Exports, M/s.Hindustan Continental Ltd, M/s.Accurate Multi Trade Pvt Ltd, M/s.Merrill Impex were only issuing bills.
- that M/s.Sunkkalp Creations Pvt Ltd of Shri Kalpesh Daftary and they normally talked to Shri Kalpesh Daftary as well as his employees Shri Vishal Vyas and Ms. Khambatta.
- that in some cases of purchase of licence from M/s.Sunkkalp Creations Pvt Ltd they arranged for billing directly from the original licence holders.
- regarding the physical movement of the Licences and Release Advices when they were purchased by their firm from other

brokers, he stated that, in some cases they received the same was at their Ahmedabad office and in some cases where they were urgently required and the volume of the licence/RA was high they were directly sent to Bharuch by Courier and the parcel marked in the name of their representatives-Shri Shailesh Rodge and Shri Hitesh Rajput. Then the particular person was sent to the courier office to collect the documents and deliver them to M/s.Hindalco.

- On being asked as to whether they maintained any register for receipt and delivery of such parcels, he stated that such registers were maintained in their office.
- that in some cases Shri.Kalpesh Daftary of M/s Sunkkalp Creations Pvt.Ltd used to send the original licences, release advice etc to Vadodara through Jet Airways Cargo service. In such cases the parcel was booked in the name of their representative through Jet Cargo Service, the parcel would reach Vadodara Airport within four hours from Mumbai and after receiving the information of receipt from Vadodara Airport they would send the particular person to Vadodara Airport who would pick up them from the Airport and deliver them to M/s. Hindalco, Dahej. For these jobs mainly Shri.Shailesh and Shri Hitesh were the persons who used to pick them up and do the delivery.
- that the sales of licences to M/s.Hindalco Industries Limited, Dahej under contracts with the said firm. The offer to supply the licences and the rate at which the licences were to be supplied were decided by Shri Parag Gathani. The offer was then sent to M/s.Hindalco Industries Ltd and if the rates were found suitable by them, a contract was issued by them. Thereafter, the supply of licences was made under the approved contract with M/s.Hindalco Industries Ltd and this was looked after by him and by Shri Brijesh Dave, Executive. Shri Brijesh Dave worked on his instructions.
- that the licences supplied to M/s.Hindalco Industries Ltd consisted of the following :-
    1) Original Transfer letter issued by the Licence Holder, with signature verification by the concerned bank.
    2) Original Licence forwarding letter issued by the DGFT.
    3) Original Licence along with endorsement of registration at the port of registration as per the licence as well as endorsement of issue of Release Advice.
    4) Two original Release advices one open and one in a sealed cover given by the Customs.

- that when the documents were sent to M/s.Hindalco Industries Ltd from Ahmedabad, the same were sent through their employee who delivered it at Dahej. Where the documents were sent from the port of registration, the same were couriered in the name of their employee for delivery at Bharuch. Their employee went to Bharuch, collected the same personally from the Courier company-namely - Shri Maruti Courier Service, Bharuch and Poonam Courier Service and delivered it at Dahej.

- that mainly Shri Shailesh Rodge and Shri Hitesh Rajput of their firm delivered the documents to M/s.Hindalco Industries Limited, Dahej.
- that the documents were delivered to Shri Jigar Shah and Shri Bikas Pilaniwala of M/s.Hindalco Industries Ltd, Dahej.
- that the letter for confirming the genuineness of the Release Advices were given to them by M/s. Hindalco and where the licences were directly purchased by them they arranged for verification from the port of issue through their agents. The verification letter from the port of issue was sent by fax from the issuing Custom house to the using custom house.
- that where the licences had been purchased by them from other brokers, they sent the letter received from M/s.Hindalco Industries Ltd to the concerned broker, who arranged for verification from the issuing custom house. After the verification letter was received the concerned broker arranged to fax the same from the issuing Custom house to the using custom house. The broker also sent them a copy either by Fax or a scanned copy by email and they forward the same to M/s.Hindalco Industries Ltd, Dahej.
- that the work relating to the verification of the Release Advices were looked after by Shri Brijesh Dave and Ms. Vaibhavi Shah.

41. A statement of Shri Dharmesh Gathani, Director of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad was recorded on 20/5/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was shown the statement of his employee Shri.Kalpesh Darji dated.20.05.2010, he confirmed the facts stated therein.
- that, all sales and purchases undertaken in M/s Vrinda Agencies Pvt.Limited actually controlled by him and his brother Parag Gathani.
- that since the purchases and payments in respect of the DEPB/VKGUY licences procured from M/s Vani Exports, Kolkata; M/s Hindustan Continental, Kolkata/Mumbai; M/s Accurate Multi trade, Mumbai; M/s Priority Traders,Mumbai; R.R Impex,Kolkata, MPG International,Kolkata; Merrill,Kolkata; M/s McAlloys, Kolkata; M/s Shivangi Enterprise,Rajkot etc. were quite long and he needed to check the complete books of accounts and he confirmed to revert back the next day.

42. A statement of Shri Girish Ghelani, Proprietor of M/s. Vani Exports, Kolkata was recorded on 20/5/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was the Proprietor of M/s Vani Exports, 2-Clive Ghat Street, Sagar Estate, Second Floor, Unit No-7,Kolkata-700001.
- that his firm was established in the year-1994-95 and it was a partnership firm in the beginning with his brother Shri.Kamlesh Ghelani as the other partner. Initially they had exported some consignments of leather garments and items in the beginning, however after incurring heavy losses they stopped exports and the partnership was also dissolved and the firm was made proprietorship firm with himself as the proprietor. Thereafter he

started trading of transferable duty credit certificates like DEPB,VKGUY,DEEC,FMS,FPS etc. and carrying on the same as on date.

- that, he was having the following bank accounts :

Sr.No	Name of Bank	Address of Branch	Current Account No.
1	HDFC Bank	Ashram Road,Ahmedabad	00692320002982
2	HDFC Bank	Chowringee Road,Kolkata	04692320000115
3	HDFC Bank	Jardine House,Kolkata	10152320000812
4	ICICI Bank	Ballygunje Branch,Kolkata	003405000763
5	Royal Bank of Scotland	Brabourne Road,Kolkata	752963
6	Standard Chartered Bank	N.S Road,Kolkata	33105145523
7	Bank of India	Kolkata Main Branch	400020110000108
8	Federal Bank Ltd.	R.N Mukherjee Rd.,Kolkata	12000200065858

- that the turnover of his company in the year-2007-08 approximately Rs.65 Crores, in 2008-09 it Rs.275 Crores and in the Year-2009-10 it Rs.300 Crore.
- that he agreed with the facts contained in the Panchnama dated.29.04.2010 drawn at his office premises at Kolkata by the officers of DRI, Kolkata.
- that in his firm he was engaged in the trading of transferable duty credit licences. Such transferable licences were all post export licences and were procured by them from various exporters who were willing to transfer the duty credits earned after the completion of the exports.
- that they do not get the licences transferred in their name. Only in some cases, when they do not have a ready buyer they get them transferred in their name. Then on availability of the buyer they transfer the same in the name of the buyer. In cases where they do not get the licences transferred in their name, they transfer them directly from the exporter (transferor) to the importer (transferee).
- that the major exporters who were transferring the licences to them were – M/s Global Green Ltd., M/s. GTN Textiles Limited, M/s. Gopal Fisheries, M/s. Patspin India Limited, M/s.CLC Corporation, M/s. Maize Products, etc.
- that the major importers who were using the transferred licences in their imports were M/s Hindalco Industries Limited, M/s Apollo Tyres Limited, M/s MIRC Electronics Limited, M/s. Ineos ABS Limited, M/s Cuprum Agrodia Limited etc.
- that his firm was not supplying licences to M/s Hindalco directly, they were all supplied only through M/s Trident India(Ltd), Ahmedabad which was controlled by Shri.Jatin Parekh. That in general, the licences were supplied at 92% to 98% of the licence value.
- regarding the margin and amount of commission earned by his firm in the total trade, he stated that the commission ranges from .05% to 0.20% on an average, since he did not have more capital to invest, he was unable to earn more profit. In this trade, the

brokers/traders who were able to invest more were able to earn more.

- that since the year 2002-03, his firm was supplying licences to M/s Trident India (Ltd) as Sh.Jatin Parekh closely known to him since long time. They were having a mutual understanding that, he would never supply licences directly to Hindalco and even if sometimes he sold directly, his sale Invoice was accompanied with a credit note and certificate mentioning that, the payment may be directly given to Trident.
- that in the year-2008 Shri.Paresh Parekh of M/s Sunkkalp Creations Pvt.Ltd came up with a proposal for supplying licences to M/s Hindalco. He denied the same. However, since Sh.Paresh Parekh was also his long time friend he could not deny the offer and he agreed that he may transfer the licences in the name of some other broker and then that broker may transfer to Hindalco or any other company as the case may be.
- that Shri.Paresh Parekh was a partner of Shri.Jatin Parekh. In the year-2004, they separated and Shri.Jatin settled with M/s Trident India(Ltd) at Ahmedabad while Sh.Paresh Parekh went to Mumbai and started a firm was in the name of M/s Sun-Splendent Overseas, from where he started trading of licences. In the year about 2006 he started a new firm under the name of M/s Sunkkalp Creations Pvt. Limited with one Shri.Kalpesh Daftary as one of the directors. From the same firm he continued trading of licences. He was having office and residence at Juhu, Mumbai.
- that he did not have any direct contact with M/s Padmavati Agencies Pvt.Ltd, Ahmedabad, he knew them through Shri.Paresh Parekh.
- that, during July-August-2008 Sh.Paresh Parekh called him up from Mumbai and asked him to supply some licences to Hindalco. He refused saying that it will be a breach of trust with M/s Trident so he could not supply to Hindalco. However, he agreed to transfer the licences to some other broker and then the said broker may further pass it on to Hindalco. Shri.Paresh suggested to him to sell the licences to M/s Padmavati agencies Pvt.Ltd., Ahmedabad.
- that in M/s Padmavati Agencies Pvt.Ltd, Ahmedabad they were dealing with one Shri.Kalpesh Darji who a close associate of their head Shri.Dharmeshbhai and dealing in the sale and purchase of the licences. At this point he clarified that, although he had issued Invoices for sale of licences to M/s Padmavati Agencies Pvt.Ltd., those licences were never transferred to him or his firm nor were these licences either purchased or sold by him. He was only issuing Invoices to facilitate the sale of the licences to Hindalco by M/s. Sunkkalp Creations Pvt Ltd, Mumbai.
- that Vrinda Agencies Pvt.Ltd. was also a firm controlled by M/s Padmavati Agencies Pvt.Ltd. The invoices were issued by him to M/s.Vrinda Agencies Pvt Ltd, Kolkata showing sale of licences and he was issuing the invoices on the instructions of Shri Kalpesh Daftary of M/s.Sunkkalp Creations Pvt Ltd, Mumbai.
- that for issuing invoices showing sale of licences, he was being supplied with the purchase invoices by Shri Kalpesh Daftary.

- that the purchase invoices supplied to him by Shri Kalpesh Daftary were in the name of M/s.Shivangi Enterprises, Bangalore, M/s.New Planet Trading, Kolkata, M/s.Krish Overseas, Rajkot, M/s.Mac Alloys Ltd, Kolkata, M/s.Hindustan Continental Ltd, Kolkata, M/s.Sabari Quality Foods etc. That these firms were all traders of licences.
- that in addition Shri Kalpesh Daftary also used to supply purchase invoices in the name of M/s.General Commodities, M/s.Aspinwall Coffee, M/s.SLN Coffee, M/s.India Products etc.
- that he did not know any of the above mentioned firms and nor had he met or talked to them at any time.
- regarding the total number of sale invoices issued by him on the instructions of Shri Kalpesh Daftary, he stated that he would have to check his records to state the same.
- that he may be allowed to examine his records which were seized by DRI, Kolkata and give the above details.

43. A further statement of Shri Girish Ghelani, Proprietor of M/s. Vani Exports, Kolkata was recorded on 21/5/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that on his request he had been given a backup of the Tally data contained in the computer withdrawn from his office and he allowed to examine the said Tally data on a laptop computer brought by him.
- that after examining the said data, he produced a list of 78 licences in respect of which purchase invoices in the name of different firms were provided to him by Shri Kalpesh Daftary. These invoices pertained to the period 2008-2009. In respect of the details of the purchase invoices and sales invoices for the period 2009-2010, he agreed to produce the same by 27/5/2010.
- that the invoices were in the name of M/s.Shivangi Enterprises, Bangalore, M/s.Mac Alloy Private Limited, M/s.General Commodities, M/s. Indian Products Ltd, M/s.NKG Jayanti Coffee, M/s. New Planet Trading Co and M/s.Sunkkalp Creation Pvt Ltd.
- that the invoices were received by him at Kolkata by Courier. The invoices were received from M/s. Sunkkalp Creations Pvt Ltd, 7, Sagarika Co-op Society, Opp. Ramada Palm Grove, Juhu Tara Road, Mumbai mainly through M/s.Maruti Courier or M/s.Blue Dart.
- that as per the instructions of Shri Kalpesh Daftary, he had issued sales invoice to M/s. Vrinda Agencies Pvt Ltd, M/s.Priyank Traexim Pvt Ltd, M/s.S.B.International, M/s.Padmavati Agencies Pvt Ltd, M/s.Multi Mine Distributors Pvt Ltd, M/s.Batbro Impex Pvt Ltd.
- that he had also issued an invoice in the name of M/s.J.K.Cement, Ltd in respect of Licence No.0710063262 dtd.25/2/2009. However, later on Shri Kalpesh Daftary asked him to cancel the said invoice and issue a separate invoice to M/s.Padmavati Agencies Private Limited and he acted accordingly.
- that he sent the sales invoices issued by him to Shri Kalpesh Daftary at Mumbai to the same address as mentioned above, through courier – M/s.Flyking or M/s.Blue Dart.

- that the purchase rates and sales rates indicated in these invoices were as per the instructions of Shri Kalpesh Daftary and he had been given commission ranging from 0.10% to 0.25% of the licence value.
- regarding the physical movement of the licences, he stated that in respect of the licences for which invoices were issued by him on the instructions of Shri Kalpesh Daftary, none of the licences were physically received by him at Kolkata or elsewhere.
- that the payments in respect of the purchase invoices given by Shri Kalpesh Daftary made by him from HDFC Bank Account No. 04692320000115. As regards the payments received for the sales invoices issued on the instructions of Shri Kalpesh Daftary, he stated that the same were also deposited in the above said bank account.
- regarding the payment details in respect of the 78 licences mentioned above, he stated that he would submit the same by 27/5/2010.
- that he was shown 17 pages contained in a file from page no. 5 to 21 and he found that the same were blank Bill/Debit Note in the name of his firm.
- that none of these documents were of his firm, they were not genuine but duplicates bearing the exact details and in the same format of the Bill/Debit Note used by his firm. He has made an endorsement to this effect on page no.21 with his dated signature.
- that he was informed that the said file withdrawn under panchnama dated 26.04.2010 from the premises of M/s.Bansi Overseas/Krish Overseas, 311, Somnath Complex, Rajkot.
- regarding his dealings with M/s Bansi Overseas he stated that M/s Bansi Overseas introduced to him by Shri.Paresh Parekh around the year-2005-06.
- that during the period he had made consignment sale agreements with some companies like-Shiv Industries, Hanuman Industries, Dhaval Agri Products etc. These agreements were forwarded to Shri.Paresh Parekh who was having a firm in the name of M/s Sun Splendent Agencies, Mumbai. Subsequently they may have been forwarded to M/s Bansi Overseas, by Shri.Paresh Parekh.

44. Examination of the details of the 78 licences furnished by Shri Girish Ghelani, Proprietor of M/s.Vani Exports, Kolkata in the course of his statement dtd.21/5/2010 revealed that the purchase of these 78 licences as detailed below :-

S.No.	**Name of the firm from whom purchased**	**No. of licences**
1	M/s.Shivangi Enterprise	41
2	M/s.General Commodities Pvt Ltd	02
3	M/s.New Planet Trading Co Pvt Ltd	17
4	M/s.Mac Alloys Pvt Ltd	14
5	M/s.Indian Products Ltd	01
6	M/s.NKG Jayanti Coffee	01

7	M/s.Sunkkalp Creations Pvt Ltd	02
	TOTAL =	78

45. Statements of Shri Bikash Pilaniwala, Senior Manager (Commercial), M/s.Hindalco Industries Ltd, Dahej was recorded on 27/04/2010 and 24/5/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he joined M/s. Hindalco Industries Ltd, Dahej – which also a company belonging to the same group- as a Senior Manager (Commercial) and still in the same post. He reported to Shri Naveen Kumar Mathur, Vice-President (Commercial & Logistics).
- That was he was looking after all the matters of M/s.Hindalco Industries Limited (HIL)-Unit-Birla Copper relating to Central Excise, Customs and Service Tax.
- that as Senior Manager (Commercial) he had about 07 persons working under him. The Central Excise related work was looked after by Shri Ashit Dixit, Shri Hitesh Sukhiya, Shri Jignesh Desai, Shri Pratik Modi and Shri Dijay Kalariya. The Service Tax work was looked after by Shri Ashish Shah, while the Customs related work was looked after by Shri Jigar Shah and Shri Vikas Siddhiwala.
- that the Customs work included the work relating to obtaining of export incentives from the DGFT.
- that Customs work included filing of bills of entry of import of goods at Dahej Port, preparation of documents viz. invoice, packing list etc. for export of goods from JNPT, procurement and utilization of licences from the market for payment of duty at the time of import, applying and procuring licences viz. Advance Licence and EPCG licence from DGFT, submission of documents to the DGFT for discharge of export obligation.
- that the work relating to the DGFT was done by their own staff, while for Customs work relating to imports at Dahej their company had appointed M/s.Kshitij Services Private Limited, Surat (KSPL) as agents and they undertook all the activities viz. preparation of documents for filing with the Customs authorities, getting clearance of the import goods from the Customs authorities, payment of Customs duty, liasioning with the Customs Authorities at Dahej and Surat, finalization of assessments etc.
- that he and Shri Jigar Shah co-ordinated with M/s.KSPL. Generally in M/s.KSPL they dealed with Shri Praveen Dikshit and Shri Lakir Desai at Surat and Shri David Abraham and Shri Fahad at Dahej.
- that they paid the customs duty in respect of the goods imported by them by debiting from the various export incentive licences purchased by them from the market.
- that they purchased various types of post export transferrable licences viz. DEPB, FMS, FPS, VKGUY etc. The licences were available in the market at about 95% to 98% of the original value, the company saved on payment of import duty to the extent of the

discount at which the licences were purchased by them from the market.

- that they got a monthly planner from their head office at Mumbai which gave them an indication of the customs duty projected to be payable during the month. Based on this they floated enquiries with their vendors of licences. On receipt of the rates from the vendors, he and Shri Jigar Shah negotiated with the vendors as and when required to have a uniform purchase. Thereafter the offers from the vendors were submitted to Shri Naveen Mathur and after his approval the same was sent to Shri N.M.Patnaik, President (Finance and Commercial) of their company. On receipt of approval from Shri Patnaik, an order to supply the licences was issued to the vendors. In the order issued to the vendors, the rate at which the licences were to be purchased by them, the period during which the licences were to be supplied by the vendors etc. were mentioned.
- that their major vendors of licences were M/s.Padmavati Agencies Pvt Ltd, Ahmedabad, M/s.Trident (India) Ltd, Ahmedabad, M/s.Kundalia Brothers Pvt Ltd, Kolkata, M/s.Rahul Enterprises, Kolkata, M/s.Rajesh Poddar HUF, Mumbai, M/s.Sumadhu Overseas Pvt Ltd, Mumbai etc.
- that he was submitted a sheet showing the vendor wise licences purchased by them during the period January, 2008 to December, 2009 and January, 2009 to March, 2010. He also produced a file containing the details of the vessel wise licences used by them for payment of Customs duty at the time of import for the period 2008-2009 and 2009-2010.
- that to the best of his knowledge the above mentioned vendors had been supplying licences to their company since the last 5 to 6 years.
- that they got offers from various traders of licences and where the trader offering to supply licences for the first time, the offer evaluated by him and Shri Jigar Shah and thereafter sent to Shri Naveen Mathur for his approval. Shri Mathur in turn seek approval from Shri Patnaik and on approval of Shri Patnaik, the trader put on their list of vendors and as and when required they informed the approved vendors about their requirement of licences.
- that to his knowledge, except for M/s.Pushp Krishi Udyog and M/s.Allianz Impex the other traders were already in the approved vendor list even before he joined HIL.
- that he was shown page No.1 to 60 of a file bearing No.3. The documents shown to him were all orders issued to M/s.Padmavati Agencies Pvt Ltd, Ahmedabad for supply of DEPB/VKGUY licences and the orders had all been signed by Shri Naveen Kumar, Vice-President (Commercial & Logistics) of their firm.
- that once the offer by the vendor approved they started supplying the licences to them. The vendors delivered the licences to them by Courier and the licences were delivered at Dahej either to him or Shri Jigar Shah.
- that the licences consisted of transfer letter from the original licence holder, signatures duly attested by the bank, the licence forwarding letter of the DGFT, the licence, the list of shipping bills

in respect of which the licence was issued, one open Release Advice (RA) issued by the Customs at the port of registration of the licence and one RA in Sealed cover. The invoice/debit note of the trader of the licence was also received along with the licences.

- that sometimes the trader of the licence send them only their invoice for commission along with instructions for payment of the licence value to either the original licence holder or to some other trader.
- that on receipt of the licences from the trader, they forwarded the same to M/s.KSPL. They handed over the licences to Shri David or Shri Fahad of M/s.KSPL at Dahej.
- that before using the licences, the genuineness of the RAs were required to be confirmed by the issuing Customs. They prepared the letters to the Customs at the port of registration for confirmation of the genuineness of the RAs. The letters after signature by the Superintendent of Customs, Dahej port were then faxed by the Customs to the Customs at the port of registration of the licences.
- that sometimes when the fax machine of the Customs at Dahej was out of order, they faxed the letter to the Customs at the port of registration using their fax machine. That to expedite the matter, many times a copy of the letter was also given by them to the trader from whom the licences were purchased for getting the genuineness verification.
- that they faxed the letter to the trader of the licence. The trader of the licence arranged for getting the genuineness verified from the port of registration of the licence and on receipt of the genuineness confirmation faxed by them a copy of the letter from the Customs at the port registration of the licence and sometimes they also send them a scanned copy of the verification letter by email to Shri Jigar Shah or to him. On receipt of the letter confirming the genuineness of the RA, where the same was not available with M/s.KSPL, a copy was forwarded to M/s.KSPL mostly by email or fax.
- that he was shown a worksheet containing details of 85 licences and their corresponding Release Advices. After going through the same and comparing the same with the details brought by him while recording his statement, he confirmed that these 85 licences had been used by their company M/s. Hindalco Industries Ltd at Dahej Port for paying Customs duty amounting to approximately Rs.54 crores at the time of import of goods.
- that all these 85 licences had been purchased by them through M/s.Padmavati Agencies Private Limited, Ahmedabad.
- that in addition to the Customs authorities, the confirmation of genuineness of the Release Advices in respect of these 85 licences were also arranged by M/s.Padmavati Agencies Private Limited, Ahmedabad.
- that he had carefully gone through the worksheet shown to him and he found that the licences used by them were shown to be registered at Mangalore Customs and Release Advice issued from there in favour of M/s Hindalco Industries Limited(IEC-0388147237) for use at Dahej Port. The said worksheet contains

details of the actual port of registration of the 85 licences and the actual port to whom the Release Advices had been issued.

- that he was shown a letter F.No.S-12/8/2009 Apprg.I Pt.II dtd.20/4/2010 of the Additional Commissioner, New Custom House, Mangalore and enclosed alongwith the list of the Release Advices actually issued by New Custom House, Mangalore for use at Dahej Port. He had compared the worksheet shown to him with the list of Release Advices actually issued for Dahej Port by New Custom House, Mangalore and stated that the licences for which Release Advices had been issued to them for use at Dahej Port and he noticed that no Release Advice had been issued by New Custom House, Mangalore for use at Dahej in respect of the 85 licences mentioned in the worksheet shown to him while recording his statement.
- that he was shown an original copy of VKGUY licence No.5310007372 dtd.19.01.2009 issued by DGFT, Trivandrum to M/s.Alphonsa Cashew Co, Kollam, Kerala for duty credit of Rs.56,56,451/- along with letter of the licence holder transferring the said licence in favour of M/s.Hindalco Industries Ltd, Dahej. He was also shown Release Advice No.1968 dtd.25/3/2009 issued by Mangalore Custom House in their favour for use at Dahej Port.
- that the said licence and Release Advice had been used by them for paying Customs duty in respect of the goods imported per vessel M.V.Arosa vide bill of entry no.F-10/09-10 dtd.08.04.2009.
- that he was shown another original copy of VKGUY licence No.5310007372 dtd.19.01.2009 issued by DGFT, Trivandrum to M/s.Alphonsa Cashew Co, Kollam, Kerala for duty credit of Rs.56,56,451/- along with letter of the licence holder-M/s Alphonsa Cashew Co.,Kollam,Kerala transferring the said licence in favour of M/s.Reliance Industries Ltd, Hazira Petrochemical Division, Hazira,Surat. He was also shown Release Advice No. 11986 dtd.03.02.2009 issued by Cochin Customs House in favour of M/s.Reliance Industries Ltd, for use at Magdalla Port.
- that he had compared both set of the documents and noticed that in the licence used by them, the Port of registration mentioned as Mangalore Sea while in the same licence used by M/s.Reliance Industries Ltd at Magdalla Port the port of registration was mentioned as Cochin Sea. He had compared both the licences and also checked the list of Release Advices issued by New Custom House, Mangalore and upon co-relation he noticed that, no release advice had been issued in respect of VKGUY licence No.5310007372 dtd.19.01.2009 in favour of M/s Hindalco Industries Limited for use at Dahej Port. The said licence used by them at Dahej Port was a forged licence.
- In the light of the above facts, he was asked whether the 85 licences used by them at Dahej Port for payment of Customs duty were genuine or forged, he stated that these 85 licences used by them at Dahej Port were not genuine but forged licences.
- that in the light of the 85 licences being forged, he asked they were entitled for exemption under Noti.No.41/2005-CUS dtd.9/5/2005, to which he stated that they were not entitled to the

benefit of the said notifications and they were required to pay the Customs duty saved in case of these 85 licences in cash.

- that he would take up the matter with his Seniors in the company regarding payment of the duty not paid on account of these 85 forged licences.

46. A statement of Shri Naveen Kumar Mathur, Vice-President (Commercial & Logistics), M/s.Hindalco Industries Ltd, Dahej was recorded on 25/5/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he joined M/s.Hindalco Industries Limited-Unit-Birla Copper, Dahej– also Aditya Birla Group Company-as a Assistant Vice President(Finance and Accounts).Subsequently in the year-2005, he was transferred to the commercial section and was designated as Vice–President(commercial and logistics).About 45 staff were working under him.
- that he reported to Shri N M Patnaik, President (Finance and Commercial) and his area of work in the company included supervision of Import of bulk materials like rock phosphate, ammonia, procurement of coal, marketing of various by-products, indirect taxation matters and other logistics matters.
- that he was looking after payment of customs and central excise duties, import clearances and DGFT related activities like procurement of licences etc. He was also handling the liasioning work with government agencies like-Indian Railways, GIDC and DGFT.
- In the indirect taxation section he was assisted by his senior manager-Shri.Bikash Kumar Pilaniwala and his team of about 7 staff members.
- that he over looking all the matters of M/s.Hindalco Industries Limited (HIL)-Unit-Birla Copper relating to Central Excise, Customs and Service Tax.
- that their company engaged in the import of raw materials mostly Copper Concentrates from various countries like Chile,Brazil and other South American countries. The work of interaction with the overseas suppliers was done by their Mumbai office.
- that the Customs work included, work relating to obtaining of export incentives from the DGFT, filing of bills of entry of import of goods at Dahej Port, preparation of documents viz. invoice, packing list etc. for export of goods from JNPT, procurement and utilization of licences from the market for payment of duty at the time of import, applying and procuring licences viz. Advance Licence and EPCG licence from DGFT, submission of documents to the DGFT for discharge of export obligation.
- that the work relating to the DGFT was done by their own staff, while for Customs work relating to imports at Dahej their company had appointed M/s.Kshitij Services Private Limited, Surat (KSPL) as agents.
- that M/s KSPL were doing the job on behalf of their company since the year-2000-2001,i.e prior to his joining this section.

- that they paid the customs duty in respect of the goods imported by them by debiting from the various export incentive licences purchased by them from the market. They purchased various types of post export transferrable licences viz. DEPB, FMS, FPS, VKGUY etc. These licences were available in the market at about 95% to 98% of the original value, the company saved on payment of import duty to the extent of the discount at which the licences were purchased by them from the market.
- that their major vendors of licences were M/s.Padmavati Agencies Pvt Ltd, Ahmedabad, M/s.Trident (India) Ltd, Ahmedabad, M/s.Kundalia Brothers Pvt Ltd, Kolkata, M/s.Rahul Enterprises, Kolkata, M/s.Rajesh Poddar HUF, Mumbai, M/s.Sumadhu Overseas Pvt Ltd, Mumbai etc.
- that the practice of procuring transferable licences from brokers/traders in vogue in the company since the year 2000-2001. Since these traders like M/s Padmavati Agencies Pvt. Limited, Ahmedabad; M/s Trident (India) Ltd., Ahmedabad; M/s Kundalia Brothers, Kolkata etc were supplying licences to them since long time and their services had been satisfactory, their management decided to continue with them and to avoid new and unknown brokers/traders, they had not floated tenders in the open market.
- that after receiving the monthly import schedule from their head office at Mumbai, they were able to project an estimation of the customs duty required to be payable during the month. Based on this enquiries were conducted with their vendors of licences. On receipt of the rates from the vendors, the offers were submitted before him and after his approval the same was sent to Shri N.M.Patnaik, President (Finance and Commercial) of their company. On receipt of approval from Shri Patnaik, an order for supply of the licences was issued to the vendors. In the order issued to the vendors, the rate at which the licences were to be purchased by them, the period during which the licences were to be supplied by the vendors etc. are mentioned. The orders/contracts were signed by him on behalf of their company.
- that he was shown a file containing pages 01 to 60, and after going through the contents he confirm that the pages in the file were the copies of contracts between M/s Hindalco Industries Limited:Unit-Birla Copper and M/s Padmavati Agencies Pvt.Ltd.,Ahmedabad for sale of transferable DEPB/VKGUY licences issued under Notification No.89/2005 of Customs and Notification No.41/2005 of the Foreign Trade Policy 2004-09.
- that in the course of business with M/s Padmavati Agencies Pvt.Limited, Ahmedabad he interacting with Shri.Parag Gathani and therefore the name of Mr.Parag Gathani appeared on each of the contracts.
- that he was shown a print out of e-mail dated.29th July,2009 appearing on page no.46 of the said file. He understood that, the mail was sent from their employee Shri.Jigar Shah to Shri.Parag Gathani of M/s Padmavati Agencies Pvt.Ltd and the contents indicated that Mr.Jigar had requested for non-vat billing rates for DEPB/VKGUY licences worth Rs.5 Crores. On being asked to

clarify as to why were they insisting for non-vat bills from their licence vendors, he stated that, he not aware of the matter as he not looking after the day to day work of the section. He would however, clarify the same within two days.

- that transferable DEPB licences were being used for payment of Customs duty since the year 2000-2001.
- that he shown the list of vendor wise licences purchased by them during the period January, 2008 to December, 2009 and January, 2009 to March, 2010 and a file containing the details of the vessel wise licences used by their company for payment of Customs duty at the time of import for the period 2008-2009 and 2009-2010.
- that he possessed the basic knowledge of different transferable licences issued by the DGFT like DEPB, VKGUY, FMS, FPS, Advance Licences, DFIA etc., and he aware that these licences were originally issued by the DGFT to some exporters for exporting various items. After exportation the exporter submitted the details of shipping bills and the value of exports with DGFT. On the basis of the export performance the exporter was awarded duty credit on each licence as an export incentive. After obtaining this duty credit, the licences were transferred to some other importer. At this point the brokers/traders of licences got hold of the transferred licences/scrips and they were sold to the importers like M/s Hindalco Industries Limited : Unit-Birla Copper and other importers.
- that he was shown the statement dtd.24/5/2010 of Shri Bikas Pilaniwala, Senior Manager (Commercial) and having read the said statement he agreed with the facts contained.
- that he was shown a worksheet containing details of 85 licences and their corresponding Release Advices. After going through the same and comparing the same with the details produced by Shri Bikas Pilaniwala on 24/5/2010, he confirmed that these 85 licences had been used by their company M/s. Hindalco Industries Ltd at Dahej Port for paying Customs duty amounting to approximately Rs.54 crores at the time of import of goods.
- that he had carefully gone through the worksheet shown to him and he noticed that the licences used by them were shown to be registered at Mangalore Customs and Release Advice issued from there in favour of M/s Hindalco Industries Limited(IEC-0388147237) for use at Dahej Port. The said worksheet contained details of the actual port of registration of the 85 licences and the actual port to whom the Release Advices had been issued.
- that he was shown a letter F.No.S-12/8/2009 Apprg.I Pt.II dtd.20/4/2010 of the Additional Commissioner, New Custom House, Mangalore and enclosed alongwith the list of the Release Advices actually issued by New Custom House, Mangalore for use at Dahej Port. He had compared the worksheet shown to him with the list of Release Advices actually issued for Dahej Port by New Custom House, Mangalore and asked to state the licences for which Release Advices had been issued to them for use at Dahej Port, he stated that he found that no Release Advice had been issued by New Custom House, Mangalore for use at Dahej in

respect of the 85 licences mentioned in the worksheet shown to him today.

- that he was also shown letter F.No.S32/31/10/GR.VII/CUS dtd.29.04.2010 and 05.05.2010 of the Additional Commissioner of Customs, Cochin, letter dtd. 12.05.2010 of the Joint Commissioner of Customs, Cochin, Letter F.No.S-12/8/2009-Appg.I (Pt.II) dtd.11.5.2010 of the Deputy Commissioner of Customs, Mangalore, Letter F.No.VIII/48/305/09-DEEC dtd.06.05.2010 of the Additional Commissioner of Customs, Tuticorin, Letter F.No.VIII/52/02/2009 ICD Conf dtd.03/5/2010 of the Additional Commissioner of Customs, ICD, Bangalore.
- that on going through the above letters, he noticed that the Custom Houses had given details in respect of the licences, out of 85 licences, registered with them. Having gone through the above letters he found that the Custom Houses had not issued Release Advice in their name for use at Dahej Port for none of the 85 licences used by them.
- that he was shown an original copy of VKGUY licence No.5310007372 dtd.19.01.2009 issued by DGFT, Trivandrum to M/s.Alphonsa Cashew Co, Kollam, Kerala for duty credit of Rs.56,56,451/- along with letter of the licence holder transferring the said licence in favour of M/s.Hindalco Industries Ltd, Dahej. He was also being shown Release Advice No.1968 dtd.25/3/2009 issued by Mangalore Custom House in their favour for use at Dahej Port.
- that the said licence and Release Advice has been used by them for paying Customs duty in respect of the goods imported per vessel M.V.Arosa vide bill of entry no.F-10/09-10 dtd.08.04.2009.
- that he was shown another original copy of VKGUY licence No.5310007372 dtd.19.01.2009 issued by DGFT, Trivandrum to M/s.Alphonsa Cashew Co, Kollam, Kerala for duty credit of Rs.56,56,451/- along with letter of the licence holder-M/s Alphonsa Cashew Co.,Kollam, Kerala transferring the said licence in favour of M/s.Reliance Industries Ltd, Hazira Petrochemical Division, Hazira,Surat. He was also shown Release Advice No. 11986 dtd.03.02.2009 issued by Cochin Customs House in favour of M/s.Reliance Industries Ltd, for use at Magdalla Port.
- that he had compared both set of the documents and noticed that in the licence used by them, the Port of registration mentioned as Mangalore Sea while in the same licence used by M/s.Reliance Industries Ltd at Magdalla Port the port of registration mentioned as Cochin Sea. He has compared both the licences and also checked the list of Release Advices issued by New Custom House, Mangalore and upon co-relation he noticed that, no release advice had been issued in respect of VKGUY licence No.5310007372 dtd.19.01.2009 in favour of M/s Hindalco Industries Limited for use at Dahej Port. That the said licence used by them at Dahej Port was a fake licence.
- that in the light of the above facts, he asked whether the 85 licences used by them at Dahej Port for payment of Customs duty were genuine or forged and he stated that these 85 licences used by them at Dahej Port were not genuine but forged licences. They

were not entitled to the benefit of under Noti.No.41/2005-CUS dtd.9/5/2005 and they were required to pay the Customs duty saved in case of these 85 licences in cash.

- that he would discuss the issue with their management regarding payment of the duty not paid on account of these 85 forged licences.

47. A statement of Shri Surendra Kumar Kulhari, Director of M/s.Hindustan Continental Ltd, Mumbai was recorded on 26/5/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :-

- that he knows a person by the name Shri.Sashin Koradia (Mob.no.09892265500) at Mumbai who was a Sales Tax consultant by profession and he used to meet him since last 4 years.
- that he wanted to buy a good company as he had some spare money with him. He used to tell him (Shri Sashin Koradia) to arrange for some good company for him to buy, as he wanted to start business of real estate in his own company.
- that during January-2008 he (Shri Sashin Koradia) informed him that a company M/s Hindustan Continental Limited was for sale, the company was established in the year-1993 by Anil Patodia, Sunil Patodia with registered office at Jabalpur,Chhattisgarh and offices at Mumbai and Jaipur.It was also listed in the Bombay Stock Exchange. Subsequently, the SEBI suspended the company and the owners wanted to dispose the company. They were having bank account with HDFC Bank, Chandivali Farm Road Branch,Powai, Mumbai. The offer seemed to be lucrative and he purchased the company for Rs.Fifteen Lakhs (Rs.15,00,000.00).
- that the payment was made to one Shri.Anil Kumar of Indore in cash. Upon purchasing and taking over the company four directors were formed – he, Sunil Kulhari, Sh.Latif Khan,Sh.Mukesh Tulshiyan and Sh.Anil Kumar.
- that none of the other directors invested/contributed in buying the company. He had paid the total amount of Rs.15,00,000.00 from his savings.Other three directors are inoperative directors and were included as per the requirement of the companies act, he is the sole operator of the company.The office address also changed from F-71,Solaris,Opp-L&T Gate No.6,Saki Vihar Road,Andheri(East),Mumbai to the present address A-01,Ground Floor,Kalyan Bhavan, Plot No.406,Andheri(East),Mumbai-400069.
- that, the present office premises was actually an office space rented within the office of M/s S M Couriers. S.M Couriers was owned by his cousin Shri.Shravan Kumar Chaudhary and he had given him the space for free of cost. In return he helped him in public relation work as he was not good in the same. The Kolkata address was also a space in the office of M/s S M Couriers at Camac Street, Kolkata.
- The bank account with HDFC Bank was amended, accordingly by including his name as the single operator. The account number was 14718630000034-Current account.
- that he was aware about the location of Shri Sashin Koradia's office which situated at Chira Bazaar, Kalbadevi, Mumbai. He did

not know the exact address. However, he could identify the office personally as he had been there.

- that he was not aware about his residence address or telephone number, he had only his (Shri Sashin Koradia) mobile number 09892265500. He had called him yesterday also and informed him that he was going to DRI, Ahmedabad.
- that during Sep-2008 Shri.Shashin Koradia informed him regarding an offer of raising some bills from his company and earning some commission against the same. He (Shri Sashin Koradia) offered a commission of 0.25% on the total turnover and informed that out of the 0.25% commission received by him, he had to give 0.05% to Sh.Sashinbhai and remaining 0.20% will remain with him.
- that he (Shri Sashin Koradia) informed him that in fact the person who was willing to use the name of his company (M/s Hindustan Continental Limited) was involved in the purchase and sale of custom incentive licences and having a huge turnover and since he did not want to show the entire turnover in his own company, he wanted to use the name and bank account of his company.
- that Shri.Shashinbhai informed him that the name of the company is M/s Sunkkalp Creation Pvt.Ltd and the persons were Sh.Pareshbhai Parekh and Sh.Kalpesshhai Daftary. He further informed that they would not be misusing the company for some illegal work and it was only for the sake of turnover adjustment, he agreed to the proposal.
- that after this he handed over blank letter heads of his company and signed blank cheques of his bank account (current account No.14718630000034 of HDFC Bank,Chandivali Farm Road Branch,Chandivali,Mumbai). The entire cheque books were signed and handed over to them; that the blank letter heads and signed cheque books were kept available with the office of M/s Hindustan Continental Limited with his staff Mr. Vishal Wadkar (Mob.No.09324335179;09320365500). Vishal was actually an employee of Sh.Shashin Koradia and visiting his office only part time for the billing and bank related work of Hindustan Continental Limited.
- that Vishal used to sign on the bills as authorized signatory and only the bank cheques were signed by him and handed over to Vishal.
- On being asked as to from where did Vishal receive the instructions for preparing the bills and making the payments, he stated that most of the time the instructions were received through e-mail or on mobile phone, but sometimes, one person by the name 'Chhotu' used to visit his office and meet Vishal for passing on instructions and handing over and taking over of bills and other documents.
- that the laptop computer used by Vishal seized by the officers of DRI,MZU at the time of the search of the premises of M/s Hindustan Continental Limited. Some files containing bills and other documents were also seized by DRI officers from his office.
- that only one bank account of Hindustan Continental Limited was used in the trading of custom incentive licences, i.e. current

account No.14718630000034 with HDFC Bank,Chandivali Farm Road Branch,Chandivali,Mumbai.

- that in the entire period by lending the name of his company and bank account to Shri.Pareshbhai Parekh and Shri.Kalpesh Daftary, till date he might have received approximately Rs.50 lakhs, out of which he had given approximately Rs.10 Lakhs to Shri.Sashin Koradia.
- that the commission was received in cash which handed over to Vishal by Chhotu and Vishal gave it to him. It was always in piecemeal payment.
- that M/s Priority Traders Private Limited, E-103, Trivedi Complex, Sheetal Nagar,Mira Road(East),Mumbai-401107 also purchased by him in the year-2008 or early 2009.This company was also arranged by Shri Shashin Koradia as it was seen that transactions in his company-M/s Hindustan Continental Limited becoming very high, he (Shri Sashin Koradia) suggested that the transactions should be distributed in some other company also, and he arranged this company for him.
- that he appointed two of his persons as directors of the company and the bank accounts were also operated by them. The directors appointed by him were Shri.Shyam Sharma and Shri.Neeraj Kumar. The bank account of the company current account no.14712320000537 with HDFC Bank Ltd., Chandivali Farm Road Branch, Chandivali, Mumbai-400072.
- that around the month of Feb-2009 (approx.) he had started the company and similarly handed over the blank letter heads and signed blank cheque books to Shri.Vishal Wadkar for utilizing them in the purchase and sale of licences as per the instructions of Shri.Paresh Parekh and Shri Kalpesh Daftary.
- that the commission amount fixed for M/s Priority Traders Pvt.Ltd. was same i.e 0.25% total, out of which 0.05% to be handed over to Shri.Shashin Koradia.
- that the actual directors of M/s Priority Traders Pvt.Ltd. were not given any amount as they were not aware of the facts.
- that the premises of M/s Priority Traders Pvt.Ltd. at Mira Road,Mumbai was vacated about 8 months back and now the current address Shop.No.8,Crystal Court, Near-Powai Police Station,Chandivali,Mumbai-400072.The said premises was a rented premises.
- that he was shown some Invoices issued by M/s Hindustan Continental Limited, as detailed below :

Invoice No	Invoice Date	Issued to:	Amount (Rs.)
HCL/101/2008-09	06.10.2008	M/s Padmavati Agencies Pvt.Ltd., Kolkata	8564913.00
HCL/102/2008-09	09.10.2008	M/s Padmavati Agencies Pvt.Ltd., Kolkata	12257528.00
HCL/103/2008-09	14.10.2008	M/s Padmavati Agencies Pvt.Ltd., Kolkata	1534306.00
HCL/104/2008-09	14.11.2008	M/s Padmavati Agencies Pvt.Ltd., Kolkata	489508.00
HCL/138A/2008-09	28.11.2008	M/s Padmavati Agencies Pvt.Ltd., Kolkata	3749507.00
HCL/175A/2008-	15.12.2008	M/s Padmavati Agencies	7499851.00

09		Pvt.Ltd., Kolkata	
HCL/214/2008-09	12.01.2009	M/s Padmavati Agencies Pvt.Ltd., Kolkata	14743254.00
HCL/215/2008-09	16.01.2009	M/s Padmavati Agencies Pvt.Ltd., Kolkata	25202408.00
HCL/216/2008-09	16.01.2009	M/s Padmavati Agencies Pvt.Ltd., Kolkata	32714588.00

- that looking to the type of the stationary he recognized that, these were the bills raised by their company, however he could not recognize the signature appearing as ' B.V.Vora' on the bills however he thought they were signed by Sh.Vishal Wadkar.
- that on going through the details of the Invoices, he understood that the invoices pertained to sale of licences to M/s Padmavati Agencies Pvt.Ltd., Kolkata. He had never heard the name of M/s Padmavati Agencies Pvt.Ltd., and he did not know the company.
- that as already stated the invoices were issued by Sh.Vishal as per the instructions of Sh.Kalpesh Daftary and Sh.Paresh Parekh. He was not aware as to what written on the Invoices.
- that he also confirmed that although the Invoices bear the remarks "Subject to Kolkata Jurisdiction" they were actually issued from their office at Mumbai and sometimes even Sh.Kalpesh Daftary and Shri Paresh Parekh had printed them on the blank stationary provided by them. Their Kolkata office was not equipped to issue such invoices as there was no staff in that office.
- that he was shown some more invoices issued in the name of M/s.Hindustan Continental Limited, the details of which were as under :-

Invoice No	Invoice Date	Issued to:	Amount (Rs.)
HCL/MUM/GE/SEP/023/200-10	30.09.2009	M/s Sunkkalp Creations Pvt.Ltd,Mumbai	23654915.00
HCL/MUM/GE/SEP/022/200-10	30.09.2009	M/s Sunkkalp Creations Pvt.Ltd,Mumbai	16488015.00
HCL/MUM/GE/SEP/021/200-10	30.09.2009	M/s Sunkkalp Creations Pvt.Ltd,Mumbai	15098134.00
HCL/MUM/GE/SEP/020/200-10	30.09.2009	M/s Sunkkalp Creations Pvt.Ltd,Mumbai	15177137.00
HCL/MUM/GE/SEP/019/200-10	30.09.2009	M/s Sunkkalp Creations Pvt.Ltd,Mumbai	15774738.00

- that these invoices were appearing in file bearing No-16 at page nos-119 to 123 and withdrawn under Panchnama dated.30.04.2010 from the premises of M/s Sunkkalp Creations Pvt.Ltd., Mumbai at 102 Sagarika Apartments, Opp.-Ramada Palm Grove,Juhu Tara Road, Mumbai.
- that looking to the type of the stationary he recognized that, these were the bills raised by their company, however he could not recognize the signature on the bills, however he thought the same were signed by Sh.Vishal Wadkar.

- that on going through the details of the Invoices, he understood that the invoices pertain to sale of licences to M/s Sunnkalp Creations Private Limited, Mumbai.
- that he was aware that the company owned by Shri.Paresh Parekh and Shri Kalpesh Daftary. He had already stated that the invoices were issued by Sh.Vishal as per the instructions of Sh.Kalpesh Daftary and Sh.Paresh Parekh. He was not aware as to what was written on the Invoices.
- that he was not aware about the DEPB/VKGUY licences and their significance in detail. He was informed by Sh.Shashin Koradia that these were export incentive licences and were freely saleable in the market and M/s Sunkkalp Creations Pvt.Ltd., Mumbai was one of the traders who were engaged in the purchase and sale of licences.
- that he was also informed that M/s Sunkkalp Creations Pvt.Ltd., Mumbai was having contract with many exporters of cashew and coffee from South India and they had made a contract with them for sale and purchase and re-sale of their licences.These licences were used for payment of custom duty.
- that he had never met Shri.Paresh Parekh or Shri,Kalpesh Daftary. However, after the search at his premises by the officers of DRI, Mumbai on 18.05.2010, he came to know that some forged licences had been sold/purchased in the name of their company and the matter was being investigated by DRI. Thereafter, he had contacted Shri.Shashin Koradia and they both went to meet Shri Paresh/Kalpesh at their residence located at 301,Third Floor,Shubhangan,14-Stik Society, JVPD Schem-2,Vile Parle(West),Mumbai, as he wanted to clarify the matter from them. However, neither Shri.Paresh nor Sh.Kalpesh was available in the house and the servant informed that he was not aware about them. He was also informed that Shri.Paresh's parents are staying there but not available at that moment.

48. In the course of the search at the office premises of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad on 21/4/2010 the laptop computer used by Shri Dharmesh Gathani, Director was also withdrawn. To examine and retrieve the data contained therein the said laptop was opened under Panchnama dtd.26/5/2010 and 27/5/2010 and printouts of the documents found relevant to the investigation was taken.

49. M/s.Padmavati Agencies Pvt Ltd, Ahmedabad vide their letter dtd.26/5/2010 submitted the details of payments made in respect of the 85 forged licences purchased and sold by them to M/s.Hindalco Industries Ltd, Dahej. From the details of the purchase and payments made it was seen that forged licences were purchased from the firms as under :-

Sr. No.	**Name of the Firm**	**No. of licences purchased**
1	M/s.Vani Exports, Kolkata	71
2	M/s.Merill Impex Pvt Ltd, Kolkata	05
3	M/s. Emend Technology, Kolkata	01
4	M/s.Ecom Gill Coffee Trading Pvt Ltd, Bangalore	02

5	M/s.General Commodities Pvt Ltd, Bangalore	04
6	M/s.Ned Commodities India Pvt Ltd, Bangalore	02
	TOTAL =	85

50. Shri Naveen Kumar Mathur, Vice-President (Commercial & Logistics) and Shri Bikash Pilaniwala, Senior Manager (Commercial) of M/s.Hindalco Industries Ltd, Dahej vide their letters dtd.27/5/2010 (sought amendment to their statements was recorded on 25/5/2010 and 4/5/2010, respectively. In similarly worded letters they sought to retract their statements and claimed that the licences purchased by M/s.HIL cannot be said to be fake/bogus. The contents of the letters of Shri Naveen Kumar Mathur, Vice-President (Commercial & Logistics) and Shri Bikash Pilaniwala, Senior Manager (Commercial) of M/s.Hindalco Industries Ltd, Dahej were not factually correct and were baseless in asmuch as their statements were recorded after showing them various documentary evidences and therefore the same were rejected as the same was mere afterthought and far from the facts. The rebuttal was issued vide letters dtd.28/5/2010. Shri Bikash Pilaniwala and Shri Naveen Kumar Mathur submitted a further letter dtd.03/06/2010 regarding their statements recorded by DRI.

51. A statement of Shri Vishal Vyas, Employee of M/s.Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 28/5/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that one of his friend Ms.Zinita Patel who worked at M/s.Sun Soul Luxy Fashion, which belonged to M/s.Sunkkalp Creation Pvt Ltd informed him of an opening at M/s.Sunkkalp Creation Pvt Ltd. On 24/11/2008, he was interviewed by Shri Kalpesh Daftary and Mrs. Sangeeta Parekh, Directors of the said firm and they offered him a job in a clerical capacity. He agreed to their offer and joined M/s. Sunkkalp Creation Pvt Ltd from 1/12/2008. He was paid salary of Rs.10000/- per month.
- that apart from the above mentioned Directors, Shri Paresh Parekh, the husband of Mrs Sangeeta Parekh was also the Director of the said firm.
- that SCPL was mainly engaged in the trading of various export incentive licences viz. DEPB, VKGUY, DFIA etc. They were also having a dealership of E-Bikes of M/s. Paradise Auto Electric Works, a showroom of luxury items, clothings etc. in the name of M/s.Sun Soul Luxy Fashion as well as another shop in the name of M/s.Skinjam which engaged in lamination of mobile phones, laptops etc.
- that he was assigned to the licence trading business of SCPL and he looked after the receipt and scrutiny of the licences purchased by them, co-ordinating with the buyers and sellers of the licences, preparing debit notes/invoices, follow-up with the buyers and sellers regarding payments, assisting the other staff members in preparation of cheques, delivery of the licences to the buyers, follow-up with the concerned parties for Telegraphic Release Advice (TRA), getting genuineness confirmation from the customs etc.

- that SCPL purchases licences from exporters directly as well as other brokers in the market. The licences were received by them from the sellers either by messenger or by courier. On receipt of the licences the same were checked by him or Shri Kalpesh Daftary.
- that the documents received by them consists of 1) Transfer Letter of the original Licence holder, 2) licence forwarding letter issued by the DGFT, 3) Original Licence bearing endorsement of the Customs at the port of registration, 4) list of shipping bills pertaining to the licence and one exporter copy of TRA and one TRA in sealed cover, issued by the Customs at the port of registration and the bill/invoice of the seller of the licence.
- that thereafter, on the instructions of Shri Kalpesh Daftary, the above documents were forwarded to their buyer along with their invoice/debit note.
- that the licence documents are sent to the buyers by Courier. For delivery within Mumbai they use the services of M/s.Vichare Courier Pvt Ltd and for outstation delivery they send the documents through M/s.Maruti Courier Services, Nr Vile Parle Station, Mumbai. The documents were delivered to the Courier company either by Shri Sarjerao P Mojar (alias Chottu) or by Shri Ganesh S. Dike.
- that after the licences were forwarded to the buyers, they contacted them at the time of requirement of genuineness confirmation of the TRA.
- that the buyers forward to them a copy of the Customs letter requesting for confirmation of genuineness. The letter was received by them by Fax or was a scanned copy received by email. They then forward the same to their agents at the port of registration and the agent on receipt forwards a copy of the Customs letter confirming the genuineness of the TRA. This letter was sent to them by their agents by fax or a scanned copy by email.
- that the fax number of SCPL is 022-26121841. The scanned copy was received at email ID info@sunkkalp.com or lic@sunkkalp.com and the same also forwarded from these email IDs.
- that agents who arranged the genuineness confirmation from the Customs at the port of registration are 1) M/s.Smarz Services at Chennai, Tuticorin and Vizag, 2) M/s.Ganesh Shipping at Mangalore, 3) M/s.Jai Ambe Logistics at JNPT, 4) Shri Jaysukh Vaghela at Pipavav, 5) Shri Prashant Chowta at Bangalore.
- that their suppliers of licences were M/s.Sabari Quality Foods, M/s.Smarz Services, M/s. Padmavati Agencies Pvt Ltd, M/s.Vani Exports, M/s.Krish Overseas. They also bought directly from Exporters viz. M/s.General Commodities, M/s. Allanasons, M/s. NKG Jayanti Coffee, M/s.Al Kabeer Exports, M/s.Aspinwall Coffee, M/s.Ecom Gill Coffee Pvt Ltd, etc.
- that their major buyers of licences were M/s.Padmavati Agencies Pvt Ltd, Ahmedabad, M/s. Reliance Industries Ltd, M/s.Hindalco Industries Ltd, M/s. Ispat Industries Ltd, M/s.S.C.Doshi & Company, M/s.Vani Exports, M/s.S.J.Impex, M/s.MPG International, M/s.Sun Exports etc.

- that the buyers and sellers with whom he mostly interacted and their phone numbers were as under :-

Name of the firm	**Name of the contact person**	**Phone Number**
M/s.Padmavati Agencies Pvt Ltd	Shri Kalpesh Darji	079-66127777
Shri Krish Overseas	Shri Nilesh Makwana	0281-2228759
M/s.Vani Exports	Shri Girish Gheelani	033-30225927
M/s.Sabari Quality Foods	Shri Murli/ Shri Ranjit	0474-2746601
M/s.General Commodities	Shri Ramanji	08030705716
M/s.Allanasons	Shri Jasani/Shri Prasad	022-22811000
M/s.S.C.Doshi	Shri Ganesh	022-32442304

- regarding their purchases and sales of licences with M/s.Hindustan Continental Ltd, M/s.New Planet Trading Pvt Ltd, M/s.Ostwal Trading, M/s.Accurate Multi Trade Pvt Ltd, M/s.R.R.Impex, M/s.Priority Traders Pvt Ltd, M/s.Punjab Chemical & Crop Protection Ltd, he stated that these firms were used only for billing purposes to save on VAT and other taxes.
- that he did not know about the owners or the contact persons of these firms. The billing in the names of these firms was all arranged for them by Shri Shashin Koradia, a Chartered Accountant and Advocate. He did not know his office address as he had never been there. He had met him on some occasions at our office.
- that he had spoken to him on his office number 022-22086575, 022-22089453, 022-31039974, 022-28915569, 022-30954272. His Mobile Number was 9322679711. He also sometime spoke to his employee Shri Vishal Wadkar.
- that the bills/debit notes were sent by Shri Shashinbhai through M/s.Vichare Courier. The billing instructions for the bills raised in the name of these companies were given by Shri.Kalpesh Daftary. He instructed them as to how the bills were to be prepared and what the rates to be mentioned on the bills were. As per the instructions he either e-mailed the details or send the details through their peon Shri Chhotu to Shri.Sashinbhai or any place he instructs.
- that the licences sold by them to M/s.Padmavati Agencies Pvt Ltd were delivered to them by courier at their Ahmedabad office. In cases of urgency they also send them by fast track service of M/s.Maruti Courier to Bharuch in the name of Shri Hitesh Rajput or Shri Shailesh Rodge where it collected by them from the courier company's office.
- that he was shown the printout of an email dtd.14/7/2009. The said email sent by him from his email account lic@sunkkalp.com to Shri Dharmesh Gathani and Shri Kalpesh Darji at their email IDs. By the said email he had forwarded a list of the licences sold by them to M/s.Padmavati Agencies Pvt Ltd which were sold by them to M/s.Hindalco Industries Ltd and M/s.Reliance Industries Ltd.
- that he was shown another email dtd.1/8/2009.The said email was sent by him from his email account lic@sunkkalp.com to Shri Dharmesh Gathani and Shri Kalpesh Darji at their email IDs. By

the said email he had forwarded a sheet containing details of the licences of Allanasons sold by them to M/s.Padmavati Agencies Pvt Ltd. The said sheet details the movement of the licences from SCPL to the ultimate user through M/s.Padmavati Agencies Pvt Ltd. That the licences were sold by them to M/s.Padmavati Agencies Pvt Ltd after paper billings from M/s.Hindustan Continental and M/s.New Planet Trading Co so as to reduce the profit in SCPL.

- that he was shown another email dtd.25/02/2010.The said email was sent by him from his email account lic@sunkkalp.com to Shri Dharmesh Gathani and Shri Kalpesh Darji at their email IDs. By the said email he had forwarded a scanned copy of a letter issued by the Superintendent of Customs, New Custom House, Mangalore bearing C.No.S-01/02/2009 IMP(Pt-II) dated 25.02.2010 also bearing the header of Commissioner of Customs, New Custom House, Mangalore. The said letter was addressed to the Superintendent of Customs, Custom House, Dahej, Bharuch. The attached letter containing details of the confirmation of genuineness of 08 (eight) RA's issued in favour of M/s Hindalco Industries Limited, Dahej in respect of VKUY/DEPB licences of M/s Allanasons Limited, Mumbai. He confirmed that these licences and the RA's were sold by them to M/s.Padmavati Agencies Pvt Ltd.
- that the said e-mail as well as the attached document received by him from one Shri. Arvind V. Sonawane of M/s Allanasons Limited, Mumbai. Shri.Arvind sitting in the Allanasons Office, Allana House, Allana Road, Colaba, Mumbai and looking after the work of licences.
- that he was shown some copies of letters for confirmation of genuineness verification in issued in the name of Deputy Commissioner of Customs,Custom Division,Dahej and the details appearing on the header of the print out confirmed that the faxes had been made from their office fax no-022-226121841.
- that he cannot recollect to whom the same were faxed as the number of the receiving fax was not visible, however he stated that as per practice if the said licences and RA's were to be utilized by Hindalco they must have been faxed to M/s Padmavati Agencies Pvt.Ltd.,Ahmedabad.
- that they had supplied DEPB/VKGUY/FMS/FPS etc licences to M/s. Hindalco, Dahej through M/s Padmavati Agencies Pvt.Ltd., Ahmedabad. Even in cases they might have sent the licences directly to Hindalco, the payments for the same was always routed through Padmavati as they did not have direct access with Hindalco as traders of licences.
- regarding the physical movement of the DEPB/VKGUY etc licences and their documents like the RA's, transfer letters etc. in case of the licences supplied to M/s Hindalco,Dahej, he stated that, mostly the licences received from M/s Sabari Quality Foods, Sabari Millenium Impex, M/s Shyam International, M/s Sabari Switchgear etc were physically received at their office at Mumbai and then they were forwarded to M/s Padmavati Agencies P.Ltd.,Ahmedabad either through courier or fast track service.

- that all the companies-M/s Sabari Quality Foods, Sabari Millenium Impex, M/s Shyam International, M/s Sabari Switchgear were controlled by one Shri Sunil of Cochin and his main controlling person is Murli. The Licences received from M/s SMARZ Services, Chennai were also forwarded physically to M/s Padmavati Agencies Pvt. Ltd, Ahmedabad. The contact persons for M/s SMARZ Services were Mr.Zaheer Basha and Mr.Shahnawaz both based in Chennai.
- that,M/s Ganesh Shipping working as a CHA at Mangalore and looking after the custom clearances of M/s General Commodities and its group companies based at Bangalore/Mangalore.One Shri.Gangadhar Shetty having mobile number 09845085089 the contact person for the same. They were contacting him for genuineness verification of the TRA's issued from Mangalore/Bangalore.
- that none of their Directors i.e. Shri Kalpesh Daftary, Shri Paresh Parekh or Mrs. Sangeeta Parekh had come to the office since about the 12th of April. He had not been able to contact them telephonically as none of their mobile phone numbers known to him were reachable and he did not know their present whereabouts.
- that in their absence no work of purchase or sale of licence being undertaken and presently they were having no work in their office.
- that in the absence of the Directors, the office being looked after by Ms. Alena Khambatta, Manager of their company. The salary for the last month was paid to them directly to their personal bank accounts and the instructions to the company's bank issued by Ms. Alena Khambatta.

52. The office premises of Shri Sashin Koradia situated at Block No-1, Second Floor, Ismail Building, 33-Pathakwadi, Lohar Chawl, Mumbai-400002 was searched on 02/06/2010 under proper panchnama and documents and records relevant to the investigations were withdrawn. In the course of the panchnama Shri Koradia was asked regarding his role in the trading of export incentive licences to which Shri Koradia informed that he acted as an agent for providing companies/firms to the licence traders viz. M/s.Sunkkalp Creations Pvt Ltd, Mumbai and M/s.Padmavati Agencies Pvt Ltd, Ahmedabad. He had provided the following companies to these licence traders :-

Sr.No.	**Name of the Company**
1	M/s.Hindustan Continental Ltd, Mumbai
2	M/s.Priority Traders Pvt Ltd, Mumbai
3	M/s.Accurate Multitech Pvt Ltd, Mumbai
4	M/s.New Planet Trading Co Pvt Ltd, Mumbai
5	M/s.Ostwal Trading Pvt Ltd, Mumbai
6	M/s.R.R.Impex, Kolkata
7	M/s.Twilight Litaka Pharma Ltd, Mumbai
8	M/s.Fast Stone Trading Pvt Ltd, Mumbai
9	M/s.Punjab Crop & Chemicals Ltd, Mumbai.

53. A statement of Shri Sashin Jayantilal Koradia, was recorded on 02/06/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that alongwith his job as a sales tax practitioner he also took up sales tax consultancy work for many companies and firms and thereafter he had also started filing of Income Tax returns on behalf of his clients. He had many friends working as chartered accountants and cost accountants and they were providing him clients for his sales tax consultancy work also.
- regarding his involvement in the trading of export incentive licences he stated that he has as an agent, assisted some traders of export incentive licences by providing some firms/companies for using them for billing purpose. The names of the all the companies provided by him in the panchnama were correct.
- that as per his knowledge these transferable licences were issued by the DGFT department falling under Ministry of Commerce and after exporting the required export quantity of products the licence holders transferred the amount of credit earned to various other parties in the open market. The traders of licences then got hold of these transferable licences and sold them to other parties who were using the duty credit in the transferred licences for payment of Custom duty at the time of importation. By this way, the importing companies were not required to pay up the required import duty in cash and the duty was debited from the licences. That these licences were sold in the market at discount of 3% to 4% on the duty credit.
- On being asked as to how he got into the business of trading of licences he stated that, in the course of his sales tax consultancy work he came in touch with one Shri.Pareshbhai Parekh in the year-2004, who was running the business of trading of export incentive licences from his office at Andheri (East), Near.Chakala and the office was under the name of Trident Creations and his partner his brother Shri.Jatibhai Parekh who used to stay in Ahmedabad. Thereafter he remained in touch with him as they were also from Gujarat and he had also attended some of their family functions.
- that during the year 2007-2008 Shri Pareshbhai called him and arranged a meeting at his office at Ground Floor, Sagarika Complex, Juhu Tara Road, Juhu and the name of the office Sunkkalp Creations Private Limited. During the meeting one Shri.Kalpesh Daftary was also there who was introduced to him by Shri.Pareshbhai as his partner. They informed him that they required some firms/companies for rotating their transactions. They informed him that they had made some agreements with some cashew and coffee traders of south India and they were going to trade in large number of licences. In order to keep their turnover within limit they wished to raise the bills through different companies.
- that they offered him a total commission of 25 paise per hundred on the turnover of the bills and agreed with the proposal as he knowing some companies who were willing to lend their names for money.

- that thereafter he contacted Mr. Surendra Kulhari of Mumbai who having a company by the name Hindustan Continental Limited. This company was delisted and suspended by SEBI and the company bought by Shri.Surendra Kulhari for Rs.15 lakhs.
- that he proposed to Shri.Kulhari for lending the name of his company for billing purpose for trading of licences by M/s Sunkkalp Creations Private Limited and offered him a commission of 20 paise on the turnover and also informed him that remaining 5 paisa will be his commission, Shri.Kulhari agreed to the same.
- that he also offered that his staff member Shri.Vishal Wadkar will be doing the accounting and clerical work in respect of raising of bills and Shri Kulhari agreed to pay up Shri.Vishal for his work also.
- that after this as per the instructions of Shri.Kalpesh Daftary of M/s Sunkkalp Creations Pvt.Ltd., he asked Shri Kulhari to give him some signed blank letter heads of his company M/s Hindustan Continental Limited and signed blank cheques of the bank account of Hindustan Continental Limited to him.
- that Shri Kulhari agreed and gave him the signed blank letter heads and signed blank cheques and he handed over these to Shri.Kalpesh Daftary.
- that gradually he arranged another company by the name M/s Priority Trading Pvt. Ltd which floated by Shri Surendra Kulhari as per his insistence as Shri.Kalpesh bhai wanted another firm.
- that thereafter he arranged five firms/companies through one of his friend Shri.Pravin Jain having mobile number – 09322655953 and having office at 626-Panchratna Building, 6th Floor, Near Charni Road Railway Station, Opera House, Mumbai. The other companies managed by him are Accurate Multi trade Pvt. Limited, Ostwal Trading Co., Pvt. Limited, New Planet Trading Company Pvt. Ltd., R R Impex,Kolkata, Fast Stone Trading Company Pvt.Ltd.
- that he was not aware about the actual owners/directors of the companies as he have got them through Shri.Pravin Jain who a consultant by profession.
- that one Shri.Girish Jain,Chartered Accountant having mobile number 09870050877 had arranged the firm M/s Twilight Litaka Pvt.Ltd., Mumbai.
- regarding M/s Punjab Crop and Chemicals Ltd.,Mumbai he stated that one Shri Vipul Joshi the director of the company and his mobile number is 09820048297 having address at Oberoi Gardens, Fifth Floor, New Link Road, Andheri (west), Mumbai. In a particular year they had low turnover and so they had done the work of false billing of these licences in order to show increased turnover. This was a company listed in the BSE.
- that till date he had received about Rs.Thirty five lakhs commission and some more yet to be received.
- regarding his association with M/s Padmavati Agencies Pvt. Limited, Ahmedabad he stated that he had met Shri Parag Gathani and Shri Dharmesh Gathani at a religious function. Thereafter sometime during 2006-2007 Shri Dharmesh Gathani met him in Mumbai and during the course of the meeting wanted his help in arranging billings in their business of purchase and sale of

licences for their profit adjustments and he agreed to his request and for providing the billing services. He was to be paid commission of 6% of the profit of the transactions arranged by him.

- that he had arranged billings for M/s. Padmavati Agencies Pvt Ltd using M/s. Hindustan Continental Ltd, M/s New Planet Trading Pvt. M/s Osatwal Trading Pvt Ltd etc. Till date he had been paid commission of about Rs.10 lakhs in cash.

54. A statement of Shri Vishal Jagannath Wadkar, Employee of Shri Sashin Koradia was recorded on 03/06/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that in August-2007 he joined the office of Shri Shashin Koradia, his present employer and he had been working with him since then. He was being paid a monthly salary of Rs.8500.00 and he had been working part time with two other companies M/s. Hindustan Continental Limited and M/s Sunkkalp Creations Private Limited and was paid approximately Rs.2500.00 per month from each company. That his email id was wadkar_vs@yahoo.co.in.
- that M/s Hindustan Continental Limited was managed by Shri.Surendra Kumar Kulhari and M/s Sunkkalp Creations Pvt. Ltd was managed by Shri Kalpesh Daftary. That apart from him, Ms. Bindi Vora and Shri Yogesh work at M/s.Hindustan Continental Ltd.
- that at the office of Shri Shashin Koradia he was handling the work related to accounts, maintaining accounts in the Tally software as he was able to handle the accounts in the Tally format and he also handled works related to share markets investments done by Shri Shashin Koradia. Shri Shashin Koradia was also having a company in the name of M/s. Someshwara Multiprojects Pvt. Limited.
- that in the office of Shri Shashin Koradia there were total of three staff members Shri.Paresh Prajapati, Shri.Anil Pashte and himself. Shri Paresh was looking after the work of going to the banks for depositing and withdrawals and other work of a peon. Shri.Anil was also doing similar work apart from attending the phone calls.
- that while working with Shri Shashin Koradia he requested by Shri Shashinbhai to use his e-mail id for sending and receiving e-mails to and from the customers. He was sending mails related to sales-tax and income tax consultancy work and works related to new company started by him.
- that during the year-2008 he was informed by Shri Shashinbhai that their firm had taken up some licence related work and he had to handle the work related to sale and purchase of licences and transfer of these licences from one company to another.
- On being asked regarding the details of licences, he stated that as per his knowledge these licences were used for export and import related work and he had never seen such licence. He was also informed by Shri Shashinbhai that these licences were sold in the market and transferred from one party to another. He did not know anything more regarding licences.

- that during the month of August-2008,Shri Shashinbhai informed him that he had to handle the sale and purchase work of the licences as per the directions of Shri Kalpeshbhai Daftary. He also informed him that Shri Kalpeshbhai Daftary will be sending e-mails to him vide which he will be giving the directions as to how the bills were required to be made.
- that thereafter he started receiving e-mails from Shri.Kalpesh Daftary from his e-mail info@sunkkalp.com . As per the directions received over the e-mails he started issuing invoices or sending mails to various parties.
- that after being satisfied with his work and maintenance of accounts in the Tally software, Shri.Kalpeshbhai informed him that he was in need of one accountant for managing his accounts and whether he would be able to work for him, at this he agreed to work for him only on Sundays.
- that on the first Sunday he went to the office of Kalpeshbhai Daftary and found that the name of the office written as M/s Sunkkalp Creations Private Limited and the address was 7, Sagarika Co-operative Housing Society, Ground Floor, Juhu Tara Road, Juhu, Vile Parle (west), Mumbai.
- that he started the work of accounting at his office during the same month on part time basis and was visiting every Sunday at 1000 hours and Shri Kalpesh and one peon Shri Chhotu or Shri Ganesh were present at the office. Shri Kalpesh Daftary used to give him directions about what work was required to be done and how, and remaining he used to do with his knowledge of accounting.
- that M/s.Padmavati Agencies Pvt Ltd a client of Shri Shashinbhai for whom billings of their licences purchase and sale for tax purposes were being undertaken by them using the firms M/s.Hindustan Continental Ltd, M/s.New Planet Trading Pvt Ltd, M/s.Ostwal Trading Ltd etc.
- that for the billing work of M/s.Padmavati Agencies Pvt Ltd, he contacted Shri Dharmesh Gathani, Shri Parag Gathani, Shri Kalpesh Darji, Ms. Nilima over the phone.
- that he had accessed his email account wadkar_vs@yahoo.co.in from a computer installed in the DRI officer and after going through the emails contained in the 'sent box', printouts of some mails have been taken which are numbering from page No.01 to 19.
- that vide email dtd.13/4/2010 he had sent the account of Padmavati [attachment Padma (07.07.07)], the account of Padmavati and Choice International [attachment Padma-Choice] and the account of Padmavati – Parag Gathani [Padma-Parag (08-09)].
- that the account Padma (07.07.07) is the account of Padmavati Agencies Pvt Ltd maintained by them in Tally account software. This account for the period from 1/4/2007 to 1/4/2010 detailed the transactions undertaken by them i.e M/s.Shashin Koradia & Co for M/s. Padmavati Agencies Pvt Ltd.

- On being asked regarding the term ATM used in the said account, he stated that wherever there was a debit or credit entry in the name of ATM, it indicated a cash transaction.
- that wherever the word 'supat' had been used in the accounts it means M/s.Hindustan Continental Ltd.
- that against the entry dtd.15/10/2007 of Rs.10,00,000/- the particulars were indicated as 'ATM from moneymore – Amd Angadia'. On being asked to explain the said particulars, he stated that an amount of Rs.10 lakhs was received from Moneymore and sent to Ahmedabad through Soma Kanchan Angadia(SK Angadia).
- that the word 'Zoo' used in the account of Shri Parag Gathani of M/s. Padmavati Agencies Pvt Ltd actually indicated M/s.Sunkkalp Creations Pvt Ltd. To explain he stated that for the entry dtd.30/1/2009 for Rs.10 lakhs the particulars were mentioned as "By Supat-Zoo, TRF to Hindustan Continental Ltd By Padmavati Agencies Pvt Ltd". This indicated that the amount of Rs.10 lakhs transferred by M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd pertains to a billing transaction arranged by them for M/s.Sunkkalp Creations Pvt Ltd.
- that the accounts of the firms for whom billing work undertaken by M/s.Shashin Koradia & Co were maintained in the computer at the office of the firm situated at 2nd Floor, Ismail Building, No.33, Pathakwadi, Lohar Chawl, Mumbai.
- that the accounts of M/s. Sunkkalp Creations Pvt Ltd, maintained at their office situated at Juhu Tara Road. The accounts of M/s.Hindustan Continental Ltd, was being maintained by him on the laptop at their office, which he came to know had been seized by the officers of DRI, Mumbai.
- regarding the invoices issued by M/s Hindustan Continental Limited and the signatures on the said Invoices, he stated that the Invoices of M/s Hindustan Continental Limited were actually prepared as per the instructions received from Shri Kalpesh Daftary on his e-mail and then they were printed at the printer installed in the office of M/s Hindustan Continental Limited and the signatures were done by one Ms.Bindi Vora. Sometimes the Invoices were printed either by Ms. Bindi or him but always signed by Ms. Bindi Vora.
- that he was shown print out of e-mail dated 01.04.2010 from his account to info@sunkkalp.com alongwith a pdf file "sunk.pdf".The details pertain to a Ledger Account of M/s Sunkkalp Creation as per the books of M/s Hindustan Continental Limited. The details mentioned against the entries "Purchase Register" actually pertained to the bills issued by M/s Hindustan Continental Limited to Sunkkalp and the details mentioned against the entries "Bank" actually was derived from the books of accounts of M/s Hindustan Continental Limited by Shri Yogesh of M/s Hindustan and then forwarded to him. Finally he had completed the account and mailed to Shri Kalpesh Daftary of Sunkkalp.
- that he once again confirmed that all the transactions were actually planned by Shri Kalpesh Daftary but executed by him on paper.

- that he was shown print out of e-mail dated 13.04.2010 from his account to dharmesh@groupgathani.com alongwith three pdf files "drg.pdf, padma0... and padma-h..." He confirmed that the mails were sent from his e-mail account and DRG means Dharmesh R Gathani wherein the words ATM means cash transactions, HGM-TLPL means Hasmukhbhai G Mehta of Twilight Litaka Pharma Limited, Zoo means Sunkkalp and Supat means Hindustan Continental Limited. The details also contained the names of Angadia firms through whom the cash was actually forwarded to the respective persons, SC paid means Service Charges paid.

55. A further statement of Shri Vishal Jagannath Wadkar, Employee of Shri Sashin Koradia was recorded on 04/06/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was shown statement dated 26/05/2010 of Shri Surendra Kumar Kulhari, Director of M/s Hindustan Continental Ltd., That the fact stated by Shri Surendra Kumar Kulhari at last para of page 3 of his statement that 'Vishal used to sign on the bills of M/s Hindustan Continental Ltd., as authorized signatory' not true. Ms. Bindi V. Vora used to sign on the bills of M/s Hindustan Continental Ltd., as authorized signatory and Ms. Shilpa R. Jadhav used to sign on the bills of M/s Priority Traders P. Ltd., as authorized signatory.
- that the accounts of M/s Hindustan Continental Ltd., and M/s Priority Traders P. Ltd., were maintained by one Shri Yogesh Kumar Palsaina, CA, having mobile no. 09324562306.
- that he accessed his email account wadkar_vs@yahoo.co.in from a computer installed in the DRI office, Ahmedabad and after going through the emails contained in the 'in box', printouts of some mails had been taken.
- that he explained in details regarding following printout as under:

(1). He was shown print out of e-mail dated 12/04/2010 from his account, which he had received from Shri Kalpeshbhai of Sunkkalp Creation P.Ltd., through e.mail "ho"<ho@sunkkalp.com>. That vide email dtd.12/4/2010, he had received scanned copy of receipt of deposit of cheque no.394604 of Rs. 25,00,000/- in account of M/s Adhunik Corp. Ltd., by M/s Vani Exports. This cheque had been deposited by Shri Kalpeshbahi in HDFC Bank, Branch Rajkot.

(2). He was shown print out of e-mail dated 7/04/2010 from his account, which he had received from Shri Vishal Vyas of Sunkkalp Creation P.Ltd., through e.mail<lic@sunkkalp.com>. That vide email dtd.7/4/2010, Shri Vishal Vyas had sent scanned copy of HDCF Bank's cheque no. 394602 of Rs.51,00,000/- issued by M/s Vani Exports in favour of M/s Adhunik Corp. Ltd.

(3). He was shown print out of e-mail dated 6/04/2010 from his account, which he had received from Shri Abhijit Arondekar of M/s Twilight Litaka Pharma Ltd., Mumbai,

through e.mail<abhijit_tmpl@rediffmail.com>. That vide email dtd.7/4/2010, Shri Abhijit had sent details of loan cheques issued by Twilight Litaka Pharma Ltd to M/s Hindustan Continental Ltd.

(4). He print out of e-mail dated 26/03/2010 and 29/03/2010 from his account, which he had received from Shri Kalpesh Darji of M/s Padmavati Agencies P. Ltd., Ahmedabad, through e.mail<kalpesh@groupgathani.com>. That vide email dtd.26/3/2010, Shri Kalpesh had sent scanned copies of bills no.K/582 dtd. 10/03/10, K/559 dtd. 18/02/10, K/553 dtd. 15/02/10, K/550 dtd.12/02/10, K/539 dtd. 04/02/10, K/506 dtd.18/01/10 and K/594 dtd.17/03/10 issued by M/s Vrinda Agencies P. Ltd., Kolkata to M/s Hindustan Continental Ltd., in respect of sale of licences.

(4.1). Vide email dtd.26/03/2010, Shri Kalpesh had sent details in tabulate form of aforesaid bills issued by M/s Vrinda Agencies P. Ltd., Kolkata to M/s Hindustan Continental Ltd., which contain licence no. & date, value of licence, rate and amount. Shri Kalpesh Darji also instructed him to issue bills from M/s Hindustan Continental Ltd., to M/s Padmavati Agencies P. Ltd., in respect of same licences. The last four columns of the table contain details on the basis of which M/s Hindustan Continental Ltd., would issue the bills to M/s Padmavati Agencies P. Ltd., such as rate, amount of bill, date on which bill should issue.

(5). He was shown print out of e-mail dated 05/03/2010 from his account, which he had received from Shri Rakesh Mudgal of M/s Choice International Ltd., through e.mail <rakesh.mudgal@thechoice.in>. That vide email dtd.05/03/2010, he had received scanned copies of Tax Invoice Ref No. Choice/March/001/2009-10 dtd.04/03/10 for Rs.2,20,60,000/- and no.Choice/March/002/2009-10 dtd.04/03/10 for Rs.5,51,500/- issued by M/s Choice International Ltd., to M/s Sterlite Industries (I) Ltd., Tuticorin. Also received a copy Tax Invoice Ref No. Choice/Feb/004/2009-10 dtd.19/02/10 for Rs.1,65,45,000/- issued by M/s Choice International Ltd., to M/s Padmavati Agencies P. Ltd. He had have forwarded these Tax Invoices to respective parties. That he unable to explain the particulars of these invoices. In this regard M/s Sterlite Industries (I) Ltd., and M/s Padmavati Agencies P. Ltd., will be able to explain.

(6) He was shown e-mail dated 09.06.2009 received from lic@sunkkalp.com alongwith a pdf file, received from Shri.Vishal Vyas of SCPL,Mumbai on going through the same he confirmed that the enclosure was a tax invoice of Shivangi to Punjab Chemicals and he had forwarded the same to Punjab Chemicals.

(7) He was shown e-mail dated 05.10.2009 received from info@sunkkalp.com , i.e alongwith a pdf file, received from Shri.Kalpesh Daftary of SCPL,Mumbai on going through the same, he confirmed that the enclosure contains the bank

account details of M/s Hardware Trading Corporation and the same forwarded by him to Shri.Mahesh Vora of M/s Hardware Trading and the same forwarded to him with verbal instructions to RTGS some amount to the said account. He did not remember the exact amount right now.

(8) He was shown e-mail dated 01.06.2009 received from lic@sunkkalp.com alongwith a pdf file, received from Shri.Vishal Vyas of SCPL,Mumbai on going through the same he confirmd that the enclosures were tax invoices of Shivangi to Punjab Chemicals and he had have forwarded the same to Punjab Chemicals.

(9) He was shown e-mail dated 29.05.2009 received from lic@sunkkalp.com alongwith a pdf file, received from Shri.Vishal Vyas of SCPL,Mumbai on going through the same he confirmed that the enclosure was an excel sheet showing the details of sale of licences from Shivangi to Punjab and he had forwarded them to Ms. Manisha of Punjab and the company was controlled by one Shri.Vipul Joshi.

(10) He was shown e-mail dated 08.07.2009 received from ho@sunkkalp.com alongwith two pdf files, received from Ms.Khambatta of SCPL,Mumbai on going through the same he confirms that the enclosures are details of documents they had demanded for opening of bank account of M/s Accurate He also stated that the said company was controlled by Shri.Pintoobhai of Mumbai who is having office at Opera House, Mumbai and also controlling New Planet and Ostwal Trading and these companies are also used by Shri.Kalpesh Daftary for rotation of the licences.

(11) He was shown e-mail dated 11.06.2008 received from info@sunkkalp.com, received from Shri.Kalpesh Daftary of SCPL,Mumbai and on going through the same he stated that this was the first e-mail received in his mail account from Kalpesh Daftary as he started using his e-mail account as per the instructions of Shri.Sashinbhai Koradia. From that day onwards his e-mail account was used by them for sending and receiving different instructions regarding the trading of licences.

56. The fake/forged licences purportedly registered at Mangalore Customs and which were used by M/s.Hindalco Industries Ltd, Dahej at Dahej Port were issued by DGFT, Chennai to M/s.Rajkumar Impex Pvt Ltd, Chennai. Therefore, vide letter dtd.08/06/2010 DGFT, Chennai was asked to forward copies of the said three licences.

57. The examination and scrutiny of the documents and evidences gathered in the investigation revealed that 08 more licences used by M/s.Hindalco Industries Ltd, Dahej at Dahej Port were of doubtful nature. These 08 licences were issued by DGFT, Mumbai to M/s.Allanasons Ltd, Mumbai. Therefore, vide letter dtd.08/06/2010, DGFT, Mumbai **was** asked to forward copies of the said 08 licences. The DGFT, Mumbai forwarded the documents vide their letter dtd.11/06/2010**.**

58. The Computers, Hard disks, Laptops, Pen Drives etc withdrawn from the premises of M/s.Krish Overseas, Rajkot, M/s.Indiyana Shoes, Kanpur, M/s.Kshitij Marine Services Pvt Ltd, Surat, M/s.Bansi Overseas, Rajkot, the residential premises of Shri Piyush Viramagama and M/s.MPG International, Kolkata were forwarded to the Directorate of Forensic Science, Gandhinagar, vide letters dtd.08/06/2010 for retrieval of the data contained therein.

59. A statement of Shri Deepesh Viramgama, brother of Shri Piyush Viramgama was recorded on 08/06/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- That after completing his education he joined M/s Bansi Overseas at Rajkot in the year-2006 as office assistant. M/s Bansi Overseas was under the proprietorship of Shri.Kalpesh Daftary and his elder brother Shri.Piyush Viramgama was also working there.
- that he had joined the firm as per the insistence of his brother.The said firm was engaged in the business of trading / brokerage of export incentive licences like DEPB,VKGUY,DFIA etc. Alongwith the same the firm was also providing consultancy services to the exporters and importers in matters related to Director General of Foreign Trade (DGFT).
- that after the said firm was closed his elder brother-Shri.Piyush started a new firm in the name of Krish Overseas and he joined him in the said firm. In the firm he was handling the work related to liasioning with DGFT and other office work.
- that he was the proprietor of M/s Krish Exim and the firm was also started for trading/brokerage of export incentive licences as Bansi Overseas and M/s Krish Overseas.
- that in the year 2009 at the insistence of his brother Shri.Piyush Viramgama, he started a partnership firm in the name of M/s Krish Computech wherein Shri.Chirag Mehta of Rajkot the other partner.The office of M/s Krish Exim mentioned as his residential address and the office of M/s Krish Computech was 301-City Plaza,Dr.Yagnik Road,Rajkot. Actually the said premises was being used by Shri.Chirag Mehta for carrying out his business of sale, purchase and repair of computers, computer spares and accessories. M/s Krish Computech was also having import export code (IEC)-2409003699.
- that he was an employee of M/s Krish Overseas having office at 302-Krish Business Centre,Third Floor, Panchnaad Plot, Near-Panchnaath Mandir,Rajkot. This firm was under the proprietorship of his eldest brother-Shri.Piyush Viramgama and in the said firm they were doing the trading/brokerage of export incentive transferable licences and consultancy work for many firms.
- that some major exporters who were their clients are M/s Jay Refractories, M/s Dhaval Agri Products, M/s Paradise Pottery Works, M/s Atlas Exports, M/s Sagar International.
- that after joining M/s Bansi Overseas in July-2006 he started work as computer operator and paid a monthly salary of Rs.3000.00 per month. During that period M/s Bansi Overseas was having its

office at 302-Somnath Commercial Centre, Behind-S.T.Bus Stand, Rajkot. As part of his job he was entering data of the exporters in the DGFT portal of the DGFT website. During that period, the applications were filed by M/s Bansi Overseas on behalf of the exporters. After entering the details in the website, the applications were manually filed in the DGFT office at Rajkot. He was entering the data in the website and his brother Piyush doing the work of taking the applications to the DGFT office and getting them approved after following the required procedure of DGFT.

- that during that period apart from Piyush and himself, Shri.Nilesh Makwana also working at Bansi Overseas. During October-2007 Shri.Kalpesh Daftary left Rajkot and went to Mumbai. In Mumbai he created a firm in the name and style of M/s Sunkkalp Creations Pvt. Limited at Mumbai. He, Shri Paresh Parekh and Smt Sangeeta Parekh wife of Shri Paresh Parekh are the directors of the said firm.
- that after this, his eldest brother Shri.Piyush Viramgama started a new firm in the name of M/s Krish Overseas and a new premises at 311-Somnath Commercial Centre, Behind-S.T.Bus Stand, Rajkot. The said firm was also engaged in sale and purchase of duty free transferrable licences. He joined the said firm to help his brother and look after the work of taking the applications to the DGFT office and getting them approved after following the required procedure of DGFT. Later on the following persons joined M/s Krish Overseas.
    i. Shri. Nilesh Makwana
    ii. Shri Hardik Shah
    iii. Shri. Vijay Gadhiya
    iv. Shri Mayur Gadhiya
    v. Shri. Sammer Makwana
    vi. Shri.Sameer Sevak,

- that Shri Nilesh Makwana and Shri Vijay Gadhiya assisted his brother Shri Piyush in sale and purchase of licences and also to locate new licence holders who intend to sell their licences. Shri Mayur Gadhia was looking after the bank work and payment collection work.
- that as licence brokers/traders they were facilitating the exporters obtain these facilities from DGFT based on their rapport with the DGFT. He was handling the work of taking the files of exporters to the DGFT and getting them approved after the proper procedure. He was handling these works since last two years.
- that he was shown import Bill of Entry No.232670, dated.17.09.2009 of Air Cargo Complex,Sahar,Mumbai.On going through the same he noticed that the said bill of entry pertains to the import of Laser Stamp Machine, Model-STC H40 from China by M/s Krish Computech,301-City Plaza,Yagnik Road,Rajkot. He was the partner of this company M/.s Krish Computech.
- that he was not aware as to who had imported this and for what this was imported. May be his brother Shri.Piyush or his partner Shri.Chirag Mehta may be aware of the same.

- that he used a personal computer in the office as well as a Lenovo make laptop computer. The Lenovo Laptop used by him was seized by from his residence premises on 22/4/2010.
- that he accessed his e-mail d_dipeshexim@hotmail.com from one of the PC's installed at DRI office at Ahmedabad and opened the 'inbox' and 'sent' mail and in the course of the examination of the mails, printouts of certain mails found relevant had been taken. The printouts of the emails are numbered from 1 to 36.
- that the email dtd.30/8/2008 at page no.1 to 4 had been received by him from his brother Shri Piyush Viramgama and by the said email he had forwarded a scanned copy of a page containing the details "To. THE DY/ASST. COMMISSIONER OF CUSTOMS MAGDALA CUSTOMS SURAT". The said scanned page also contained the round seal(rubber stamp) of Mangalore Custom House.
- that the emails at page no. 5 to 33 were emails sent by him to his brother Shri Piyush Viramgama at his email ID piyushexim@hotmail.com . By three emails dtd.26/9/2008 and one email dtd.3.10.2008 softcopies (MS Word and MS Excel files) of the annexure to VKGUY licences and the forwarding letters of the DGFT, Bangalore in respect of VKGUY licence no.0710058005 dt.19.6.2008, 0710057530 dtd.22.5.2008, 0710057639 dtd.29.5.2008 and 0710057493 dt.19.6.2008 had been forwarded. He did not presently remember anything about these documents. However, he confirmed that the same had been sent was by him from his email ID.
- that he had by email dtd.16/08/2008 addressed to Shri Piyush Viramgama forwarded scanned copy of VKGUY licence No.0710058574 dtd.16.7.2008 issued by DGFT, Bangalore to M/s.Bola Surendra Kamath & Co, Karakala. The scanned copy also contained the reverse side of the said licence and bore the endorsement of the Customs, Mangalore for registration of the licence as well as the endorsement for issue of TRA in favour of M/s.EI Dupont India Pvt Ltd for use at ICD Dashrath. He did not presently remember anything about these documents. However, he confirmed that the same had been sent by him from his email ID.

60. The Commissioner of Customs, Custom House, Mangalore was asked vide letter dtd.09/06/2010 to forward copies of all Requests for verification of Genuineness received from Customs, Dahej during the period from 1/4/2008 to 31/03/2010 and also copies of the replies sent to Dahej Customs.

61. A further statement of Shri Sashin Jayantilal Koradia, was recorded on 10/06/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that M/s Twilight Litaka Pvt.Ltd., Mumbai was situated at 206, Shivai Dongri Industrial Estate, 89, Andheri Kurla Road, Andheri (East), Mumbai-400072, having telephone no. 67745310 and Tele Fax No. 28505867.
- that Shri.Girish Jain, Chartered Accountant was having his office at 507, Kakad Market, 5th Floor, 303, Kalbadevi Road, Mumbai and his Tele Fax No. 22082965.

- that he was shown the statement of his employee Shri.Vishal Wadkar dated 03.06.2010 recorded at DRI, Ahmedabad and he agreed with the facts contained therein.
- that he was shown printouts of mails numbering from 1 to 19, which had been retrieved from "sent box" of his employee Shri.Vishal Wadkar's email id wadkar_vs@yahoo.co.in during recording of his statement dated 03.06.2010.
- that he had perused the said printouts and explained the details of each printout as under:
- He had seen the printout of email dtd.13.4.2010, containing pages from 1 to 13. That the account Padma (07.07.07) was the account of M/s Padmavati Agencies Pvt. Ltd., Ahmedabad maintained by them in Tally account software. This account for the period from 1.4.2007 to 1.4.2010 detailed the transactions undertaken by them i.e M/s.Shashin Koradia & Co for M/s.Padmavati Agencies Pvt Ltd. The said entries had been made on the direction / instruction of Shri Parag Gathani and Shri Dharmesh Gathani both directors of M/s Padmavati Agencies Pvt. Ltd., Ahmedabad. Regarding the term ATM used in the said account, he stated that wherever there was a debit or credit entry in the name of ATM, it indicated a cash transaction. That wherever the word 'supat' had been used in the accounts it meant M/s.Hindustan Continental Ltd., and the word 'ZOO' mentioned in the transactions actually mean M/s Sunkkalp Creations Private Limited, the letters 'DRG' actually mean Dharmesh R Gathani of M/s Padmavati Agencies Pvt.Ltd.,'Punjab' actually meant M/s Punjab Chemicals and Crop Protection Ltd., Mumbai, 'Padma' actually meant Padmavati Agencies Private Limited, HGM-TLPL actually meant Hasmukh G Mehta of M/s Twilight Litaka Pvt. Ltd.,'Planet-Pintoo' actually meant Shri Pravin Jain of M/s New Planet Trading. The above abbreviations were actually made by Shri.Kalpesh Daftary to hide the actual names of the companies involved in the transactions.
- that the entry dtd.08.10.2007 to 11.10.2007 pertaining to entries by Ruchi and to Ruchi, that M/s Padmavati Agencies Pvt Ltd., had transferred an amount of Rs.2.62 Crores from their account to Shri Ramesh Gathani. M/s Padmavati Agencies Pvt Ltd., issued cheques to M/s Ruchi Infrastructure Ltd., Mumbai who in turn transferred the said amount to Shri Ramesh Gathani.
- regarding the entry dtd.12.12.2007 to 15.12.2007 he stated that that on 12.12.2007 an amount of Rs.5,00,000/- in cash sent through S.R. angadia for delivery to M/s Padmavati Agencies Pvt Ltd., at Ahmedabad. The amount was delivered to angadia by Shri Vijay who was working in his office at that time. Similarly, on 13.12.2007 an amount of Rs.5,00,000/- in cash sent through Moneymore for delivery to M/s Padmavati Agencies Pvt Ltd., at Ahmedabad. On 14.12.2007 an amount of Rs.15,00,000/- in cash was sent through Soma Kanchan angadia for delivery to M/s Padmavati Agencies Pvt Ltd., at Ahmedabad. On 15.12.2007 an amount of Rs.19,75,000/- in cash was sent through angadia firm for delivery to M/s Padmavati Agencies Pvt Ltd., at Ahmedabad and also an amount Rs.10,00,000/- in cash was sent to M/s Padmavati Agencies Pvt Ltd., at Ahmedabad through R. Shah.

- regarding the entry dtd.17.12.2007 he stated that on 17.12.2007 an amount of Rs.8,00,000/- in cash was sent through Moneymore angadia and an amount of Rs.50,00,000/- in cash was sent through Pintoo for delivery to M/s Padmavati Agencies Pvt Ltd., at Ahmedabad. That Pintoo was nick name of Shri Pravin Jain who had arranged him five firms/companies as stated by him in his earlier statement dated 02.06.2010.
- regarding the entry dtd.27.12.2007 and 02.01.2008 he stated that on 27.12.2007 an amount of Rs.10,00,000/- in cash and on 02.01.2008 an amount of Rs.10,00,000/- in cash were sent through SomaKanchan angadia for delivery to M/s Padmavati Agencies Pvt Ltd., at Ahmedabad. The amounts were delivered to angadia by Shri Sandeep and Shri Vijay respectively, who were working in his office at that time.
- regarding the entry dtd.21.01.2008, he stated that an amount of Rs.8,00,000/- in cash was sent through angadia firm for delivery to M/s Padmavati Agencies Pvt Ltd., at Ahmedabad.
- regarding the entry dtd.21.02.2008, he stated that on 21.02.08 an amount of Rs.10,00,000/- in cash was received from M/s Padmavati Agencies Pvt Ltd., by Amu Chala at Ahmedabad.
- regarding the entry dtd.22.02.2008, he stated that on 22.02.2008 an amount of Rs.10,00,000/- and Rs. 7,00,000/- in cash was sent through angadia firm for delivery to M/s Padmavati Agencies Pvt Ltd., at Ahmedabad.
- regarding the entry dtd.03.03.2008 and 05.03.2008, he stated that on 03.03.2008 an amount of Rs.3,00,000/- in cash was sent through angadia firm for delivery to Shri Pareshbhai Parekh on direction of M/s Padmavati Agencies. The said amount was received by Shri Chotu employee of Shri Pareshbhai. On 05.03.2008 an amount of Rs.1,00,000/- in cash was sent through Soma Kanchan angadia for delivery to Shri Pareshbhai Parekh on direction of M/s Padmavati Agencies.
- regarding the entry dtd.18.03.2008, he stated that on 18.03.2008 an amount of Rs.5,00,000/- in cash was given to Shri Parag Gathani at Mumabi by Shri Sandeep an employee of his office.
- regarding the entry dtd.26.03.2008 and 27.03.2008, he stated that on 26.03.08 an amount of Rs.5,00,000/- and on 27.03.08 an amount of Rs.5,00,000/- in cash were received by one friend of Shri Hiren Kothari of Mumbai from M/s Padmavati Agencies Pvt Ltd., at Ahmedabad.
- regarding the entry dtd.28.05.2008, he stated that on 28.05.08 an amount of Rs.4,00,000/- in cash was given by M/s Padmavati Agencies Pvt Ltd., to M/s Global Exim.
- regarding the entry dtd.06.06.2008, he stated that on 06.06.2008 an amount of Rs.50,00,000/- in cash was given to M/s Padmavati Agencies Pvt Ltd., by Shri Bagadia of Baroda at Ahmedabad.
- regarding the entry dtd.04.09.2008, he stated that on 04.09.2008 an amount of Rs.3,00,000/- in cash was given to Shri Bhavik a relative of M/s Padmavati Agencies Pvt Ltd., at Mumbai on the direction of M/s Padmavati Agencies.
- regarding the entry dtd.06.10.2008, he stated that on 06.10.2008, M/s Shree Krishna Enterprise a sister concern of M/s Padmavati

Agencies had issued a cheque of Rs.1,00,00,000/- to M/s Punjab Chemical & Crop Protection, which converted was into cash and out of which an amount of Rs.75,00,000/- in cash given by him to Shri Kalpesh Daftary of M/s Sankkalp Creation on 06.10.08 on the direction of M/s Padmavati Agencies.

- regarding the entry dtd.08.10.2008, he stated that on 08.10.2008 an amount of Rs.10,00,000/- in cash was sent to Shri P.Daftary at Rajkot through Amrut Kranti angadia.
- regarding the entry dtd.14.10.2008, he stated that on 14.10.2008 an amount of Rs.5,00,000/- in cash was given to Shri Kalpesh Daftary by Shri Heran Kothari at Mumbai.
- regarding the entry dtd.15.10.2008, he stated that on 15.10.2008 an amount of Rs.5,00,000/- in cash was given to Shri Shashank at Delhi a friend of Shri Kalpesh Daftary on the direction of M/s Padmavati Agencies.
- regarding the entry dtd.10.12.2008 and 11.12.2008, he stated that on 10.12.2008 an amount of Rs.6,00,000/- in cash was sent by M/s Padmavati Agencies Pvt Ltd., through Soma Kanchan angadia which was received by Shri Anil an employee of his firm and was delivered the said amount to one Mr. Garg at Fort, Mumbai on 11.12.2008 on direction of M/s Padmavati Agencies.
- regarding the entry dtd.25.04.2009, he stated that on 25.04.2009 an amount of Rs.1,00,000/- in cash was given to Shri Bhavik a relative of M/s Padmavati Agencies at Mumbai on the direction of M/s Padmavati Agencies.
- regarding the entry dtd.07.07.2009 and 08.07.2009, he stated that on 07.07.09 an amount of Rs.4,00,000/- and on 08.07.2009 an amount of Rs.1,30,000/- in cash were given either to Shri Parag Gathani or Shri Dharmesh Gathani at Mumbai.
- regarding the entries dated 04.03.2010 to 10.03.2010 shown at page no.9 of the attachment to the statement of Shri.Vishal Wadkar, he stated that this actually showed a total turnover of Rs.224,00,000.00 between Padmavati Agencies Pvt.Ltd and M/s Choice International. The entry dated.05.03.2010 showed a payment of Rs.1,65,45,000.00 including 1.5 crore plus service tax. Then next entry on the same date showed RTGS of an amount of Rs.84 lakhs to Choice International which was actually made by M/s Sterlite Technologies Limited this amount also included service tax and the actual amount shown was Rs.92,65,200.00. Then there were the four entries of ATM as per dates 04.03.2010- for Rs.50,00,000.00, 08.03.2010 for Rs.24,00,000.00, 09.03.2010 for Rs.75,00,000.00 and 10.03.2010 for Rs.75,00,000.00 which showed that a total of Rs.2.24 Crores went out in the form of cash to Ahmedabad and Delhi.The entire transaction was done as per the instructions of Mr.Dharmesh Gathani of M/s Padmavati Agencies Pvt.Ltd, Ahmedabad.
- that in the entire deal he had received a commission of approx.Rs.2.34 lakhs.Comission also given to M/s Choice International.
- that the mention of Supat in all the transactions done since M/s Choice also grouped under the same name with M/s Hindustan Continental Limited.

- regarding the entries mentioned at page no.10 of the annexure to the statement dtd.03.06.2010 of Shri.Vishal Wadkar, he stated that this shows a total transaction of Rs.8,39,00,000.00 which actually pertains to the sale/purchase of licences and the licences are shown to be rotated from one company to the other.
- that as per transaction dated 06.02.2009 M/s Padmavati Agencies had transferred an amount of Rs.Seven Crores forty three lakhs seventy thousand to M/s Hindustan Continental Limited, then these funds were transferred by Hindustan Continental to M/s Vrinda Agencies Pvt.Ltd., and from Pabmavati Agencies to M/s Hindustan Continental Limited.The ATM amount of Rs.10,00,000.00 shown as cash payment by Shri.Dinesh-his driver to Shri.Shukla the driver of Sunkkalp.
- regarding the transactions on 19.02.2009 at page no.11, he stated that M/s Padmavati Agencies Transferred Rs.60,00,000.00 to Hindustan continental which returned to Padmavati in cash on 20.02.2009 and delivered to one Mr.Khanna at Delhi. On 27.02.2009 Rs.50,00,000.00 was received by Hindustan from padmavati by cheque and against the same on the same day Rs.47,50,000.00 given to Shri.Parag Gathani in cash and the amount was sent through Soma Kanchan Angadia. On 28.02.2009 an amount of Rs.67,50,000.00 was delivered at M/s Soma Kanchan Angadia by Mr Vikram of Hindustan Continental and his employee Paresh Parjapati, this cash amount delivered to Shri.Parag Gathani of M/s Padmavati Agencies Pvt.Ltd, Ahmedabad. On 19.03.2009 M/s Padmavati was sent Rs.42,95,374.00 to M/s Hindustan out of this an amount of Rs.40,00,000.00 was sent to Shri.Parag Gathani by Angadia by Mr.Babloo brother of Shri.Praveen Jain of New Planet. On 23.03.2009 M/s Padmavati transferred Rs.1.5 Crore to Hindustan and against this an amount of Rs.1.66 Crores was sent through Angadia and delivered to Shri.Parag Gathani in cash. On 25.03.2009 an amount of Rs.24,00,000.00 was paid to Shri.Chhootu @ S.P Mojar of Sunkkalp Creations Pvt.Ltd in cash as per the instructions of Shri.Parag Gathani.
- that on 26.03.2009 Rs.8 Crore was transferred by M/s Padmavati to Hindustan which was in turn transferred by Hindustan to Vrinda agencies on the same day.
- regarding the benefit earned by them for arranging these transactions he stated that he had with the help of his accountant Shri.Vishal Wadkar listed these transactions in the tally software and he had received nominal commission for the same. He also confirmed that he had used the e-mail account of Shri.Vishal Wadkar for receiving and sending all these e-mails and he had asked Vishal to give his e-mail to Shri.Kalpesh Daftary of M/s Sunkkalp Creations Pvt.Ltd. He had also introduced Shri.Vishal to Shri.Kalpesh and he was working at Kalpesh's office on part time basis.

62. A further statement of Shri Sashin Jayantilal Koradia, was recorded on 11/06/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he produced the ledger account of M/s.Sunkkalp Creations Pvt Ltd, Mumbai maintained by them under the code name of 'ZOO'. The said ledger account running into 64 pages was for the period from 1.4.2008 to 31.3.2010.
- that he was shown the email dtd.13.4.2010 sent by Shri Vishal Wadkar to Shri Dharmesh Gathani of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad and was asked regarding the transactions dtd.13/4/2009 of the account Padma-Parag (08-09) at page no.12 of the email, he stated that M/s Padmavati Agencies had transferred Rs.25,00,000.00 to Hindustan Continental out of which an amount of Rs.20,00,000/- returned to Padmavati Agencies in cash on the same day. The amount was delivered at Angadia Soma Kanchan, Mumbai by his employees Shri Anil and Shri Paresh and the Angadia in turn paid the same to Shri Parag Gathani in Ahmedabad.
- that regarding the transaction dtd.22/4/2009 under the Entry To ATM, with the narration 'SKA-Paresh-Anil', he stated that an amount of Rs.60,00,000/- in cash delivered to Shri Parag Gathani of M/s.Padmavati Agencies Pvt Ltd, in Ahmedabad by Soma Kanchan Angadia. The amount was delivered to the said Angadia by his employees Shri Paresh and Shri Anil.
- that regarding the transaction dtd. 24.04.2009 he stated that an amount of Rs.1,53,74,806 transferred by M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental, out of this an amount of Rs.96,44,228/- transferred by M/s.Hindustan Continental to M/s. Vrinda Agencies Pvt Ltd and Rs.5,00,000/- paid to Shri Shashank in cash.
- that regarding the entry dtd.7.5.2009 he stated that M/s.Padmavati Agencies Pvt Ltd had transferred an amount of Rs.25,00,000/- to his company M/s.Someshwara Multiprojects Ltd.
- that the transactions explained by him above as well as in his statement dtd.10/6/2010 in respect of the account Padma-Parag (08-09) were all undertaken by him on the instructions and directions of Shri Parag Gathani of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad.
- that he was shown a email dtd.1/4/2010 of Shri Vishal Wadkar sent to Shri Kalpessh Daftary of M/s.Sunkkalp Creations Pvt Ltd, Mumbai at his email ID info@sunkkalp.com. By the said email the ledger account of M/s.Sunkkalp Creations Pvt Ltd in the books of accounts of M/s.Hindustan Continental Ltd, Kolkata was forwarded to Shri Kalpesh Daftary. The said ledger account was in respect of the transactions undertaken by M/s.Hindustan Continental Ltd on behalf and on the instructions of Shri Kalpesh Daftary of M/s.Sunkkalp Creations Pvt Ltd.
- that all the transactions contained in the said ledger account pertained to the purchase and sale of export incentive licences by M/s.Hindustan Continental Ltd on behalf of M/s.Sunkkalp Creations Pvt Ltd, Mumbai.
- that the transactions of purchase and sale of licences were shown and booked from the Kolkata branch office of M/s.Hindustan Continental Ltd for the purpose of saving on VAT. On being asked,

VAT of 4% was exempted in West Bengal on sales of Licences accordingly only CST @ 2% was required to be paid. Therefore, there was a net benefit of 2% and hence the billings were done on the Kolkata address.

- that the entries mentioned as ' By Purchase Register' were in respect of the export incentive licences shown as purchased by M/s.Hindustan Continental Ltd. The entries mentioned as 'To Sales Register' were in respect of the export incentive licences shown as sold by M/s.Hindustan Continental Ltd .
- that the entries dtd.22/5/2009, 28/5/2009 and 29/5/2009 were in respect of the licences was shown to be purchased by M/s.Hindsutan Continental Ltd from M/s.Sunkkalp Creations Pvt Ltd.
- that the entries dtd.30/9/2009 were in respect of the licences shown to be sold by M/s.Hindustan Continental Ltd to M/s. Global Exim.
- that he was shown an email dtd.14/4/2010 sent by Shri Vishal Wadkar to Shri Dharmesh Gathani of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad. By the said email the account of Shri Dharmesh Gathani maintained by them for the period from 1/4/2004 to 1/4/2010 was sent as an attachment.
- that the entry dtd. 27/7/2008 was in respect of an amount of Rs.2,00,000/- paid by Shri Dharmesh Gathani to his friend Shri Ashok Muchala in Ahmedabad.
- that the entry dtd.28/8/2008 in respect of an amount of Rs.14,00,000/- was paid to Shri Dharmesh Gathani in cash. The entry dtd.29/8/2008 was in respect of an amount of Rs.6,00,000/- paid to Shri Chotu of M/s.Sunkkalp Creations Pvt Ltd on the instructions of Shri Dharmesh Gathani.
- that he was shown an email dtd.13/4/2010 sent by Shri Vishal Wadkar to Shri Dharmesh Gathani of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad. By the said email the accounts of Shri Dharmesh Gathani under the code name ' DRG', M/s.Padmavati Agencies Pvt Ltd under the code name of ' Padma 09-10' and Padma – HCL09-10 maintained by them was sent as an attachment.
- that the entry dtd.11/12/2009 in respect of an amount of Rs.97,00,000/- paid in cash to Shri Dharmesh Gathani at Ahmedabad. The amount was sent by Angadia M/s. Soma Kanchan. On the same day an amount of Rs.36,00,000/- was paid in cash to Shri Dharmesh Gathani at Ahmedabad. This amount was sent by Angadia M/s. Magan Shankar. On the same day an amount of Rs.50,00,000/- was transferred by M/s.Padmavati Agencies Pvt Ltd to M/s.Hindustan Continental Ltd. This transaction pertained to sale and purchase of licences by M/s. Hindustan Continental Ltd on behalf of M/s.Sunkkalp Creations Pvt Ltd.
- that the entry dtd.14/12/2009 was in respect of an amount of Rs.1,00,00,000/- transferred by M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd.
- that the entry dtd.18/2/2010 was in respect of an amount of Rs.1,50,00,000/- paid in cash to Shri Dharmesh Gathani at Bhuleshwar, Mumbai. On the same day an equal amount of

Rs.1,50,00,000/- transferred by M/s.Vrinda Agencies Pvt Ltd to M/s.Twilight Litaka Pharma Ltd.

- that the entry dtd.20/2/2010 was in respect of an amount of Rs.15,00,000/- paid in cash to one Shri Hajare in Delhi on the instructions of Shri Dharmesh Gathani.
- that the entry dtd.22/2/2010 pertained to an amount of Rs.50,00,000/- which was transferred by M/s.Vrinda Agencies Pvt Ltd to M/s. Twilight Litaka Pharma Ltd. On the same day an amount of Rs.15,00,000/- was paid to Shri Dharmesh Gathani in cash at Angadia M/s.Soma Kanchan. Similarly on 23/2/2010 an amount of Rs.30,00,000/- was paid in cash to Shri Dharmesh Gathani at Opera House, Mumbai by Angadia M/s.Soma Kanchan.
- that the entry dtd.4/3/2010 in respect of an amount of Rs.1,50,00,000/- was paid by M/s.Padmavati Agencies Pvt Ltd to M/s.Hindustan Continental Ltd. This amount pertained to the sale purchase of licences between M/s.Padmavati Agencies Pvt Ltd and M/s.Hindustan Continental Ltd on behalf of M/s.Sunkkalp Creations Pvt Ltd and accordingly the entry had been mentioned as 'ZOO'. On the same day M/s.Sunkkalp Creations Pvt Ltd an amount of Rs.1,50,00,000/- was paid to Shri Dharmesh Gathani.
- that the entry dtd.17/3/2010 was in respect of an amount Rs.1,00,00,000/- transferred by M/s.Vrinda Agencies Pvt Ltd to M/s.Twilight Litaka Pharma Ltd. This amount was transferred on the same day by M/s. Twilight Litaka Pharma Ltd to M/s. Padmavati Agencies Pvt Ltd.
- that the entry on 18/3/2010 was in respect of an amount of Rs.1,00,00,000/- transferred by M/s.Vrinda Agencies Pvt Ltd to M/s.Twilight Litaka Pharma Ltd. On the same day the same amount was transferred by M/s.Twilight Litaka Pharma Ltd to M/s.Padmavati Agencies Pvt Ltd.
- that the entry dtd.19/3/2010 was in respect to an amount of Rs.1,00,00,000/- transferred by M/s.Vrinda Agencies Pvt Ltd to M/s.Twilight Litaka Pharma Ltd. On the same day the same amount was transferred by M/s.Twilight Litaka Pharma Ltd to M/s.Padmavati Agencies Pvt Ltd.
- that regarding the entry dtd.20/3/2010 he stated that M/s.Vrinda Agencies Pvt Ltd had transferred an amount of Rs.1,49,37,642/- to M/s. Twilight Litaka Pharma Ltd which was transferred by them on the same day to M/s. Padmavati Agencies Pvt Ltd.
- that the transactions explained by him above in respect of the account 'DRG' were all undertaken by him on the instructions and directions of Shri Dharmesh Gathani of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad.
- that the account 'Padma 09-10' pertained to the account of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad was maintained by them.
- that the entries dtd.15/10/2009, 16/10/2009 and 27/10/2009 were in respect of a total amount of Rs.60,00,000/- transferred by M/s. Twilight Litaka Pharma Ltd to M/s.Padmavati Agencies Pvt Ltd, Ahmedabad.

- that the entry dtd.30/10/2009 pertained to an amount of Rs.60,00,000/- which was transferred by M/s.Vrinda Agencies Pvt Ltd to M/s.Twilight Litaka Pharma Ltd.
- that the entry dtd.31/10/2009 in respect of an amount of Rs.15,00,000/- was paid in cash to M/s.Padmavati Agencies Pvt Ltd at Ahmedabad. The said amount was paid to them by his friend Shri Vishwa Mani Tiwari
- that the entry dtd.10/11/2009 was in respect of an amount of Rs.25,00,000/- paid to M/s.Global Exim on his and Shri Pankaj Vora's instructions.
- that the entry dtd.11/11/2009 in respect of an amount of Rs.10,00,000/-was paid in cash to M/s.Padmavati Agencies Pvt Ltd in Ahmedabad by his friend Shri Vishwa Mani Tiwari.
- that the entry dtd.19/3/2010 was in respect of an amount of Rs.50,00,000/- transferred by M/s. Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd and this amount pertained to the purchase of licence by M/s.Padmavati Agencies Pvt Ltd from M/s.Hindustan Continental Ltd. On the same day an amount of Rs.50,00,000/- in cash was paid to M/s.Padmavati Agencies Pvt Ltd at Angadia M/s.Soma Kanchan, Opera House, Mumbai.

63. A statement of Smt Bindi Vinay Vora, Employee of M/s.Hindustan Continental Ltd, Mumbai was recorded on 11/06/2010 under Section 108 of the Customs Act, 1962 wherein she stated inter alia :

- that she joined M/s Hindustan Continental Limited during October-2008 as part time clerk and paid a starting salary of Rs.3500.00 and finally receiving a salary of Rs.5000.00. She was working from 1200 hrs to 1600 hrs in the office at A-02,Kalyan Bhavan, Plot No-406,Tally Galli,Andheri(East),Mumbai.
- that in the office of Hindustan Continental Limited there one personal computer on which she was working and one laptop computer(acer) which was being used by Shri.Yogesh Palsania. She was accessing the e-mails from the personal computer installed in the office. Her e-mail i.d is v_bindi@yahoo.com which was used for receiving and sending correspondences related to the business of M/s Hindustan Continental Limited. Shri.VIshal Wadkar and others used to send her e-mails and she was also forwarding certain mails to different persons as per the directions received.
- that their company was also having an address at Kolkata which actually being used only for billing purpose and they did not have any staff at Kolkata as the works related to Kolkata branch also handled from this office at Mumbai.
- that she continued to work at M/s Hindustan Continental Limited till March-2010 and as a part of her job she was preparing sale Invoices, signing the sale Invoices, sending e-mails to various persons and filing of purchase bills. She was working as per the directions of Shri.Surendra Kumar Kulhari who was the director and main person of the company.
- that M/s Hindustan Continental Limited was engaged in raising bills for sale/purchase of DEPB/VKGUY licences. She was

instructed by Shri.Surendra Kulhari to prepare the sale bills and other documents as per the instructions received from the office of Shri.Sashin Koradia who was having his office at Kalbadevi, Mumbai.

- that all instructions were received through e-mail and the mails in relation to directions for preparation of Invoices/bills were received from the e-mail account wadkar_vs@yahoo.co.in and the said account was used by Shri.Vishal Wadkar an employee of Shri.Sashin Koradia.
- That she had never received any original copy of DEPB/VKGUY licence or any related document at the office of M/s Hindustan Continental Limited.
- that the major parties from whom the purchase bills were received were - M/s Sunkkalp Creations Private Limited,Mumbai; M/s Padmavati Agencies Pvt.Ltd.,Ahmedabad;M/s Vani Exports, Kolkata; M/s Sabari Quality Foods, etc.
- that the sales bills were also raised in the name of similar firms or sometimes in the name of other firms/companies also. The bills were all prepared as per the instructions received from Shri.Vishal Wadkar through e-mails.
- that she was signing the bills on behalf of M/s Hindustan Continental Limited as authorized signatory however, sometimes when she was not available for signature the bills were also signed from the office of Shri.Sashin Koradia as they were having the letter heads of their company and the details for preparation of the invoices.
- that as per her knowledge the licences were sold from one trader to another and then to the third and then to the fourth trader and so on, but the actual licences were not being physically moved to so many traders. Actually the licence was physically sent from the first seller to the last buyer/ultimate user of the licence. She was aware that these licences were utilized for payment of customs duty at the port during import of some goods.
- that regarding the other staff members of M/s Hindustan Continental Limited, Mumbai she stated that one Mr.Yogesh Palsania handling the accounts and tally software of the company. The office was actually a rented premises from the premises of M/s S.M Couriers, Mumbai.
- that she was shown the sale bills of M/s Hindustan Continental Limited, Mumbai and she recognized the same and also recognized her signature and affirmed the same. She also identified some of the Invoices which were actually not signed by her and mentioned the same on the Invoice.
- that she identified the following sale invoices of M/s Hindustan Continental Limited, Mumbai :

Sr. No	**Sale Invoice No.**	**Sale Invoice Date**	**Invoice Amount (Rs.)**	Issued to
1	HCL/101/2008-09	27.11.2008	8564913.00	M/s Padmavati Agencies Pvt.Ltd
2	HCL/102/2008-09	27.11.2008	12257528.00	M/s Padmavati Agencies Pvt.Ltd

3	HCL/103/2008-09	27.11.2008	1534306.00	M/s Padmavati Agencies Pvt.Ltd
4	HCL/104/2008-09	27.11.2008	489508.00	M/s Padmavati Agencies Pvt.Ltd
5	HCL/138-A/2008-09	28.11.2008	3749507.00	M/s Padmavati Agencies Pvt.Ltd
6	HCL/175-A/2008-09	15.12.2008	7499851.00	M/s Padmavati Agencies Pvt.Ltd
7	HCL/214/2008-09	12.01.2009	14743254.00	M/s Padmavati Agencies Pvt.Ltd
8	HCL/216/2008-09	16.01.2009	32714588.00	M/s Padmavati Agencies Pvt.Ltd
9	HCL/215/2008-09	16.01.2009	25202408.00	M/s Padmavati Agencies Pvt.Ltd

- that she was shown nine bills of M/s Hindustan Continental Limited, Mumbai bearing the above invoice numbers, she identified the said bills and confirmed that the bills had been issued on the letter heads of M/s Hindustan Continental Limited and the details on the bills like Invoice number,amount and name of the buyer were same as shown in the identical invoices listed in the above table, however she confirmed that, the date of issue of the invoices were different in the actual invoices found among the files of M/s Hindustan Continental Limited, Mumbai withdrawn by DRI Mumbai vide Panchnama dated 18.05.2010.
- that she was shown Invoice No-K/100 dated 04.10.2008 of M/s Vrinda Agencies Pvt.Ltd for sale to M/s Hindustan Continental Limited in respect of two licences bearing numbers 0710057493, dated 21.05.2008 and 0710057638 dated 29.05.2008. She confirmed that the sale of the licences had taken place at 65.10% and 66.35% respectively.
- that on being asked to co-relate the sale of these two licences from among the sale bill file of M/s Hindustan Continental Limited withdrawn by DRI, Mumbai under Panchnama dated.18.05.2010 she co-related the same with Sale Invoice No.HCL/101/2008-09 dated.27.11.2008 for sale to M/s Padmavati Agencies Pvt.Ltd.,Kolkata and the sale had taken place at 98% for each licence.
- that on being asked to identify the signature appearing on the Sale Invoice No. HCL/101/2008-09 dated.27.11.2008, she stated that the signature appeared to be that of Ms.Shilpa R Jadhav who was working with M/s Priority Traders Pvt.Ltd.
- that on being asked she accessed her e-mail account v_bindi@yahoo.com from a computer installed in DRI office Ahmedabad and opened her mailboxes i.e inbox, sent mailbox etc. That the password for this e-mail id was also given to Shri.Yogesh Palsania and Ms.Shilpa R Jadhav also.
- that after accessing the same she took the print outs of the following e-mails and explained as under :

  a) that e-mail dated 02.02.2010 was sent from her email id to Kavita Parmar-kavita_parmar@rediffmail.com alongwith one xl file. She stated that the details actually contained the list of companies to which Shri.Surendra Kulhari was associated. These xl sheets were prepared from the

data/details provided to her by Shri Kulhari. Then the xl sheet was forwarded to Ms.Kavita Parmar on her e-mail id as shown above.

b) that e-mail dated 05.12.2008 from her e-mail id to Shri Kamalji Poddar-samank2010@yahoo.com who a family friend of Shri Surendra Kulhari and was very close to him and also visited the office of Hindustan Continental Limited often. The details were prepared and forwarded by her as per the instruction of Shri.Surendra Kulhari.The details were for sale bills for period 21.11.2008 to 05.12.2008 and some purchase bills details also.

c) that e-mail dated 10.09.2008 was from Reena-reena.momentum@gmail.com to her e-mail id. That Reena was an employee of a firm by the name Momentum at Kandivali,Mumbai and looking after the web designing on behalf of various companies/firms. The sheet contained passwords sent by Reena to her to be given to Shri.Surendra Kulhari. These passwords were required to access the websites.

d) that e-mail dated.08.01.2010 was received from someshwara ltd-someshwaramultiproject@yahoo.co.in to her e-mail id. The mail contained three sheets as attachments and she was not able to recollect as to why the same was sent to her as she did not have any letter head of Choice International, the same could be explained by Shri.Surendra Kulhari.

e) that e-mail dated.23.10.2009 was from someshwara ltd-someshwaramultiproject@yahoo.co.in to her e-mail id. The attachment was the Purchase register and sales register of Hindustan Continental Limited and Priority Traders Pvt.Ltd for the period 01.07.2009 to 30.09.2009 all in tally format. After receiving the details she verified them with the actual bill files available with them.

f) that e-mail dated.24.09.2009 was received from Ms.Shilpa Jadhav-hishilpa_jadhav@yahoo.in The details contained names, addresses and person details of different companies and were sent by Shilpa R Jadhav.

g) that e-mail dated.20.11.2009 was received from one Bikram Mohanty-bkmbkmsrm@yahoo.co.in. The details in the enclosed sheet contained tally data of Day Book of M/s Sakambhari Enterprises from 14.11.2009 to 24.11.2009. The data was forwarded to her to be given to Shri.Kulhari.

h) that e-mail dated.18.05.2009 was received from one suraj - surajjha_83@rediffmail.com.The details were received from one person of M/s Sunkkalp or Mr.Sashin Koradia and the details were required to be sent on Invoices of M/s Hindustan Continental Limited.

64. A statement of Smt Shilpa Raghunath Jadhva, Employee of M/s.Priority Traders Pvt Ltd, Mumbai was recorded on 11/06/2010 under Section 108 of the Customs Act, 1962 wherein she stated inter alia :

- that in 2008 Smt. Bindi V. Vora, who was working in M/s Hindustan Continental Limited, A-02, Kalyan Bhavan, Plot No-406, Tally Galli, Andheri (East), Mumbai contacted and told her that her boss Shri Surendra Kulhari was also having a firm in the name of in M/s Priority Traders Private Limited, Shop No.8, Crystal Court Building, Near Powai Police Station, Chandivali, Andheri (East), Mumbai-72 and there vacancy of office clerk. She advised her to meet Shri Surendra Kulhari for the said job. In the month of Jan, 2009, she met Shri Surendra Kulhari in his office. She started working in M/s Priority Traders Private Limited as office clerk.
- that she continued to work at M/s Priority Traders Private Limited, till March-2010 she left the said job from April' 2010 because of her brother's death.
- that M/s Priority Traders Private Limited was engaged in raising bills for sale/purchase of DEPB/VKGUY licences. She was working as per the directions of Shri.Surendra Kumar Kulhari who was the director and main person of the company. Initially she was handling filing work but after some time on the direction of Shri Surendra Kulhari, she was signing the sale Invoices as authorised signatory of M/s M/s Priority Traders Private Limited, sending e-mails to various persons and filing of sale and purchase bills.
- that she did not know regarding who prepared the bills. On the directions of Shri Surendra Kulhari, she had created her e-mail account hishilpa_jadhav@yahoo.in. For receiving and sending business mail of M/s Priority Traders Private Limited her above said e-mail id was being used.
- that she had never received or seen any original copy of DEPB/VKGUY licence or any related document at the office of M/s Priority Traders Private Limited.
- that she accessed her email account hishilpa_jadhav@yahoo.in from a computer installed in the DRI officer and after going through the emails contained in the 'in box', printouts of some mails had been taken which were numbered from page No.01 to 07. She explained the details regarding following printout as under:

  (1). that e-mail dated 28.10.2009 was received from Vinay Ghoria, through e.mail "vinay_zandu@rediffmail.com>. Vide email dtd. 28.10.2009, she had received scanned copy of letter head "SAFAL RESORTS PRIVATE LIMITED" and "Alken Management & Financial Services Pvt. Ltd., with their respective telephone numbers, email id and website. She did not know Shri Vinay Ghoria. On the direction of Shri Surendra Kulhari she had down loaded the said mail and taken the printout of the said mail and handed over the same to him.

  (2). that e-mail dated 04.07.2009 was received from Latiff Khan, through e.mail latiffkhan@rediffmail.com Vide email dtd. 04.07.2009, she had received scanned copy of letter head "HOT N ICE _ Entertainment Private Limited, "Tac Technosoft Pvt. Ltd.", "Harekrishna

Securities Private Limited", "ELPEE Corporate Services Pvt. Ltd,", "Priority Traders Private Limited", "Ealdor Retails Private Limited", "Rana Advertising & Marketing Pvt. Ltd.,", "Hormony Energy Private Limited", "Lilac Medicines Pvt. Ltd.", "Skylar Chemicals Private Limited", "Epson Trading Private Limited", and "Panama Overseas Private Limited", with their respective telephone numbers, email id and website. Shri Latiff Khan was a Director of M/s Hindustan Continental Ltd. On the direction of Shri Surendra Kulhari she had down loaded the said mail and taken the printout of the said mail and handed over the same to him.

- that she was shown some sale bills of M/s Priority Traders Private Limited, Mumbai, she recognized the same and also recognized her signature and affirmed the same.
- that she was shown some sale bills of M/s Hindustan Continental Ltd. Mumbai for the period Nov' 2008 to Dec'2008. She had signed on these bills as authorized signatory and she recognized her signature and affirmed the same. She had signed these on the direction of Shri Surendra Kulhari.
- that she was the only staff member working in the office of M/s Priority Traders Private Limited. Beside her only Shri Surendra Kulhari used to come office.
- that the e-mail account of Smt. Bindi V Vora also being used by her for the works of M/s Hindustan Continental Limited and M/s Priority Traders Pvt.Ltd and she having the password of the said e-mail account. The password of her e-mail account was also known to Shri.Surendra Kulhari for the e-mail transactions for facts related to M/s Hindustan Continental Limited and M/s Priority Traders Pvt. Ltd.

65. A further statement of Shri Sashin Jayantilal Koradia, was recorded on 12/06/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was shown the ledger account of M/s.Sunkkalp Creations Pvt Ltd (M/s SCPL), Mumbai maintained by them under the code name of 'ZOO', which he had produced during his statement dated 11.06.2010.
- that M/s SCPL engaged in trading of export incentive licences. Many a times to show lesser profit in their accounts they showed sale and purchase of these licences in the name of various others firms viz. M/s New Planet Trading Co. P. Ltd., M/s Hardware Trading Corporation, M/s Ostwal Trading Pvt. Ltd. etc.
- that Shri Kalpesh Daftary of M/s SCPL requested them to arrange for billings for which he would be paying them commission/service charge of 6% of the profit element of such transaction. Accordingly, he had arranged for billings in the name of different firms some of which were as stated above.
- that except for M/s Punjab Crop Protection P. Ltd., the other firms were arranged by him through his friends Shri Pravin Jain alias Pintoo, Shri Girish Jain, and Shri Kamal Poddar. Shri Girish Jain

and Shri Kamal Poddar were all Chartered Accountants by profession.

- that in the said ledger account maintained in the code name of 'ZOO" various other words had been used which were codes for persons or firms. He explained the same as under :-

    1) Zoo – this was the code name for M/s.Sunkkalp Creations Pvt Ltd and derived from their office location i.e. Juhu.
    2) Babloo – this was the code name for the firms of Shri Pravin Jain. Babloo the pet name of the younger brother of Shri Pravin Jain. The entries under this name pertained to the transactions undertaken in the name of the firms of Shri Pravin Jain.
    3) HGM – this was the code name for Shri Hasmukh Gulabchand Mehta who his friend and also a sales tax consultant. The entries under this name indicated that either billings or funds had been provided from the accounts managed by Shri Hasmukh Mehta.
    4) SC – this was the code for Service Charges.
    5) ATM – this was the code for Cash Transactions.
    6) Supat – this was the code name for M/s.Hindustan Continental Ltd. and the entries under this name pertained to the transactions undertaken in the name of the said firm.

- that as and when required Shri Kalpesh Daftary would send them the details and asked them to raise purchase invoices of the licences either from the original licence holders or from other licence traders. Accordingly, he would arrange for the purchase invoices in the name of the firms as mentioned above. As per the directions of Shri Kalpesh Daftary he would also arrange for preparation of sales invoices.
- that he explained the billing transaction by way of an illustration. M/s.New Planet Trading would on the instructions of Shri Kalpesh Daftary purchase licences from M/s. General Commodities at 75% of the licence value and would raise a sale invoice in the name of M/s.Ostwal Trading Pvt Ltd. at 80% of the licence value, who would in turn raise a sales invoice in the name of M/s. Hindustan Continental Ltd at 85% of the licence value. M/s.Hindustan Continental Ltd would in turn raise a sales invoice in the name of the firm instructed by Shri Kalpesh Daftary at 90% of the licence value. By the above routing of purchase and sales, the sale value of the licence was raised by each firm and accordingly the profit was split among the firms. However, this splitting of the profit was only on paper and these firms were not the beneficiaries. The difference between the actual purchase value of the licence and the actual final sale value of the licence went to only M/s.Sunkkalp Creations Pvt Ltd. He got only commission/service charge @ 6% of the profit

and this was split by him with the firms involved in the transaction.

- that some times the amount involved in the above mentioned purchase and sale of licence was transferred to M/s. SCPL by cheque or Real Time Gross Settlement (RTGS) but many times the amount was paid to M/s.SCPL in cash.
- that the firms used in these transactions raised the cash and which he arranged to be paid to Shri Kalpesh Daftary, Shri Paresh Parekh or to any other person of M/s.SCPL. There had also been instances where the cash had been delivered to other persons on the instructions of Shri Kalpesh Daftary or Shri Paresh Parekh.
- that he listed out the instances, detailed in the said account, where the amount arising out of the purchase and sale of licences had been paid to M/s.SCPL in cash and the same as as per Annexure attached to his statement.
- that he explained one transaction wherein the payments received by the billing firms were converted to cash and returned to M/s.SCPL. He explained the entry dtd.25/10/2008: M/s. Padmavati Agencies Pvt Ltd transferred an amount of Rs.60,00,000/- by RTGS to M/s. New Planet Trading on 25/10/2008. This amount was converted to cash and given to M/s.Sunkkalp Creations Pvt Ltd. The cash amount was delivered to the person of M/s.Sunkkalp Creations Pvt Ltd Shri Chotu.
- that he was listed the transactions between M/s.Sunkkalp Creations Pvt Ltd and M/s. Padmavati Agencies Pvt Ltd as under :-

Sr. No.	**Date**	**Details of the Transaction**	**Amount (Rs.)**
1	12/6/2008	RTGS from M/s.Padmavati Agencies Pvt Ltd to M/s. New Planet Trading	1,00,00,000/-
2	17/6/2008	RTGS from M/s.Padmavati Agencies (Mohali) to M/s. New Planet Trading	40,00,000/-
3	18/6/2008	RTGS from M/s.Padmavati Agencies (Mohali) to M/s. New Planet Trading	50,00,000/-
4	24/6/2008	RTGS from M/s.Padmavati Agencies Pvt Ltd to M/s. New Planet Trading	61,00,000/-
5	10/7/2008	RTGS from M/s.Padmavati Agencies to M/s. New Planet Trading	25,00,000/-
6	9/9/2008	RTGS from M/s.Vrinda Agencies Pvt Ltd to M/s. Ostwal Trading Co	40,00,000/-
7	27/9/2008	M/s.Padmavati Agencies Pvt Ltd to M/s.New Planet Trading by Cheque No.533075 of HDFC	15,03,257/-
8	27/9/2008	M/s.Vrinda Agencies Pvt Ltd to M/s.Ostwal Trading by Cheque No.444365 of HDFC	7,01,798/-
9	29/9/2008	RTGS from M/s.Vrinda Agencies Pvt Ltd to M/s. Ostwal Trading Co	25,00,000/-
10	3/10/2008	RTGS from M/s.Vrinda Agencies Pvt Ltd to M/s. Ostwal Trading Co	25,00,000/-
11	25/10/2008	RTGS from M/s.Padmavati Agencies Pvt Ltd to M/s. New Planet Trading	60,00,000/-
12	31/10/2008	RTGS from M/s.Padmavati Agencies Pvt Ltd to M/s. New Planet Trading	40,00,000/-
13	12/12/2008	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. R.R.Impex.	50,00,000/-
14	18/12/2008	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. R.R.Impex.	50,00,000/-

15	05/01/2009	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. R.R.Impex.	25,00,000/-
16	19/01/2009	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. R.R.Impex.	1,50,00,000/-
17	21/1/2009	RTGS from M/s.Padmavati Agencies Pvt Ltd to M/s. R.R.Impex.	1,00,00,000/-
18	22/1/2009	RTGS from M/s.Padmavati Agencies Pvt Ltd to M/s. R.R.Impex.	25,00,000/-
19	27/1/2009	RTGS from M/s.Padmavati Agencies Pvt Ltd to M/s. R.R.Impex.	1,00,00,000/-
20	29/1/2009	RTGS from M/s.Padmavati Agencies Pvt Ltd to M/s. R.R.Impex.	50,00,000/-
21	06/02/2009	M/s.Hindustan Continental Ltd to M/s.Padmavati Agencies Pvt Ltd by Cheque No.005327 of HDFC	2,00,00,000/-
22	10/02/2009	M/s.Hindustan Continental Ltd to M/s.Padmavati Agencies Pvt Ltd by Cheque of HDFC	2,00,00,000/-
23	10/2/2009	Cheque transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. R.R.Impex.	53,97,872/-
24	14/02/2009	M/s.Hindustan Continental Ltd to M/s.Padmavati Agencies Pvt Ltd by Cheque of HDFC	2,00,00,000/-
25	16/2/2009	M/s.Hindustan Continental Ltd to M/s.Padmavati Agencies Pvt Ltd by Cheque No.005840 of HDFC	60,00,000/-
26	16/2/2009	M/s.Hindustan Continental Ltd to M/s.Padmavati Agencies Pvt Ltd by Cheque No.005841 of HDFC	60,00,000/-
27	18/02/2009	M/s.Hindustan Continental Ltd to M/s.Padmavati Agencies Pvt Ltd by Cheque No.005842 & 005843 of HDFC	1,00,00,000/-
28	06/03/2009	Transfer from M/s.Vrinda Agencies Pvt Ltd to M/s.R.R.Impex.	50,00,000/-
29	7/3/2009	Transfer from M/s.Vrinda Agencies Pvt Ltd to M/s.R.R.Impex.	35,00,000/-
30	10/3/2009	Transfer from M/s.Vrinda Agencies Pvt Ltd to M/s.R.R.Impex.	65,00,000/-
31	12/3/2009	Transfer from M/s.Vrinda Agencies Pvt Ltd to M/s.R.R.Impex.	1,75,00,000/-
32	14/03/2009	Transfer from M/s.Vrinda Agencies Pvt Ltd to M/s.R.R.Impex.	2,00,00,000/-
33	19/3/2009	Transfer from M/s.Vrinda Agencies Pvt Ltd to M/s.R.R.Impex.	50,00,000/-
34	20/3/2009	Transfer from M/s.Vrinda Agencies Pvt Ltd to M/s.R.R.Impex.	50,00,000/-
35	23/3/2009	Transfer from M/s.Vrinda Agencies Pvt Ltd to M/s.R.R.Impex.	1,00,00,000/-
36	24/3/2009	Transfer from M/s.Vrinda Agencies Pvt Ltd to M/s.R.R.Impex.	35,00,000/-
37	25/3/2009	Transfer from M/s.Vrinda Agencies Pvt Ltd to M/s.R.R.Impex.	50,00,000/-
38	26/3/2009	Transfer from M/s.Vrinda Agencies Pvt Ltd to M/s.R.R.Impex.	1,20,00,000/-
39	18/5/2009	M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd by cheque of HDFC	1,25,00,000/-
40	21/5/2009	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd. by HDFC.	20,00,000/-
41	22/5/2009	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd. by HDFC.	10,00,000/-
42	26/5/2009	Transfer from M/s.Padmavati Agencies	90,00,000/-

		Pvt Ltd to M/s. Hindustan Continental Ltd. by HDFC.	
43	30/5/2009	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd.	50,00,000/-
44	08/07/2009	Cheque transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd.	20,00,00,000/-
45	14/07/2009	Cheque transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd.	2,00,00,000/-
46	29/07/2009	Cheque transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd.	5,00,00,000/-
47	29/7/2009	Cheque transfer from M/s.Priority Traders Pvt Ltd to M/s. Padmavati Agencies Pvt Ltd.	3,00,00,000/-
48	25/8/2009	Cheque transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd.	4,00,00,000/-
49	25/8/2009	Cheque transfer from M/s. Hindustan Continental Ltd to M/s.Vrinda Agencies Pvt Ltd.	4,00,00,000/-
50	01/10/2009	Cheque transfer from M/s.Accurate Multitrade to M/s.Padmavati Agencies Pvt Ltd	2,00,00,000/-
51	03/10/2009	Transfer from M/s.Hindustan Continental Ltd to M/s. Vrinda Agencies Pvt Ltd by Cheque No.017746 of HDFC	34,34,289/-
52	03/10/2009	Cheque transfer from M/s.Accurate Multitrade to M/s.Padmavati Agencies Pvt Ltd	3,12,99,545/-
53	06/10/2009	RTGS by M/s.Padmavati Agencies Pvt Ltd to M/s.Hindustan Continental Ltd.	50,00,000/-
54	08/10/2009	RTGS from M/s. New Planet Trading to M/s.Padmavati Agencies Pvt Ltd	50,00,000/-
55	09/10/2009	RTGS from M/s. New Planet Trading to M/s.Padmavati Agencies Pvt Ltd	25,00,000/-
56	12/10/2009	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd.	30,00,000/-
57	16/10/2009	RTGS from M/s. New Planet Trading to M/s.Padmavati Agencies Pvt Ltd	25,00,000/-
58	16/11/2009	Transfer from M/s.Priority Traders Pvt Ltd to M/s. Padmavati Agencies Pvt Ltd. cheque No.019811 of HDFC	55,11,574/-
59	17/11/2009	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd.	55,00,000/-
60	02/12/2009	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd.	25,00,000/-
61	07/12/2009	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd.	92,00,000/-
62	16/2/2010	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd.	50,00,000/-
63	23/02/2010	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Hindustan Continental Ltd.	1,07,00,000/-
64	23/02/2010	Transfer from M/s.Hindustan Continental Ltd to M/s.Vrinda Agencies Pvt Ltd	19,89,514/-

65	23/02/2010	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Adhunik Corporation Ltd.	5,00,00,000/-
66	27/02/2010	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Adhunik Corporation Ltd.	12,00,000/-
67	03/03/2010	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Accurate Multitrade.	50,00,000/-
68	04/03/2010	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Accurate Multitrade.	50,00,000/-
69	06/03/2010	Transfer from M/s.Ostwal Trading to M/s.Padmavati Agencies Pvt Ltd.	50,00,000/-
70	08/03/2010	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Accurate Multitrade.	50,00,000/-
71	09/03/2010	RTGS from M/s.OStwal Trading to M/s.Padmavati Agencies Pvt Ltd.	50,00,000/-
72	09/03/2010	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Accurate Multitrade.	50,00,000/-
73	15/03/2010	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Adhunik Corporation Ltd.	78,05,431/-
74	17/03/2010	Transfer from M/s.Padmavati Agencies Pvt Ltd to M/s. Accurate Multitrade.	96,77,885/-
75	23/03/2010	RTGS from M/s.Ostwal Trading to M/s.Padmavati Agencies Pvt Ltd.	91,00,000/-
76	25/3/20101	RTGS from M/s.Ostwal Trading to M/s.Padmavati Agencies Pvt Ltd.	94,48,561/-

- that his attention drawn towards the entry dtd.8/7/2009 mentioned as " By Supat – Zoo" with the narration ' Ch TRF From Padmavati Agencies to Hindustan Continental Ltd' and the amount Rs.20,00,00,000/- and the entry of the same dtd. Mentioned as " To Supat –Zoo" with the narration 'Ch TRF From Hindustan Continental Ltd. to Sunkkalp Creation Pvt. Ltd' and the amount Rs.20,00,00,000/-. On being asked to explain he stated that an amount of Rs.20 crores was transferred by M/s.Padmavati Agencies Pvt Ltd to M/s.Hindustan Continental Ltd who in turn transferred it on the same day to M/s.Sunkkalp Creations Pvt Ltd. That he was not able to remember presently what this transaction pertained to however, he would check the records of M/s.Hindustan Continental Ltd and inform within a week's time.

65. A further statement of Shri Surendra Kulhari, Director of M/s.Hindustan Continental Ltd, Mumbai was recorded on 12/06/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was shown the statements of Smt.Bindi V Vora dated.11.06.2010 and Ms.Shilpa R Jadhav dated.11.06.2010 and agreed with the facts stated therein.
- that Smt.Bindi V Vora was his employee in M/s Hindustan Continental Limited and Ms.Shilpa R Jadhav was his employee in M/s Priority Traders Pvt.Ltd.
- that he was shown his previous statement dated 26.05.2010 and requested for rectifying some facts stated in his statement dated.26.05.2010. He confirmed that he was holding stakes in many companies. Hindustan Continental Limited was one of them

and he was one of the active directors of the said company. His signature was also approved in the bank account of the company. Regarding trading of licences through M/s Hindustan Continental Limited.

- that he confirmed that the offer was given to him by Shri.Sashin Koradia and since he wanted to have some turnover in the company, he accepted the offer.However, he also confirmed that in M/s Hindustan Continental Limited and M/s Priority Traders Pvt.Ltd. they had raised bills for trading of licences only, they had never been involved in the physical movement of the licences. To re-confirm the facts he reiterated that they had never received any licences or its associated documents at their office.
- that the bills were being raised by their staff members as per the directions received via e-mails from Shri.Vishal Wadkar an employee of Shri.Sashin Koradia. All the instructions were received from the e-mail of Shri.Vishal Wadkar's at the e-mail of his employee Smt.Bindi V Vora.
- that the sale Invoices were prepared by Smt.Vora and also signed by her. In some cases the sale invoices/bills were also signed by his other employee Ms.Shilpa R Jadhav.
- that the bills raised by M/s Priority Traders Pvt.Ltd. the bills/sale invoices were signed by Ms.Shilpa R Jadhav.
- that one of his staff members Shri.Yogesh Palsania was actually maintaining the accounts and he would produce him before the investigation in case his presence is required.
- that he shown print out of one e-mail dated.28.02.2008 taken out from the e-mail of Smt.Bindi V Vora-v_bindi@yahoo.com. He confirmed that it contained names of many companies and their directors. His name was found to be appearing among the directors in – M/s Fairline Compusoft Pvt.Ltd., M/s Shalimar Bansal Realtors Pvt.Ltd. The said list was an old one and the same was updated at a later stage and he had resigned from M/s Fairline Compusoft Pvt.Ltd., but still a director in M/s Shalimar Bansal Realtors Pvt.Ltd.
- that on being asked regarding the activity of these firms/companies he stated that these were the companies being used for various securities/shares related purposes and they had nothing to do with the trading of licences.
- that on being asked regarding the e-mail dated 24.09.2009 appearing with the statement dated.11.06.2010 of Smt.Bindi V Vora, he stated that the list also contained names of some companies and the details of their directors. He also confirmed from the list that his name figured against the names of M/s Abhilasha Money Operations Pvt.Ltd., Hindustan Continental Limited, M/s Emma Auto Ancillaries Pvt.Ltd.,M/s Harmony Energies Pvt.Ltd., M/s Lilac Medicines Pvt.Ltd., M/s Shalimar Bansal Realtors Pvt.Ltd., M/s Weald and Fashions Pvt.Ltd.,
- that these companies were engaged in security trading business and the list of directors were updated from time to time. These companies had nothing to do with the trading of licences as per his knowledge.

- that Smt.Bindi V Vora was also looking after the other works related to his firms, therefore these mails were received in her e-mails as she kept the proper record from time to time.
- that in Hindustan Continental Limited, they had used the e-mail account of Smt.Bindi V Vora for receiving the e-mails and the directions for preparing the sale invoices.
- that he was shown his statement dated.26.05.2010 and the Sale Invoices of Hindustan Continental Limited, Kolkata shown to him during that statement.
- that these bills were raised by his company M/s Hindustan Continental Limited as per the instructions received from the office of Shri.Kalpesh Daftary through the e-mails of Shri.Vishal Wadkar to Smt.Bindi V Vora.
- that the signatures appearing on these Invoices appeared to be that of Smt.Bindi V Vora, however as stated in her statement, some signatures might have been done by some other person as authorized signatory.
- that he was shown Invoice No-K/100 dated 04.10.2008 of M/s Vrinda Agencies Pvt.Ltd for sale to M/s Hindustan Continental Limited in respect of two licences bearing numbers 0710057493, dated 21.05.2008 and 0710057638 dated 29.05.2008. He confirmed that the sale of the licences had taken place at 65.10% and 66.35% respectively.
- that on being asked to co-relate the sale of these two licences from among the sale bill file of M/s Hindustan Continental Limited withdrawn by DRI, Mumbai under Panchnama dated.18.05.2010 he co-related the same with Sale Invoice No.HCL/101/2008-09 dated.27.11.2008 for sale to M/s Padmavati Agencies Pvt.Ltd.,Kolkata and the sale had taken place at 98% for each licence.
- that he realized that the sale amount far higher than the purchase price and profit generated with the account of M/s Hindustan Continental Limited. They had nothing to do with the utilization of the profit generated as the rotation of the actual amount received from the sale of the licences were also managed by Shri.Kalpesh Daftary. They were only concerned with the share of 25 paise commission which they had received out of which they had given 05 paise commission to Shri.Sashin Koradia.
- that they had never seen the details mentioned in the purchase or sale Invoices. All work was done as per the directions of Shri.Kalpesh Daftary of M/s Sunkkalp Creations Pvt. Limited, Mumbai.

Sr. No.	Licence No.& Date	Amount (Rs.)	Purchase from	Sale to
1	0710057493, dtd.21.05.2008	4680410	Vrinda Agencies Pvt.Ltd.	Padmavati Agencies Pvt.Ltd.
2	0710057638, dtd.29.05.2008	4059297	Vrinda Agencies Pvt.Ltd.	Padmavati Agencies Pvt.Ltd.
3	5310006880, dtd.11.11.2008	5681619	Vrinda Agencies Pvt.Ltd.	Padmavati Agencies Pvt.Ltd.
4	5310006867, dtd.11.11.2008	8150713	Vrinda Agencies Pvt.Ltd.	Padmavati Agencies Pvt.Ltd.
5	5310006882,	6740954	Vrinda Agencies	Padmavati

	dtd.11.11.2008		Pvt.Ltd.	Agencies Pvt.Ltd.
6	5310006874, dtd.11.11.2008	8300303	Vrinda Agencies Pvt.Ltd.	Padmavati Agencies Pvt.Ltd.
7	5310006825, dtd.05.11.2008	6979498	Vrinda Agencies Pvt.Ltd.	Padmavati Agencies Pvt.Ltd.
8	5310006896, dtd.11.11.2008	7696239	Vrinda Agencies Pvt.Ltd.	Padmavati Agencies Pvt.Ltd.
9	5310006893, dtd.11.11.2008	6313154	Vrinda Agencies Pvt.Ltd.	Padmavati Agencies Pvt.Ltd.
10	5310006883, dtd.11.11.2008	7667008	Vrinda Agencies Pvt.Ltd.	Padmavati Agencies Pvt.Ltd.

- that on being asked to explain the purchase and sale details of the above licences he stated that he would have to check the exact accounting details from his accounts person to confirm the same.
- that on being asked regarding the payments and receipts in respect of the abovementioned licences, he stated that for the same again he would have to check the ledger of the concerned parties through his accounts person. He agreed to submit the details as early as possible.

66. Shri Kalpessh Daftary, Director of M/s.Sunkkalp Creations Pvt Ltd, Mumbai was issued Summons No.41/2030 dtd.15/6/2010 for appearance on 18/6/2010. Shri Kalpessh Daftary did not appear and vide letter dtd.17/6/2010 sought a fresh date after 10-15 days.

67. A statement of Shri Sarjerao Mojar @ Chhotu, employee of M/s.Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 18/6/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he working as peon at the office of M/s Sunkkalp Creations Private Limited having office at 101-103-Sagarika Co-op Housing Society Pvt.Ltd., Opp-Ramada Palm Grove, Juhu Tara Road,Vile Parle(West),Mumbai-400049 since last 25 years.
- that the company was engaged in the trading of duty free export licences.About 25 years back he joined Shri.Pareshbhai Parekh at Trident India Limited and during that time there were three directors-Shri.Jatinbhai Parekh,Shri.Pareshhai Parekh and Shri.Jitubhai Mehta.
- that the company was engaged in the trading of different types of duty free licences. The office was situated at 82-Kaji Saiyad Street, Masjid Bunder,Mumbai-400003.Then the office was shifted to Near.Siemens Office,Chakala, Andheri(East),Mumbai-400099 thereafter the office was further shifted to 204, Manek Smruti,Above HDFC Bank,Nehru Road,Vile Parle(East), Mumbai-400057. Then the office was further shifted to the present location at Juhu, Mumbai.
- that in the year-2004 there was a partition among the directors of M/s Trident India Limited and Shri.Pareshbhai Parekh separated and created a new firm in the name of M/s Splendent Overseas having office at 204, Manek Smruti, Above HDFC Bank,Nehru Road,Vile Parle(East), Mumbai-400057. The other directors Shri.Jatin Parekh and Shri.Jitubhai Mehta shifted to Ahmedabad and started Trident India Limited there.

- that in the year-2005 the name the company further changed to M/s Sunkkalp Creations Private Limited and the office continued at the current place.
- that in their office presently there were three directors Shri.Pareshbhai Parekh, his wife Smt.Sangita Parekh and Shri.Kalpesh Daftary. Shri.Kalpesh Daftary had joined the company in the year-2005.
- that Shri.Kalpesh Daftary was residing at Mumbai in the residence of Shri.Pareshbhai Parekh situated at 301,Shubhangan,14-Stik Society, JVPD, Road No-2,Vile Parle(west), Mumbai.
- that he was doing the work of peon and office boy at the company. He was handing over tapals to different couriers, receiving and booking transactions with different angadia firms, receiving cash from the angadia firms as per the directions of Shri.Kalpesh Daftary.
- that since last two years Shri.Paresh Parekh was physically unfit for work and Shri.Kalpesh Daftary actually handling the entire work of the company.
- that he also knew one Shri.Sashin Koradia having office at Kalbadevi,Mumbai and he was also passing instructions regarding booking of cash with the angadias and then as per the directives of Shri.Kalpesh Daftary he was receiving the cash from the angadias situated at Bhuleshwar,Mumbai.
- that he had not met any of his directors since second week of April-2010.He had received his monthly salary regularly and in the absence of their directors the entire office management was done by one of their oldest employee-Ms.Eline Khambhatta. She was also managing the bank works also.
- that he was aware that one Shri.Vishal Wadkar-an employee of Sashin Koradia coming to their office on Sundays on part time basis for accounts related work since July-2008. He was working as per the instructions of Shri.Kalpesh Daftary as whenever Vishal was coming to office Shri,Kalpesh was also coming to give him directions.

68. In the course of the search of the office premises of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad on 21/4/2010, the laptop computer of Shri Kalpesh Darji, full time Auditor also withdrawn. The said laptop computer was opened under panchanama dtd.21/6/2010, 23/6/2010, 25/6/2010 and the data contained therein examined. Printouts were taken of the documents found relevant to the investigations.

69. As per the details furnished by M/s.Vani Exports, Kolkata the purchase invoices in respect of 14 licences given to them were of M/s.Mac Alloys Pvt Ltd, Kolkata. Therefore, vide letter dtd.23/6/2010 M/s.Mac Alloys Pvt Ltd, Kolkata were called upon to furnish copies of the purchase and sale invoices, ledger accounts and payment details. The details of purchase of the 85 fake/forged licences indicated that M/s. Padmavati Agencies Pvt Ltd, Ahmedabad had 05 fake/forged licences from M/s.Merill Impex Pvt Ltd, Kolkata. Therefore, M/s.Merill Impex Pvt Ltd, Kolkata were called upon vide letter dtd.23/6/2010 to furnish

copies of the purchase and sale invoices, ledger accounts and payment details.

70. As Shri Kalpessh Daftary did not appear in response to the summons issued to him, he was issued another Summons No.41/2036 dtd.24/6/2010 for appearance on 01/07/2010. However, Shri Daftary failed to appear before the investigating officer.

71. A further statement of Shri Vishal Vyas, Employee of M/s.Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 25/6/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that the e-mail accounts being used by him were : lic@sunkkalp.com ; ho@sunkkalp.com ; vishal_vyas@yahoo.com; vishal_vyas@live.com; the first two e-mails were pertaining to his office,i.e M/s Sunkkalp Creations Private Limited . The e-mail lic@sunkkalp.com being used by him or any other staff in his absence and the e-mail ho@sunkkalp.com majorly being used by Ms.Alean Khambhatta of their office and sometimes he also used the same. Another e-mail info@sunkkalp.com used and controlled by Shri.Kalpesh N Daftary.
- that since April-15, 2010 since all their directors were not visiting the office since April-15,2010 they did not have any work in the office. The work of purchase/sale of licences was actually controlled by their director Shri.Kalpesh N Daftary and since he was not coming to the office, they were not doing any purchase/sale of licences.
- that one Shri Vishal Wadkar a part time accountant who was visiting their office only on Sundays. As per his knowledge he was an employee of Sh. Sashin J Koradia of Mumbai. He was working for their company even before he had joined, i.e before Nov-2008. Shri.Vishal Wadkar was specially looking after the work of accounting in Tally software.
- that he was not efficient in working with the said software. One of their staff members Smt.Mamta Shah was also doing the work of accounting with Tally software. Shri.Vishal Wadkar was looking after some specific accounting work as per the directions of their director Shri.Kalpesh N Daftary.
- that Shri.Vishal Wadkar having e-mail wadkar_vs@yahoo.co.in and he sending mails to him as well as receiving e-mails from him using the said account. All mails related to the parties connected to Shri.Sashin Koradia were actually sent to the mail account wadkar_vs@yahoo.co.in, this was done as per the instructions of Shri.Kalpesh N Daftary.
- that in the said e-mails they were sending the details for making debit notes/invoices; details of the purchase and sale prices to be finalised on the debit notes, details of payments to be recovered from the parties, details of payments to be made to parties etc.
- that the names of the parties details related to whom they sent emails to the mail account was wadkar_vs@yahoo.co.in were- M/s Hindustan Continental Limited, Mumbai/Kolkata; M/s R.R

Impex,Kolkata; M/s Adhunik Corporation, Kolkata; Punjab Crop Care Protection Limited, Kolkata; New Planet Trading Pvt.Ltd.,Kolkata; Ostwal Trading Pvt.Ltd., Kolkata; M/s Accurate Multi Trade Pvt.Ltd.,Mumbai; M/s Priority Traders Pvt.Limited; Mumbai.

- that on being asked regarding the persons concerned of these firms/companies, he stated that he had never met any person of these companies and informed that all are through Sashin Koradia of Mumbai.
- that regarding the similar mails sent to some other mail accounts, he stated that, they were sending similar details related to M/s Vani Exports, Kolkata; M/s Merill Impex Pvt.Ltd,Kolkata; M/s Mac Alloy Pvt.Ltd; Kolkata to one Shri Girish Ghelani of Kolkata but the details were sent through fax and not through e-mail.
- that similar details in respect of M/s Krish Overseas, Rajkot; M/s Shivangi Enterprise, Rajkot were forwarded to the e-mail account info@krishoverseas.com. The debit notes/Invoices of M/s Shivangi Enterprise,Rajkot were forwarded to M/s Vani Exports,Kolkata through Maruti Courier Service. All the above activities were carried out as per the instructions of Shri.Kalpesh Daftary.
- that details related to M/s Padmavati Agencies Pvt.Ltd.,Ahmedabad/Kolkata and M/s Vrinda Agencies Pvt.Ltd.,Ahmedabad/Kolkata were forwarded to Shri.Kalpesh Darji of Padmavati Agnecies Pvt.Ltd., in his e-mail account kalpesh@groupgathani.com .
- that he was shown e-mail dated 07.04.2010 obtained from the inbox of wadkar_vs@yahoo.co.in showing the details forwarded to the said e-mail account from his e-mail and he confirmed that the said e-mail sent by him and it contained the scanned copy of cheque for Rs.51,00,000.00 from M/s Vani Exports to M/s Adhunik Corporation Ltd.
- that he was shown print out of e-mail dated 15.02.2010 from the inbox of Shri.Vishal Wadkar containing an attachment of an excel sheet. The mail was sent by him to Vishal Wadkar for being given to Sashin Koradia. The excel sheet contained details of VKGUY licences of M/s Allanasons Ltd, Mumbai.
- that all VKGUY licences related to Meat Exports by Allanasons Ltd., Mumbai or any of its group companies were received by their company at a discount of 15% as per some agreement. These licences were received either in the name of M/s Padmavati Agencies Pvt.Ltd or M/s Sunkkalp Creations Pvt.Ltd from Allanasons.
- that these licences were sold either to M/s Hindalco Industries Limited, Dahej or to M/s Reliance Industries Limited,Hazira or Magdalla. Sales to Hindalco were through M/s Padmavati Agencies Pvt.Ltd and to Reliance were through Shri.Bhavesh Doshi of M/s S.C Doshi & Sons,Nagdevi,Mumbai.
- that these licences were finally sold at about 97% or 97.5%. Usually Sunkkalp Creations Pvt.Ltd. raising the bills at a margin of 10 paise to 20 paise and the remaining margin between 85.20% to 97.50% adjusted by Shri.Sashin Koradia by rotating the purchase and sale of the licence among different companies.

- that for arranging this rotation of the licences the list of licences and their values were forwarded to Shri.Sashin Koradia through the e-mail of Vishal Wadkar.
- that he was shown e-mail dated 23.02.2010 from the mail i.d ho@sunkkalp.com to Vishal Wadkar giving the details of M/s Varsha Traders Pvt.Ltd.,Kolkata. He stated that, M/s Sunkkalp Creations Pvt.Ltd had purchased some shares of M/s Varsha Traders Pvt.Ltd and some payments were required to be made to the company, so bank details of the company was sent.
- that he was shown e-mail dated 08.03.2010 from his mail account to Vishal Wadkar, this showed the details of pending c-forms to be obtained from different parties.
- that he was shown the e-mail dated.16.03.2010 from his mail account to Vishal Wadkar alongwith scanned copies of three Tax Invoices of M/s Sunkkalp Creations Private Limited. These sale Invoices bearing No.SCPL/VKGUY/09-10/138A dated 05.03.2010; SCPL/VKGUY/09-10/138B dated 05.03.2010 and SCPL/VKGUY/09-10/138C dated 05.03.2010 showed sale of 09 WKGUY licences from Sunkkalp to M/s Accurate Multitrade Pvt.Ltd,Mumbai as listed below:

Licence No	**Date**	**Exporter Name**	**Duty Credit (Rs.)**	**Rate**	**Sale Amount (Rs.)**
2410027452	16.02.10	Rajan Sea Foods	2187757.00	50%	1093878.50
0810086657	19.02.10	Kan Foods	4346658.00	50%	2173329.00
2410027451	16.02.10	Salet Sea Foods	3175878.00	50%	1587939.00
0310505134	03.02.09	Allanasons Ltd	7183467.00	50%	3591733.50
0310505146	03.02.09	Allanasons Ltd	8983026.00	50%	4491513.00
0310504360	29.01.09	Allanasons Ltd	2924826.00	50%	1462413.00
0310509915	02.03.09	Allanasons Ltd	3111232.00	50%	1555616.00
0310504353	29.01.09	Allanasons Ltd	3281782.00	50%	1640891.00
0310477042	02.07.08	Allanasons Ltd	1001152.00	50%	500576.00

- that he noticed that the sale in all the said invoices was shown at 50% for each licence and the e-mail showed instructions to Vishal Wadkar to make further Sale Invoices for these licences to M/s Vani Exports, Kolkata @ 98.94%(including CST 2%).
- that on being further asked to explain as to why the scanned copy of sale invoices were showing the sale at 50%, he stated that he did not know exactly as to why the sale was made at such low value, as the sale invoices were prepared as per the instructions of Shri.Kalpesh Daftary.
- that on being further asked to co-relate the sale invoices with the purchase invoices, he found out Purchase Invoice No-LT1-123 dated 18.06.2009 and LT1-94 dated 18.09.2009 of M/s Allanasons Ltd., Mumbai from seized File No.16 seized from the office premises of M/s Sunkkalp Creations Pvt.Ltd. by DRI under Panchnama dated 30.04.2010, vide which the purchase of the following licences were available :

Licence No	Date	Exporter Name	Purchase Inv.No. & Date	Purchase Rate	Sale Amount (Rs.)
0310505134	03.02.09	Allanasons Ltd	LT1-123 dated 18.06.2009	98.85%	3591733.50
0310505146	03.02.09	Allanasons Ltd	LT1-123 dated 18.06.2009	98.85%	4491513.00
0310504360	29.01.09	Allanasons Ltd	LT1-94 dated 18.09.2009	101.25%	1462413.00
0310509915	02.03.09	Allanasons Ltd	LT1-94 dated 18.09.2009	101.25%	1555616.00
0310504353	29.01.09	Allanasons Ltd	LT1-94 dated 18.09.2009	101.25%	1640891.00
0310477042	02.07.08	Allanasons Ltd	LT1-123 dated 18.06.2009	98.85%	500576.00

- that out of these six licences, three had been sold earlier to M/s Padmavati Agencies Pvt.Ltd,Kolkata and three to M/s Sun Export Pvt.Ltd,Mumbai vide the sale Invoices which he had traced out from the seized File No.16 seized from the office premises of M/s Sunkkalp Creations Pvt.Ltd. by DRI under Panchnama dated 30.04.2010, the details of earlier sales were as under:

Licence No	Date	Exporter Name	Sale Inv.No. & Date	Sale Rate	Sale Amount (Rs.)
0310505134	03.02.09	Allanasons Ltd	SCPL/VKGUY/09-10/038;dtd.26.06.09	94.61 %	6796123.24
0310505146	03.02.09	Allanasons Ltd	SCPL/VKGUY/09-10/038;dtd.26.06.09	94.61 %	8498647.20
0310477042	02.07.08	Allanasons Ltd	SCPL/VKGUY/09-10/038;dtd.26.06.09	94.61 %	947168.32
0310504360	29.01.09	Allanasons Ltd	SCPL/VKGUY/09-10/070;dtd.26.09.09	97.36 %	2847486.87
0310509915	02.03.09	Allanasons Ltd	SCPL/VKGUY/09-10/070;dtd.26.09.09	97.36 %	3028963.87
0310504353	29.01.09	Allanasons Ltd	SCPL/VKGUY/09-10/070;dtd.26.09.09	97.36 %	3195004.14

- that on being asked how the sale of same six licences had been shown for the second time in the records, he stated that he was not aware as to why the same done, as the same was done as per the instructions of our director Shri Kalpesh Daftary. The Signatures appearing on the above two Sale Invoices of Sunkkalp Creations Pvt.Ltd bearing Nos. SCPL/VKGUY/09-10/038;dtd.26.06.09 and SCPL/VKGUY/09-10/070;dtd.26.09.09 as authorized signatory of the company were his.
- that similar type of re-sale/second sale of licences were done in previous occasions also.
- that on being asked to find out the details of such re-sale of Invoices from among the records seized by DRI from the office premises of M/s Sunkkalp Creations Pvt.Ltd. under Panchnama dated 30.04.2010 he prepared a co-related sheet data sheet showing the First Purchase, First Sale, Second Purchase and

Second Sale of the same VKGUY/DEPB Licences from the records as available in Box File No-16 from among the files withdrawn from the office of Sunkkalp Creations Pvt.Ltd., under Panchnama dated 30.04.2010. The print out of the co-related sheet in MS-Excel format in enclosed alongwith this statement and marked as Annexure-A.

72. Shri Piyush Viramgama had in his statement dtd.12/05/2010 informed that he had transferred money to the account of one Shri Ashok Gupta on the instructions of Shri Niyaz Ahmed of M/s.Indiyana Shoes. Therefore, the account opening form and account details of the bank account of Shri Ashok Gupta were called for from Union Bank of India, Kanpur and the same were received vide letter No. BM:Misc:2010 dtd.25/6/2010.

73. A further statement of Shri Vishal Vyas, Employee of M/s.Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 26/6/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that on being asked to explain the sheet prepared and submitted by him yesterday which contained details of 31 licences, he stated that the same pertained to the purchase of licences from M/s.Allanasons, Mumbai and subsequent sale to various firms viz. M/s. Padmavati Agencies Pvt Ltd, M/s.Suresh C.Doshi, M/s.Hardware Trading Corporation, M/s.Sun Exports and M/s.Vani Exports. These very licences were sold also by M/s.Hindustan Continental to their firm M/s.Sunkkalp Creation Pvt Ltd (SCPL) from where they were subsequently sold to M/s.Punjab Chemical & Crop Protection Ltd.
- that he was shown a email dtd.18/3/2010 sent by him to Shri Vishal Wadkar at his email ID wadkar_vs@yahoo.co.in. He had forwarded the CST number and address of M/s.Tirupati Vyapar Pvt Ltd, Kolkata in whose name he was to raise invoice in respect of the licences transacted by them.
- that was he was shown a email dtd.28/5/2009 sent by him to Shri Vishal Wadkar at his email ID wadkar_vs@yahoo.co.in. That on the instructions of Shri Kalpesh Daftary he had forwarded details of 06 licences purchased by SCPL from M/s.Allanasons, Mumbai and had asked Shri Vishal Wadkar to prepare Debit Notes showing purchase of these licences in the name of M/s.Accurate Multitrade Pvt Ltd and M/s.Priority Traders Pvt Ltd.
- that he was shown another email dtd.28/5/2009 sent by him to Shri Vishal Wadkar at his email ID wadkar_vs@yahoo.co.in. That on the instructions of Shri Kalpesh Daftary he had forwarded details of 06 licences and had asked Shri Vishal Wadkar to prepare Debit Notes (invoices) in the name of M/s.Hindustan Continental Ltd for sale of these licences to M/s.Hindalco Industries Ltd, Dahej.
- that he was shown a email dtd.29/5/2009 sent by him me to Shri Vishal Wadkar at his email ID wadkar_vs@yahoo.co.in. He had

forwarded details of an invoice of SCPL showing sale of 02 licences to M/s.Hindustan Continental Ltd, Mumbai.

- that he was shown a email dtd.09/6/2009 sent by him to Shri Vishal Wadkar at his email ID wadkar_vs@yahoo.co.in. That on the instructions of Shri Kalpesh Daftary he had asked Shri Wadkar to prepare debit note showing sale of licence No.0310508275 dtd.19/2/2009 from M/s.Accurate Multitrade Pvt Ltd to SCPL.
- that he was shown a email dtd.26/8/2009 sent by him to Shri Vishal Wadkar at his email ID wadkar_vs@yahoo.co.in. He had asked Shri Wadkar to prepare debit note in the name of M/s.Hindustan Continental Ltd showing sale of licence no. 0710060157 dtd.26/9/2008 and 0710062167 dtd.1.1.2009. He does not presently remember the firm to whom the licences were to be sold by M/s. Hindustan Continental Ltd.
- that he was shown a email dtd.10/10/2009 sent by him to Shri Vishal Wadkar at his email ID wadkar_vs@yahoo.co.in. That as instructed by Shri Kalpesh Daftary he had forwarded details a list of 31 licences to Shri Wadkar and had asked him to prepare sale invoices in the name of M/s.Hindustan Continental Ltd and M/s.Punjab Chemical and Crop Protection Ltd.
- that by email dtd.10/11/2009 he had instructed Shri Vishal Wadkar to raise a sale invoice from M/s.Hindustan Continental Ltd to M/s.Reliance Industries Ltd for sale of licence no. 0410108797 dtd.23/10/2009.
- that he had vide email dtd.12/1/2010 forwarded copies of the agreement between M/s.ITC Ltd and M/s.SCPL to Shri Vishal Wadkar. As per the said agreement SCPL was to provide services to enable M/s.ITC to get benefits under the VKGUY scheme. Further as per the agreement, SCPL would be getting the licences issued to M/s.ITC at the rate of 80%. The licences of M/s.ITC were transacted in the name of M/s.New Planet Trading and therefore, he had on the instructions of Shri Kalpesh Daftary forwarded a copy of the agreement to Shri Vishal Wadkar.
- that by email dtd.3/2/2009 sent by him to Shri Vishal Wadkar he he had forwarded a list of 60 licences for preparing debit notes in the name of M/s.Hindustan Continental Ltd to M/s.Reliance Industries Ltd.
- that by email dtd.31/1/2009, he had forwarded details of 8 licences to Shri Vishal Wadkar for preparing debit notes in the name of M/s.Hindustan Continental Ltd to M/s.Reliance Industries Ltd.
- that he had vide email dtd.26/12/2009 forwarded details of 39 licences to Shri Wadkar for preparing debit notes in the name of M/s.Hindustan Continental Ltd to M/s.MPG International.
- that by email dtd.5/12/2008 he had asked Shri Wadkar to prepare debit notes showing sale of 41 licences from in the name of M/s.Hindustan Continental Ltd to M/s. MPG International. These licences were ultimately sold to M/s.Reliance Industries Ltd.
- that by email dtd.12/3/2009, he had forwarded a list of 63 licences and asked Shri Wadkar to prepare debit notes showing sale of 29 licences from M/s.R.R.Impex to M/s.Vrinda Agencies Pvt Ltd.

- that by email dtd.2/3/2009, he had asked Shri Wadkar to prepare debit notes showing sale of 15 licences from M/s.Hindustan Continental Ltd to M/s.MPG International and debit notes showing sale of 29 licences from M/s.Hindustan Continental Ltd to M/s.Bally Exports.
- that by email dtd.9/2/2009 he had asked Shri Wadkar to prepare debit notes showing sale of 03 licences from M/s.Hindustan Continental Ltd to M/s.Reliance Industries Ltd.
- that by email dtd.25/3/2009, he had asked Shri Wadkar to prepare debit note in the name of M/s.Hindustan Continental Ltd showing sale of licence no.0710063262 dtd.25/2/2009 to M/s.Reliance Industries Ltd.
- that by email dtd.8/4/2010 he had forwarded to Shri Wadkar the bank account statement in respect of account no.04692320000115 of M/s.Vani Exports, Kolkata.
- that by email dtd.22/9/2009 he had forwarded to Shri Wadkar a detailed worksheet showing the details of the sale and purchase transactions in respect of licences purchased from M/s.Sabari Quality Foods for which invoices/debit notes were got issued in the name of M/s.Hindustan Continental Ltd, M/s.R.R.Impex, M/s.MPG International and M/s.Ostwal Trading and who further issued invoices/debit notes showing sale of the licences to M/s.Vrinda Agencies Pvt Ltd, M/s.Padmavati Agencies Pvt Ltd, M/s.Bally Exports, M/s.Reliance Industries Ltd, M/s.Select Products etc.
- that by email dtd.29/5/2009 he had forwarded to Shri Wadkar a list of 23 licences for preparing debit notes/invoices. These licences were shown to be purchased by M/s.Punjab Chemical and Crop Protection Ltd from M/s.Shivangi Enterprises @ 42% of the value of the licences. Shri Wadkar was also asked to prepare debit notes/invoices showing sale of these licences by M/s.Punjab Chemical and Crop Protection Ltd to M/s. Vani Exports @ 90.25 of the value of these licences.
- that by email dtd.8/7/2009, he had forwarded to Shri Wadkar 08 debit notes issued by M/s. Shivangi Enterprise, Bangalore showing sales of 23 licences detailed in the email dtd.29/5/2009, to M/s.Punjab Chemical and Crop Protection Ltd.
- that the Debit Notes of M/s.Shivangi Enterprises, Bangalore were given to him by Shri Kalpesh Daftary. The originals of these debit notes were sent to Shri Vishal Wadkar.
- that by email dtd.9/6/2009 he had forwarded to Shri Vishal Wadkar one debit note of M/s.Shivangi Enterprises, Bangalore showing sale of 03 licences to M/s.Punjab Chemical and Crop Protection Ltd. This debit note was also given to me by Shri Kalpesh Daftary and he had sent the original to Shri Vishal Wadkar.

74. The documents and records withdrawn from various places indicated that the licences corresponding to the fake/forged licences used by M/s.Hindalco Industries Ltd, Dahej were transacted by M/s.Sabari Quality Foods, Kollam. Therefore, the office premises of the

said firm were searched on 25/6/2010 under proper panchnama and records and documents relevant to the investigations were withdrawn.

75. A statement of Shri Deepak Tibrewal, Director of M/s.Merill Impex Pvt Ltd, Kolkata was recorded on 28/6/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he had the business of his cousin brother Shri.Uttam Kumar Bagaria who is engaged in the trading of Coal, Iron and Steel, Timber and also taking up contracts for road building from different companies. Apart from the company M/s Merrill Impex Private Limited, Kolkata, Shri Bagaria was also a director in M/s Yes Trading Pvt. Ltd., M/s Award Suppliers Pvt. Ltd. and M/s Calendula Merchants Pvt. Ltd. M/s Yes Trading Pvt. Ltd was engaged in the sale/purchase of land and other construction work and the other two companies are newly formed and was yet to start any activity.
- that he was one of the directors of the company and was looking after all executive works of the company. Apart from himself Shri.Uttam Kumar Bagaria was the other director of the company and decision making part of all activities was being looked after by Shri.Uttam Kumar Bagaria that their company mainly was engaged in the trading of Coal, Iron and Steel, Timber and also taking up Infrastructure Contractual Work from different companies. The annual turnover of M/s Merrill Impex Pvt. Limited for the past three years were as under:

YEAR	TURNOVER
2006-07	Rs.38,95,12,133/-
2007-08	Rs.52,52,45,319/-
2008-09	Rs.85,08,03,567/-

- that recently M/s Merrill Impex Pvt. Limited had opened a liaisioning office at Block C-130, Shastri Nagar, Nana Mava Main Road, Rajkot-360005 for trading of coal. One Shri Ritesh Dukakiya was looking after the liaison work at Rajkot. He directly reported to other director Shri.Uttam Kumar Bagaria. The mobile no. of Shri Ritesh Dukakiya was 09327971754 and office telephone no. is 0281-3203071.
- that in past they were importing timber from Malaysia and Indonesia and to paid Customs duty they were utilizing DEPB licences. They were purchasing DEPB Licences from Shri Girish Ghelani, Proprietor of M/s Vani Exports, 2-Clive Ghat Street, Sagar Estate, 2nd Floor, Unit No-7, Kolkata, who was running the business of trading of export incentive licences. While purchasing DEPB licences from Shri Girish Ghelani they developed good business relation with him.
- that at that time they showed their interest in the trading of export incentive licences to which Shri Girish Ghelani told them that their firm M/s Merrill Impex Pvt. Limited will be used for rotating their transactions. He also informed that their firm will be used only for billing purpose and they had to invest finance in the trading. They

offered him a total commission of 2.5% of the annual turnover. That he agreed with the proposal and lent their firm names for money. The trading of licences was controlled by Shri Girish Ghelani and on his direction they had issued the bill.

- that regarding purchase and sale of licence no.5310007305 dtd. 09.01.09 for duty amount of Rs.4375823/-, 5310007276 dtd.09.01.09 for duty amount of Rs.3870740/-, 5310007357 dtd.16.01.09 for duty amount of Rs.6847571/-, 5310007407 dtd.20.01.09 for duty amount of Rs.3197361/- and 0710063439 dtd. 05.03.09 for duty amount of Rs.5161612/-, he stated that they had purchased these licences from M/s Rajputana General Commercial Corporation Pvt. Ltd., Kolkata @ Rs.90.35%. Details purchase were as under :

Licence No. & date	**Duty amount of Licence**	**Debit Note No. / Invoice No.& date**	**Amount / value of purchase**
5310007305 dtd. 09.01.09	Rs.4375823/-	RJ/DEPB/09-10/4 dtd.29.04.09	Rs.3953556/-
5310007276 dtd. 09.01.09	Rs.3870740/-	RJ/DEPB/09-10/2 dtd.29.04.09	Rs.3497214/-
5310007357 dtd. 16.01.09	Rs.6847571/-	RJ/DEPB/09-10/1 dtd.29.04.09	Rs.6186780/-
5310007407 dtd. 20.01.09	Rs.3197361/-	RJ/DEPB/09-10/3 dtd.29.04.09	Rs.2888816/-
0710063439 dtd. 05.03.09	Rs.5161612/-	RJ/DEPB/09-10/5 dtd.29.04.09	Rs.4663516/-

- that they had sold all these licences to M/s Padmavati Agencies Pvt. Ltd., Ahmedabad @ Rs.90.40%, detail of sale were as under:

Licence No. & date	**Duty amount of Licence**	**Debit Note No. / Invoice No.& date**	**Amount / value of Sale**
5310007305 dtd. 09.01.09	Rs.4375823/-	MI/DEPB/015/09-10 dtd.29.04.09	Rs.3955743.99
5310007276 dtd. 09.01.09	Rs.3870740/-	MI/DEPB/015/09-10 dtd.29.04.09	Rs.3499148.96
5310007357 dtd. 16.01.09	Rs.6847571/-	MI/DEPB/017/09-10 dtd.29.04.09	Rs.6190204/-
5310007407 dtd. 20.01.09	Rs.3197361/-	MI/DEPB/016/09-10 dtd.29.04.09	Rs.2890414/-
0710063439 dtd. 05.03.09	Rs.5161612/-	MI/DEPB/018/09-10 dtd.29.04.09	Rs.4666097/-

- that he produced copies of purchase and sale ledger account alongwith original copies of purchase and sale debit notes / invoices, under letter F.No.MI/035/10-11 dated 26.06.2010.
- that the payments for the sale of these licences had been received by them from M/s Padmavati Agencies Pvt.Ltd, Ahmedabad/Kolkata in their bank account with State Bank of India, Overseas Branch, Kolkata. He was not aware as to who was the owner of M/s Padmavati Agencies Pvt.Ltd.
- that after receiving DRI letter dated 23.06.10 in the matter he had made enquiries in respect of past/back sale and purchase transactions of these licences and found that these licences were sold by M/s Vani Exports, Kolkata to M/s Tirupati Vyappar Pvt.

Ltd., Kolkata @Rs.90.25%. licence no. 0710063439 dtd.05.03.09 was directly sold by M/s Vani Exports to M/s Rajputana General Commercial Corporation Pvt. Ltd., Kolkata @ Rs.90.30%. The details were as under :

Licence No. & date	**Duty amount of Licence**	**Debit Note No./ Invoice No.& date**	**Amount/value of transaction**
5310007305 dtd. 09.01.09	Rs.4375823/-	VE/0133/09-10 dtd.29.04.09	Rs.3949180.26
5310007276 dtd. 09.01.09	Rs.3870740/-	VE/0133/09-10 dtd.29.04.09	Rs.3493342.85
5310007357 dtd. 16.01.09	Rs.6847571/-	VE/0134/09-10 dtd.29.04.09	Rs.6179932.83
5310007407 dtd. 20.01.09	Rs.3197361/-	VE/0134/09-10 dtd.29.04.09	Rs.2885618.30
0710063439 dtd. 05.03.09 (Sold directly to M/s Rajputana General Commercial Corporation Pvt. Ltd.,()	Rs.5161612/-	VE/0135/09-10 dtd.29.04.09	Rs.4660936/-

- that M/s Tirupati Vyappar Pvt. Ltd., Kolkata had sold these licences to M/s Rajputana General Commercial Corporation Pvt. Ltd., Kolkata @Rs.90.30%, details of which were as under :

Licence No. & date	**Duty amount of Licence**	**Debit Note No. / Invoice No.& date**	**Amount / value of transaction**
5310007305 dtd. 09.01.09	Rs.4375823/-	TV/DEPB/001/09-10 dtd.29.04.09	Rs.3951368/-
5310007276 dtd. 09.01.09	Rs.3870740/-	TV/DEPB/002/09-10 dtd.29.04.09	Rs.3495278/-
5310007357 dtd. 16.01.09	Rs.6847571/-	TV/DEPB/004/09-10 dtd.29.04.09	Rs.6183357/-
5310007407 dtd. 20.01.09	Rs.3197361/-	TV/DEPB/003/09-10 dtd.29.04.09	Rs.2887217/-

- that he had obtained the copy of purchase and sale ledger account and copies of purchase and sale debit notes/invoices from M/s Tirupati Vyappar Pvt. Ltd., Kolkata, which he produced. That the entire transaction was managed by Shri.Girish Ghelani of M/s Vani Exports, Kolkata.
- that during the entire transaction of licences done by them during the period 2008-09 and 2009-10 they had never received any DEPB/VKGUY licence physically at their office. He clarified that they had provided the billing only and they have received commission for the same.
- that on being asked the details of licences and their utility he stated that he was having the knowledge that these licences were utilized for debiting of Customs duty at the time of import by the importer.
- that he did not know or came across any person in the name of Shri Kalpesh Daftary of M/s Sunkkalp Creation Pvt. Ltd., Mumbai and Shri Piyush Viramgama of M/s Krish Overseas, Rajkot.

- that he produced printout of ledgers of M/s Merrill Impex Pvt.Ltd for the period Jan-2010 to March-2010.

76. It was informed by Customs Dahej that the verification of genuineness of the Release Advices, purportedly issued by Customs, Mangalore, were called for from Mangalore Customs vide their letters of different dates. Therefore, Mangalore Customs was requested vide letter dtd.09/06/2010 and 28/6/2010 to confirm receipt of the letters from Customs, Dahej and also forward copies of the letters replying to the Dahej Customs.

77. A statement of Shri Samir Bhagat, Director, M/s.Mac Alloys (P) Ltd, Hyderabad was recorded on 29/06/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was the director of M/s Mac Alloys Pvt. Ltd. and apart from him the other director was Mr.Pankaj Kandoi. Their company was engaged in the manufacture of Steel ingots from the raw materials MS Scrap, Sponge Iron and Cast Iron. Apart from the company he was also a director in M/s Kamini Metalliks Pvt. Ltd. where they were manufacturing TMT Bars. Both their units were registered with the Central Excise department.

- that he was the active director in both the companies and was looking after entire business of the two companies. The annual turnover of M/s Mac Alloys Pvt. Limited for the past three years were as under:

YEAR	TURNOVER
2006-07	Rs.26.17 Crore
2007-08	Rs.38.07 Crore
2008-09	Rs.32.06 Crore

- that Shri Girish Ghelani, Proprietor of M/s Vani Exports, 2-Clive Ghat Street, Sagar Estate, 2nd Floor, Unit No-7, Kolkata, who was engaged in the trading of export incentive licences, was their family friend since long time. At the time of financial crisis or whenever Shri Girish Ghelani required some financial help in his business his uncle Shri Sajan Bhagat and some time they used to finance him.
- that in the month of Jan, 2009, Shri Girish Ghelani came up with a financial deal proposal according to which they had to invest an amount of Rs.15 Crore in his trading business and as a return he offered them profit of Rs.5 Crore. They agreed with the proposal and had shown finance to him in their company's account. But due to some problems the said deal was could not be executed.
- that as they had already shown finance to him in their company's account, to appropriate the same Shri Girish Ghelani told them that their firm M/s Mac Alloys Pvt. Limited will be used only for billing purpose for rotating their transactions. To appropriate the debit account of their company he agreed with the proposal and lent his firm names for issuing bills in trading of licences.

- that as per his requirement they had used their registered office address 9,Waterloo Street, Dalhousie, Kolkata for issuing the bills and the same address was shown as office address in all the bills raised by M/s Mac Alloys Pvt.Ltd.
- that the trading of licences was controlled by Shri Girish Ghelani and on his directions they had issued the bills.
- that the said address was created as per requirement of non-vat bills for the sales as there no Vat was applicable in Kolkata.
- that they had purchased and sold only 14 licences bearing no.5310006873 dtd. 11.11.08, 5310006856 dtd.11.11.08, 5310006892 dtd.11.11.08, 5310006894 dtd.11.11.08, 0710058005 dtd. 19.06.08, 0710059272 dtd.21.08.08, 0710059325 dtd.27.08.08, 5310006898 dtd.11.11.08, 5310006911 dtd.24.11.08, 5310006973 dtd.11.11.08, 5310007004 dtd.24.11.08, 5310006811 dtd. 05.11.08, 5310006861 dtd. 11.11.08 and 5310006829 dtd.05.11.08. They had purchased these licences from M/s Shivangi Enterprise, 909, Centre Point, M.G. Road, Bangalore. Details of purchase were as under :

Licence No. & date	**Duty amount of Licence**	**Debit Note No. / Invoice No.& date**	**Purchase Rate @**	**Amount / value of purchase**
5310006873 dtd. 11.11.08,	Rs.4771165/-	SE/1247/08-09 dtd.23.03.09	Rs.67.31%	Rs.3211360/-
5310006856 dtd.11.11.08,	Rs.6273237/-	SE/1247/08-09 dtd.23.03.09	Rs.67.31%	Rs.4222372/-
5310006892 dtd.11.11.08,	Rs.3882931/-	SE/1247/08-09 dtd.23.03.09	Rs.67.31%	Rs.2613512/-
5310006894 dtd.11.11.08	Rs.5099797/-	SE/1247/08-09 dtd.23.03.09	Rs.67.31%	Rs.3432556/-
0710058005 dtd. 19.06.08	Rs.5628582/-	SE/1250/08-09 dtd.23.03.09	Rs.76.92%	Rs.4329680/-
0710059272 dtd.21.08.08	Rs.4387551/-	SE/1250/08-09 dtd.23.03.09	Rs.76.92%	Rs.3375040/-
0710059325 dtd.27.08.08	Rs.1584203/-	SE/1250/08-09 dtd.23.03.09	Rs.76.92%	Rs.1218618/-
5310006898 dtd.11.11.08	Rs.4294243/-	SE/1248/08-09 dtd.23.03.09	Rs.67.31%	Rs.2890355/-
5310006911 dtd.24.11.08	Rs.5480267/-	SE/1248/08-09 dtd.23.03.09	Rs.67.31%	Rs.3688642/-
5310006973 dtd.11.11.08	Rs.5903697/-	SE/1248/08-09 dtd.23.03.09	Rs.67.31%	Rs.3973642/-
5310007004 dtd.24.11.08	Rs.6268780/-	SE/1248/08-09 dtd.23.03.09	Rs.67.31%	Rs.4219372/-
5310006811 dtd. 05.11.08	Rs.5459158/-	SE/1249/08-09 dtd.23.03.09	Rs.67.31%	Rs.3674433/-
5310006861 dtd. 11.11.08	Rs.5063013/-	SE/1249/08-09 dtd.23.03.09	Rs.67.31%	Rs.3407798/-
5310006829 dtd.05.11.08.	Rs.6191243/-	SE/1249/08-09 dtd.23.03.09	Rs.67.31%	Rs.4167183/-

- that they had sold all these licences to M/s Vani Exports, Kolkata. Detail of sale were as under:

Licence No. & date	**Duty amount of Licence**	**Commercial Invoice No. & date**	**Sale Rate @**	**Amount / value of sale**

5310006873 dtd. 11.11.08,	Rs.4771165/-	Nil dtd.25.03.09	Rs.90.40%	Rs.4313133/-
5310006856 dtd.11.11.08,	Rs.6273237/-	Nil dtd.25.03.09	Rs.90.40%	Rs.5671006/-
5310006892 dtd.11.11.08,	Rs.3882931/-	Nil dtd.25.03.09	Rs.90.40%	Rs.3510170/-
5310006894 dtd.11.11.08	Rs.5099797/-	Nil dtd.25.03.09	Rs.90.40%	Rs.4610216/-
0710058005 dtd. 19.06.08	Rs.5628582/-	Nil dtd.25.03.09	Rs.90.40%	Rs.5088238/-
0710059272 dtd.21.08.08	Rs.4387551/-	Nil dtd.25.03.09	Rs.90.40%	Rs.3966346/-
0710059325 dtd.27.08.08	Rs.1584203/-	Nil dtd.25.03.09	Rs.90.40%	Rs.1432120/-
5310006898 dtd.11.11.08	Rs.4294243/-	Nil dtd.25.03.09	Rs.90.40%	Rs.3881996/-
5310006911 dtd.24.11.08	Rs.5480267/-	Nil dtd.25.03.09	Rs.90.40%	Rs.4954161/-
5310006973 dtd.11.11.08	Rs.5903697/-	Nil dtd.25.03.09	Rs.90.40%	Rs.5336942/-
5310007004 dtd.24.11.08	Rs.6268780/-	Nil dtd.25.03.09	Rs.90.40%	Rs.5666977/-
5310006811 dtd. 05.11.08	Rs.5459158/-	Nil dtd.25.03.09	Rs.90.40%	Rs.4935079/-
5310006861 dtd. 11.11.08	Rs.5063013/-	Nil dtd.25.03.09	Rs.90.40%	Rs.4576964/-
5310006829 dtd.05.11.08.	Rs.6191243/-	Nil dtd.25.03.09	Rs.90.40%	Rs.5596884/-

- that he produced copies of purchase and sale ledger account for the year 2008-09 and 2009-10 alongwith all original copies of purchase and sale debit notes /invoices including above 14 licences.
- that the payments for the sale of above 14 licences had been received by them from M/s Vani Exports, Kolkata in their bank account with AXIS Bank, Branch-Tarnaka, Hyderabad.
- that he produced a list containing bank account numbers of M/s Vani Exports, Kolkata which were used for entire transaction between them and M/s Vani Exports.
- that he did not know that to whom M/s Vani exports had sold above mentioned 14 licences
- that he was not aware as to who was the owner of M/s Shivangi Enterprise. They had made remittance to M/s Shivangi Enterprise in respect of the purchase of 14 licences to its HDFC Bank,Rajkot Branch, Rajkot's account no.03792000002927 and AXIS Bank Rajkot Branch, Rajkot's account no.910020005728774.
- that the entire transaction managed by Shri.Girish Ghelani of M/s Vani Exports, Kolkata.
- that during the entire transaction of licences done by them during the period 2008-09 and 2009-10 they had never received any DEPB/VKGUY licence physically at their office. They had provided the billing only and they had received commission for the same.
- that he was having the knowledge that these licences were utilized for debiting of Customs duty at the time of import by the importer.
- that he did not know or had come across any person in the name of Shri Kalpesh Daftary of M/s Sunkkalp Creation Pvt. Ltd.,

Mumbai and Shri Piyush Viramgama of M/s Krish Overseas, Rajkot.

78. M/s. Allanasons Ltd, Mumbai were called upon vide letter dtd.30/6/2010 to submit details of the DEPB/VKGUY licences sold/transferred to various traders/brokers/importers during the period 2008-2009 and 2009-2010.

79. Since Shri Kalpessh Daftary did not appear in response to the summons issued to him on 24/6/2010, he was again issued Summons No.41/2043 dtd.01/07/2010 for appearance on 5/7/2010.

80. M/s.Vani Exports, Kolkata vide their letter dtd.03/07/2010 submitted the original purchase and sale invoices as well as the payment details in respect of the fake/forged licences.

81. A statement of Shri Prakash Changela, Proprietor of M/s.Reliance Enterprise, Rajkot was recorded on 06/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- during the year-2007 he started a proprietorship firm M/s Reliance Enterprise at 16,Kunj Complex, Kanak Road, Off-Canal Road, Behind-Bhootkhana, Rajkot. The said firm was started for trading of MS Scrap. Since, he was not having knowledge of scrap one of his friend Shri. Deepak S Tanna was actually looking after the entire work of sale and purchase of Scrap. The said firm was having three bank accounts as under :

  (i). Current Account No-03788330000053 with HDFC Bank,Kalavad Road,Branch,Rajkot.

  (ii). Current Account No.6271 with Vijay Commercial Co-operative Bank, Main Branch,Opp-Fire Brigade, Kanak Road, Rajkot.

  (iii). Current Account No.01948 with Citizen Co-operative Bank, Indl.Area Branch, DHebar Road, Rajkot

- that he submited the account statement of his firm's Current Account No.6271 with Vijay Commercial Co-operative Bank and Current Account No.01948 with Citizen Co-operative Bank.
- that in the said firm they were purchasing scrap from different local firms through local brokers and then the same was sold to ultimate users like M/s New Tech Forge and Foundry, Samakhiyali, M/s Hans Ispat Limited, Bhachau-Bhuj Road, Kutchh, ASR Multi metals Limited, Samakhiyali, Kutchh etc. All payments received from the buyers were actually received through cheques in the above three accounts of the firm.
- that since Shri. Deepak Tanna was actually looking after the entire trading work of scrap in Reliance Enterprise, the profit and loss also calculated by him, he had never asked for the exact

amount due to him till date. As and when required he used to collect money from Shri. Deepak and gradually he was able to repay his loans.

- that after being shown the account statement of bank account no. 03788330000053 with HDFC Bank, Kalavad Road, Branch, Rajkot he confirmed that the said print out belonged to the current account of M/s Reliance Enterprise.
- that on being further asked regarding the 'Credit' and 'Debit' transactions from account Nos.03792000002927 and 03792560001883 as well as cash withdrawals shown immediately after the deposits, he stated that, these were the transactions done by Shri. Piyush Viramgama of M/s Krish Overseas, Rajkot.
- that Shri Piyush Viramgama a frequent visitor in Hotel Tej Palace, situated in Kunj Complex just beside their office. They used to meet him regularly and he was also friendly with the owner of the hotel-Shri.Bhavesh Kotak.
- that during about October-2008 Shri.Piyush Viramgama requested them to lend their bank account for credit of amounts and cash withdrawals from them. At this they agreed to lend their account for the purpose and thereafter their two bank accounts with HDFC Bank and Vijay Commercial Co-operative Bank Limited were used by Shri.Piyush Viramgama to credit money and withdrew cash amounts from the same.
- that all credit entries in their account were credited from the account of M/s Shivangi Enterprise having bank account No. 03792000002927 with HDFC Bank, Rajkot. In some cases the credited amounts were directly transferred to the account of M/s Krish Overseas having account No. 03792000002927.
- that in most of the cases, he was signing blank cheques for 'SELF' withdrawals and the money was withdrawn by them from the bank directly on production of the cheques.
- that three persons used to come to them for taking the cheques-Shri. Piyush Viramgama, Shri.Vijay Gadhia and Shri.Mayur Gadhia. He was not aware as to where the money being sent after cash withdrawal.
- that they had not made any sale or purchase neither from M/s Shivangi Enterprise nor from M/s Krish Overseas. He produced a ledger copy of M/s Shivangi Enterprise for the year 2009-10 and M/s Krish Overseas for the year 2008-2009 and 2009-2010 maintained by them.
- that he was shown some credit and debit entries of their firm's account statement of bank account no. 03788330000053 with HDFC Bank, Kalavad Road, Branch, Rajkot. The credit entry dated 10.12.2008 at page no. 5 of account statement of bank account no. 03788330000053 with HDFC Bank, Kalavad Road, Branch, Rajkot, showed credit of an amount of Rs.30,00,000/- from account no. 03792000002927 (of M/s Shivangi Enterprise) and the next entry in same date showed debit of amount of Rs.30,00,000/- to account no. 03792000002927 (of M/s Krish Overseas) vide cheque no.0229096. Similar, credit and debit entry for Rs.50,00,000/- appeared on the same page vide dated 22.01.2009 and debited vide cheque no. 0229100.

- that in the same page at entry dated 14.03.2009 an amount of Rs. 35,00,000/- was credited from M/s Shivangi Enterprise and the same amount was debited to their account no. 6271 with VCCB Ltd., Rajkot vide cheque no.0263127. At page no. 6 entry dated 10.04.2009 an amount of Rs.45,00,000/- was credited from M/s Shivangi Enterprise and the same day 5 cheques for "***Self***" bearing no. 0263131 to 0263135, each for Rs.9,00,000/- were issued. Similar entry was reflected on the same page dated 02.07.2009 for Rs.23,00,000/- and dated 21.07.2009 for Rs.30,00,000/-.
- that all these cheques for "Self" were actually handed over to Shri. Piyush Viramgama/ Shri.Vijay Gadhia/ Shri.Mayur Gadhia. After that they were withdrawing the said amounts and taking away.
- that on being asked regarding the financial benefit gained from lending the account of M/s Reliance Enterprise to Shri.Piyush Viramgama, he stated that they had not taken any benefit for the same.
- that during the time of lending the bank account he was not aware as to what business he was doing, later on he came to know through news papers that he was involved in some forgery case.
- that he agreed to submit the ledger copy of M/s Shivangi Enterprise for the period 2009-2010 in two days time.

82. A statement of Shri Deepak Tanna, Rajkot was recorded on 06/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was trading in fabrics prior to the Earthquake in the year-2001. During Earthquake he lost his stock of goods of about Rs.4.5 Crores and he was in a very bad position financially. In order to clear his debts he started work as commission agent for Scrap.
- that during the year-2007 through Shri. Bhavesh Kotak of Hotel Tej Palace, Rajkot, he came to know that one Shri.Prakash Changela was also in debt and wanted to start some business to clear the loans. He had a talk with Shri. Prakash Changela and told him that since he unable to open any new firm or bank account due to being defaulter in many occasions, if he can start a firm he can help him in purchase and sale of MS Scrap as he had knowledge of the trade and market.
- that Shri Prakash Changela started a proprietorship firm M/s Reliance Enterprise at 16,Kunj Complex, Kanak Road, Off-Canal Road, Behind-Bhootkhana, Rajkot. In this firm he was actually looking after the entire work of sale and purchase of Scrap. The said firm was having three bank accounts as under :

  (i). Current Account No-03788330000053 with HDFC Bank, Kalavad Road Branch, Rajkot.

  (ii). Current Account No.6271 with Vijay Commercial Co-operative Bank,Main Branch, Opp-Fire Brigade, Kanak Road, Rajkot.

(iii). Current Account No.01948 with Citizen Co-operative Bank,Indl.Area Branch, DHebar Road, Rajkot

- that he was shown the statement of Shri. Prakash Changela dated.06.07.2010 and agreed with the facts stated therein.
- that regarding lending of the bank account of M/s Reliance Enterprise to Shri Piyush Viramgama he stated that, Shri Piyush was a regular visitor to Hotel Tej Palace, Rajkot and they were acquainted with him. About Oct-2008 he was requested for lending of the bank accounts of M/s Reliance Enterprise for crediting some amount and then debiting them in cash.
- that thereafter deposits were made by them in the bank accounts of M/s Reliance Enterprise either through transfer or cheques and then the same day or next day the deposited amount either withdrawn in cash by way of 'SELF' cheques or transferred to the bank account of M/s Krish Overseas with HDFC bank, Rajkot.
- That almost all the money were rotated between the bank accounts of M/s Shivangi Enterprise and M/s Krish Overseas.
- that initially he was not aware as to what the business of Shri Piyush Viramgama as he was introduced by Shri Bhavesh Kotak of Hotel Tej Palace as he was a regular customer in his hotel. After reading in the newspaper in April-May-2010 he came to know that he was involved in some forgery case.

83. Customs Mangalore informed vide letter No.S-01/05/2010 IMP dtd.06/07/2010 that only one fax letter No.CH/DJ/32/2008-09 dtd.10/09/2009 in respect of RA No.1665 dtd.28/8/2008 was received them from Dahej Customs. It further was informed that that as no such TRA (Telegraphic Release Advice) was issued under the said licence to Dahej Customs, a reply was sent vide their fax letter No.S-01/02/2008 IMP dtd.12/9/2008 informing that the said licence No., RA No., duty credit etc. were not relevant to Release Advice No.1665 dtd.28/8/2008 issued by them. It was also informed that no other reference of Custom house, Dahej received by them.

84. M/s. Allanasons Ltd, Mumbai vide their letter No. ASL/186/2010 dtd.06/07/2010 submitted details of the licences sold/transferred by them to various parties during 2008-2009 and 2009-2010. M/s. Allanasons Ltd, Mumbai vide their letter No. ASL/187/2010 dtd.08/07/2010 was submitted a revised list showing details of the licences sold/transferred by them to various parties during 2008-2009 and 2009-2010.

85. A statement of Shri Sunil Kumar P Proprietor of M/s. Sabari Quality Foods, Kollam was recorded on 08/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that in the year-1992 he started business of trading/brokerage of licences. He was having an office at Cochin, Chennai and Bangalore. He was also having two other firms by the name M/s Sabari Millenium Pvt.Ltd at Cochin, he and other family members

were the directors and in that company also they were trading in licences.

- that the other firm was M/s Sabari Switchgear Pvt.Ltd having office at Kolkata and Chennai and he and his elder brother were the directors and in the company they were also trading in licences.
- that M/s Sabari Enterprise Pvt. Ltd was a recently opened company based in Kollam with himself, his sister and his younger brother as the directors.
- that he started M/s Sabari Quality Foods as a proprietor and the office was at 717-Ikarashikam, Ashramam-P.0,Kollam, Kerala. In the said office Mr.Murali was in-charge of sale and purchase of licences and Mr.Vishwajeet was the CEO of the company.
- that he started the business of trading/brokerage of export incentive licences in the year-1992 and gradually he contacted the Cashew Exporters at Kollam and then got into the trading of licences. His firm was doing consultancy to all the Cashew Exporters of Kollam and helped them in making applications with the DGFT for procuring the export incentive licences. As a return about 90% of the cashew exporters of Kollam were transferring their licences through his firm.
- that the purchase price of these licences vary from 70% to 85% depending upon the prevailing rate in the market. Thereafter these licences were sold by them at about 80% to 90% depending upon the buyers.
- that regarding his association with Shri.Kalpesh Daftary of M/s Sunkkalp Creations Pvt. Limited, Juhu, Mumbai he stated that, about three years back he came in contact with one Shri.Jatin Parekh of Trident India Limited, Ahmedabad who was also a major licence trader in Ahmedabad. He introduced his to his brother Shri. Pareshbhai Parekh who was also in the same business and was having office at Mumbai. Thereafter Shri. Pareshbhai introduced Shri.Kalpesh Daftary to him as his business partner.
- that the first time he met Shri.Kalpesh Daftary at Delhi alongwith Paresh Parekh when he had been to Delhi on some business trip. Thereafter he met him at the office of Sunkkalp Creations Pvt.Ltd at Juhu.
- that during the period July-2008 they started selling export incentive licences through Shri.Pareshbhai/Shri.Kalpesh Daftary at the insistence of Shri.Jatinbhai Parekh. These licences were purchased by his firm from the Cashew Exporters of Kollam.
- Thereafter during the period October-2008 to February-2008 they were facing a problem of selling the licences as during that period customs insisting for payment of duty therefore licences of about 40-50 crores were stuck up.
- that during this period Shri.Kalpesh Daftary wanted to purchase licences from him. During the period he also got the news that Shri.Pareshbhai Parekh is very ill and he wanted to help him in some way. Therefore, he agreed to sell these licences through Shri.Kalpesh Daftary.
- that he produced a list of 408 licences sold through Shri.Kalpesh Daftary. Though these licences were sold through Shri.Kalpesh

Daftary, the sale invoices/debit notes for all these licences were made in the names of M/s R.R Impex,Kolkata, M/s M.P.G International,Kolkata, M/s Hindustan Continental Limited, Kolkata and M/s Padmavati Agencies Pvt.Ltd.

- that regarding the physical delivery of these licences, he stated that, all the original licences, transfer letters and other related documents were sent through courier to M/s Sunkkalp Creations Pvt. Limited and he also submitted two files containing all the courier receipts which showed that the parcels were booked in the name of M/s Sunkkalp Creations Pvt. Limited.
- that he was shown page 74 of file No.4 withdrawn by the officers of DRI, Mumbai Zonal Unit, Mumbai under panchnama dtd. 18.05.2010 from the premises of M/s Hindustan Continental Ltd., Kolkata's Mumbai office on 18.05.2010. That this was invoice no.SQF/08-09/347 dated 27.11.2008 issued by M/s Sabari Millennium Impex Pvt. Ltd., Cochin to M/s Hindustan Continental Ltd., Kolkata. Although it contained all the details such as invoice no., name of the consignee, details of licences no. , its value etc. as per actual transaction but the format of the said invoice, script of the invoice, letter font, invoice date and signature did not tally with their actual invoice. Thus, this invoice appeared to be fake and forged.
- that the actual invoice no.SQF/08-09/347 dated 16.11.2009 issued by them was at page no.352 of spiral book No.27 withdrawn under panchnama dated 25.06.2010.
- that the invoice found in the file no. 4 recovered from the premises of M/s Hindustan Continental Ltd., Kolkata's Mumbai office, shown to be issued on 27.11.2008 whereas the actual invoice was issued by them on 16.11.2008.
- that he also found many in the said file no.4 which were fake and forged invoices which were not issued by them. To segregate the said invoices he requested for some time and he would segregate such invoices and submit a list of all such fake invoices tomorrow.

86. A further statement of Shri Sunil Kumar P, Proprietor of M/s.Sabari Quality Foods, Kollam was recorded on 09/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was provided file No.4 withdrawn by the officers of DRI, Mumbai Zonal Unit, Mumbai under panchnama dtd. 18.05.2010 from the premises of M/s Hindustan Continental Ltd., Kolkata's Mumbai office on 18.05.2010 and the spiral books containing invoices issued by them, which were withdrawn by the officers of DRI during the course of search of his office premises at Kollam under panchnama dated 25.06.2010.
- that he had segregated the fake and forged invoices containing in the file no. 4 of M/s Hindustan Continental Ltd., Kolkata. He had prepared a list of details of invoices containing page no.1 to 6**,** which were actually issued by his firm and he produced the same.
- that the invoice of the same numbers of the list containing in the file no. 4 of M/s Hindustan Continental Ltd., Kolkata were fake

and forged. However, the details contained in the invoices were same.

- that he was shown a list of 85 licences. Out of these 85 licences his firm had sold 68 licences through M/s Sunkkalp Creation Pvt. Ltd., Mumbai and invoices were prepared as per direction of Shri Kalpesh Daftary, Director of M/s Sunkkalp Creation Pvt. Ltd., Mumbai as stated in his statement dated.08.07.2010.
- that all these licences were finally utilized by M/s Reliance Industries, Magdalla, Gujarat. In respect of these 68 licences, all licences, their transfer letter, forwarding letter, release advice and their sale invoice/debit note all in original were sent to M/s Sunkkalp Creation Pvt. Ltd., Mumbai through Blue Dart Courier or through air by Jet Airways.
- that he produced a box file (having pages 01 to 435) containing Xerox copies of these 68 licences, their transfer letter, forwarding letter, release advice etc. and TRA confirmation copies in respect of above said 68 licences in a file containing page no. 1 to 29.
- that he also produced courier receipts containing in two files bearing page no.1 to 14 and page 1 to 36.
- that payment in respect of above said 68 licences were received by them in their Indus Ind Bank account no. 0120J84904060 Branch Kollam and/or their bank account with ING Vaishya Bank,Kollam and Dhanlaxmi Bank,Kollam through DD or RTGS.
- that he confirmed to submit the copies of account statements of all the above accounts and copies of ledger account in respect of sale of the said licences and other licences sold through Shri.Kalpesh Daftary.
- that he was shown printout of mail dated 10.07.2009 taken out from the inbox of vishal wadker (wadker_vs@yahoo.co.in) and on being asked he stated that the present mail was received from Shri Yogesh Palsania (yogeshrvg@gmail.com).
- that after going through the contents and attachments of the mail he found that the attachments contains a list of debit note/bills issued by M/s Sabari Quality Foods, during the period Nov' 2008 and Dec'2008. The invoices shown to be issued on 27.11.2008 were actually issued by his firm on 16.11.2008. That he also referred to the six pages of Annexure to this statement wherein he had correlated his actual invoices with the invoices recovered from the purchase file of M/s Hindustan Continental Ltd.
- that on correlating these two documents he understood that the fake and forged invoices of his firm dated 27.11.2008 were actually prepared as per the instruction passed on through this email.
- that he was not aware regarding email ids of the sender or receiver of the email. The details of the remaining invoices of his firm mentioned in the said email were as per the actual invoices raised by his firm.
- that he shown VKGUY licence no. 5310006896 issued to M/s Rajan Cashew Company, Kollam Kerala (IEC 1088002021) for duty credit of Rs.76,96 239/-. He had gone through the said licence and other documents like transfer letter, forwarding letter of DGFT, TRA copy and list of shipping bills all in original and confirmed that this licence registered at Cochin Sea Port and

transferred to M/s Reliance Industries Ltd., Hazira was transferred through his firm and was an original licence. This licence was actually transferred to M/s Reliance Industries through M/s Sunkkalp Creation Pvt. Ltd.

- that he was shown another original copy of same VKGUY licence, he confirmed that this licence was not genuine because the port of registration was mentioned as Mangalore Sea instead of Cochin Sea. Also, looking to the forwarding letter of M/s Rajan Cashew Company he confirmed that this firm was actually having Bank account with State Bank Of India, Kollam whereas the forged forwarding letter contained Bank attestation of Indus Ind Bank Ltd., Kollam. This he confirmed because he was the consultant for M/s Rajan Cashew Company, Kollam.
- that a Xerox copy of genuine set of document was being produced by him, which was contained at page no. 313 to 319 of the box file produced by him.
- that there was no contract between Cashew Exporters of Kollam and Shri Kalpesh Daftary, Director of M/s Sunkkalp Creation Pvt. Ltd., Mumbai regarding obtaining of VKGUY licences from DGFT.

87. Shri Kalpessh Navinchandra Daftary, Director of M/s.Sunkkalp Creations Pvt Ltd, Mumbai appeared before the investigating officer on 14/07/2010 and his statement **was** recorded under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he started a firm in the name of M/s.Vishal Movers with his wife and other two ladies as Partners and was doing the work of assisting the Exporters/Importers in customs clearance work through Kandla Port and also doing consultancy in making application and obtaining IEC code for various parties;
- that he learnt various procedures of DGFT and in the year 2003 he started a Proprietorship firm in the name of M/s.Bansi Overseas at 302, Somnath Commercial Complex, B/h ST Bus Stand, Rajkot and started trading/brokerage of transferable import licence;
- that his employees were Shri Nilesh Makwana, Shri Piyush Surendra Viramgama and Shri Deepesh Surendra Viramgama;
- that Shri Piyush Viramgama and Shri Deepesh Viramgama were doing the work of making application with the DGFT for obtaining the licences and IECs;
- that apart from running the firm M/s.Bansi Overseas as a Proprietor, he was also assisting Shri Dharmesh Gathani of M/s.Padmavati Agencies Pvt. Ltd., Ahmedabad, in the work of conversion of free shipping bill into advance licence/DEPB/DFRC/Drawback Shipping Bills and conversion of shipping bills from one export promotion scheme to another;
- that he was looking after the work of conversion of shipping bills pertaining to exports made from CFS, Mulund, Mumbai Custom House, Bombay port and Custom House, Nhava Sheva;
- that in the course of his business he came into contact with Shri Paresh Parekh at Mumbai;
- that in the year 2006, he shifted to Mumbai and started a firm in the name of M/s. Sunkkalp Creation Pvt. Ltd., at Mumbai along

with Shri Paresh Parekh. Apart from himself, Shri Paresh Parekh, Smt.Sangeeta Parekh wife of Shri Paresh Parekh and their son Shri Eshan Parekh were the other Directors of the firm;

- that he came to know about the DRI enquiry through Shri Dharmesh Gathani on 15/16th of April, 2010 and also through Shri Prashant of M/s.Ganesh Shipping Agency, Mangalore around 20th of April, 2010;
- that he had rented a flat at 201, Juhu Princess Apartment, Juhu Tara Road, Mumbai for the last one year which next to their office of M/s.Sunkkalp Creation Pvt. Ltd. and all the three Directors were staying there along with their children;
- that he had instructed his staff to tell that the Directors had gone to Turkey whenever there an enquiry from any Govt. authorities.
- that his staff regularly reported the day-to-day activities at the flat where they were residing;
- that he was involved in the forgery of DEPB/VKGUY licences utilized in the import made by M/s.Hindalco Industries Ltd., Dahej;
- that during August, 2008, his employee Shri Piyush Viramgama in M/s.Bansi Overseas at Rajkot, informed him that one Shri Niyaz Ahmed at Kanpur an expert in printing of forged licence and could supply such forged licence;
- that Shri Piyush also informed that those licences could be used at ports as genuine licence as the custom release advice could also be printed and the custom letter of genuineness verification could also be done easily;
- that he had Shri Piyush at Mumbai and after discussion he decided that those licences could be utilized only at non-EDI ports;
- that M/s.Hindalco Industries Ltd., a major user of such transferable licences and were using those licences at Dahej port which was a non-EDI port;
- that he, Shri Paresh Parekh and Shri Piyush Viramgama met the officers at M/s.Hindalco Industries Ltd., who informed them that they need to be registered as Vendor and supply licence from Kolkatta under non-VAT bills. They did not register as vendor as they had no office at Kolkatta;
- that as they were supplying licences to M/s.Padmavati Agencies Pvt. Ltd., Ahmedabad, who registered with M/s.Hindalco Industries Ltd., as a registered vendor he thought of supplying the licences through M/s.Padmavati Agencies and Shri Dharmesh Gathani agreed to accept the licences supplied by them but insisted for a non-VAT bill;
- that as he was supplying licences to Shri Dharmesh Gathani through M/s.Vani Exports, Kolkatta and M/s.Hindustan Continental Ltd., Kolkatta with non-VAT bills, he decided to sell those licences through the same route and Shri Dharmesh Ghatani informed to take out release advice for Dahej Port;
- that he asked Shri Piyush Viramgama to supply a set of forged licences using the photocopies of the licences that were sold by him and which were already utilized;
- that he had dealt in the licences obtained from cashew and coffee exporters of South India, and he was having copies of the same;

- that he had procured genuine licences of the cashew and coffee exporters through Shri Sunilkumar of M/s.Sabri Quality Food, Kerala and other firms of Shri Sunilkumar;
- that he had sold those licences mainly to M/s.Reliance Industries Ltd., for use at Mangalore Port. Those licences were high value licences and he selected those licences and gave the photocopies and other details to Shri Piyush Viramgama for forging the same;
- that those licences were forged at Kanpur and he instructed to change the port of registration in the forged licences to Mangalore Sea Port as he could manage the details of release advices issued from Mangalore Port;
- that the transfer letter in respect of those forged licences were forged by Shri Niyaz Ahmed at Kanpur and sent through Shri Piyush Viramgama;
- that all the documents which were issued by DGFT i.e., Licence, Licence forwarding letter, shipping bill list, etc., were forged by Shri Niyaz Ahmed in the first lot;
- that thereafter only the licences were printed by Shri Niyaz Ahmed at Kanpur and the remaining documents such as release advice, forwarding letters, bank authorizations were forged by Shri Piyush Viramgama;
- that Shri Piyush Viramgama forged the rubber stamps and signatures of the officers of DGFT on the licence, rubber stamps and signatures on the licence forwarding letters, licence transfer letter and release advices were also forged by Shri Piyush Viramgama;
- that the DGFT round seal appearing on the forged licences were done by Shri Niyaz Ahmed at Kanpur;
- that the forged licences were sold under the invoices of M/s.Shivangi Enterprise, Bangalore, however actually the invoices were printed at Rajkot by Shri Piyush Viramgama and the bank account of M/s.Shivangi Enterprise, Rajkot of Shri Vijay Gadhiya used to receive and make payments;
- that the licences were invoiced from M/s.Shivangi Enterprise to M/s.Vani Exports, M/s.Mac Alloys Ltd., and M/s.Merill Impex and those firms in turn sold the same to M/s.Padmavati Agencies Pvt. Ltd., or M/s.Vrinda Agencies Pvt. Ltd., who in turn sold it to M/s.Hindalco Industries Ltd.;
- that the reason for routing the licences in the above manner was for dividing the margin of profit at each stage and since those were firms were Kolkatta based firms, they could raise non-VAT bills as required by M/s.Hindalco Industries Ltd.;
- that the money was withdrawn in cash from the bank account of M/s.Shivangi Enterprise from HDFC Bank, Rajkot or transferred to the bank account of M/s.Reliance Enterprise from where it was withdrawn in cash;
- that the amount were also transferred to other bank accounts in the firms such as M/s.Ostwal Trading, M/s.Sabari Millenium, etc.;
- that regarding the release advices in case of those forged licences, the customs officers did not fax the letter to Mangalore Customs but gave the letter to M/s.Hindalco Industries Ltd., who faxed it to

M/s.Padmavati Agencies, who in turn faxed it to Shri Piyush Viramgama;

- that Shri Piyush Viramgama forged the Mangalore Customs letter of verification and faxed it back to him at M/s.Sunkkalp Creation office from where it was faxed to M/s.Padmavati Agencies and then to M/s.Hindalco Industries Ltd.;
- that one time the letter faxed by Dahej Customs to Mangalore Customs and when he came to know about it Shri Piyush Viramgama went to Mangalore and managed to get the letter withdrawn by saying that it was sent by mistake to Mangalore port instead of some other port;
- that Shri Prashant an employee of M/s.Ganesh Shipping Agency, Mangalore, was informing the details of the release advices issued by Mangalore Custom House during certain period;
- that Shri Piyush Viramgama was very good in forging signatures and hence managed to forge the signature of the custom officers on the reverse of the licence, on the release advices, on the transfer letters and rubber stamp of the banks;
- that sometimes with his consent Shri Piyush Viramgama had forged his signature on the bank cheques for urgent withdrawals;
- that Shri Piyush Viramgama was an expert in documentation related to DGFT and Customs; that Shri Niyaz Ahmed told him that the stationery for printing those licences were actually received by him(Shri Niyaz Ahmed) from the Central Licensing Authority (CLA) at Delhi and one Shri Chander, who a suspended employee of CLA, was supplying the same to him(Shri Niyaz Ahmed);
- that the forged documents were sent to Shri Piyush Viramgama at Rajkot from Shri Niyaz Ahmed at Kanpur through courier;
- that Shri Piyush Viramgama was forging the signatures and attaching the remaining documents like transfer letters of the exporters with forged signatures and forged signatures of the bank officials showing attestation of the signatures, forged list of the shipping bills attached with the licences and forwarding those documents as complete set to him at the office address of M/s.Sunkkalp Creations Pvt. Ltd., Mumbai, through courier or sometimes delivered them personally at Mumbai;
- that he sent the documents to M/s.Padmavati Agencies through Maruti courier which were collected at Bharuch and delivered to M/s.Hindalco Industries Ltd., at Dahej;
- that Shri Niyaz Ahmed had sent about 5 licences during December, 2009 through Air from Kanpur and the same collected by Shri Piyush Viramgama at Mumbai Airport;
- that Shri Piyush Viramgama had stayed in a hotel at Mumbai and forged the rubber stamps and signatures on those licences which were delivered to him at his office;
- that he was shown page No.3 and 4 of the file No.6 seized under panchnama dated 21.4.2010 from the office premises of M/s.Bansi Overseas, 302, Somnath Complex, Rajkot;
- that those documents actually pertained to the list of licences which were actually forged and utilized by M/s.Hindalco Industries Ltd., through M/s.Padmavati Agencies and most of the genuine

licences bearing the same numbers were actually sold by him to M/s.Reliance Industries Ltd., and used at Magdala Port, Gujarat;

- that the confirmation of the genuineness of all those forged licences were actually printed and faxed by Shri Piyush from Rajkot to his office M/s.Sunkkalp Creations Pvt. Ltd., Mumbai and then faxed from his office to M/s.Hindalco Industries or to Customs, Dahej;
- that he did not remember the exact number of forged licences supplied by them and utilized by M/s.Hindalco Industries Ltd., but he had received an amount of Rs.46.00 Crores approximately as per the debit notes raised by them;
- that he raised debit notes for about 65% to 70% of the licence value for all those forged licences;
- that he was shown a set of licences and other documents and he confirmed that those documents pertained to the forged licences which were sold by him and utilized by M/s.Hindalco Industries Ltd.;
- that he could identify and confirm those documents as forged licences as the port of registration mentioned as Mangalore Sea and the top right corner of the licence the words 'FOR CUSTOM PURPOSE ONLY' printed by over-writing the words 'Exchange Control Copy'.
- that he was shown a set of 75 licences and other documents which were actually genuine licences and were sold to M/s.Reliance Industries Ltd;
- that he was shown a list of 85 licences and confirmed that the same were the details of 85 forged licences as well as genuine licences shown to him.

88. A further statement of Shri Kalpessh Navinchandra Daftary, Director of M/s.Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 15/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was shown pages 66 to 83 of file No.6 seized from the premises at 302, Somnath Commercial Centre, Rajkot, which the office of M/s.Bansi Overseas and later on M/s.Krish Overseas;
- that the documents were invoices in the name of M/s.Shivangi Enterprise showing address as 909, Centre Point, MG Road, Bangalore : 560 001. There were 18 debit notes raised in the name of M/s.Vani Exports, Kolkatta showing sale of 18 VKGUY licences;
- that the address of M/s.Shivangi Enterprises shown in the invoices were fake and forged. M/s.Shivangi Enterprise was a proprietorship firm of Shri Vijay Amrutlal Gadhiya who was working with Shri Piyush Viramgama;
- that the details of the 18 VKGUY licences were forged licences which appeared in the list of 85 forged licences shown to him. Those licences were sold at a lesser value than the value of the licences;
- that M/s.Shivangi Enterprises was a fake firm used by him for showing the movement of the forged licences. The bank account of M/s.Shivangi Enterprises was used by him to route the money received from sale of such forged licences;

- that he was shown page 1 to 3 containing the details of 85 licences. All the 85 forged licences were sold to M/s.Hindalco Industries Ltd., by M/s.Padmavati Agencies Pvt. Ltd., Ahmedabad;
- that he sold the 13 genuine VKGUY licences in the name of coffee exporters such as M/s.General Commodities Ltd., M/s.Ned Commodities Ltd., M/s.E-Com Gill Coffee Trading Pvt. Ltd., through his firm M/s.Sunkkalp Creations Pvt. Ltd., Mumbai;
- that those numbers were printed in the forged licences along with transfer letters. The transfer letters were printed showing direct sale of those forged licences from the exporters to M/s.Padmavati Agencies Pvt. Ltd., to adjust the payments against sale of genuine VKGUY licences due from him;
- that he informed the coffee exporters that the payments made by M/s.Padmavati was to be adjusted against payments to be received from his company;
- that he was shown the print outs of various e-mails sent by his employee to various firms on his instructions;
- that he confirmed the transactions of forged licences in those e-mails through M/s.Padmavati Agencies to M/s.Hindalco Industries Ltd.;
- that he was shown page No.180 of file No.1 seized from his office premises at Mumbai under panchnama dated 30.4.2010.The document was a print out of e-mail from his office e-mail account ho@sunkkalp.com which operated by his staff;
- that the e-mail sent to the Manager of HDFC bank, Kalawad Road Branch, Rajkot and another employee of the same bank as per his instructions;
- that an amount of Rs.97,00,000/- was rotated through three accounts in the same bank. The first debit was from account of Sunkkalp which was credited to the account of Padmavati and then from Padmavati credited to the account of Accurate and again from Accurate credited to the account of Sunkkalp as per his instructions;
- that those transactions were made to complete the turnover cycle of Sunkkalp and Padmavati and debit notes were raised in that manner and money rotated and brought back to the same account;
- that he was shown print outs of such similar e-mails on page 225 to 232 and 254 to 256 from file No.7 withdrawn from his office at Mumbai under panchnama dated 30.4.2010, which pertained to similar bank transactions as explained above;
- that he was shown a file submitted by Superintendent of Customs, Dahej, containing letters of confirmation of genuineness received from Mangalore Custom House. He confirmed that all those letters were forged documents which were printed by Shri Piyush on the basis of the genuine verification letters received from Mangalore Custom House;
- that the round seal of Mangalore Custom House was forged by Shri Piyush at Rajkot;
- that those forged letters were faxed by Shri Piyush to him and in turn faxed to M/s.Padmavati at Ahmedabad and which were in turn faxed to M/s.Hindalco and Dahej Customs;

- that he came into contact with one person Shri Sashin Jayantilal Koradia Mumbai, whose was providing the names of many companies for adjustment of turnover;
- that Shri Sashin controlled the accounting of sale and purchase in those firms. The forged licences were routed through the firms of Shri Sashin for distribution of profit margin. Some of those firms were M/s.Accurate Multitrade Pvt. Ltd., M/s.R.J.Impex, M/s.New Planet Trading M/s.Hindustan Continental Ltd., M/s.Ostwal Trading Pvt. Ltd., M/s.Punjab Chemicals and Crop Protection Ltd., M/s.Priority Traders Pvt. Ltd., M/s.Adhunik Corporation;
- that he had never met any of the owners/partners/directors of the firms/companies of the above companies. The sales and purchases in the name of the above companies were only on paper;
- that export of coffee included under VKGUY with effect from 1.4.2007. His firm M/s.Sunkkalp Creation Pvt. Ltd., pursued the representation of Coffee Exporters Association with the Ministry of Commerce for their inclusion under VKGUY;
- that under an agreement with Coffee Exporters Association in the event of inclusion of Coffee Exports under VKGUY those exporters would share the benefits with his company to an extent of 30% of the duty credit;
- that after inclusion of coffee exports under VKGUY the coffee exporters association had sold the genuine transferable licences at a discounted rate of 70% which were sold in the market as per the prevailing market value of the licence;
- that in order to keep track of the distribution of profit on books copies of such genuine licences and connected documents were kept with them on the basis of which Shri Piyush gave those copies to Shri Niyaz for printing of the forged licences;
- that similarly cashew exports were removed from the export benefits which included again on the representation of the cashew exporters association;
- that he was approached Shri Sunil of M/s.Sabri Quality Foods, Kollam for trading of some of those licences and traded the same in the market at a profit margin of 30%;
- that in order to keep track of the sale and profit earned he kept photocopies of the genuine licences and connected documents which were again used for printing forged licences by Shri Niyaz;
- that he sold those forged licences to M/s.Hindalco at Dahej which a non-EDI port and kept track of such forged licences;
- that similar project of inclusion of meat and meat products under VKGUY was handled by him and in the similar modus operandi as above, he earned a profit margin of 30%;
- that the other Directors of his company viz.Shri Paresh Parekh, Smt.Sangita Parekh and Shri Eshan Parekh were not aware of the transactions of forged licences;
- that as he was in deep financial trouble and to overcome that he indulged into transactions of such forged licences as suggested by Shri Piyush;
- that the invoices were raised by M/s.Shivangi Enterprise on various firms which in turn raised sales invoices on M/s.Vani

Exports who in turn raised invoices on M/s.Padmavati Agencies or M/s.Vrinda Agencies;

- that the sales of forged licences to M/s.Hindalco was on the invoices of M/s.Padmavati Agencies or M/s.Vrinda Agencies;
- that the payment received from M/s.Hindalco was routed back to M/s.Shivangi Enterprise on the basis of sales invoices raised;
- that the profit on such forged licences were shared at the rate of 20% to Shri Niyaz, 20% to Shri Piyush and 50% to him as the licences were sold at 90% of the original value;
- that the money received from sale of such forged licences transferred to the bank account of M/s.Shivangi Enterprises from the companies of Shri Sashin was to the extent of 40% which was the share of Shri Piyush and Shri Niyaz; that the balance to the extent of 40% of the original value was partly received in cash from the companies of Shri Sashin and some part transferred to M/s.Sunkkalp Creations Pvt. Ltd., by the firms of Shri Sashin;
- that 10% of the licence retained by Shri Sashin was for arranging payments;
- that he agreed to the facts stated by Shri Piyush in his statement. But he differed with the statement of Shri Piyush to the extent that initially in the case of the first lot of 22 licences, Shri Niyaz prepared the entire set of forged licences and its connected documents and sent to Shri Piyush who forged the signatures and endorsement on the reverse of licences and printed the transfer letters and forged the signature as also the bank seal and signature;
- that after completing the set Shri Piyush was sent to Mumbai either by Courier or delivered the same personally;
- that in the case of the other lots Shri Niyaz printed the forged licence and sent the same to Shri Piyush who completed the other documents including the printing of RAs;
- that he disagreed in page 8 para 2 of the statement of Shri Piyush dated 13.5.2010. All the signatures were forged by Shri Piyush only and not him;
- that he also differed with the statement dated 13.5.2010 of Shri Piyush at para 4 of page 7. Shri Piyush prepared the verification of genuineness, forged the signatures, affixed the round seal of Mangalore Customs and faxed to him which in turn faxed to others;
- that for the above acts of forging Shri Piyush received 20% of the licence value;
- that he was shown the statement of Shri Vijay Gadhiya and he agreed with the facts stated therein.

89. A further statement of Shri Kalpessh Navinchandra Daftary, Director of M/s.Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 16/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was shown VKGUY licences and related documents of M/s.Allanasons Ltd. and utilized by M/s.Reliance Industries Ltd., at Dahej port. Those licences were forged licences sold by him to

M/s.Reliance Industries Ltd., by routing them through other firms - Shri Bhavesh Doshi of M/s.S.C.Doshi & Sons, Mumbai;

- that the money received from those forged licences were also shared in the same ratio to Shri Piyush and Shri Niyaz as in the case of forged licences sold to M/s.Hindalco;
- that Shri Piyush and Shri Niyaz were fully aware as they were actively involved in the forging of signatures and printing of forged licences and received money for the same;
- that the genuine set of VKGUY licences pertaining to the export of meat and meat products exported by M/s.Allanasons Ltd. and their group companies were sold by him through M/s.Sun Exports Pvt. Ltd., Mumbai;
- that he was shown eight sets of DEPB Post export licences and their attached documents of M/s.Allanasons Ltd., Mumbai recovered from Dahej Customs;
- that those licences were apart from the list of 85 licences shown to him in his previous statement;
- that he confirmed those licences were forged licences sold by him to M/s.Hindalco Industries Ltd.;
- that the letter of verification of genuineness from Mangalore Customs were actually printed by Shri Piyush who forged the signature and round seal of Mangalore Customs;
- that he shown an e-mail dated 10.11.09 sent by him from his mail id to Shri Vishal Wadkar his employee;
- that he received an e-mail from Shri Bashir Jasani of M/s.Allanasons Ltd., which contained the details of 18 licences which forwarded to Shri Bhavesh Doshi;
- that out of the 18 licences, 13 licences were sold by him to M/s.Reliance Industries Ltd. That those licences were sold under the invoices of M/s.Hindustan Continental Ltd., through broker Shri Bhavesh Doshi;
- that those were forged licences as he had sold the genuine licence to M/s.Sun Export, Mumbai who in turn sold it to M/s.Trident India Ltd., and M/s.S.R.International, Mumbai;
- that the port of registration of the genuine licence JNPT, however, in the forged licence the port of registration changed to Mangalore Sea Port;
- that he got the above forged licences printed by Shri Niyaz Ahmed through Shri Piyush Viramgama. The method of forging similar to the 85 VKGUY forged licences;
- that he was shown the panchnama dated 27.6.2010 drawn at the residential premises of Shri Vijay Amrutlal Gadhiya at Rajkot;
- that he was shown the impression of the seal and seal making items recovered from the said premises;
- that he confirmed the round seal recovered from the premises was the same round seal of 'Mangalore Custom House', used on the forged letters of confirmation of genuineness prepared by Shri Piyush which used for custom purposes.

90. Shri Kalpessh Navinchandra Daftary was arrested by DRI on 16/07/2010 under the provisions of Section 104 of the Customs Act, 1962 and was produced before the Additional Chief Metropolitan

Magistrate, Ahmedabad (ACMM). Since Shri Daftary was required for further investigations, remand of 2 days was sought from the Hon 'ble ACMM was pleased to remand him to DRI custody till 19/70/2010.

91. A further statement of Shri Kalpessh Navinchandra Daftary, Director of M/s.Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 17/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter-alia :

- stated that he had earned a total amount of Rs.46 Crores from the sales of forged licences to M/s.Hindalco on the basis of the duty credit figure on the licences and release advices;
- that he was once again shown the list of 85 forged licences sold to M/s.Hindalco Industries Ltd., which showed the total duty figure as Rs.54 Crores approx.. The difference of Rs.7 Crores was due to typographical error which had occurred in the licence No.5310006661 dated 20.10.2008 of N.Satishkumar Cashew, Kerala; that the actual amount in the licence was Rs.73,35,173/- but in the sheet it was wrongly typed as Rs.7,33,35,173/- and hence there was a difference of Rs.7 Crores;
- that the total amount of duty wrongly availed by M/s.Hindalco by utilization of 85 forged licences came to Rs.46,71,83,001/-;
- that he was shown the eight forged DEPB licences of M/s.Allanasons Ltd., sold to M/s.Hindalco and the duty credit wrongly availed by M/s.Hindalco came to Rs.1,71,46,032/-;
- that he was shown the list of 13 VKGUY licences of M/s.Allanasons Ltd., sold to M/s. Reliance Industries Ltd., and the duty credit wrongly availed by M/s.Reliance Industries Ltd., came to Rs.6,95,54,068/-;
- that he was shown e-mails showing RTGS details of many companies/firms forwarded to Vishal Wadkar for making debit notes. Those RTGS through the banks were made for making debit/credit entries for rotation of the export incentive licences;
- that he had raised two bills for six DEPB licences on different firms/companies. The first bill was a factual bill for sale of genuine licences and the second set of bills were actually bogus bills made to adjust the profit margin.

92. A further statement of Shri Kalpessh Navinchandra Daftary, Director of M/s.Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 18/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that the letters for verification of genuineness of TRA was issued from Dahej Customs and given to respective vendors for confirmation; that in cases of forged licences sold by them, all TRAs were sent to M/s. Padmavati Agencies who in turn sent by fax or mail to him after scanning;
- that he had forwarded the same to Shri Piyush who prepared the forged confirmation letters shown to be issued from Mangalore Customs and after forging the signatures and affixing the forged round seals, which were recovered from the residence of Shri Vijay Gadhiya under panchnama, the same were received from Shri Piyush at his office at Mumbai which were faxed to M/s.

Padmavati Agencies and onward to M/s. Hindalco and Dahej Customs;

- that he was shown a letter of the Superintendent of Customs, Dahej addressed to the Assistant Commissioner of Customs, Mangalore for confirmation of TRA against VKGUY licence;
- that it related to the first RA of the set of forged licences used by him in the entire scheme of forgery;
- that he was also shown a letter issued by the Superintendent of Customs, Mangalore in reply confirming that no such TRA issued from Mangalore. The letter might not have reached Dahej;
- that the forged verification of genuineness in respect of the above TRA was prepared by Shri Piyush and faxed to M/s.Padmavati Agencies through him, which was used for debit of the said TRA at Dahej;
- that he was shown page 7 of file No.6 seized under panchanama dated 21.4.2010 from the premises at 302, Somnath Commercial Complex, Rajkot;
- that the document was an original copy of forged VKGUY licence and complete set of connected documents in the name of M/s. General Commodities Ltd. with the forged round seal of DGFT and forged endorsements;
- that those documents were forged licence prepared by Shri Niyaz and one such forged licence of same number was sold by them to M/s.Hindalco and utilized at Dahej port which appeared in the list of 85 forged licences shown to him;
- that he was shown the ledger account of M/s.Sunkkalp Creation Pvt. Ltd., Mumbai, for the period 1.4.2008 to 31.3.2010 maintained by Shri Sashin;
- that the said ledger account pertained to the billing and transactions arranged through the firms of Shri Sashin Koradia for M/s.Sunkkalp Creation Pvt. Ltd.;
- that all the cash transactions shown in the ledger account amount to approximately Rs.60 Crores;
- that out of the above Rs.60 Crores, Rs.40 Crores pertained to the sale of forged licences to M/s.Hindalco Industries and M/s.Reliance Industries Ltd.;
- that out of that Rs.40 Crores, Rs.28 Crores his profit from the sale of forged licences and Rs.10 Crores was paid to Shri Piyush Viramgama and Rs. 2 Crores was paid to Shri Niyaz as instructed by Shri Piyush;
- that the amount of Rs.40 Crores was cashed by Shri Sashinbhai from the various firms in whose names the billings for sale and purchase of forged licences were arranged. The remaining amount of Rs.20 Crores pertained to the sale of genuine licences;
- that he used the cash generated to pay off the loans and interest taken by him from various persons;
- that he used Rs.90 lakhs for purchase of shares of M/s.Siddhant Estate Pvt. Ltd., and Rs.3.10 Crores transferred to M/s.Sonbar Developers and Investment Pvt. Ltd., in which he was a Director;
- that he confirmed the duty benefit availed by M/s.Hindalco Industries Ltd., amounted to Rs.48,93,29,033/- involving utilization of 93 forged VKGUY/DEPB licences and by

M/s.Reliance Industries Ltd., amounted to Rs.6,95,54,068/- involving utilization of 13 forged VKGUY licences.

93. A further statement of Shri Kalpessh Navinchandra Daftary, Director of M/s. Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 19/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia confirmed that the facts stated by him in his earlier statements were true and correct.

94. A statement of Shri Rajesh Rameshchandra Sajnani, Retired Superintendent of Central Excise & Customs and Director of M/s.Kshitij Marine Services Pvt Ltd, Surat was recorded on 20/07/2010 and 27/08/2012 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that presently he was working as a director of M/s Kshitij Marine Services Pvt. Limited having office at O-2,Madhulika Apartments, Bhatar Road, Surat and the Managing Director of the company is Shri.Praveen Dixit.
- that he was a Central Government employee and took voluntary retirement as Superintendent of Central Excise and Customs from the department of Central Excise & Customs under Ministry of Finance, Department of Revenue on 24.07.2009.
- that his last posting as Superintendent of Customs and Central Excise was at Dahej Customs House, Dahej under Surat Custom Division where he worked from 21.11.2007 to 23.07.2009.
- that during the period of his posting at Dahej Custom House the major importers were M/s Reliance Industries Limited, M/s Petronet LNG Limited, M/s Hindalco Industries Limited, Dahej and M/s BASF Limited who were contributing the major share of the total revenue of the Port. Major exporters were M/s Reliance Industries Limited and M/s Indian Oil Corporation.
- that M/s Hindalco Industries Limited and M/s Reliance Industries Limited were utilizing various transferable import licences like DEPB/VKUY/VKGUY/FMS/FPS etc. issued by DGFT for debiting the import duties at the time of imports.
- that M/s Hindalco was using about 5000 transferable licences of various types in a year and the duty foregone figure after debiting these licences would have been approx. Rs.1000 to 1500 Crores per annum by utilizing these licences.
- that similarly M/s Reliance Industries Limited were utilizing about 3000-4000 transferable licences of various types and the duty foregone figures by utilizing these licences would have been approx. Rs.800-900 Crore.
- that the Custom Office at Dahej was actually situated in the building of M/s Reliance Industries Limited at Room No.35 in the first floor and all infrastructure facilities for the office was supplied by M/s Reliance Industries limited.
- that the fax No.02641-281610 installed at Dahej Customs was also supplied by the custodians M/s Reliance Industries Limited.
- that during his tenure with the Dahej Customs the internet facility at Dahej was given by M/s Reliance Industries Limited and only

limited internet sites were accessible from the said facility as most of the sites were blocked by Reliance Industries Limited in all their internet lines.

- that regarding fax facility on telephone no.02642-282610 he stated that the fax machine installed with this number was not functional for a major period during his tenure at Dahej, during that period the fax facility of M/s Reliance Industries Limited was used by them at Customs for receiving and making faxes related to confirmation of genuineness of the Release Advices received by them.
- that M/s Hindalco Industries Limited were filing their bills of entries and shipping bills on self basis but their work being handled by M/s Kshitij Marine Services, Surat.
- that all the employees of these Custom House Agent's firms who were handling the import/export documents like the bills of entries, shipping bills, invoices, packing lists, duty free licences etc. were holding valid authorizations as per the requirement of the Custom House Agents Licensing Regulations,2004.
- that as M/s Hindalco Industries Limited (Unit:Birla Copper) had authorized M/s Kshitij Marine Services Pvt. Limited to file the bills of entries on their behalf they were allowed to access and handle the important import documents and original licences, release advice, verification of genuineness letters and their replies.
- that regarding the procedure adopted at Dahej Port for debiting of import duty from the duty free transferable licences and Release Advices, he stated that during his tenure at Dahej Port duty free transferable licences were utilized for debiting of import duty by M/s Hindalco Industries Limited and M/s Reliance Industries Limited.
- that the imports of M/s Hindalco Industries Limited at their Captive Jetty at Dahej and the imports were full vessel loads of Copper Concentrates in bulk. But, Hindalco jetty was not having any storage facility/bonded area for storing non-duty paid import cargo, therefore the import of Hindalco were required to be cleared as soon as the vessel reached the jetty. Therefore to speed up the clearances the procedure of debiting of duty before discharging of the import cargo was adopted for Hindalco.
- that in the imports made by Hindalco, the import documents like bill of entry, import invoice, import packing list, original copy of duty free transferable licences, the original release advices in relation to these import licences etc. were submitted by the importer prior to arrival of the cargo.
- that the documents were filed prior to the arrival of the vessel with the permission of the jurisdictional Assistant Commissioner as per procedural requirement, in some cases when the documents were filed after arrival of the vessel the permission of the AC not required.
- that these documents were verified for its correctness and the duty leviability and quantum assessed in the bill of entry. Then the licences which were registered at Dahej Port, were taken up and the genuineness of these licences were verified from the website of DGFT by using the internet facility of Reliance Industries Limited.

- that regarding the procedure adopted for confirmation of genuineness of the release advices utilized at Dahej by Hindalco from the port of issuance of the release advices, he stated that normally during his tenure at Dahej as Superintendent of Customs, after receiving the original release advices before debit, they were preparing letters for confirmation of genuineness addressed to the Assistant Commissioner of the port from where the RA's were issued.
- that these letters for confirmation of genuineness were faxed to the concerned Custom House using the fax/telefax machine installed at Dahej Customs bearing No.02641-282610 and in case the fax/telephone line was out of order, the same was also handed over to M/s Hindalco Industries Limited for faxing them to the RA issuing Customs House.
- that in some cases the faxes were also sent using the fax machine installed at the office of the Assistant Commissioner of Customs, Custom Division, Surat having No.0261- 2478741.
- that the genuineness verification was done only on fax and the hard copy was not sent by post again. The request for verification of genuineness was made in two copies, one was faxed and forwarded to Hindalco through the representative of Kshitij Marine Services Pvt. Limited and the other copy was retained with Dahej Customs as office copy.
- that during the period generally two representatives of Kshitij Marine Services at Dahej Mr.David Abraham and Mr.Fahad were doing the work.
- that the confirmation of genuineness of the release advices were received by them at Customs from M/s Hindalco or sometimes they were received at their office fax machines also.
- that on being asked as to whether any letter of non-confirmation received for any Release Advice, he stated that during his entire tenure at Dahej Customs he had never seen any letter of non-confirmation of any release advice because they maintained a procedure that only after receiving the confirmation of genuineness in respect of the Release Advice from the port of issuance the RA's and the Licences were debited at Dahej.
- that regarding the procedure for verification of genuineness in respect of the duty free transferable licences utilized by M/s Reliance Industries Limited at Dahej he stated that same procedure as described above for Hindalco was adopted for the licences utilized by RIL also.
- that in case of the request for verification of genuineness of the TRA's presented by M/s RIL at Dahej the requests were either faxed from Dahej or handed over to the representative of CHA-M/s Nationwide Shipping Services namely Shri.Abdul and/or Shri.Mukhtar and /or Shri.Vinod. Similarly the confirmation of genuineness from the port of issuance was also received through the importer or their representative.
- that he was shown the print out of the Call details for the period 14.10.2008 to 31.03.2010 (contained in page numbers 01 to 111) in respect of telephone/fax no.02641-282610 received from the BSNL department.

- that on being asked to confirm regarding the incoming and outgoing faxes to/from Mangalore Customs having numbers-0824-2407100; 0824-2408147; 0824-2406057; 0824-2400437, he stated that he had read the details of incoming and outgoing calls to/from the said telephone number and confirmed that during the period of the print out no outgoing calls were shown to Mangalore Custom House where the forged licences were shown to be registered and the forged Release Advices were shown to be issued in favour of M/s Hindalco Industries Limited for being utilized at Dahej.
- that there was only 3 or 4 incoming calls from Mangalore Custom House. The faxes for confirmation of genuineness were actually not made from the fax number 02641-282610. They were actually giving the request letters for confirmation of genuineness for faxing either to David Abraham or to Fahad both employees of M/s Kshitij Marine Services Pvt.Limited.
- that he was shown some letters of request for confirmation of genuineness sent from Dahej Customs either under his signature or that of other Superintendents. These letters are addressed to Mangalore Customs requesting verification of the genuineness of the RA's issued by them.
- that he was informed that none of these letters were received by Mangalore Customs and on being asked to explain, he stated that as stated in earlier paragraph they have handed over these letters to either David or Fahad, both representatives of Kshitij Marine Services Pvt.Limited for faxing them therefore he would check with them and explain.
- that he was shown some letters purportedly issued by Mangalore Customs confirming the genuineness of the RAs. On being asked how these letters were received at Dahej Customs. In all cases the confirmation of genuineness letters were submitted back to customs at Dahej by the importer or their CHA. Therefore these also had come to them at Customs Dahej through their representative M/s Kshitij Marine Services P.Ltd.
- that he was being informed that these letters of Mangalore Customs were in fact not issued by Mangalore Customs and that the same were forged documents and on being asked, he stated that they received them from either from M/s.Kshitij Marine or M/s.Hindalco Industries and these letters of confirmation appeared to be in the same format as that of Mangalore Customs and therefore, the same were assumed to be genuine.
- that the VKUY/VKGUY licences were utilized and the release advice amounts were debited against the import duty due from M/s Hindalco Industries Limited, Dahej on the basis of these confirmation letters which he had now come to know were in fact forged letters.
- that regarding the FAX headers appearing at the top of the said letters and on being asked whether the headers appearing in the above letters of confirmation of genuineness were noticed by him while allowing utilization of the TRAs mentioned in the letters, he stated that he did not remember presently whether he had noticed the headers. However, as stated by him in his earlier statement the

letters to the Customs for verification of genuineness of the RAs were handed over to M/s.Hindalco Industries Ltd as the FAX installed in Dahej Custom House non-functional most of the time. Further, to his understanding as per the general trade practice, M/s.HIL also used to ask their licence supplier (broker) for speedy follow-up of the verification of the TRAs from the issuing Custom House. Therefore, it was possible that the licence supplier (broker) of M/s.HIL might had obtained a copy of the letter confirming the genuineness of the TRA from the issuing Custom House and faxed the same to HIL.

- that he was shown some of the licences utilized by M/s.HIL at Dahej and which were subsequently found to be forged.
- that his attention drawn towards the printed matter " FOR CUSTOMS PURPOSE ONLY" at the top on the right hand side of the licence and asked whether the same was noticed by him at the time of allowing utilization of the licence. He stated that generally the licence was checked with regard to its endorsement of registration which appeared on the reverse side of the licence. The endorsement regarding registration of the licence with the Custom House was compared with the port of registration appearing on the obverse side of the licence.
- that he was shown the overwriting of the printed matter " FOR CUSTOMS PURPOSE ONLY" and asked whether the same noticed/observed by him. In this regard he stated that he did not remember exactly but to his knowledge this was not noticed by him. He further stated that looking to the huge quantum of duty free transferable licences being utilized by M/s HIL during the period it was not practically possible to check each and every aspect/parameters of the Licences and the RA's presented before him.

95. A statement of Shri Rakesh Bainle, Superintendent of Central Excise & Customs, Surat -I was recorded on 23/07/2010 and 27/08/2012 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was working as a Superintendent of Central Excise & Customs in Surat –I Commissionerate and was presently posted at Central Excise, Range-II, Division-V, Surat-I. From February, 2008 to February, 2009 he was posted at Dahej Custom House, Dahej.
- that Custom House Dahej was manned by two Superintendents and four Inspectors. During his posting was at Custom House Dahej the other Superintendent, Shri R.R.Sajnani who had since retired from the department.
- that the Inspectors working in Custom House Dahej during his tenure were Shri K.Venkateshan, Shri Ajay Agarwal, Shri C.S.Malviya, Shri T.Venkatraman, Shri Rakesh Jain and Shri Nilesh Handure. All these Inspectors were not posted at the same time.
- that during the period of his posting at Dahej Custom House the major importers were M/s Reliance Industries Limited, M/s Petronet LNG Limited, M/s Hindalco Industries Limited, Dahej and M/s BASF Limited.

- that there was no distribution of work whereby the officers were allocated particular firms. The work was being done commonly by all the officers.
- that M/s Hindalco Industries Limited and M/s Reliance Industries Limited were utilizing various transferable import licences like DEPB/VKUY/VKGUY/FMS/FPS etc. for debiting the import duties at the time of imports. M/s Hindalco was using about more about 4000 to 5000 licences of various types in a year. Similarly M/s Reliance Industries Limited were utilizing about 3000-4000 licences of various types.
- that in addition to their own licences, M/s. Hindalco Industries Ltd and M/s. Reliance Industries Ltd were also using licences of other exporters purchased by them. For such licences M/s. Hindalco Industries and M/s. Reliance Industries produced transfer letters from the original licence holders or the traders from whom the licences were purchased by them.
- that in these cases, alongwith the original licence they also submitted the Release Advices issued in their favour by the Customs at the Port of Registration.
- that the Custom Office at Dahej was situated in the building of M/s Reliance Industries Limited (previously Indian Petrochemical Corporation Limited) at Room No.35 in the first floor and all infrastructure facilities for the office was provided by M/s Reliance Industries limited.
- that M/s. Reliance Industries Ltd had provided the phone and fax facilities to the Customs at Dahej. The phone provided to them was having No.02641-282610 and the same was used as telefax. During his tenure at the Dahej Customs internet facility at Dahej was given by M/s Reliance Industries Limited however, only limited internet sites were accessible.
- that the fax machine installed no.02642-282610 was not functional most of the time during his tenure at Dahej. Even when the fax was functioning the receipts were not legible.
- that all the employees of these Custom House Agent's firms who were handling the import/export documents like the bills of entries, shipping bills, invoices, packing lists, duty free licences etc. were holding valid authorizations as per the requirement of the Custom House Agents Licensing Regulations,2004.
- that as M/s Hindalco Industries Limited (Unit:Birla Copper) have authorized M/s Kshitij Marine Services Pvt. Limited to file the bills of entries on their behalf they were allowed to access and handle the important import documents and original licences, release advice, verification of genuineness letters and their replies.
- that regarding the procedure adopted at Dahej Port for debiting of import duty from the duty free transferable licences and Release Advices, he stated that during his tenure at Dahej Port duty free transferable licences were utilized for debiting of import duty by M/s Hindalco Industries Limited and M/s Reliance Industries Limited.
- that the imports of M/s Hindalco Industries Limited at their Captive Jetty at Dahej and the imports were full vessel loads of Copper Concentrates in bulk. But, Hindalco jetty was not having

any storage facility/bonded area for storing non-duty paid import cargo, therefore the import of Hindalco were required to be cleared as soon as the vessel reaches the jetty. Therefore to speed up the clearances the procedure of debiting of duty before discharging of the import cargo was adopted for Hindalco.

- that in the imports made by Hindalco, the import documents like bill of entry, import invoice, import packing list, original copy of duty free transferable licences, the original release advices in relation to these import licences etc. were submitted by the importer prior to arrival of the cargo.
- that the documents were filed prior to the arrival of the vessel with the permission of the jurisdictional Assistant Commissioner as per procedural requirement, in some cases when the documents were filed after arrival of the vessel the permission of the AC was not required.
- that these documents were verified for its correctness and the duty leviability and quantum assessed in the bill of entry. Then the licences which were registered at Dahej Port, were taken up and the genuineness of these licences were verified from the website of DGFT by using the internet facility of Reliance Industries Limited.
- regarding the procedure adopted for confirmation of genuineness of the release advices received by Hindalco from the port of issuance of the release advices and utilized at Dahej, he stated that normally during his tenure at Dahej as Superintendent of Customs, after receiving the original release advices before debit, they were preparing letters for confirmation of genuineness addressed to the Assistant Commissioner of the port from where the RA's were issued.
- that as the fax machine at Dahej Custom house was non functional most of the time and looking to the volume of licences and verification involved, they handed over the letters to either Shri David or Shri Fahad employees of M/s.Kshitij Marine Services Pvt Ltd.
- that on being asked why the said letters were given to the employees of M/s. Kshitij Marine Services Pvt Ltd, he stated that the general practice prevailing to give the letters to the CHA for faxing them and therefore, he too followed the procedure.
- that many a times they also gave a copy of the letter to M/s. Hindalco Industries Ltd for getting the genuineness confirmation. On some occasions the fax was also sent using the fax machine installed at the office of the Assistant Commissioner of Customs, Custom Division, Surat having No.0261- 2478741.
- that for faxing the letter from Customs Division, Surat, they used to give the letters to the employees of M/s.Kshitij Marine Services who faxed them to their office at Surat. The employees of M/s.Kshitij Marine Services Pvt Ltd then faxed the letters from Custom Division, Surat.
- that the genuineness verification done by fax and the request for verification of genuineness and no copy of the letters were sent by post.
- that regarding the receipt of the letters confirming genuineness of the RA, he states that the confirmation of genuineness of the

release advices were received by them at Customs on the fax machine installed at Dahej Customs if it was functional or from M/s. Kshitij Marine Services Pvt Ltd or M/s Hindalco.

- that during his tenure at Dahej Customs no letter was received from the Custom House denying issuance of the RA.
- that he was shown photocopy of page numbers 7.188 and 7.189 of the CBEC's Custom Manual regarding Telegraphic Release Advices and he states that even in the said procedure prescribed by the CBEC, no procedure for confirmation of genuineness of the RA had been prescribed. But they had adopted the procedure for confirmation of genuineness of the RA followed by most of the Custom formations i.e. by faxing a letter to the RA issuing custom house.
- that there was no instruction or standing order issued by Ahmedabad Customs Commissionerate. That Dahej Custom House is a non-EDI location and did not have proper infrastructure facilities like Internet connection etc. As stated above even the fax machine was non functional many a times. The telephone and faxes being provided by M/s Reliance Industries Limited were also repaired by them and were not under their direct control.
- that on being further asked regarding the procedure for verification of genuineness in respect of the duty free transferable licences utilized by M/s Reliance Industries Limited at Dahej he stated that same procedure as described above for Hindalco was adopted for the licences utilized by RIL also.
- that in case of the request for verification of genuineness of the TRA's presented by M/s RIL at Dahej the requests were handed over to the representative of CHA-M/s Nationwide Shipping Services namely Shri.Abdul or Shri.Mukhtar or Shri.Vinod. Similarly the confirmation of genuineness from the port of issuance was also received by them through the importer or their representative.
- that he was shown the print out of the Call details for the period 14.10.2008 to 31.09.2009 (contained in page numbers 01 to 111) in respect of telephone/fax no.02641-282610 received from the BSNL department. That having gone through the said call detail, he found that there were no outgoing calls to Mangalore Custom House having numbers-0824-2407100; 0824-2408147; 0824-2406057; 0824-2400437. There were only 08 incoming calls from Mangalore Custom House during February, 2009 to August, 2009.
- that he was shown some letters of request for confirmation of genuineness sent from Dahej Customs either under his signature or that of other Superintendents. These letters were addressed to Mangalore Customs requesting verification of the genuineness of the RA's issued by them.
- that he was informed that none of these letters were received by Mangalore Customs and on being asked to explain, he stated that as stated in earlier paragraph they handed over these letters to either Shri David or Shri Fahad, employees of M/s. Kshitij Marine Services Pvt.Limited for faxing them, it was probable that they might have committed some mischief and not faxed the letters to Mangalore Customs.

- that he was also being shown some letters purportedly issued by Mangalore Customs confirming the genuineness of the RAs. On being asked how these letters were received at Dahej Customs, he stated that in all cases the Customs letters confirming genuineness of the RA were received by them from the importer or their CHA. He was not able to recollect exactly but he believed these letters were given to them by either M/s.Hindalco Industries Ltd or by their representative i.e. M/s.Kshitij Marine Services Pvt Ltd.
- that he was informed that these letters of Mangalore Customs were in fact not issued by Mangalore Customs and that the same were forged documents and on being asked, he stated that these letters were received by them from either from M/s.Kshitij Marine or M/s.Hindalco Industries and these letters of confirmation was in the same format as that of Mangalore Customs and also had the round seal (rubber stamp) of Mangalore Customs, therefore, they thought the same to be genuine and accordingly allowed utilization of the RA issued in respect of the concerned licences.
- that he had now come to know that the letters confirming the genuineness of the RAs in respect of the corresponding VKUY/VKGUY licences were all forged documents. It had now come to his notice that they had allowed M/s Hindalco Industries Limited, Dahej to utilize the said licences and RAs for debit of duty on the basis of these forged confirmation letters.
- that he was shown copy of letter no.CH/DJ/32/2008-09 dtd.10/9/2008 and letter no.S-01/02/2008 IMP dtd.12.09.2008, On being asked, he stated that the letter dtd.10/9/2008 was issued by him under his signature to Mangalore Customs for verification of RA no.1665 dtd.28/8/2008 issued in respect of licence no. 0710057647 dtd.30/5/2008.
- that in respect of letter dtd.12/9/2008 he stated that Mangalore Customs has by the said letter addressed to Dahej Customs stated that no such RA i.e. 1665 dtd.28/8/2008 issued by them. The said letter dtd.12/9/2008 was not received by them at Dahej Custom house.
- that regarding the FAX headers appearing at the top of the said letters and on being asked whether the headers appearing in the above letters of confirmation of genuineness were noticed by him while allowing utilization of the TRAs mentioned in the letters, he stated that he did not remember presently whether he had noticed the headers. However, as stated by him in his earlier statement, the letters to the Customs for verification of genuineness of the RAs were handed over to M/s.Hindalco Industries Ltd as the FAX installed in Dahej Custom House non-functional most of the time. Further, to his understanding as per the general trade practice, M/s.HIL also used to ask their licence supplier (broker) for speedy follow-up of the verification of the TRAs from the issuing Custom House. Therefore, it was possible that the licence supplier (broker) of M/s.HIL may have obtained a copy of the letter confirming the genuineness of the TRA from the issuing Custom House and faxed the same to HIL.
- that he was shown some of the licences utilized by M/s.HIL at Dahej and which were subsequently found to be forged.

- that his attention was drawn towards the printed matter " FOR CUSTOMS PURPOSE ONLY" at the top on the right hand side of the licence and asked whether the same noticed by him at the time of allowing utilization of the licence. He stated that generally the licence was checked with regard to its endorsement of registration which appeared on the reverse side of the licence. The endorsement regarding registration of the licence with the Custom House was compared with the port of registration appearing on the obverse side of the licence.
- that he was shown the overwriting of the printed matter " FOR CUSTOMS PURPOSE ONLY" and asked whether the same noticed/observed by him. In this regard he stated that he did not remember exactly but to his knowledge this was not noticed by him. He further stated that looking to the huge quantum of duty free transferable licences being utilized by M/s HIL during the period it was not practically possible to check each and every aspect/parameters of the Licences and the RA's presented before him.

96. A statement of Shri N.S.Mangawa, Superintendent of Central Excise & Customs, Surat -I was recorded on 23/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia stated:

- that presently he was posted as Superintendent of Central Excise, Statistics Section, Headquarters, Surat-I. He was posted at Dahej Custom House from 05.03.2009 to 30.06.2010 and during the period he was working under Surat Custom Division and was reporting to the Assistant Commissioner of Customs,Custom Division,Surat. Custom Division at Surat was under the control of Commissioner of Customs, Ahmedabad. At Dahej Custom House the sanctioned and working strength of Superintendents was Two (2).
- that during the period of his posting at Dahej Custom House the major importers were M/s Reliance Industries Limited, M/s Petronet LNG Limited, M/s Hindalco Industries Limited, Dahej and M/s BASF Limited who were contributing the major share of the total revenue of the Port. that M/s Hindalco Industries Limited and M/s Reliance Industries Limited were utilizing various transferable import licences like DEPB/VKUY/VKGUY/FMS/FPS etc. issued by DGFT for debiting the import duties at the time of imports.
- that during his tenure as Superintendent at Dahej Customs, M/s Hindalco was utilising about 4000 transferable licences of various types in a year and the duty foregone figure after debiting these licences would have been approx. Rs.300 Crores per annum by utilizing these licences. Similarly M/s Reliance Industries Limited were utilizing about 500 transferable licences of various types and the duty foregone figures by utilizing these licences would have been approx. Rs.150-200 Crore.
- that the Custom Office at Dahej was actually situated in the building of M/s Reliance Industries Limited at Room No.35 in the first floor and all infrastructure facilities for the office was supplied by M/s Reliance Industries limited. The fax No.02641-282610

installed at Dahej Customs was also supplied by the custodians M/s Reliance Industries Limited. Internet facility at Dahej was given by M/s Reliance Industries Limited and only limited internet sites were accessible from the said facility as most of the sites were blocked by Reliance Industries Limited in all their internet lines.

- that the fax machine installed with no.02642-282610 was not functional for a major period. During his tenure at Dahej. He had written letters to Hindalco for supply of Fax machine as the fax machine was not working. He produces a copy of the said letter dated 16.12.2009 wherein the reference of earlier letter dated 24.06.2009 is also reflected.
- that whenever the fax facility of the office of Customs Dahej was out of order they were using the fax facility of M/s Reliance Industries Limited having number 02641-283084 for receiving and making faxes related to confirmation of genuineness of the Release Advices received by them and other letters. Dahej Custom House was on cost sharing basis.
- that M/s Hindalco Industries Limited were filing their bills of entries and shipping bills on self basis but their work being handled by M/s Kshitij Marine Services, Surat.
- that all the employees of these Custom House Agent's firms who were handling the import/export documents like the bills of entries, shipping bills, invoices, packing lists, duty free licences etc. were holding valid authorizations as per the requirement of the Custom House Agents Licensing Regulations,2004.
- that as M/s Hindalco Industries Limited (Unit:Birla Copper) have authorized M/s Kshitij Marine Services Pvt. Limited to file the bills of entries on their behalf they were allowed to access and handle the important import documents and original licences, release advice, verification of genuineness letters and their replies.
- that regarding the procedure adopted at Dahej Port for debiting of import duty from the duty free transferable licences and Release Advices, he stated that during his tenure at Dahej Port duty free transferable licences were utilized for debiting of import duty by M/s Hindalco Industries Limited and M/s Reliance Industries Limited.
- that the imports of M/s Hindalco Industries Limited at their Captive Jetty at Dahej and the imports were full vessel loads of Copper Concentrates in bulk. But, Hindalco jetty was not having any storage facility/bonded area for storing non-duty paid import cargo, therefore the import of Hindalco were required to be cleared as soon as the vessel reaches the jetty. Therefore to speed up the clearances the procedure of debiting of duty before discharging of the import cargo was adopted for Hindalco.
- that in the imports made by Hindalco, the import documents like bill of entry, import invoice, import packing list, original copy of duty free transferable licences, the original release advices in relation to these import licences etc. were submitted by the importer prior to arrival of the cargo.
- that the documents were filed prior to the arrival of the vessel with the permission of the jurisdictional Assistant Commissioner as per procedural requirement, in some cases when the documents were

filed after arrival of the vessel the permission of the AC not required.

- that these documents were verified for its correctness and the duty leviability and quantum assessed in the bill of entry. Then the licences which were registered at Dahej Port, were taken up and the genuineness of these licences were verified from the website of DGFT by using the internet facility of Reliance Industries Limited.
- regarding the procedure adopted for confirmation of genuineness of the release advices received by Hindalco from the port of issuance of the release advices and utilized at Dahej, he stated that normally during his tenure at Dahej as Superintendent of Customs, after receiving the original release advices before debit, they were preparing letters for confirmation of genuineness addressed to the Assistant Commissioner of the port from where the RA's were issued.
- that these letters for confirmation of genuineness were handed over to the representative of the importer for faxing them to the respective Custom Houses.
- that in case of the verification letters in respect of DEPB/VKGUY licences utilized by M/s Hindalco Industries Limited (Unit-Birla Copper) the verification letters were handed over to Mr.David Abraham and Mr.Fahad and in case of the verification letters in respect of DEPB/VKGUY licences utilized by M/s Reliance Industries Limited,Dahej were handed over to the representative of their CHA-M/s Nationwide Shipping Services namely Shri.Abdul and/or Shri.Mukhtar and /or Shri.Vinod.
- that in some cases the faxes were also sent using the fax machine installed at the office of the Assistant Commissioner of Customs, Custom Division, Surat having No.0261- 2478741.
- that the genuineness verification was done only on fax and the hard copy not sent by post again.
- that the request for verification of genuineness was made in two copies, one faxed/or handed over to the representative of the importer and the other copy retained with Dahej Customs as office copy.
- that he was not aware of any prescribed procedure for verification of genuineness of the Release Advices issued from various EDI/non-EDI locations. During his tenure he was verifying that the Release Advices were issued by the Dy./Asstt. Commissioner of the respective Custom Houses and then the genuineness of the RA's were verified by sending faxes either directly or through the representative of the importers.
- that he was shown photocopy of page numbers 7.188 and 7.189 of the CBEC's Custom Manual regarding Telegraphic Release Advices and after reading it stated that Dahej Custom House was a non-EDI location and was not supplied proper infrastructure facilities like Internet connection etc. Even the fax facility was out of service many a times due to fault in the telephone lines. The telephone and faxes were provided by M/s Reliance Industries Limited were also maintained by them.
- that he confirmed that they had taken care to get the confirmation of genuineness done through fax before utilization.

- that he was shown the print out of the Call details for the period 14.10.2008 to 31.03.2010 (contained in page numbers 01 to 111) in respect of telephone/fax no.02641-282610 received from the BSNL department. On being asked to confirm regarding the incoming and outgoing faxes to/from Mangalore Customs having numbers-0824-2407100; 0824-2408147; 0824-2406057; 0824-2400437 he confirmed that during the period of the print out no outgoing calls were shown to Mangalore Custom House where the forged licences were shown to be registered and the forged Release Advices were shown to be issued in favour of M/s Hindalco Industries Limited for being utilized at Dahej.
- that there were only 3 or 4 incoming calls from Mangalore Custom House. He stated that the faxes for confirmation of genuineness were actually not made from the fax number 02641-282610.
- that they were actually giving the request letters for confirmation of genuineness either to David Abraham or to Fahad both employees of M/s Kshitij Marine Services Pvt.Limited., in respect of DEPB/VKGUY licences utilized by M/s Hindalco Industries Limited (Unit:Birla Copper) for faxing to the respective Custom Houses and to obtain their confirmation.
- that in the case of M/s.Reliance Industries Ltd, they were giving the letters to the representative of their CHA-M/s Nationwide Shipping Services namely Shri.Abdul and/or Shri.Mukhtar and /or Shri.Vinod.
- that he was shown some letters of request for confirmation of genuineness sent from Dahej Customs either under his signature or that of other Superintendents. These letters were addressed to Mangalore Customs requesting verification of the genuineness of the RA's issued by them.
- that he was informed that none of these letters were received by Mangalore Customs and on being asked to explain, he stated that as stated in earlier paragraph they had handed over these letters to either David or Fahad, both representatives of Kshitij Marine Services Pvt.Limited for faxing them therefore he would check with them and explain.
- that he was also shown some letters purportedly issued by Mangalore Customs confirming the genuineness of the RAs. On being asked how these letters were received at Dahej Customs, he stated that in all cases the confirmation of genuineness letters were submitted back to Customs at Dahej by the importer or their CHA. Therefore, these also had come to them at Customs Dahej through their representative M/s Kshitij Marine Services P.Ltd.
- that he was informed that these letters of Mangalore Customs were in fact not issued by Mangalore Customs and that the same are forged documents and on being asked, he stated that they received them from either from M/s.Kshitij Marine or M/s.Hindalco Industries and in the case of M/s.Reliance Indsutries Ltd either from the company or from the representative of their CHA-M/s Nationwide Shipping Services namely Shri.Abdul and/or Shri.Mukhtar and /or Shri.Vinod and these letters of confirmation appeared to be in the same format as that of Mangalore Customs and therefore, the same were assumed to be genuine.

- that the VKUY/VKGUY licences were utilized and the release advice amounts were debited against the import duty due from M/s Hindalco Industries Limited, Dahej on the basis of these confirmation letters which he had now come to know were in fact forged letters.
- that regarding the FAX headers appearing at the top of the said letters and on being asked whether the headers appearing in the above letters of confirmation of genuineness were noticed by him while allowing utilization of the TRAs mentioned in the letters, he stated that he did not remember presently whether he had noticed the headers. However, as stated by him in his earlier statement the letters to the Customs for verification of genuineness of the RAs were handed over to M/s.Hindalco Industries Ltd as the FAX installed in Dahej Custom House non-functional most of the time. Further, to his understanding as per the general trade practice, M/s.HIL also used to ask their licence supplier (broker) for speedy follow-up of the verification of the TRAs from the issuing Custom House. Therefore, it was possible that the licence supplier (broker) of M/s.HIL may had obtained a copy of the letter confirming the genuineness of the TRA from the issuing Custom House and faxed the same to HIL.
- that he was shown some of the licences utilized by M/s.HIL at Dahej and which were subsequently found to be forged.
- that his attention was drawn towards the printed matter " FOR CUSTOMS PURPOSE ONLY" at the top on the right hand side of the licence and asked whether the same was noticed by him at the time of allowing utilization of the licence. He stated that generally the licence was checked with regard to its endorsement of registration which appeared on the reverse side of the licence. The endorsement regarding registration of the licence with the Custom House was compared with the port of registration appearing on the obverse side of the licence.
- that he was shown the overwriting of the printed matter " FOR CUSTOMS PURPOSE ONLY" and asked whether the same was noticed/observed by him. In this regard he stated that he did not remember exactly but to his knowledge this was not noticed by him. He further stated that he was looking to the huge quantum of duty free transferable licences being utilized by M/s HIL during the period it was not practically possible to check each and every aspect/parameters of the Licences and the RA's presented before him.

97. A further statement of Shri David Abraham, Shipping Assistant of M/s.Kshitij Marine Services Pvt Ltd, Surat was recorded on 27/07/2010 under the provisions of Section 108 of the Customs Act, 1962 in the course of which he stated inter alia that :

- that he was working as a Shipping Assistant with M/s Kshitij Marine Services Pvt. Limited and alongwith him Shri Fahad Netarwala was also doing the same work at Dahej.
- that Hindalco was majorly importing and clearing Copper Concentrates at Dahej and the cargo was imported in bulk. Before

arrival of the import cargo all the transferable export Incentive licences e.g DEPB,VKUY, VKGUY, FMS,FPS etc. alongwith their release advice, which were to be utilized in the clearances of the expected import, were presented before customs Dahej and only after confirmation of their genuineness the bill of entry filed and assessed.

- that during the period 2008-09 and 2009-10 the ports of registration of the licences was utilized by M/s Hindalco, were Kandla Port, Mundra Port, Pipavav Port, Ahmedabad ICD and Ahmedabad Air Cargo, ICD Kanpur, Falta, Jogbani, Malda, Nhava Sheva, Petrapole, Mangalore, Cochin, Tuticorin, Goa, New Delhi etc.
- that a list of fax numbers of all these Custom houses present at Dahej Customs.
- that the letters for verification of genuineness actually prepared by Shri.Jigarbhai Shah of Hindalco. The letter was made in two copies and the Superintendent of Customs would put his signature on both the copies. These two letters of confirmation was addressed to the customs of the port from where the release advices were issued.
- that the port of registration mentioned on the licence was same as the port from where the release advice was issued. After putting the signature the Superintendent of Customs at Dahej would hand over these letters to them for faxing them to other customs. Out of the two copies given to them, one copy of the letter of confirmation of genuineness, in original, was taken by him or Fahad and they were handing over them to Shri.Jigarbhai Shah of M/s Hindalco.
- that they were going to Hindalco office at Dahej to give these letters to Shri.Jigarbhai Shah.
- that the reports of confirmation of genuineness was again received by them from Shri Jigarbhai. In some cases he was also sending the e-mails of these confirmations to their office at Surat.
- that Shri Jigarbhai told them that all verifications of genuineness for Mangalore Customs may be tried to be faxed to the fax no.0824-2407100 but if not possible should be handed over to him only and should not be faxed, therefore they tried to fax sometimes but most of the times the fax number was found engaged, therefore they never faxed these letters to Mangalore Customs directly but handing over all the verification letters for Mangalore Customs to Jigarbhai. And the confirmation of all these letters were also received by Jigarbhai and he send them to customs.
- that sometimes Jigarbhai also faxed these confirmation letters to the fax at custom house Dahej and sometimes he was sending them to their Surat office and then it was faxed from their Surat office to Dahej customs on the fax at Dahej customs.
- that he was present at Dahej Custom office on 06.04.2010 when the officers of DRI visited for collection of files from Dahej custom office.
- that on that day evening he received a call from Jigarbhai for some other work and during his talk with him he told him over phone that DRI officers from Ahmedabad had come and were taking some licence files with them.

- that at Dahej Customs the original documents in the import files of Hindalco were maintained Vessel wise.
- that he was shown some letters of request for confirmation of genuineness sent from Dahej Customs signed by the Superintendent of Customs, containing in a box file no.2 which produced by Shri Jigar Shah during his statement dated 27.04.2010 before the officer of DRI at the premises of M/s Hindalco Industries Ltd., Dahej.
- that he understood that these letters were addressed to various Customs Houses including Mangalore Customs requesting verification of the genuineness of the RA's issued by them. These letters were prepared by Shri Jigarbhai as stated by him in above earlier paragraph and given to him or Fahad.
- that after getting them signed by the Superintendent of Customs, Dahej, he filed one copy in Customs office record and second one he gave back to Shri Jigarbhai.
- that Shri Jigarbhai Shah had instructed him and Fahad that letter requesting verification of the genuineness of the RA's issued to Mangalore Customs should be handled by him and for the other Custom House such as JNPT, Petrapole, Malda and Pipavav, they had to fax the letter from Dahej Custom office to the respective Customs House by using Dahej Customs fax no. 02641-282610.
- that Jigarbhai told them that in these four custom houses they only accept faxed from custom to custom.
- that he was also shown some letters purportedly issued by Mangalore Customs confirming the genuineness of the RAs. These letters were same which were received through Shri Jigabhai and copy of same was given to him or Fahad for producing the same before Dahej Customs.
- that these confirmation letters in respect of genuineness issued by Mangalore Customs were never received through Dahej Customs fax machine.

98. A statement of Shri Mohammed Fahad Netrawala, Junior Executive (Shipping) of M/s.Kshitij Marine Services Pvt Ltd, Surat was recorded on 27/07/2010 under the provisions of Section 108 of the Customs Act, 1962 in the course of which he stated inter alia that :

- that he joined M/s.Kshitij Marine Services Pvt. Ltd., Surat during July, 2007 as Junior Executive (Shipping). Shri Pravin Dikshit was Director of M/s.Kshitij Marine Services Pvt. Ltd., Surat. He was entrusted the work at Dahej and Bharuch.
- that M/s.Kshitij Marine Services Pvt. Ltd. was engaged in providing services related to Customs clearance, shipping services etc. M/s.Kshitij Marine Services Pvt. Ltd., had been appointed by M/s.Hindalco Industries Ltd., Dahej, for providing services related to the customs procedures for their import and export purposes.
- that since the day he joined the said company, he and his colleague Shri David Abraham were looking after the work related to M/s.Hindalco Industries Ltd at Dahej.
- that M/s.Hindalco Industries Ltd were not having any Custom House Agent (CHA) at Dahej for their imports and exports.
- that his duties at Dahej included filing of bills of entry, checking calculation of duty, taking samples and giving it to Customs

testing purpose, collecting documents from M/s.Hindalco Industries Ltd and handing it over to Customs, taking documents from Customs and delivering it to M/s.Hindalco Industries Ltd etc.

- that the bill of entry was prepared at their Surat office and sent to Dahej through Shri Chirag. The bill of entry was filed along with provisional invoice of the supplier, bill of lading, assay report etc. Since the goods were imported on vessel load basis, provisional bill of entry was filed.
- that in addition to the above documents, they also submitted to the Customs the original licences along with Release Advice (RA), confirmation of genuineness of the RA etc. for payment of duty on the imported goods.
- That M/s.Hindalco Industries Ltd purchased and used transferrable licences for payment of Customs duty on the imported goods. These licences were registered at various ports viz. JNPT, Petrapole, Kandla, Mundra, Cochin, Tuticorin, Mangalore, Attari, Loni etc. Before using the licences genuineness confirmation of the RAs was necessary. Therefore, M/s.Hindalco Industries Ltd gave them the letter from Customs, Dahej addressed to the RA issuing Custom House.
- that these letters were prepared and given to him by Shri Jigar Shah, Officer of Commercial and Logistics department of M/s.Hindalco Industries Ltd.
- that thereafter he took these letters to Customs Dahej and get the letters signed by the Superintendents. The letters were prepared in two copies. After the letters were signed, one copy was kept with the Customs and the other copy was delivered by him to Shri Jigar Shah.
- that he or his colleague Shri David Abraham faxed the letters from Customs Dahej to the RA issuing Custom house.
- that most of the times the fax machine at Dahej Customs was not functional therefore, they used to hand over the letters to Shri Jigar Shah of M/s.Hindalco Industries Ltd.
- that Shri Jigar Shah had instructed that letters of certain ports like JNPT, Petrapole, Pipavav etc. be faxed from Customs Dahej to the RA issuing Custom House. He did not know the reason for the same.
- that regarding the confirmation letters in respect of the other ports viz. Tuticorin, Bangalore, Cochin, Mangalore, Kanpur, Delhi etc., he states that he handed over most of the request for genuineness confirmation letters issued by the Superintendent, Dahej Customs to Shri Jigar Shah.
- that on being specifically asked whether he had ever faxed the letters requesting confirmation of genuineness to Mangalore Port, he stated that he had never faxed any letter to Mangalore Customs and all the letters pertaining to Mangalore Port were handed over by him to Shri Jigar Shah of M/s.Hindalco Industries Ltd, Dahej.
- that regarding the genuineness confirmation letters received from the RA issuing Customs, he stated that most of the letters were received by M/s.Hindalco Industries Ltd and given to either him or Shri David Abraham and they then handed over the same to the Customs along with the licences, RAs and other documents.

- that he had never received any letter from Mangalore Customs confirming genuineness of the RAs at Dahej Customs fax.
- that he was shown some letters signed by the Superintendent of Customs, Dahej requesting confirmation of genuineness and which were sent by Dahej Customs. These letters were contained in a box file no.2 which was produced by Shri Jigar Shah in the course of his statement recorded on 27.04.2010
- that these letters were addressed to various Customs Houses including Mangalore Customs requesting verification of the genuineness of the RA's issued by them.
- that as stated by him above, these letters were prepared by Shri Jigar and given either to him or Shri David. After getting the letters signed by the Superintendent of Customs, Dahej, one copy was kept in the Customs office and the other copy given by either him or Shri David to Shri Jigar Shah.
- that Shri Jigar Shah had instructed him and Shri David that letter requesting verification of the genuineness of the RA's issued to Mangalore, Cochin, Tuticorin, Kanpur, Delhi etc should be handled over to him and in respect of the other Custom House such as JNPT, Petrapole, Pipavav etc. they were to fax the letter from Dahej Custom office to the RA issuing Custom House.
- that Shri Jigar Shah told us that in some of the Custom houses only accepted fax request for confirmation of genuineness of RA from Custom to Custom.
- that he was shown some letters said to be issued by Mangalore Customs confirming the genuineness of the RAs.
- that these letters were received by them from Shri Jigar Shah and they had handed over the same to Dahej Customs.
- that these letters of Mangalore Customs confirming genuineness of the RAs was not received on the fax installed at Dahej Customs.

99. A statement of Shri Parag Rameshchandra Gathani, Director of M/s. Padmavati Agencies Pvt Ltd, Ahmedabad was recorded on 28/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was a director of M/s Padmavati Agencies Private Limited at Ahmedabad. In their company apart from himself, his brother Shri. Dharmesh Gathani was also a director. The status of the directors of the company had been revised in April-2010.The company was engaged in the trading and brokerage of transferable export incentive licences and also providing consultancy services to various exporters and importers.
- that after completing his studies he joined the day to day business in their office on full time basis and looking after the work of trading and brokerage of transferable export incentive licences like DEPB/DFRC/DFIA etc.
- that his brother Shri.Dharmesh Gathani was also engaged in this business before his joining the business and was still continuing the same and as on today he was looking after the day to day work of the trading and brokerage of transferable export incentive licences.

- that their company was having branch office at Kolkata and Mumbai and the works related to these branches were actually controlled from their office at Ahmedabad.
- that M/s Vrinda Agencies Limited was also a company actually controlled by them which was having a branch office at Kolkata also.
- that their company started with consultancy work related to various incentives of the DGFT and Ministry of Commerce. His father was mostly engaged in the consultation work related to enabling the exporters with maximum export incentives utilizing the existing provisions of DGFT and Ministry of Commerce.
- that they started trading and brokerage of transferable export incentive licences from the year-2001.Initially they were taking up the licences of those exporters and importers who were their clients in consultancy work.
- that during the period 2000 to early 2004 these transferable licences were sold on premium. This means that a licence having duty credit of Rs.100.00 sold at a rate of Rs.103.00 to 105.00 or even more depending upon the demand and supply of these licences in the market. After January-2004 with the abolishing of SAD (Special Additional Duty) the purchase and sale ratio of these licences were traded in discount and the same trend is continued as on today.
- that regarding the licences supplied to M/s Hindalco, he stated that the licences were sold at a discounted price range of 91% to 98% of the duty credit of the licences.
- that regarding the profit margin in this trading of licences he stated that during the period 1999 to early 2004 when the licences were actually sold on premium, the profit margin was higher than in the later period when they were sold at discount.
- that regarding the utilization of transferability of export incentive licences he stated that as export incentive measures various export promotion schemes were started by the central Government from time to time. These policies were controlled by Ministry of Commerce and Director General of Foreign Trade (DGFT) was the nominated agency of the government for issuing such export promotion notifications. Many ad-hoc incentives were also inserted and availed by exporters on request from the ministry of commerce and these measures were followed up by consultants like them on behalf of the client. After the exporters/importers were given the benefit they were paying consultancy charges to them which were mostly fixed as a percentage of the benefit earned by the exporters/importers.
- that exporters export their goods by quoting these schemes in the shipping bills and after the exports were over they were submitting the list of shipping bills along with the total FOB values of cumulative export over a period of time. On the basis of the documents submitted by the exporters they were submitting applications with the concerned DGFT offices for obtaining the export benefits on behalf of the client. The Jt. DGFT then scrutinizes the applications submitted and allowed benefit to the exporters which were again in the form of percentage of export and

the benefit was required to be utilized in the imports made by the exporter.

- that it was also allowed that in case the exporter do not want to import, they may transfer the import benefits to some other parties who want to avail the benefit. The import incentives were in the form of Licences like DEPB/VKGUY/VKUY etc. The duty credit mentioned in these licences was utilized for debiting the import duty by the importer at the time of importation.
- that in the cases of DEPB/VKUY/VKGUY licences issued by the DGFT the goods could be imported from a different port other than the port of export. In such cases Release Advices(RAs) were issued from the customs at the port of export to the customs at the port of actual utilization. The licences were debited on the strength of these release advices.
- that all DEPB/VKUY/VKGUY licences were transferable and were normally registered at the port of export and then RAs were issued from the same port.
- that for the licences sold by them to Hindalco the release advices were either got issued by them or the brokers from whom they were procuring these licences.
- that during the year-2001 he had an interaction with Shri.K.P Sharma, then working as Vice President (Commercial) with M/s Hindalco Industries Limited (Unit: Birla Copper) at Dahej. He was in look out for some Notification of DGFT which he was able to give and explain to him.
- that thereafter, he developed relations with him as they were buying transferable licences from the market and utilizing in their imports.
- that in the year-2001-02 Padmavati Agencies Private Limited registered with M/s Hindalco as Vendors for supplying transferable licences.
- that during that period Shri.Amit was the person who was handling the day to day work of procurement of licences at Hindalco, Dahej. Shri.K P Sharma expired in the year-2004-05 and after that Shri. Naveen Kumar (Mathur) was the person who holding the charge for the said department of procurement of licences.
- that he was communicating with Shri Naveen Kumar for their business. Shri Naveen Kumar was assisted by Shri.B K Pilaniwala and Shri.Jigar Shah.
- that he was not communicating with Shri.Pilaniwala or Shri.Jigar on day to day basis as that work was done by Shri Kalpesh Darji from their office.
- that gradually their business relations were developed and they had also done two consultancy jobs for Hindalco and they had given them fees for the same in year 2008-09 & 2009-10.
- that regarding the contracts made with Hindalco for supply of transferable licences, he stated that these contracts were done on e-mail/fax and sometimes in original.
- that he would submit the copies of all contracts made with Hindalco from his office records.

- that the contracts were as per their requirements, i.e approx.of Rs.1 Crores,Rs.2 Crores, Rs.5 Crore, Rs.10 Crores and some times of Rs.20 Crores. Usually the contracts were initially of Rs.1 & 2 crores and gradually it increased to approx.Rs.5 Crores. These contracts were signed by Shri. Naveen Kumar from Hindalco and from their side the offer letter was mailed either by him of Kalpesh Darji.
- that the licences supplied to Hindalco were received by them either from other traders/brokers or from the exporters directly. These original licences and their other documents like original release advice, original transfer letter, original authorization letter of DGFT, original annexure of shipping bills were received by them from their buyers and supplied to Hindalco directly.
- that in order to make the movement of documents fast, they had assigned the job of pickup and delivery of original documents to two of their employees Shri. Shailesh Rodge and Shri Hitesh Rajput. Either of these two persons was actually picking up the packet of original documents from Maruti Courier Services, Bharuch Branch and they were delivering them directly to Hindalco office at Dahej.
- that they had opened an account with Maruti Courier Services and these documents were actually received under the names of these two persons via Fast-Track service of couriers. After delivering the documents the same were usually presented before customs at Dahej by persons of Hindalco.
- that the confirmation of genuineness of the release advices were also arranged by them as requested by Hindalco.
- that these confirmation letters were either mailed or faxed to Hindalco from their Ahmedabad office.
- that as per his knowledge the licences and release advices sold by them to Hindalco were utilized only after confirmation of their genuineness as Hindalco releasing the complete payments of these licences only after they were confirmed as genuine. Therefore they wanted fast confirmations in order to get their payments.
- that as directed by Hindalco they were being sent one copy of letters of request for confirmation of genuineness of licences signed by the Customs Dahej officers and they were further sending them to other brokers/traders from whom they have purchased the licences.
- that in case they were purchased directly from the exporter the letters were faxed/e-mailed to the exporter of his representatives.
- that similarly the reply for Confirmation of genuineness was also received by them from either the brokers/traders or the exporters and they were further mailed/faxed by them to Hindalco.
- that after showing these confirmation letters to Customs, the licences were debited by Hindalco and they were given their complete payment for the sales made by them to Hindalco.
- that the quantum of purchase of transferable export incentive licences by Hindalco was increased from the year-2007 onwards. And as per their requirement they had also purchased more licenses from different brokers/traders of licences after that period in order to meet the requirement of Hindalco.

- that at Dahej they were supplying licences to Hindalco. They had supplied some licences to Reliance Industries Limited also but they were through some other trader and the licences were actually sent to RIL,Mumbai office as per their requirement.
- that he was not aware as to how many licences were sold by them to RIL that may be explained by Kalpesh Darji as he was keeping those records.
- that after the implementation of VAT on inter-state transaction they opened an office at Kolkata for PAPL and also for Vrinda Agencies Pvt. Limited as Hindalco required non-vat bills for their purchases.
- that regarding the transferable DEPB/VKUY/VKGUY licences sold to M/s Hindalco by them during the period 2008-09 and 2009-10 he stated that during this period he was actually not handling the day to day activity of sale and purchase of licences at PAPL, as this work being looked after by his elder brother Shri. Dharmesh Gathani.
- that he confirmed that Hindalco was their old customer and was actually started by him, therefore he was still interacting with Shri. Naveen Kumar of Hindalco for any problem as and when required.
- that regarding the purchase of these licences sold to Hindalco during the period 2008-09 and 2009-10 he stated that as stated by him the work of purchase was also looked after by Shri. Dharmesh.

100. The details of purchase of the fake/forged licences submitted by M/s.Vani Exports, Kolkata indicated that they had purchased **68** from M/s.Shivangi Enterprise, Bangalore. Therefore, DRI, Bangalore was requested vide letter dtd.29/07/2010 to verify the existence of the firm at the stated address, the name of owners/partners, business profile, business transactions related to sale and purchase of transferable export incentive licences. DRI, Bangalore vide letter No. .S/VIII/23/2010 Misc BG/085/10 dtd.10/8/2010 informed that no such address was in existence.

101. A statement of Shri Kailash Kumar Didwania, Director of M/s.Viraj Impex Pvt Ltd, Mumbai was recorded on 30/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that in the year 1988, he started business of import of Iron & Steel and established M/s Viraj Impex Private Limited, Mumbai. In M/s Viraj Impex Private Limited there were three directors. Apart from him, his father Shri Ratanlal Didwania and his brother Shri Prakash Didwania were the directors.
- that they were importing Hot Rolled Coils from China and Russia. For paying the customs duty on the imports of Iron & Steel products we were utilizing export incentive / duty free transferrable licences such as DEPB, VKGUY etc. The annual turnover of M/s Merrill Impex Pvt. Limited for the past three years were as under:

YEAR	TURNOVER
2007-08	Rs.200 Crores Approx.

2008-09	Rs.200 Crores Approx
2009-10	Rs.200 Crores Approx

- that they were directly purchasing export incentive / duty free transferrable licences from the exports through brokers. They enquired with the brokers regarding the availability of these export incentive / duty free transferrable licences. The broker informed them the name of exporter with whom these licenses were available and also informed them their brokerage.
- that they purchased the said licences through that broker on their invoice/debit note and pay their brokerage. The amount of the licences was always paid directly to the exporter to whom the licenses belong.
- that they are purchasing and utilizing export incentive/duty free transferrable licences of M/s Allanasons Ltd, M/s Essar Steel, Uttam Gallwa Ltd., etc.
- that regarding purchase of the eight licences bearing no.0310504365 dtd. 29.01.09 , 0310504347 dtd.29.01.09, 0310505127 dtd.03.02.09 , 0310514855 dtd.08.04.09, 0310514866 dtd. 08.04.09, 0310533750 dtd.13.08.09, 0310536516 dtd.09.09.09 and 0310538513 dtd.18.09.09, he stated that they had purchased these licences from M/s Allansons Limited, Mumbai through M/s Hemant N Mehta (HUF), 9-Botawal Chamber, Second Floor, Sir P.M.Road,Mumbai-400001 who had acted as brokers in the deal.
- that the licences were purchased @ 97.55% and 4% VAT was added upon in the bill of the exporter. They had purchased these licences at a total consideration of 101.55% out of which 100% was debited as Customs duty in the bill of entry and the VAT amount paid by them was availed as credit.
- that they had paid 0.25% (i.e 25 paise per hundred) as brokerage/commission to the Brokers - M/s Hemnat N Mehta.
- that the details of purchase of the licences purchase were as under :

Licence No. & date	**Duty amount of Licence**
0310504365 dtd. 29.01.09	Rs.2784840/-
0310504347 dtd.29.01.09	Rs.2599495/-
0310505127 dtd.03.02.09	Rs.2653468/-
0310514855 dtd.08.04.09	Rs.2294517/-
0310514866 dtd. 08.04.09	Rs.3003596/-
0310533750 dtd.13.08.09	Rs.1055532/-
0310536516 dtd.09.09.09	Rs.2235500/-
0310538513 dtd.18.09.09	Rs.519084/-

- that he produced original copies of above said licenses alongwith original copies of license forwarding letter issued by DGFT, Transfer letters of exporter, Release Advice etc. vide their letter dated 30.07.2010.

- that payments for the purchase of these licences had been made by them to M/s Allanasons through their bank account with UCO Bank, Nariman Point, Mumbai vide Account No. 19080505080009.

101. A statement of Shri Jigar Jaysinh Shah, Officer (Commercial & Logistics) of M/s. Hindalco Industries Ltd, Dahej was recorded on 27/04/2010 and 30/07/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he joined M/s. Hindalco Industries Ltd, Dahej in the year 2005 as a Trainee and then he promoted as Officer(Commercial & Logistics).
- that for his day to day work he used to report to Shri Bikash Kumar Pilaniwala,Senior Manager (Commercial) and sometimes to Shri Naveen Kumar, Vice President (Commercial & Logistics)
- that alongwith him he had two colleagues in the same section Shri Pratik Modi, Senior Assistant and Shri Vikas Siddhiwala, Assistant.
- that as a part of his job he was looking after the work of Custom clearance of the goods imported by M/s Hindalco Industries Limited (Unit: Birla Copper) at Dahej.
- that their company had assigned the job of preparation of customs documents for exports and imports, submitting of documents before customs, customs examination, final assessment of bill of entry and shipping bills etc to M/s Kshitij Marine Private Limited(KMPL) having office at O-2,Madhulika Apartments,Bhatar Road,Surat and he produced copies of Contracts with M/s KMPL for the period 01.07.2007 to 30.06.2009 and 01.07.2009 to 30.06.2010.
- that these Contracts were done per the terms and conditions decided by Shri.B K Pilaniwala and Shri. Navin Kumar. All the bill of entries and the shipping bills were filed by Hindalco on self basis and Shri.B.K Pilaniwala and Shri.Naveen Kumar were authorized to sign the bills of entries and shipping bills on behalf of the company.
- that on behalf of KMPL, Shri.David Abraham and Shri.Fahad Netarwala were handling the day to day work at Dahej and the office work at Surat was co-ordinated by Shri.Praveen Dixit and Shri Lakeer Desai.
- that he was communicating with all these persons of KMPL depending upon the nature of the work.
- that he was doing all the work as per the instructions of Shri.Bikas Pilaniwala and Shri.Naveen Mathur.
- that before him the work of Commercial and Logistics in the section being handled by one Shri.Tarak Joshi who left the company in September-2008 and after September-2008 he joined this section.
- that since 2005 till Sep.-2008 he was working in DAP-Logistics section of Hindalco at Dahej and as per the instruction of Shri.Pilaniwala he shifted to the Commercial Section after departure of Tarak Joshi.

- that Hindalco was paying customs duty in respect of the goods imported by them by debiting from the various export incentive licences purchased by them from the market.
- that they purchased various types of post export transferrable licences viz. DEPB, FMS, FPS, VKGUY etc.
- that since the licences were available in the market at about 95% to 98% of the original value, the company saves on payment of import duty to the extent of the discount at which the licences were purchased by them from the market.
- that they got a monthly planner from their head office at Mumbai which gives them an indication of the customs duty projected to be payable during the month. Based on this, company send enquiries to their vendors of licences. On receipt of the rates from the vendors, he and Shri Pilaniwala negotiate with the vendors as and when required to have a uniform purchase. Thereafter the offers from the vendors were submitted to Shri Naveen Mathur and after his approval the same was sent to Shri N.M.Patnaik, President (Finance and Commercial) of their company. On receipt of approval from Shri Patnaik, an order to supply the licences was issued to the vendors.
- that in the order issued to the vendors, the rate at which the licences were to be purchased by them, the period during which the licences were to be supplied by the vendors etc. were mentioned.
- that their major vendors of licences were M/s.Padmavati Agencies Pvt Ltd, Ahmedabad, M/s.Trident (India) Ltd, Ahmedabad, M/s.Kundalia Brothers Pvt Ltd, Kolkata, M/s.Rahul Enterprises, Kolkata, M/s.Rajesh Poddar HUF, Mumbai, M/s.Sumadhu Overseas Pvt Ltd, Mumbai etc.
- that he submitted copies of Contracts made between Hindalco and M/s Padmavati Agencies Pvt.Limited, Ahmedabad for supply of transferable DEPB/VKUY/VKGUY licences to Hindalco. The conditions and rate fixation in these contracts were decided by Shri.Pilaniwala and Shri.Naveen Kumar and they were typed by him.
- that during the year-2008-09 contracts were made for supply of DEPB/VKUY licences worth Rs.187.05 Crores and during the year-2009-10 contracts were made for supply of DEPB/VKGUY licences worth Rs.176.50 Crores.
- that once the offer by the vendor was approved they started supplying the licences to them. The vendors delivered the licences to them by Courier and the licences were delivered at Dahej either to him or Shri Pilaniwala.
- that in case of purchase of licences from M/s Padmavati Agencies P. Ltd, Ahmedabad, they received the original licences and all original documents like the TRA's, transfer letters etc. through Maruti Courier and was delivered to him either by Shri Shalesh Rodge or Shri Hitesh Solanki both employees of Padmavati Agencies Pvt.Limited.
- that the complete set of original documents consisted of original transfer letter from the original licence holder, signatures duly attested by the bank, the licence forwarding letter of the DGFT, the

licence, the list of shipping bills in respect of which the licence was issued, one open Release Advice (RA) issued by the Customs at the port of registration of the licence and one RA in Sealed cover all documents in original.

- that he took into use only those licences which were accompanied by TRA.
- that after receiving the original set of licences and other documents from the trader, they forwarded the same to M/s.KMPL.
- that they handed over the licences to Shri David or Shri Fahad of M/s.KMPL at Dahej. Before using the licences, the genuineness of the RAs were required to be confirmed by the issuing Customs.
- that the letters for confirmation of genuineness of the release advices were prepared by him in the computer and then given to David or Fahad for getting signatures of the Custom Superintendent from Dahej Customs. After getting the signature the original letter was again handed over to him.
- that he used to fax them to their vendors who had supplied these licences. For this, he used the fax number 02641-251024 installed at their office at Dahej. He also used to send a scanned copy by email.
- that as per practice the letters of confirmation of genuineness were faxed to the respective vendors who had supplied these licences and release advices. The vendor gets the TRA verified from the respective Custom House and sends them back the TRA verification letter either by Fax or by sending a scanned copy of the said letter through Email.
- that in case the fax was not working properly the scanned copy of the letter was mailed to the vendors using his e-mail i.d - jigar.shah@adityabirla.com
- that similarly the confirmation of these genuineness were also received from the vendors by him either on his e-mail or by fax and he further forwarding them either by fax or e-mail to M/s KMPL.
- that regarding the licences and release advices received by them from M/s Padmavati Agencies Pvt.Limited, Ahmedabad, he stated that in case of the licences registered at Mangalore Sea Port, the fax for confirmation of genuineness was never faxed to the Mangalore Customs directly and they were always faxed to M/s Padmavati for arranging the confirmation of genuineness.
- that in some cases he had also scanned these letters and mailed them to Shri.Kalpesh Darji of M/s Padmavati Agencies Pvt.Limited. Similarly, the replies to the abovementioned verifications were received via fax from Padmavati or via e-mail from Kalpesh Darji.
- that they had never received any fax directly from Mangalore Customs.
- that M/s Hindalco was filing the import documents with customs on self basis and that the company was responsible for the import and export clearances and the genuineness of the documents presented by the company before Customs.
- that he was shown box file no.2 bearing pages 1 to 562, and he confirmed that the said file was submitted by him during his statement dated 28.04.2010.

- that the file contained the letters for verification of genuineness addresses to various custom houses for verification of genuineness of the Release Advices issued by them in favour of Hindalco at Dahej.
- that these letters were prepared by them at Hindalco and after getting the signature of Custom officer from Dahej they were faxed to the respective vendors from whom the licences were purchased.
- that he drew attention towards the words – "Padma", "Padmavati", "Taurus", "Vivid", "Kund", "Rajesh", "Trident" and telephone/fax numbers written by pencil on the back side of the letters, and confirmed that these were written by him in his own handwriting and they actually meant the names of the licence traders like "Padmavati Agencies Pvt.Limited", "M/s Taurus International", "M/s Vivid Vision", "M/s Kundalia Brothers", "M/s Rajesh Poddar", "M/s Trident India Limited" etc. and the numbers written were actually the fax numbers of the respective vendors.
- that as per routine they were faxed to the vendors and the replies were received through them and they were presented before customs through Kshitij Marine Services Pvt.Limited.
- that he was shown the letter F.No.CH/DJ/32/2008-09 dated 27.11.2008 of the Superintendent of Customs, Customs Dahej and addressed to the Asstt.Commr.of Customs,Custom House, Mangalore for verification of genuineness of 9 VKUY licences and their Release advices.
- that he found that Release Advice Numbers 1785 and 1784 were reflected two time in the same letter, one was having issue date as 17.11.08 and the other as 20.11.08 and the values and correspondence licence numbers were different.
- that he realized that there was some mistake and two release advice of same numbers cannot be issued from the same port.
- that he was shown print out of some e-mails retrieved under Panchnama dated 23.06.2010 from the laptop seized from the premises of M/s Padmavati Agencies Pvt.Limited, Ahmedabad during the search under Panchnama dated 21.04.2010.

1. Print out of e-mail dated 10.09.2008 from his e-mail i.d to Kalpesh Darji at his e-mail kalpesh@groupgathani.com requesting for urgent TRA confirmation in respect of TRA issued from licence no.710057647 dated 30.05.2008 registered at Mangalore Sea Port. He confirmed to having sent the email.
2. Print out of e-mail dated 23.10.2008 from his e-mail i.d to Kalpesh Darji at his e-mail kalpesh@groupgathani.com requesting for urgent TRA confirmation in respect of 13 TRA's issued from different ports. He confirmed to having sent the email.
3. Print out of e-mail dated 05.11.2008 from his e-mail i.d to Kalpesh Darji at his e-mail kalpesh@groupgathani.com requesting for urgent TRA confirmation in respect of some TRA's issued from various ports. He confirmed to having sent the email.

4. Print out of e-mail dated 17.11.2008 from his e-mail i.d to Kalpesh Darji at his e-mail kalpesh@groupgathani.com requesting for urgent confirmation in respect of pending genuineness of Tuticorin. He confirmed to having sent the email.

5. Print out of e-mail dated 02.12.2008 from his e-mail i.d to Kalpesh Darji at his e-mail kalpesh@groupgathani.com requesting to get the genuineness by today. He confirmed to having sent the email.

6. Print out of e-mail dated 17.12.2008 from his e-mail i.d to Kalpesh Darji at his e-mail kalpesh@groupgathani.com requesting for arranging confirmation by same date in respect of 7 TRA's. He confirmed to having sent the email.

7. Print out of e-mail dated 20.12.2008 from his e-mail i.d to Kalpesh Darji at his e-mail kalpesh@groupgathani.com giving the list of pending genuineness of Cochin and JNPT. He confirmed to having sent the email.

8. Print out of e-mail dated 25.12.2008 from his e-mail i.d to Kalpesh Darji at his e-mail kalpesh@groupgathani.com with an attachment of a list of TRA's issued from Cochin and JNPT and requesting for pending genuineness. He confirmed to having sent the email.

- that these mails were all sent by him to Shri.Kalpesh Darji of M/s Padmavati Agencies Pvt.Limited, Ahmedabad in respect of the DEPB/VKGUY licences and their TRA's sold by them to Hindalco.
- that these mails were sent by him to get the confirmation of genuineness in respect of these release advices as they were arranging them and sending to them for submission to Customs. All the DEPB/VKUY/VKGUY licence numbers mentioned in the e-mails were supplied by M/s Padmavati to Hindalco.
- that his senior Shri.Bikash Pilaniwala had told him that during recording of his statement at DRI, Ahmedabad on 24.05.2010 he was shown a list of 85 DEPB/VKGUY/VKUY licences and that all these licences were sold to Hindalco by M/s Padmavati Agencies Pvt.Limited and that they were forged and wrongly utilized by M/s Hindalco in their imports.
- that 10 to 12 days back one police man from Police Station, Dahej came to their office at M/s Hindalco Industries Ltd., Dahej and informed that M/s Padmavati Agencies Pvt. Ltd., Ahmedabad had filed a FIR in their Policy Station saying that the DEPB/VKGUY Licences supplied to them by them, out of which 85 licences which were registered to Mangalore Sea Port were forged. The value of licences said to be Rs.45 Crores. In this regard they had also recorded his statement. During the statement they showed him a list of 85 licenses and informed him that these licences were supplied by M/s Padmavati Agencies P. Ltd. to M.s Hindalco Industries Ltd. and they asked him regarding procedure of purchasing of licenses, which he explained to them.

102. A further statement of Shri Parag Rameshchandra Gathani, Director of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad was recorded

on 02/08/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was shown some print outs retrieved from the laptop of Shri Dharmesh Gathani by DRI under Panchnama dated.26.05.2010 and 27.05.2010 and the said laptop seized by DRI from the business premises of M/s Padmavati Agencies Pvt.Limited under Panchnama dated 21.04.2010.
- that he was shown an email dtd. 13/04/2010 sent by Shri Vishal Wadkar from Email ID wadkar_vs@yahoo.co.in to his elder brother Shri Dharmesh Gathani at his Email ID dharmesh@groupgathani.com along with its attachment He stated that Shri Vishal Wadkar was the employee of Shri Shashin Koradia a Mumbai based person, who arranged billings for profit adjustment. He had met Shri Shashin Koradia on some occasions at his office in Mumbai.
- that he knew Shri Shashin Koradia since the last 4-5 years however, he was not able to recollect when and where he met him for the first time.
- that on being asked regarding the attachment which was a ledger account titled " Padma – Parag (08-09) 1- Apr-2007 to 1-Apr-2010", he stated that this was the account pertaining to the transactions arranged by Shri Shashin Koradia for M/s.Padmavati Agencies Pvt Ltd on his account.
- that on being asked to explain the entries dtd.6/2/2009 contained in the said ledger account, he stated that M/s.Hindustan Continental Ltd had by cheque no.005304 to 005307 paid a total amount of Rs.7,93,69,980/- to M/s.Vrinda Agencies Pvt Ltd. This amount was towards licences sold by M/s.Vrinda Agencies Pvt Ltd to M/s.Hindustan Continental Ltd.
- that on being asked, regarding the details of the licences and the invoices in respect of which the payment being made by M/s.Hindustan Continental Ltd, he stated that he would have to check their books of accounts.
- that on being asked regarding the payment amounting to Rs.7,93,70,000/- made by M/s.Padmavati Agencies Pvt Ltd by cheques no. 724762, 724763, 724755 and 724761 to M/s.Hindustan Continental Ltd and which were at entries dtd.6/2/2009, he stated that this amount was towards the licences sold by M/s.Hindustan Continental Ltd. to M/s.Padmavati Agencies Pvt Ltd. Regarding the details of the licences and the invoices in respect of which the payment was being made by M/s.Padmavati Agencies Pvt. Ltd to M/s.Hindustan Continental Ltd, he stated that he would have to check their books of accounts and he agreed to inform within 2 days.
- that on being asked regarding the entry dtd.19/2/2009, he stated that an amount of Rs.60,00,000/- was transferred to by M/s.Padmavati Agencies Pvt. Ltd to M/s.Hindustan Continental Ltd. Regarding the purpose, he stated that this amount was pertaining to the adjustment of profits booked at M/s.Hindustan Continental Ltd. and the payment made by them through cheque was returned to them in cash and the details of this was

mentioned at the entry dtd.20/2/2009. This amount was paid at Delhi to one Mr.Khanna on his instructions.

- that on being asked regarding the cash transactions as per the said ledger account, he stated that the details were as below :-

Sr.No.	Date	Particulars	Amount
1	30/01/2009	To ATM – Dinesh to Shukla ur Party	Rs.7,00,000/-
2	14/02/2009	To ATM – Dinesh to Shukla	Rs.10,00,000/-
3	20/02/2009	To ATM – at Delhi to Khanna – Token	Rs.60,00,000/-
4	27/02/2009	To ATM – to Soma Kanchan Angadia + Parag	Rs.47,50,000/-
5	28/02/2009	To ATM – at Soma Kanchan – Vikram + Paresh	Rs.50,00,000/-
6	28/02/2009	To ATM – at Soma Kanchan – Vikram	Rs.17,50,000/-
7	20/03/2009	To ATM – Angadia Amd by Babaloo	Rs.40,00,000/-
8	20/03/2009	To ATM – Angadia to u at Amd.	Rs.1,66,00,000/-
9	25/03/2009	By ATM – Chout at our off. (receipt)	Rs.24,00,000/-
10	13/04/2009	To ATM – Soma K by Anil & Paresh at Boiwada	Rs.20,00,000/-
11	14/04/2009	To ATM – Padma – Ushma Madam at Brv HGM	Rs.2,00,000/-
12	20/04/2009	To ATM – Vidhi – Bhavik	Rs.11,00,000/-
13	22/04/2009	To ATM – SKA – Paresh + Anil	Rs.60,00,000/-
14	22/04/2009	To ATM – By Bhavesh at Amd by Capex	Rs.19,98,000/-
15		To ATM – Shashank	Rs.5,00,000/-

- that in the process of profit adjustment the payment paid by them to the firms arranged by Shri Shashin Koradia was returned to them part by cheque and the amount of profit adjusted in cash. To be more specific they showed sales to the firms arranged by Shri Shashin Koradia at a lower price and these firms in turn adjusted the profit and show sales to their firms at the normal cost price and they paid them this amount. The difference amount between their original sale price and the price at which they buy from them was the profit which was returned to them in cash. The cash transactions as detailed above amounting to Rs.4,91,98,000/- was the profit adjusted and returned to them in cash by Shri Shashin Koradia one entry of Rs.24,00,000/- showed that an extra cash received by them was returned to Sashin Koradia.
- that he was shown a file bearing no.3 and page numbers 01 to 60 and he understood that the documents contained in the file was seized from the premises of M/s Padmavati Agencies Pvt.Limited by DRI under Panchnama dated.21.04.2010.
- that he has read all the documents on pages 01 to 60 in the file and stated that all the documents contained in the file were copies of 'Contracts' made between their company and M/s Hindalco Industries Limited (Unit: Birla Copper) at Dahej for supply of DEPB/VKGUY licences utilized by them for their imports.
- that the contracts were signed by Shri.Naveen Kumar on behalf of Hindalco and on behalf of their company his name was mentioned in the top.
- that since the business relationship with Hindalco was developed by him during the year-2001 till today he was interacting with the company for all business transactions.
- that the terms and conditions were actually dictated by M/s Hindalco Industries Limited and they had accepted all the terms

mentioned by them in the contracts. These contracts were based on the offers given by them to M/s.Hindalco Industries Ltd.

- that he was aware that during the course of the inquiry initiated by DRI regarding DEPB/VKGUY licences utilized by M/s Hindalco Industries limited at Dahej which were sold by them, some licences were forged and they have intimated the matter to Hindalco verbally.

103. The details of the Release Advices issued in respect of the eight (08) licences of M/s. Allanasons Ltd, Mumbai which were registered with Mangalore Customs was received from Mangalore Customs vide letter No. S-01/05/2010 IMP dtd.3/8/2010. On scrutiny of the same it was seen that the Release Advices in respect of all the eight (08) licences were issued in favour of M/s.Viraj Impex Pvt Ltd, Mumbai for use at Mumbai Port, New Custom House, Mumbai. No Release Advice was issued in favour of M/s.Hindalco Industries Ltd, Dahej for use at Dahej Port.

104. A statement of Shri Manish Jain, Director of M/s.Ostwal Trading India Pvt Ltd, Mumbai & Kolkata was recorded on 04/08/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that with the help and guidance of Shri Pravin Jain, his uncle who was engaged in trading of Diamonds, he established a firm in the name and style of M/s Ostwal Trading India Pvt. Ltd., 703, Bombay Market, Tardeo Road, Mumbai and started trading of diamond.
- that he was the director of M/s Ostwal Trading India Pvt. Ltd., and apart from him the other director is Mr.Gopal Javda.
- that his firm's bank account was with Canara Bank, Khetwadi Branch, Mumbai, having account no. 0155201002546.
- that he was the active director in the firm and was looking after entire business of the said firm. The annual turnover of M/s Ostwal Trading India Pvt. Ltd., for the past three years were as under:

YEAR	**TURNOVER**
2006-07	Rs.47.36 Crore
2007-08	Rs.111.00 Crore
2008-09	Rs.94.32 Crore

- that on being asked regarding his involvement in the trading of transferable export incentive licences and purchase of VKGUY licences from M/s Shivangi Enterprise, 909, Centre Point, M.G. Road, Bangalore, he stated that he was personally not involved in the trading of licenses purchased from M/s Shivangi Enterprise.
- that one Shri Shashin Jayantilal Koradia, who was a friend of Shri.Pravin Jain, was supplying companies to many parties for adjustment of turn-overs. He was having own connections with other firms who were controlling the share market.
- that many listed companies who were running in loss wanted to show more turnover in their balance sheet to increase their share value approach persons like Sashinbhai. Then Sashinbhai utilized

the name and bank account of these firms/companies for rotating the transferable licences.

- that he also learnt that he (Sashinbhai) used to assist some traders by providing some firms/companies for using them for billing purpose.
- that sometime in the year – 2008 Shri Shashin Jayantilal Koradia discussed with his uncle that he needed some firms for rotating transactions of sale/purchase of transferable export incentive licences and he would give some commission to the owners of the firm/company whose names were used for billing.
- that Shri Pravin Jain told him regarding Shri Shashin proposal. Shri Pravin Jain also informed that if his firm name was used that will be done only for billing purpose and the turnover of his firm would also rise due to the trading.
- that during that period the diamond market was also very slack and their turnover was very low, so he decided to trade in some licences as it would increase the turnover of his company also he would get some commission.
- that he met Sashinbhai and told him that he would lend the name of his firm for rotating the transactions in the trading of licences, he (Sashinbhai) offered him a total commission of 2.5% of the annual turnover.
- that he (Sashinbhai) also asked him to create a branch office at Kolkata as the billings were required from Kolkata address, in Kolkata VAT was exempted in trading of VKGUY licences and for purchase and sale of licences non VAT invoices were required otherwise the sale value would become very high. He agreed with the proposal and lent their firm's name for money.
- that as directed by Shri Shashin, and with the help of some friends at Kolkata, he opened a branch office of his firm M/s Ostwal Trading India Pvt Ltd., at 91, Netaji Shubhash Road, 3rd Floor, Room No.78, Kolkata-700001 for showing sale and purchase of licences.
- that the sale and purchase of transferable DEPB/VKUY/VKGUY licences done by their firm M/s Ostwal Trading India Pvt Ltd. was controlled by Shri Shashin and on his direction he had issued the bills and he had also signed on them on behalf of the company.
- that during the year 2008-09 they had purchased a total of 17 VKUY/VKGUY licences from M/s Shivangi Enterprise, Bangalore and all these licences were sold to M/s New Planet Trading Co. Pvt. Ltd., Kolkata. The details of purchase and sale were tabulated as under :

Sr. No	VKGUY LICENCE NO.	VKGUY LICENCE DATE	VKGUY LICENCE AMOUNT (Rs.)	NAME OF LICENCE HOLDER	INVOICE NO.	INVOICE DATE	INVOICE AMOUNT (Rs.)
1	5310007345	16.01.09	5838663.00	ALPHONSO CASHEW IND.	SE/1217/0809	20.02.09	2125273.00
2	5310007349	16.01.09	5666976.00	ALPHONSO CASHEW IND.	SE/1218/0809	20.02.09	2062780.00

3	5310007337	16.01.09	5461698.00	ALPHONSO CASHEW IND.	SE/1219/0809	20.02.09	1988058.00
4	5310007265	05.01.09	5690966.00	ALPHONSO CASHEW IND.	SE/1220/0809	20.02.09	2071512.00
5	5310006391	11.09.08	6210199.00	VIJAYLAKSHMI CASGEW CO.	SE/1221/0809	20.02.09	2260513.00
6	5310007404	21.01.09	7557528.00	BEENA CASHEW CO.	SE/1222/0809	20.02.09	2750940.00
7	5310007194	22.12.08	4927875.00	ALPHONSO CASHEW IND.	SE/1223/0809	20.02.09	1793746.00
8	5310007301	19.01.09	4993935.00	ALPHONSO CASHEW IND.	SE/1224/0809	20.02.09	1817792.00
9	5310007180	19.12.08	4963862.00	ALPHONSO CASHEW IND.	SE/1225/0809	20.02.09	1806846.00
10	5310007309	09.01.09	6701782.00	A.S.CASHEW EXPORTERS	SE/1226/0809	20.02.09	2439449.00
11	5310007357	16.01.09	6487571.00	SHREE DURGA CASHEW FACTORY	SE/1227/0809	20.02.09	2492516.00
12	5310007353	16.01.09	7008360.00	ALPHONSO CASHEW IND.	SE/1228/0809	20.02.09	2551043.00
13	5310007391	20.01.09	4742336.00	SOUTH KERALA CASHEW EXPORT	SE/1229/0809	20.02.09	1726211.00
14	5310007387	20.01.09	4834592.00	SOUTH KERALA CASHEW EXPORT	SE/1230/0809	20.02.09	1759791.00
15	5310007361	19.01.09	5538470.00	SOUTH KERALA CASHEW EXPORT	SE/1231/0809	20.02.09	2016004.00
16	5310007372	19.01.09	5656451.00	ALPHONSO CASHEW IND.	SE/1232/0809	20.02.09	2058948.00
17	5310007384	20.01.09	4602610.00	ABBAS CASHEW COMPANY	SE/1233/0809	20.02.09	1675351.00

DETAILS OF SALE OF THE DEPB/VKGUY LICENCES TO M/S NEW PLANET TRADING PVT.LIMITED, KOLKATA

SR. NO	VKGUY LICENCE NO.	VKGUY LICENCE DATE	VKGUY LICENCE AMOUNT (Rs.)	NAME OF LICENCE HOLDER	INVOICE NO.	INVOICE DATE	INVOICE AMOUNT (Rs.)
1	5310007345	16.01.09	5838663.00	ALPHONSO CASHEW IND.	OTK/LI/01/08-09	21.03.09	3631648.00
2	5310007349	16.01.09	5666976.00	ALPHONSO CASHEW IND.	OTK/LI/02/08-09	21.03.09	3524859.00
3	5310007337	16.01.09	5461698.00	ALPHONSO CASHEW IND.	OTK/LI/03/08-09	21.03.09	3397176.00

4	5310007265	05.01.09	5690966.00	ALPHONSO CASHEW IND.	OTK/LI/04/08-09	21.03.09	3539781.00
5	5310006391	11.09.08	6210199.00	VIJAYLAKSHMI CASGEW CO.	OTK/LI/05/08-09	21.03.09	3862744.00
6	5310007404	21.01.09	7557528.00	BEENA CASHEW CO.	OTK/LI/06/08-09	21.03.09	4700782.00
7	5310007194	22.12.08	4927875.00	ALPHONSO CASHEW IND.	OTK/LI/07/08-09	21.03.09	3065138.00
8	5310007301	19.01.09	4993935.00	ALPHONSO CASHEW IND.	OTK/LI/08/08-09	21.03.09	3106228.00
9	5310007180	19.12.08	4963862.00	ALPHONSO CASHEW IND.	OTK/LI/09/08-09	21.03.09	3087522.00
10	5310007309	09.01.09	6701782.00	A.S.CASHEW EXPORTERS	OTK/LI/17/08-09	21.03.2009	4168508.00
11	5310007357	16.01.09	6487571.00	SHREE DURGA CASHEW FACTORY	OTK/LI/10/08-09	21.03.09	4259189.00
12	5310007353	16.01.09	7008360.00	ALPHONSO CASHEW IND.	OTK/LI/11/08-09	21.03.09	4359200.00
13	5310007391	20.01.09	4742336.00	SOUTH KERALA CASHEW EXPORT	OTK/LI/12/08-09	21.03.09	2949733.00
14	5310007387	20.01.09	4834592.00	SOUTH KERALA CASHEW EXPORT	OTK/LI/13/08-09	21.03.09	3007116.00
15	5310007361	19.01.09	5538470.00	SOUTH KERALA CASHEW EXPORT	OTK/LI/14/08-09	21.03.09	3444928.00
16	5310007372	19.01.09	5656451.00	ALPHONSO CASHEW IND.	OTK/LI/15/08-09	21.03.09	3518313.00
17	5310007384	20.01.09	4602610.00	ABBAS CASHEW COMPANY	OTK/LI/16/08-09	21.03.09	2862823.00

- that he produced copies of purchase and sale ledger account alongwith original copies of purchase and sale debit notes/invoices in respect of above said licences.
- that all the purchase invoices were received by them from the office of Shri. Sashin Koradia and the sale invoices in the exact format was received by him in his e-mail account – rishabhbabel@yahoo.com from the e-mail account of Shri.Sashin Koradia – wadkar_vs@yahoo.co.in and it was instructed in the mail to take a print out of the formatted invoice in their letter head.

- that as per the directions he was only taking the print outs in the letter head of M/s Ostwal Trading India Pvt. Limited and put his signature on the invoice.
- that the Sale Invoices were prepared in two copies and one copy was kept for record and one copy was sent to the office of Sashin Koradia.
- that all the e-mails vide which he had received the instructions for issuing sale invoices of M/s Ostwal Trading India Pvt. Limited were deleted as they were long time back and usually he deleted old mails from time to time.
- that the payments for the purchase of above said licences had been made by them through Canara Bank, Khetwadi Branch, Mumbai's account no. 0155201002546 to M/s Shivangi Enterprise. Similarly, they had received payment of sale of these licences from M/s New Planet Trading Co. Pvt. Ltd., Kolkata in their bank account with Canara Bank.
- that he would check the details of payments and revert back whether any other bank account might have been used for receiving and making the payments.
- that he agreed to submit details of receipt and payments made in the entire transaction of trading of these DEPB/VKGUY/VKUY licences, cheque no. wise to M/s Shivangi Enterprise and payment received from M/s New Planet Trading Co. Pvt. Ltd., within two days time.
- that the owner of M/s New Planet Trading Co. Pvt. Ltd., Kolkata is Shri Virendra Abhani, who was also a relative of Shri Pravin Jain. However, he was not aware as to who was owner of M/s Shivangi Enterprise.
- that during the entire transaction of licences done by them during the period 2008-09 and 2009-10 they had never received any VKGUY/VKUY licence physically at their office.
- that they had provided the billing only and they had received commission for the same.
- that he was having the knowledge that the said licences were utilized for debiting of Customs duty at the time of import by the importer, he had not seen any copy of DEPB/VKUY/VKGUY licences physically.
- that he did not have any photocopy of these licences and he had never paid any attention at what rate the licences were purchased and sold by them.
- that he noted that all the 17 VKGUY licences detailed in his statement actually purchased at very lower rate than the actual value of the licences. However he agreed that they had sold them after adding some profit on the purchase price.

105. A statement of Shri Vipul Harsukhlal Joshi, Chief Financial Officer and Authorised Signatory of M/s.Punjab Chemical and Crop Protection Ltd, Mumbai was recorded on 04/08/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that in the year 1992 he joined M/s. Punjab Chemicals and Crop Protection Ltd, Mumbai (PCCPL) as Financial Controller. He was promoted as Vice-President (Finance) in the year 1996. In the year 2006 he was promoted as Chief Financial Officer (CFO).
- that Shri Shalil Shroff was the Managing Director who was looking after the operations at Mumbai while Shri Shankar Tiwari, Director looked after their operations at Pune and Shri Avtar Singh, Director looked after the operations at Chandigarh.
- that PCCPL was engaged in the manufacture of Agro-Chemicals viz. herbicides, pesticides, insecticides and Industrial Chemicals i.e. preservatives, catalysts for medicinal drug industry.
- that PCCPL was a company listed on the Mumbai and National Stock exchanges. The turnover of our company during the last three years was Rs.303 crores, Rs.464 crores and Rs.442 crores.
- that in addition to their core business they had also engaged in trading of transferrable export incentive licences during 2008-2009.
- that due to the global economic meltdown their profitability badly affected. Therefore, to boost their profits they were looking at other avenues of business and they discussed the matter with one Shri Shashin Koradia.
- that their company had taken over a company named M/s. IA&IC Pvt Ltd, Mumbai in the year 2005. In the course of the takeover process they were introduced to Shri Shashin Koradia and he had helped them in the takeover process. It was during this time they also came to know that Shri Shashin Koradia provides services for enhancing turnover as well as profits. Therefore, when their company was required to increase its profits, they approached Shri Shashin Koradia.
- that in the course of the discussions Shri Shashin Koradia informed them that he could arrange for licence trading business which would help in showing higher profits.
- that Shri Shashin Koradia further informed them that he would arrange the purchase as well as sales transactions and they were only to raise sales bills on the basis of the purchase invoices supplied by him. Shri Shashin Koradi also informed that them that the payments for purchase would be made from the payments received from the sales.
- that as the proposal of Shri Shashin Koradia was suited to their requirements, they had agreed to the same.
- that they had not paid any service charges to Shri Shashin Koradia for arranging profits.
- that Shri Shashin Koradia had thereafter supplied them with the invoices of other firms showing their purchase of transferrable export incentive licences and as per his instructions they raised sales invoices and these invoices were mostly issued on the same day.
- that Shri Shashin Koradia would inform them the rate at which they were to prepare the sales invoices.
- that in most of the cases the rate at which they sold the licences much higher than their purchase price. Thereafter when their buyer would make payment, Shri Shashin Koradia would inform

them about the same and as per his instructions they would make payments to their suppliers.

- that since the profit arising out of the licence trade did not belong to them, they were to return the same as per the instructions.
- that the amount of profit paid by them either by cheque or RTGS in favour of the firms was informed to them by Shri Shashin Koradia.
- that presently he did not recollect the names of the firms but he undertook to inform the details immediately after reaching Mumbai.
- that on being further asked as to how these payments were shown in their accounts, he stated that the payments were shown as either Loans or Advances and the final settlement in respect of the element of profit was still pending.
- that regarding the quantum of trading transactions of licences arranged by Shri Shashin Koradia, he stated that they had not shown the trading of licences in their company's turnover and therefore, he did not have the details presently. However, he would inform the details upon reaching Mumbai.
- that they had shown the profits arising out of the licence trading transactions in their books under the head of 'Other Income'.
- that during 2008-2009 the amount of profit, on account of the licence trading transactions arranged by Shri Shashin Koradia, was about Rs.6 crores.
- that during 2008-2009 Shri Shashin Koradia had given them 08 invoices of M/s.Shivangi Enterprise, Bangalore and produced these invoices in original.
- that regarding the sales invoices issued by them corresponding to these purchase invoices, he produced the original invoices.
- that the licences shown to have been sold to them under the Invoices of M/s.Shivangi Enterprise, Bangalore were all sold by them to M/s.Vani Exports, Kolkata.
- that the sales invoices were shown issued by their branch office at Kolkata as per the instructions of Shri Shashin Koradia.
- that the reason for issuing invoices from Kolkata is on account of the VAT exemption available in West Bengal on sale of licences.
- that the details of the 23 licences shown purchased under the invoices of M/s. Shivangi Enterprise, Bangalore were as below :-

SR. NO	LICENCE NO. & date	LICENCE AMOUNT (Rs.)	NAME OF LICENCE HOLDER	INVOICE NO.	INVOICE DATE	NAME OF SELLER	INVOICE AMOUNT (Rs.)
1	710057530 dtd.22.05.08	4174117	NED COMMODITIES	SE/1258/0809	24.03.09	SHIVANGI ENTERPRISE, BANGALORE	1685508
2	710058085 dtd.24.06.08	4022044	E-COM GILL COFFEE	SE/1258/0809	24.03.09	SHIVANGI ENTERPRISE, BANGALORE	1756880
3	710057647 dtd.30/05/08	7123471	GENERAL COMMODITIES	SE/1257/0809	24.03.09	SHIVANGI ENTERPRISE, BANGALORE	

4	710057375 dtd.13.05.08	5097978	GENERAL COMMODITIES	SE/1257/0809	24.03.09	SHIVANGI ENTERPRISE, BANGALORE	
5	710057639 dtd.29.05.08	5371995	NED COMMODITIES	SE/1257/0809	24.03.09	SHIVANGI ENTERPRISE, BANGALORE	7389247
6	5310006876 dtd.11.11.08	4399075	ANZAR CASHEW CO.	SE/1242/0809	11.11.08	SHIVANGI ENTERPRISE, BANGALORE	
7	5310006906 dtd.11.11.08	4379309	N.SATHEESHKUMAR	SE/1242/0809	11.11.08	SHIVANGI ENTERPRISE, BANGALORE	
8	710060736 dtd.27.10.08	4083246	GAYATHRI EXPORTS	SE/1242/0809	11.11.08	SHIVANGI ENTERPRISE, BANGALORE	5401885
9	710060737 dtd.27.10.08	4900580	GAYATHRI EXPORTS	SE/1241/0809	16.03.09	SHIVANGI ENTERPRISE, BANGALORE	
10	5310006910 dtd.11.11.08	4833716	EMMANUEL CASHEW IND.	SE/1241/0809	16.03.09	SHIVANGI ENTERPRISE, BANGALORE	
11	5310006884 dtd.11.11.08	4596457	POORNACHANDRA CASHEW CO.	SE/1241/0809	16.03.09	SHIVANGI ENTERPRISE, BANGALORE	6018917
12	5310006878 dtd.11.11.08	5073945	ABBAS CASHEW COMPANY	SE/1236/0809	27.02.09	SHIVANGI ENTERPRISE, BANGALORE	
13	5310006885 dtd.11.11.08	5023350	PRASANTHI CASHEW	SE/1236/0809	27.02.09	SHIVANGI ENTERPRISE, BANGALORE	
14	5310006869 dtd.11.11.08	5005100	NILA CASHEW	SE/1236/0809	27.02.09	SHIVANGI ENTERPRISE, BANGALORE	6343007
15	5310006882 dtd.11.11.08	6740954	N.SATHEESHKUMAR	SE/1235/0809	27.02.09	SHIVANGI ENTERPRISE, BANGALORE	
16	5310006893 dtd.11.11.08	6313154	EMMANUEL CASHEW IND.	SE/1235/0809	27.02.09	SHIVANGI ENTERPRISE, BANGALORE	
17	710060173 dtd.26.09.08	3726014	BOLA RAGHAVENDRA KAMATH	SE/1235/0809	27.02.09	SHIVANGI ENTERPRISE, BANGALORE	7047652
18	5310006896 dtd.11.11.08	7696239	RAJAN CASHEW COMPANY	SE/1216/0809	19.02.09	SHIVANGI ENTERPRISE, BANGALORE	
19	5310006883 dtd.11.11.08	7667008	POORNACHANDRA CASHEW CO.	SE/1216/0809	19.02.09	SHIVANGI ENTERPRISE, BANGALO	

						RE	
20	5310006825 dtd.5.11.08	6979498	PRASANTHI CASHEW CO.	SE/1216/0809	19.02.09	SHIVANGI ENTERPRISE, BANGALORE	9383953
21	5310006880 dtd.11.11.08	5681619	JOHNS CASHEW CO.	SE/1215/0809	19.02.09	SHIVANGI ENTERPRISE, BANGALORE	
22	5310006874 dtd.11.11.08	8300303	RAJAN CASHEW COMPANY	SE/1215/0809	19.02.09	SHIVANGI ENTERPRISE, BANGALORE	
23	5310006867 dtd.11.11.08	8150713	EMMANUEL CASHEW IND.	SE/1215/0809	19.02.09	SHIVANGI ENTERPRISE, BANGALORE	9295707

- that they had sold the above 23 licences to M/s.Vani Exports, Kolkata and the details were as below :-

SR. NO	**LICENCE NO.**	**LICENCE AMOUNT (Rs.)**	**NAME OF LICENCE HOLDER**	**INVOICE NO.**	**INVOICE DATE**	**NAME OF BUYER**	**INVOICE AMOUNT (Rs.)**
1	7100575 30 dtd. 22.05.08	4174117	NED COMMODITIES	PCCPL/022/2008-09	26.03.09	VANI EXPORTS, KOLKATA	3767141
2	7100580 85 dtd. 24.06.08	4022044	E-COM GILL COFFEE	PCCPL/023/2008-09	26.03.09	VANI EXPORTS, KOLKATA	3629895
3	7100576 47 dtd. 30.05.08	7123471	GENERAL COMMODITIES	PCCPL/019/2008-09	26.03.09	VANI EXPORTS, KOLKATA	6428933
4	7100573 75 dtd. 13.05.08	5097978	GENERAL COMMODITIES	PCCPL/021/2008-09	26.03.09	VANI EXPORTS, KOLKATA	4600925
5	7100576 39 dtd. 29.05.08	5371995	NED COMMODITIES	PCCPL/021/2008-09	26.03.09	VANI EXPORTS, KOLKATA	4848225
6	5310006 876 dtd. 11.11.08	4399075	ANZAR CASHEW CO.	PCCPL/016/2008-09	21.03.09	VANI EXPORTS, KOLKATA	3970165
7	5310006 906 dtd. 11.11.08	4379309	N.SATHEESHKUMAR	PCCPL/017/2008-09	21.03.09	VANI EXPORTS, KOLKATA	3952326
8	7100607 36 dtd. 27.10.08	4083246	GAYATHRI EXPORTS	PCCPL/018/2008-09	26.03.09	VANI EXPORTS, KOLKA	3685130

						TA	
9	7100607 37 dtd. 27.10.08	49005 80	GAYATHRI EXPORTS	PCCPL/013/2 008-09	26.03. 09	VANI EXPOR TS, KOLKA TA	44227 73
10	5310006 910 dtd. 11.11.08	48337 16	EMMANUEL CASHEW IND.	PCCPL/021/2 008-09	26.03. 09	VANI EXPOR TS, KOLKA TA	43624 29
11	5310006 884 dtd. 11.11.08	45964 57	POORNACHAN DRA CASHEW CO.	PCCPL/015/2 008-09	20.03. 09	VANI EXPOR TS, KOLKA TA	41483 02
12	5310006 878 dtd. 11.11.08	50739 45	ABBAS CASHEW COMPANY	PCCPL/010/2 008-09	28.02. 09	VANI EXPOR TS, KOLKA TA	45792 35
13	5310006 885 dtd. 11.11.08	50233 50	PRASANTHI CASHEW	PCCPL/011/2 008-09	28.02. 09	VANI EXPOR TS, KOLKA TA	45335 73
14	5310006 869 dtd. 11.11.08	50051 00	NILA CASHEW	PCCPL/012/2 008-09	28.02. 09	VANI EXPOR TS, KOLKA TA	45171 03
15	5310006 882 dtd. 11.11.08	67409 54	N.SATHEESHK UMAR	PCCPL/007/2 008-09	28.02. 09	VANI EXPOR TS, KOLKA TA	60837 11
16	5310006 893 dtd. 11.11.08	63131 54	EMMANUEL CASHEW IND.	PCCPL/008/2 008-09	28.02. 09	VANI EXPOR TS, KOLKA TA	56976 21
17	7100601 73 dtd. 26.9.08	37260 14	BOLA RAGHAVENDR A KAMATH	PCCPL/009/2 008-09	28.02. 09	VANI EXPOR TS, KOLKA TA	33627 28
18	5310006 896 dtd. 11.11.08	76962 39	RAJAN CASHEW COMPANY	PCCPL/004/2 008-09	23.02. 09	VANI EXPOR TS, KOLKA TA	69458 56
19	5310006 883 dtd. 11.11.08	76670 08	POORNACHAN DRA CASHEW CO.	PCCPL/005/2 008-09	23.02. 09	VANI EXPOR TS, KOLKA TA	69194 75
20	5310006 825 dtd. 05.11.08	69794 98	PRASANTHI CASHEW CO.	PCCPL/006/2 008-09	23.02. 09	VANI EXPOR TS, KOLKA TA	62989 97
21	5310006 880 dtd. 11.11.08	56816 19	JOHNS CASHEW CO.	PCCPL/001/2 008-09	23.02. 09	VANI EXPOR TS, KOLKA TA	51276 61

22	5310006874 dtd. 11.11.08	8300303	RAJAN CASHEW COMPANY	PCCPL/002/2008-09	23.02.09	VANI EXPORTS, KOLKATA	7491023
23	5310006867 dtd. 11.11.08	8150713	EMMANUEL CASHEW IND.	PCCPL/003/2008-09	23.02.09	VANI EXPORTS, KOLKATA	7356018

- that they had never physically received the licences which were shown to have been purchased and sold by them. They had also not seen any of the licences and neither were they aware as to the kind of licence i.e. DEPB, VKGUY etc.
- that they did not know the owners of either M/s.Shivangi Enterprise, Bangalore or M/s.Vani Exports, Kolkata and neither have them met or spoken to them at any time.

106. A further statement of Shri Sashin Jayantilal Koradia, was recorded on 05/08/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that on being asked regarding his role in the entire scheme of purchase and sale of forged transferable licences organized by Shri Kalpessh Daftary, he stated that Shri Kalpessh Daftary was known to him since the year-2008.
- that as he was providing the services of managing the accounts of various companies and also adjustments of their profits in their books of accounts as per their directions, Kalpesshbhai Daftary asked him to provide some companies for rotation of transferable licences and on consultation with the proprietors/ partners/directors of the companies he provided some companies for billing purpose only.
- that he had charged service charges for the same and was also given a part of it to the proprietors/partners/directors.
- that neither he nor any of the owners of the companies/firms provided by him had ever seen any transferable duty free licence physically. They were not aware as to which licences were genuine and which were forged.
- that on being asked as to whether they had ever tried to know the authenticity of the licences they were trading in, he stated that since these companies were providing services of billing only, they had neither seen the licences nor had they even taken physical delivery and therefore, they never verified whether these licences were genuine or otherwise.
- that even he had never checked any licence physically as his job to provide billing facility by rotating the profits and losses in various companies as stated by him earlier. He never knew from where the licences were originating and where they were finally utilized. He rotated the billings as per the instructions of Shri Kalpesh Daftary.
- that he was once again shown the account statement – "ZOO Account" submitted by him in his statement dated 11.06.2010, and on being asked to list out all the cash transactions mentioned

as 'ATM' in the said 'ZOO' account, he requested to allow him one days time for the same.

107. A further statement of Shri Sashin Jayantilal Koradia, was recorded on 06/08/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that as per his statement dated 05.08.2010 he had segregated the cash transactions shown as 'ATM' from the account maintained in the code name 'ZOO' submitted by him vide his statement dated 11.06.2010. The cash transactions segregated by him were detailed in the annexure to this statement.
- that these cash transactions totally amounted to Rs.62,25,31,660/-. Out of this an amount of Rs.60,63,16,660/- was paid to different persons as instructed by Shri Kalpessh Daftary of M/s. Sunkkalp Creations Pvt Ltd.
- that in many cases, the cash had been paid to Shri Chotu, the employee of Shri Daftary and he was not aware as to what done with the same.
- that the cash payments were also made to the other persons whose identity he was not aware of and neither was he aware of the purpose for the payment. The cash payments were made on the instructions of Shri Daftary.
- that the cash amounts were generated through the billings for trading of licences in the names of the firms, arranged by him. He explained by way of an example :

  > Shri Kalpessh Daftary gives them an invoice of Shivangi Enterprise for licences originally valued at Rs.100/-. As per the invoice of Shivangi Enterprise the licences are sold to Punjab Chemical and Crop Protection Ltd (PCCPL) at Rs.42. On the instructions of Shri Kalpessh Daftary M/s.PCCPL in turn sells the licences at Rs.92 to M/s.Vani Exports. M/s. Vani Exports would make payment of Rs.92 to M/s.PCCPL either by cheque or RTGS and M/s.PCCPL would retain the profit of Rs.50 and return Rs.42 to M/s.Shivangi Enterprise either by RTGS or by cheque. The profit of Rs.50 is then converted to cash and paid to Shri Kalpessh Daftary.

- that on being asked as to how the cash amount was withdrawn and from bank account of which firm/company, he stated that the cash never physically withdrawn from any bank account at one time. In fact the company which was earning the profit was returning the profit earned in the form of cash after deducting their commission.
- that how these cash was withdrawn by them was not known to him, however as a general practice in this trade the cash was taken from some person having cash and was in need of cheque. Then that person was given cheque and in lieu of the same he gives cash of equivalent amount.

108. A further statement of Shri Surendra Kumar Kulhari, Director of M/s.Hindustan Continental Ltd, Mumbai, was recorded on

06/08/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that on being asked regarding purchase and sale of licence no.310526777 dtd. 02.07.09, 310523564 dtd.11.06.09, 310528212 dtd.10.07.09, 310529284 dtd.16.07.09, 310528689 dtd. 13.07.09, 310523562 dtd.11.06.09, 31531532 dtd.10.11.09, 310518177 dtd.04.05.09, 310523566 dtd.11.06.09, 310521936 dtd.29.05.09, 310522743 dtd.05.06.09, 310512901 dtd.24.03.09, and 310522738 dtd. 05.06.09, he verified the details from his purchase and sale records and confirmed that their company had purchased these licences from M/s Vani Exports, Kolkata under two Debit Notes/Sale Invoices @ Rs.55.00% and 42.13% of the actual value of the licences. The details of purchase were tabulated as under :

Sr. No.	**Licence No.**	**Date**	**Name of the Lic. Holder**	**Duty Amount of Licence (in Rs.)**	**PURCHASE INVOICE NO.**	**INVOICE DATE**	**PURCHASE INVOICE AMOUNT (Rs.)**
1	310526777	02.07.09	Allanasons Limited	4470235	VE/922/09 Purchased @ Rs.55.00%	05.11.09	2458629.25
2	310523564	11.06.09	Allanasons Limited	4003373	VE/922/09 Purchased @ Rs.55.00%	20.02.09	2201855.15
3	310528212	10.07.09	Allanasons Limited	6590018	VE/922/09 Purchased @ Rs.55.00%	20.02.09	3624509.90
4	310529284	16.07.09	Indagro Foods Ltd.,	5626358	VE/922/09 Purchased @ Rs.55.00%	20.02.09	3094496.90
5	310528689	13.07.09	Allanasons Limited	4776335	VE/922/09 Purchased @ Rs.55.00%	20.02.09	2626984.25
6	310523562	11.06.09	Allanasons Limited	5753032	VE/922/09 Purchased @ Rs.55.00%	20.02.09	3164167.60
7	310531532	10.11.09	Allanasons Limited	6005453	VE/922/09 Purchased @ Rs.55.00%	20.02.09	3302999.15
8	310521936	29.05.09	Frigorifico Allana Ltd.,	4426478	VE/921/09 Purchased @ Rs.42.13 %	20.02.09	1864872.00
9	310522743	05.06.09	Indagro Foods Ltd.,	7778161	VE/921/09 Purchased @ Rs.42.13 %	20.02.09	3276935.00
10	310512901	24.03.09	Indagro Foods Ltd.,	4572385	VE/921/09 Purchased @ Rs.42.13 %	20.02.09	1926343.00
11	310518177	04.05.09	Indagro Foods Ltd.,	5247824	VE/922/09 Purchased @ Rs.55.00%	20.02.09	2886303.20

12	310522738	05.06.09	Indagro Foods Ltd.,	5173856	VE/921/09 Purchased @ Rs.42.13 %	20.02.09	2179742.00
13	310523566	11.06.09	Allanasons Limited	5130380	VE/922/09 Purchased @ Rs.55.00%	20.02.09	2821709.00

- that they had sold all these licences to M/s Reliance Industries Ltd., Dahej @ Rs.98.00%. Details of sale were as under:

Sr. No.	**Licence No.**	**Date**	**Name of the Lic. Holder**	**Duty Amount of Licence (in Rs.)**	**INVOICE NO.**	**INVOICE DATE**	**SALE AMOUNT (Rs.)**
1	310526777	02.07.09	Allanasons Limited	4470235	HCL041/2009-10 Purchased @ Rs.98.00%	11.11.09	4380830.00
2	310523564	11.06.09	Allanasons Limited	4003373	HCL042/2009-10 Purchased @ Rs.98.00%	11.11.09	3923306.00
3	310528212	10.07.09	Allanasons Limited	6590018	HCL043/2009-10 Purchased @ Rs.98.00%	11.11.09	6458218.00
4	310529284	16.07.09	Indagro Foods Ltd.,	5626538	HCL044/2009-10 Purchased @ Rs.98.00%	11.11.09	5513831.00
5	310528689	13.07.09	Allanasons Limited	4776335	HCL045/2009-10 Purchased @ Rs.98.00%	11.11.09	4680808.00
6	310523562	11.06.09	Allanasons Limited	5753032	HCL046/2009-10 Purchased @ Rs.98.00%	11.11.09	5637971.00
7	310531532	10.11.09	Allanasons Limited	6005453	HCL047/2009-10 Purchased @ Rs.98.00%	11.11.09	5885344.00
8	310521936	29.05.09	Frigorifico Allana Ltd.,	4426478	HCL051/2009-10 Purchased @ Rs.98.00%	11.11.09	4337948.00
9	310522743	05.06.09	Indagro Foods Ltd.,	7778161	HCL052/2009-10 Purchased @ Rs.98.00%	11.11.09	7622598.00
10	310512901	24.03.09	Indagro Foods Ltd.,	4572385	HCL053/2009-10 Purchased @ Rs.98.00%	11.11.09	4480937.00
11	310518177	04.05.09	Indagro Foods Ltd.,	5247824	HCL049/2009-10 Purchased @ Rs.98.00%	11.11.09	5142868.00
12	310522738	05.06.09	Indagro Foods Ltd.,	5173856	HCL054/2009-10 Purchased @ Rs.98.00%	11.11.09	5070379.00
13	310523566	11.06.09	Allanasons Limited	5130380	HCL048/2009-10 Purchased @ Rs.98.00%	11.11.09	5027772.00

- that he produced original copies of purchase invoices of M/s Vani Exports, Kolkata and Xerox copies of the sale invoices issued by them. He would submit purchase and sale ledger account in respect of above licences within two days time.
- that payments for the purchase sale of these licences had been made by them to M/s Vani Exports, Kolkata from their bank account with HDFC Bank, Branch, Chandivali, Mumbai bearing no. 14718630000034, similarly payment was received by them from M/s Reliance Industries Ltd., in their above said bank account. He agreed to confirm the payment details after checking the ledgers from his accountant and also agreed to submit a copy of the Purchase and Sales Ledger in respect of these licences.
- that as stated by him in his previous statements, during the entire transaction of licences done by them during the period 2008-09 and 2009-10 they had never received any DEPB/VKGUY licence physically at their office. They had provided the billing only and they had received commission for the same.
- that he was having the knowledge that the said licences were utilized for debiting of Customs duty at the time of import by the importer.
- that as stated by him, they had done only billing of these licences and had never seen these licences physically. Since they had never received these licences physically they had not ascertained the genuineness of these licences. However he confirmed that trading of all these licences were done as per the instructions of Shri.Kalpessh Daftary of M/s Sunkkalp Creations Pvt.Limited and the billings were arranged by Shri Sashin Koradia of Mumbai.
- that the Sale Invoices of M/s Hindustan Continental Limited were actually printed by Shri.Sashin Koradia or as per the instructions of Shri.Sashin Koradia at his office and the signatures were done by his employee Smt.Bindi V Vora.
- that he agreed to submit the details of all purchases from M/s Vani Exports during the Fin.year-2009-10 and also the payments made for these transactions.

109. A statement of Shri (now late) Paresh G. Paarekh, Director of M/s. Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 13/08/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he was having the business of sale and purchase of various transferable export incentive licences in the name of M/s Sunkkalp Creation Pvt. Ltd., Mumbai. M/s Sunkkalp Creation Pvt. Ltd., Mumbai was having four directors namely, (i). He (ii), Shri Kalpessh Daftary, (iii) his wife Smt. Sangitaa Parekh and (iv). Shri Eshan Parekh his son.
- that he started his business career with a firm M/s B Parekh and Co. in the year 1981 and the office situated at Sai Bhavan, next to Round Building, Princess Street, Mumbai-400002. The firm was having two partners Mr.Jatin Parekh and himself and the firm was doing the trading and brokerage of export incentive transferable licences. Thereafter the firm was changed to M/s Trident and Shri.Jitubhai R Mehta joined the firm alongwith the existing two

partners. Thereafter the firm was changed to M/s Trident India Pvt. Limited with all the three partners as the directors.

- that in the year-2003-04, he separated from the business and started a firm under his proprietorship as Splendent Sun Overseas and the office at 204, Manek Smruti, above HDFC Bank,Nehru Road,Vile Parle (East), Mumbai.
- that during July-2006 Shri.Kalpesh Navinchandra Daftary joined the firm and the firm changed to M/s Sunkkalp Creations Pvt.Limited with himself, his wife Smt. Sangita Paresh Parekh, Shri.Kalpesh N Daftary and his son Shri.Eshan P Parekh as the four directors.
- that in M/s Sunkkalp Creations Pvt. Limited, himself and Shri Kalpessh Daftery are the active Directors, while his wife Smt Sangitaa Parekh and Shri Eshan Parekh were sleeping Directors of the company.
- that his wife and Shri Eshan were not actually looking after the purchase and sale of export incentive licences.
- that from 2007, he developed some illness and the illness, since 2008 the whole business activities of M/s Sunkkalp Creation Pvt. Ltd., controlled and managed by Shri Kalpessh Daftary as he was not able to concentrate on the business and Shri Daftary having good knowledge of the trade and also experience.
- that in M/s Sunkkalp Creation Pvt. Ltd., they were engaged in the trading of DEPB/VKGUY/FMS/FPS/DFIA export incentive licences.
- that Shri.Kalpesh was having a firm under the name of M/s Bansi Overseas at Rajkot and he was also engaged in the business of trading and brokerage of transferable export incentive licences at Rajkot. During that period they knew each other as they were in the same trade and also sometimes sold/purchased licences through his firm.
- that he was also associated with him previously in a work of conversion of shipping bills at JNPT Mumbai. During that period he (Shri Daftary) visited Mumbai frequently and meeting him regularly.
- that Shri Daftary was having some family problem and after that in the year-2006 he shifted to Mumbai after the death of his father and getting divorced from his wife. After coming to Mumbai he was also in need of some support to start a new business. As he was known to him and he also managing his business alone he offered that he (Shri Daftary) may join him in my business and they can work together.
- that in 2006 they started M/s Sunkkalp Creations Pvt.Limited. In the said company his wife and son were also directors and Shri.Kalpesh holding 40% of the shares and the three family members were holding the remaining 60%.
- that as stated by him, since his illness and his deteriorating health he was not able to attend office on regular basis and attend business deals. Thereafter from 2008, he allowed Shri Kalpesh Daftary to handle the business of Sunkkalp Creations completely and he was doing quite good work. He (Daftary) also utilized his old

acquaintances in getting more and more exporters to sell their licences through them and they earned good brokerage.

- that he had good relations with Shri Sunil Kumar P of M/s Sabari Quality Foods, Kollam, Kerala and he was having good rapport with the Cashew Exporters of South India as also with the Cashew Exporters Association. Through Shri Sunil he obtained the VKGUY licences of these Cashew Exporters and these licences were sold mostly to M/s Reliance Industries Limited during the period 2008-09.
- that he was having good relations with the Coffee Exporters Association of South India and he utilized them to make a contract with the association. Thereafter the VKGUY licences received by these Coffee exporters were also sold through his firm.
- that as per the contract these licences were received by them at a price of about 70% of the actual value of the licences. Then as per his memory these licences were mostly sold/transferred to M/s Reliance Industries Limited and were debited at Dahej / Magdalla ports.
- that as a routine they were keeping copies of these licences and their connecting documents like the RA's, transfer letters etc as record.
- that on being asked as to whether Shri.Kalpesh Daftray was aware about his relations with the Cashew/Coffee exporters and their association and regarding the VKGUY licences that he had received from them and sold / transferred by their firm, he stated that Kalpessh Daftary was aware of all the facts as he was also coming with him to visit these exporters and their association and their offices.
- that he (Shri daftary) had also visited the office of Shri. Sunil Kumar P at Kollam with him once.
- that it was in his (Shri Daftary) knowledge that these VKGUY licences were purchased by them at about 70% of their licences value and they had earned good profit on them.
- that since he was not able to put his signature properly in the bank cheques and other bank documents, the bank accounts of M/s Sunkkalp Creations Pvt. Limited were also controlled by Shri Kalpessh Daftary and he and Smt Sangitaa were signing the cheques on behalf of the company.
- that during 2009 February he was very much ill and hospitalized for about two months and after that he was not attending office and neither looking after the works of the company and the entire work controlled by Shri Kalpesh Daftary.
- that regarding the utilization of forged DEPB/VKGUY licences at Dahej Port was being investigated by DRI and the role of their company and Shri Kalpessh Daftary in the forgery, he stated that since he was actually not aware as to why they were being targeted.
- that Shri Daftary informed him that his name being falsely implicated by some other person and he actually not involved. Shri Daftary also told him that since they have raised some debit notes, they were being investigated by DRI.

- that he could not express his feelings so he was not taking much interest as he had full faith in Kalpessh Daftary and believed that he cannot be involved in such forgery case.
- that on being asked as to why they were not residing at their regular residence since April-2010 till July-2010, he stated that since last one year they had taken a flat on rent in the adjoining building just next to their office premises. He was resting in the flat at day time.
- that about April-2010 Shri Kalpessh told that they should go on vacation and then they went to some nearby place for vacation with children. Then they continued to stay in the said flat which they had rented as told by Kalpessh and he also told to avoid DRI and staying at their regular residence will be problem and they will be falsely implicated and harassed.

110. A statement of Smt. Sangitaa Paresh Paarekh, Director of M/s.Sunkkalp Creations Pvt Ltd, Mumbai was recorded on 13/08/2010 under Section 108 of the Customs Act, 1962 wherein she stated inter alia :

- that her husband Shri Paresh Parekh was having business of sale and purchase of various export incentive licences in the name of M/s Sunkkalp Creation Pvt. Ltd., Mumbai. M/s Sunkkalp Creation Pvt. Ltd., Mumbai was having four directors namely, (i). Shri Paresh Parekh, (ii), Shri Kalpessh Daftery, (iii) herself and (iv). Shri Eeshan Parekh. Shri Paresh Parekh and Shri Kalpessh Daftery were the active Directors, while she and Shri Eeshan Parekh were sleeping Directors of the company. She and Shri Eeshan were not actually looking after the purchase and sale of export incentive licences.
- that after the illness of her husband Shri Paresh Parekh, since 2008 the whole business activities of M/s Sunkkalp Creation Pvt. Ltd., had been controlled and managed by Shri Kalpessh Daftery. M/s Sunkkalp Creation Pvt. Ltd., was engaged in the trading of DEPB/VKGUY/FMS/FPS/DFIA export incentive licences. It was incepted in the year 2006.
- that prior this her husband was having firm in the name of M/s Splendent Sun Overseas, which was a Proprietary and having Shri Paresh Parekh as Proprietor. The said firm was also engaged in trading of various types of export incentive licences. She was given the power of authorized signatory in M/s Splendent Sun Overseas as her husband Shri Paresh Parekh was busy in touring.
- that during July-2006 Shri Kalpesh Navinchandra Daftary joined the firm and the firm was changed to M/s Sunkkalp Creations Pvt. Limited.
- that in the constitution of M/s Sunkkalp Creation Pvt Ltd., Shri Kalpessh N Daftary was holding 50% of the shares alone as against the other 50% held by her husband Shri Paresh Parekh, herself and her son Shri Eeshan Parekh.
- that the bank accounts of M/s Sunkkalp Creations Pvt. Limited were also controlled by Shri.Kalpessh Daftary and she was signing the cheques as Shri Pareshbhai was not able to sign properly since last 2-3 years.

- that she has little knowledge of trading of export incentive licences. They procure the various export incentive licences such as DEPB/VKGUY/VKUY etc. from the exporters directly, as well as, traders of such licences and sell them to the importers who utilize the same for duty credit. Some time these licences are sold through brokers to the importers. These licences were utilized by the actual users i.e importers for debiting of customs duty at the time of imports made by them.
- that she was mostly looking after the work of some shops taken on rent in the ground floor of the building which houses the office of M/s Sunkkalp Creations Pvt. Limited. These shops were selling some ladies garments and other cosmetic and handicraft items and they were under the name of 'Sun Soul'and 'Skin Jam'.
- that she was aware that an investigation was going on regarding the forgery of the transferable export incentive licences and DRI had also searched the premises of their office and their residence in the issue.
- that since the activity relating to the trading of licences was handled by Shri Kalpessh Daftary only and she was not concerned in these activities, she did not know anything about this matter. She again stated that she was looking after the activities of 'Sun-Soul' and 'Skin-Jam' only.

111. During the search of the residence premises of Shri Kalpessh Daftary on 01/05/2010 some wardrobes were found locked and the keys of which were not available. Therefore, the same were sealed. These wardrobes were unsealed and opened on 13/08/2010 and searched under proper panchnama dtd.13/8/2010 in the course of which copies of some licences were recovered.

112. A further statement of Shri Piyush Viramgama, Proprietor of M/s.Krish Overseas, Rajkot was recorded on 19/8/2010 under Section 108 of the Customs Act, 1962, wherein he stated inter alia:

- that he confirmed the facts stated in his earlier statements dtd.11/5/2010, 12/5/2010 and 13/5/2010;
- that regarding the forging of signatures of the FTDO appearing on the forged licences utilized at Dahej port by M/s.Hindalco Industries Ltd, which were shown to him during the course of his statements recorded on 11/5/2010, 12/5/2010 and 13/5/2010, he stated that the signatures of the FTDO appearing on the front face of the forged VKGUY licences were done by Shri Niyaz Ahmed and in some cases were done by him also;
- that in the first lot of the forged licences all the signatures appearing on the licences i.e. signatures of the FTDO of DGFT appearing on the front side and the signatures of the Customs officers on the reverse side were forged by Shri Niyaz Ahmed of Kanpur;
- that he and Kalpessh Navinchandra Daftary planned to have only partly printed copies of these forged licences and asked Shri Niyaz Ahmed to give blank stationery but Shri Niyaz did not agree to this;

- that he and Kalpessh Navinchandra Daftary decided that they would get only the details of the front side printed by him (Shri Niyaz Ahmed) and the remaining work would be done by him and Kalpessh Navinchandra Daftary;
- that in the remaining lots only the front side of the forged VKGUY/DEPB licence printed by Shri Niyaz and given to him and Kalpessh Navinchandra Daftary and then the remaining part and the RA's were done by him;
- that the signatures of the FTDO of DGFT appearing on the front side of the forged licences also forged by him in many cases;
- that regarding the signatures of the Customs officers on the reverse side of the forged licences, he stated that all the signatures were done by him and also the endorsements on the reverse side of the forged licences were done by him;
- that regarding the printing of the forged Release Advice for the forged VKGUY licences utilized by M/s.Hindalco at Dahej he stated that in the initial lot the release advices were printed by Shri Niyaz Ahmed at Kanpur but in the subsequent lots the release advices were printed by him at Rajkot and also the signatures of the Superintendent of Customs and the Assistant Commissioner of Customs was also done by him using pens of different ink colours;
- that he remembered to have forged the signatures of the Dy./Asst. Commissioner of Mangalore Custom House using a green colour ink pen as Shri Kalpessh informed him that the Dy./AC, Mangalore Customs actually uses a green colour ink as appearing in the genuine licences of the same number and were dealt by Shri Kalpessh Navinchandra Daftary;
- that regarding the forged transfer letters of various exporters attached with the forged licences, he confirmed that these transfer letters were also forged by him using the forged letter heads of these exporters and after forging the signatures;
- that he recollectd that some of the used rubber stamps and their letter heads were also recovered by DRI from the premises located at 311, Somnath Commercial Complex, Near S.T. Bus Stand, Rajkot and he confirmed that these forged rubber stamps were actually used for forging the stamps of the original licence holders on their forged transfer letters;
- that the signatures were also forged by him using the pens of different ink colours;
- that regarding the rubber stamps and signatures of the bank attestations appearing on the forged transfer letters he stated that these forged rubber stamps were put using the rubber stamps prepared by Shri Vijay Gadhiya and they were affixed on the transfer letters;
- that he recollects that some rubber stamps and their negatives and butter paper prototypes were recovered by DRI from the residence of Vijay Gadhiya at Rajkot and these rubber stamps were actually used for forging the stamps for bank attestation on the transfer letters;
- that regarding the signatures of the bank managers he stated that these signatures were also forged by him and in some cases by Shri Vijay Gadhiya;

- that regarding the signature of the Asstt. Commissioner of Customs, Custom House, Mangalore appearing on the forged letters of verification of genuineness received at Dahej Customs he stated that these forged letters were actually printed by him and the signature of the Asstt. Commissioner of Customs, Custom House, Mangalore appearing on these forged letters were also forged by him;
- that in the case of the last lots of forged licences, these forged licences were actually received at the office of Shri Kalpessh Navinchandra Daftary at Mumbai and the forging of the signature of the FTDO, the forged endorsements on the reverse side of the licences, the forged signatures of the Custom officers on the reverse side of the licence were all done by him in the presence of Shri Kalpessh Navinchandra Daftary at a hotel in Mumbai;
- that the corresponding forged release advices, the transfer letters, the list of shipping bills attached with the licence and the annexure of the forged licences were printed by him at Rajkot and taken to Mumbai and after attaching them together with each forged licence;
- that he had forged all the signatures of the FTDO, the Custom officers, the bank attesting officers, sitting at the hotel;
- that Shri Kalpessh Navinchandra Daftary was always with him during this time and he assisted him in showing the original signatures from the copies of the genuine licence and other genuine documents and he forging the signatures after some practice;
- that regarding the forgery of the round seal of Mangalore Custom House, he stated that one original rubber stamp of DGFT Rajkot was forged by Shri Niyaz Ahmed and sent from Kanpur and then the Ashok emblem was cut out from the said round seal, this Ashok emblem was affixed in the middle of the round seal of Mangalore Customs fraudulently prepared by Shri Vijay Gadhiya;
- that since he was having the round seal of Mangalore Customs only, in all the forged licences he had shown the port of registration as Mangalore Sea;
- that all round seals of the DGFT office were made of brass and not rubber seal;
- that regarding forgery of DEPB licences apart from the VKUY/VKGUY licences done by him, he had stated that he had forged eight DEPB licences in the same manner and they were also utilized at Dahej by M/s.Hindalco;
- that the genuine DEPB licences were actually sold by Shri Kalpessh Navinchandra Daftary and the forged licences were printed by Niyaz Ahmed on the basis of the copies of the genuine licences provided by him;
- that he confirmed that all the work of forgery done as per the instructions and guidance of Shri Kalpessh Navinchandra Daftary as he had the original copies of all the genuine licences and having knowledge as to whom they were actually sold.

113. A further statement of Shri Piyush Viramgama, Proprietor of M/s.Krish Overseas, Rajkot was recorded on 06/09/2010 under Section 108 of the Customs Act, 1962, wherein he stated inter alia :-

- that he produced bills containing pages from 1 to 17, of Shree Maruti Courier Service Pvt. Ltd., Rajkot, for the period from 01.03.2009 to 31.08.2009 except 01.05.2009 to 31.05.2009 in respect of documents / parcels sent from his firm M/s Krish Overseas, Rajkot to various persons / firms. The said bills contained date wise consignee name to whom documents/dak were sent.
- that on being asked that apart from 85 forged licences utilized by M/s Hindalco Industries Ltd., Dahej as to how many more forged licences had been utilised at different places, he stated that he did not remember the exact number of the forged licences forged by him and Niyaz Ahmed and sold by Shri.Kalpesh Daftary. However, as per his memory the total duty credit of all the forged licences was approx.Rs.54 Crore including the 85 forged licences utilized by Hindalco at Dahej Port.
- that he produced a list which contains details of 20 licences. As per his memory, out of these 20 licences, licences mentioned at sr.no. 1 to 9 and sr. no.17 to 20 of said list were forged licences and they had been utilized. However, at present he did not remember the name of final utilizer to whom the licences were sold, he would confirm the details of sale of the 13 forged licences and where they were utilized at a later date.
- that on being asked, regarding the remaining 07 licences of the list, he requests for some time to explain the details in respect of remaining other 7 licences.

114. Shri Piyush Viramgama had in his statements stated that he was introduced to Shri Niyaz Ahmed by one Shri Hiten Parekh. Therefore, a statement of Shri Hiten Parekh was recorded on 07/09/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he his brothers are Shri Jatin Parekh and Shri Paresh Parekh. Shri Jatin Parekh was having firm in the name of M/s Trident (India) Ltd., which is situated at Upper Floor 7-8, Satkar Building, Behind Lal Bungalow, C.G. Road, Ahmedabad, and was engaged in the trading of export incentive licences. Shri Paresh Parekh was also having business of trading of export incentive licences and he was running the said business under his firm M/s Sunkalp Creation P. Ltd., Mumbai.
- that initially his brothers Shri Jatin Parekh and Shri Paresh Parekh started their business of trading and brokerage of export incentive transferrable licences with a firm M/s B.Parekh & Company at Mumbai. Thereafter, the name of firm was changed to M/s Trident (India) Ltd. Later on they both separated their business and Shri Jatinbhai shifted to Ahmedabad and continued his business in name of firm as M/s Trident (India) Ltd. Shri Pareshbhai continued with his business in Mumbai, he did not remember name of his firm but at present he was running his

business in the name of firm M/s Sunkalp Creation P. Ltd., Mumbai.

- that initially he was assisting his brothers in their business of trading and brokerage of export incentive transferable licences, when the name of firm M/s B. Parekh & Company. Thereafter, in the year 1982, he separated from them and shifted to Ahmedabad and obtained CHA licence from the Customs Department at Ahmedabad.
- that he opened a CHA firm in the name of M/s Ravi Air Cargo and started Customs clearance work at Air Cargo, Ahmedabad. However, he surrendered his CHA Licence No.1/82 and went back to Mumbai in the year-1987.
- that in Mumbai with the help of some friends he started work of assisting some CHA's in custom clearances at Air Cargo, Mumbai; Nhava Sheva Port etc. He also assisted many importers of Mumbai for making their customs clearances work. He did this work upto 2005.
- that after the year 2005 he practically retired from active life and occasionally doing work of brokerage of export incentive licences to any party in Ahmedabad or Mumbai as some of his old importers were still contacting him for the same.
- that on being asked as to how he knew Shri Piyush Viramgama and Shri Niyaz Ahmed, he stated that during the year 2005 he had met one person by the name of Shri Haseeb at Mumbai. He was a representative of some leather exporters of Mumbai and was coming to Air Cargo Complex at Mumbai for some export related work. He informed him that basically he was from Kanpur and was working in Mumbai since long time.
- that after having met two to three times, he (Shri Haseeb) informed him that one of his close friends Shri Niyaz Ahmed was based in Kanpur and was dealing in export incentive transferable licences. Subsequently he (Shri Haseeb) introduced him to Niyaz Ahmed at Mumbai when Niyaz had come there for some export related work and he remembered to had met him at Air Cargo Complex, Mumbai.
- that since he (Niyaz) was also in the licence trading business he (Niyaz) gave him his contact numbers and informed that in case any requirement of licence arises he could can contact him.
- that during the year-2005 he was in requirement of some export incentive licences to be sold to some importer at Ahmedabad. He contacted his brother Pareshbhai at Mumbai for the same and he informed him that Shri Piyush Viramgama was dealing in trading and brokerage of transferable licences at Rajkot in the name of M/s Bansi Overseas.
- that Pareshbhai also told him that he could get licences from Piyush for sale in Ahmedabad and he contacted Piyush and got some licences from him and sold it to an importer at Ahmedabad. In this way he came to know about Piyush Viramgama. During the period he had also visited the office of Bansi Overseas at Rajkot.
- that during the year 2006 Shri Niyaz informed him that he was having some licences of M/s LML Limited, Kanpur and he wanted to sell them in the market. He had informed him that since he was

not in day to day touch with the licence trading market he (Shri Niyaz) may contact Shri Piyush Viramgama of Rajkot for selling them. He introduced Piyush and Niyaz to each other. He did not have any idea whether they made the deal or not.

- that on being asked regarding the details of Niyaz Ahmed he stated that he was not aware about what he was doing, since after introducing Niyaz to Piyush he never contacted them to know as to whether they were still in touch or otherwise.
- that he was not aware of the name of the firm under which Niyaz deals in licences. He did not know his address at Kanpur.
- that he had the mobile number of Niyaz but as he had not had any contact with him for many years, he did not presently remember the same. He did not remember the mobile number of Piyush Viramgama.
- that he was aware that Kalpesh Daftary of Rajkot had joined the business of Shri.Pareshbhai at Mumbai in the year-2006, however he met him only in Jan-2010 when he had gone to Mumbai to see Pareshbhai who seriously ill at that time.

115. A statement of Shri Arvind Vithal Sonawane, Export Executive of M/s.Allanasons Ltd, Mumbai was recorded on 13/09/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he joined M/s Allanasons Limited in the year-2005 as Export Executive and since then he was working in the same position. He was reporting to Mr.Bashir Jasani, Manager, M/s Allanasons Limited and in his absence he was reporting to Mr.K.C Mehta or Mr.T.K.Gowrishankar both Directors of M/s Allanasons Limited.
- that his company M/s Allanasons Limited was engaged in the export of various agricultural processed food (frozen boneless buffalo meat, frozen fruit pulp, coffee, spices, chilled sheep/goat meat etc.).
- that exports were taking place majorly from Nhava Sheva, Mumbai, ICD Garhi Harsaru, ICD Dadri, ICD Loni,Ghaziabad, ICD Bangalore, Mangalore Sea Port, Delhi Air Cargo and Mumbai Air Cargo.
- that as a part of his job he was looking after the documentation work relating to the post export formalities like collecting the copies of Shipping Bills of his company from the respective ports of Export through the concerned Custom House Agents, collecting the bank realization certificates of the exports from the respective banks.
- that after collecting the documents these documents were forwarded to the specific officers of the company for filing applications with the DGFT offices for obtaining the export incentive licences.
- that they obtained various types of licences from DGFT like DEPB, VKGUY (previously known as VKUY), FMS(Focus Market Scheme). All these licences were freely transferable licences and transferred/sold to various importers through brokers/traders of licences.

- that their company was obtaining a specific type of VKGUY licence from DGFT, Delhi which was under actual user condition, now it could be transferred among to status holder.
- that he was aware that the transferable DEPB,VKGUY licences sold/transferred by their company were utilized by various importers during the course of clearance of their imports in lieu of payment of Customs duty, i.e instead of making the payment of custom duty in cash the same amount of duty was debited from these licences/ the Release Advices issued from the concerned licences.
- that Release Advices were issued by the Customs authorities of the Port of registration of the DEPB/VKGUY licences in favour of the Customs at the port of utilization of these licences.
- that as routine practice they were obtaining the Release Advices from the concerned port of registration in favour of the importer as per their requests.
- that on being asked regarding the role of the various licence traders/brokers of the licences being transferred/sold by them, he stated that after obtaining the licences from DGFT they informed these brokers/traders for getting suitable customers for these licences as they were not able to find customers by themselves. Then the broker/trader informed them regarding the customer and they were preparing transfer letters in the name of the importer.
- that the Transfer letters of M/s Allanasons Limited were being signed by the authorized signatory Shri. M Parekh.
- that further details regarding the sale of transferable licences by their company may be given in details by Shri.Prasad Vasant Kane of their company.
- that he was shown print out of e-mail dated 25.02.2010 shown as sent from his e-mail account avsonawane@allana.com to info@sunkkalp.com and lic@sunkkalp.com regarding RA Confirmation.
- that on further reading the print out, he found that it showed that the message was shown to had been received from Mohammed S Saleem/Saheebabad/India/Allana. The attachment of the said mail was a ms-word document in the form of letter C.No.S-01/02/2009 IMP(Pt-II) dated 25.02.2010 issued by the Superintendent of Customs(Appg-I), NCH, Mangalore from the office of the Commissioner of Customs, New Custom House, Penambur, Mangalore and was also bearing the Round Seal of Mangalore Custom House.
- that on going through the contents of the said document he found that it showed the confirmation of the following DEPB licences and their corresponding release advices as per the list below:

DEPB Licence No. & date (Licensee Allanasons Limited, Mumbai)	**R.A No.**	**Duty Credit in RA**
0310533750 dtd.13.08.09	2667/12.02.2010	Rs.1055532/-
0310514855 dtd.08.04.09	2664/12.02.2010	Rs.2294517/-
0310504347 dtd.29.01.09	2665/12.02.2010	Rs.2599495/-
0310538513 dtd.18.09.09	2666/12.02.2010	Rs.519084/-
0310514866 dtd. 08.04.09	2663/12.02.2010	Rs.3003596/-
0310505127 dtd.03.02.09	2661/12.02.2010	Rs.2653468/-

0310536516 dtd.09.09.09	2668/12.02.2010	Rs.2235500/-
0310504365 dtd. 29.01.09	2662/12.02.2010	Rs.2784840/-

- that the details of the letter shows the Confirmation of the above mentioned RA's being issued from Mangalore Custom House and the letter was addressed to the Superintendent of Customs,Custom House,Dahej.
- that on going through the details of the licence numbers, he stated that he was unable to comment as to whom these licences were actually sold to by their company.
- that he requested that he be allowed to access his e-mail from the computer and check the exact e-mail he had received and sent on that day as he was not able to recall the exact mail received on the said date.
- that after checking the incoming and outgoing mails in the Inbox folder and Sent folder for 25.02.2010 for all the mails received by him on 25.02.2010 from Mohammed S Saleem/Saheebabad/ India/Allana he produced a copy of the e-mail dated 25.02.2010 received from Mohammed S Saleem/ Saheebabad/India/Allana who was an employee of his company at Sahibabad, U.P and confirmed that this was the only e-mail received by him in his said e-mail account from Mohammed S Saleem/Saheebabad/ India/Allana and it was clear that the contents of the said mail pertained to some other issue and not to the Confirmation of RA's.
- that he checked the outbox of his mail account for 25.02.2010 and noticed that he had not forwarded any mail on that day to info@sunkkalp.com or lic@sunkkalp.com, and as a fact of confirmation to the same he produced a printout of the page of the Sent box folder of his e-mail account for 25.02.2010 which showed that no such e-mail was forwarded by him on that date.
- that on being asked to explain the reason for such mismatch in the above two e-mails, he stated that the print out of e-mail shown to him actually was never received by him and neither had he forwarded such e-mail from his e-mail account to any person.
- that as per his knowledge the e-mail account lic@sunkkalp.com actually used by Shri Vishal Vyas, an employee of M/s Sunkkalp Creations Pvt. Limited of Mumbai and the said firm was engaged in the trading/brokerage of export incentive licences and they had sold many licences through the said firm.
- that he produced a copy of the e-mail dated 12.01.2010 received in his e-mail account from Mohammed S Saleem alongwith an attachment. This mail was actually forwarded by him from his e-mail account to info@sunkkalp.com and lic@sunkkalp.com on the same day. The attachment with the said e-mail actually contained the scanned copy of the letter from Superintendent, ICD, LONI, Ghaziabad dtd.11.01.2010 for the confirmation of 8 Release Advices issued by them in favour of M/s Reliance Industries Limited for being utilized at Dahej Port.
- that he also went through the DEPB Licence numbers and the corresponding RA nos mentioned in the said letter and stated that as was evident from the details of the letter it was clear that, the contents of this letter of ICD, Loni was totally different from the

letter of Mangalore Custom House shown to him. A copy of this letter was faxed by him to DRI, Ahmedabad on 03.08.2010.

116. A statement of Shri Bashir F. Jasani, Manager (Exim) of M/s.Allanasons Ltd, Mumbai was recorded on 13/09/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he joined M/s Allanasons Limited in the year-1982 and since then he is working in the company. He was reporting to Mr.K.C Mehta or Mr.T.K.Gowrishankar both Directors of M/s Allanasons Limited.
- that his company M/s Allanasons Limited was engaged in the export of various agricultural processed food (frozen boneless buffalo meat, frozen fruit pulp, coffee, spices, chilled sheep/goat meat etc.). They had different custom house agents for different ports of export.
- that exports were taking place majorly from Nhava Sheva, Mumbai, ICD Garhi Harsaru, ICD Dadri, ICD Loni, Ghaziabad, ICD Bangalore, Mangalore Sea Port, Delhi Air Cargo and Mumbai Air Cargo.
- that as part of his job profile in the company, his section (Exim Department) was looking after the documentation work relating to the post export formalities like collecting the copies of Shipping Bills of his company from the respective ports of Export through the concerned Custom House Agents, collecting the bank realization certificates of the exports from the respective banks.
- that after collecting the documents these documents the online applications were filed with the DGFT website and then these documents were manually submitted to the DGFT offices for obtaining the export incentive licences.
- that they obtain various types of licences from DGFT like DEPB, VKGUY (previously known as VKUY), FMS(Focus Market Scheme).
- that the sale/transfer of these transferable licences to various importers through the brokers/traders of licences their delivery and receipt of the sale proceeds of these licences was also looked after by his department.
- that these licences were sold in the market at a discounted price, e.g. a licence having duty credit of Rs.100.00 may be sold in the market at any rate ranging between Rs.95 to Rs.98 (inclusive of VAT) depending upon the prevailing market price of such licences.
- that some licences were also utilized in their own imports as they were also importing Edible Oils and Cake Mix.
- that Mr. Arvind Sonawane and four other subordinates were working in his department and all correspondences related to the DGFT and Customs were being looked after by his department.
- that all these licences were freely transferable licences and transferred/sold to various importers through brokers/traders of licences.
- that he was aware that the transferable DEPB,VKGUY licences sold/transferred by their company were utilized by various importers during the course of clearance of their imports in lieu of payment of Customs duty, i.e instead of making the payment of custom duty in cash the same amount of duty was debited from

these licences/ the Release Advices issued from the concerned licences.

- that Release Advices were issued by the Customs authorities of the Port of registration of the DEPB/VKGUY licences in favour of the Customs at the port of utilization of these licences.
- that as per the deal fixed with the broker /trader of licences, they were obtaining the Release Advices from the concerned port of registration in favour of the importer as per their requests.
- that after obtaining the licences from DGFT they inform these brokers/traders for getting suitable customers for these licences as they were not able to find customers by themselves. Then the broker/trader informed them regarding the customer and they were preparing transfer letters in the name of the importer.
- that the Transfer letters of M/s Allanasons Limited were being signed by the authorized signatory Shri M Parekh.
- that further details regarding the sale of transferable licences by their company would be given in details by Shri.Prasad Vasant Kane of their company.
- that he was shown print out of e-mail dated 25.02.2010 shown as sent from his e-mail account avsonawane@allana.com to info@sunkkalp.com and lic@sunkkalp.com regarding RA Confirmation. It shows that the message was shown to had been received from Mohammed S Saleem/Saheebabad/India/Allana. The attachment of the said mail was a ms-word document in the form of letter C.No.S-01/02/2009 IMP(Pt-II) dated 25.02.2010 issued by the Superintendent of Customs(Appg-I), NCH, Mangalore from the office of the Commissioner of Customs, New Custom House, Penambur, Mangalore and was also bearing the Round Seal of Mangalore Custom House.
- that on going through the contents of the said document he noticed that it showed the confirmation of the following DEPB licences and their corresponding release advices as per the list below:

DEPB Licence No. & date (Licensee Allanasons Limited, Mumbai)	**R.A No.**	**Duty Credit in RA**
0310533750 dtd.13.08.09	2667/12.02.2010	Rs.1055532/-
0310514855 dtd.08.04.09	2664/12.02.2010	Rs.2294517/-
0310504347 dtd.29.01.09	2665/12.02.2010	Rs.2599495/-
0310538513 dtd.18.09.09	2666/12.02.2010	Rs.519084/-
0310514866 dtd. 08.04.09	2663/12.02.2010	Rs.3003596/-
0310505127 dtd.03.02.09	2661/12.02.2010	Rs.2653468/-
0310536516 dtd.09.09.09	2668/12.02.2010	Rs.2235500/-
0310504365 dtd. 29.01.09	2662/12.02.2010	Rs.2784840/-

- that the details of the letter shows the Confirmation of the above mentioned RA's being issued from Mangalore Custom House and the letter was addressed to the Superintendent of Customs, Custom House, Dahej.
- that on going through the details of the licence numbers, he was unable to comment as to whom these licences were actually sold to by their company.

- that he be allowed to access his e-mail and check the exact e-mail he had received and sent on that day as he was not able to recall the exact mail received on the said date.
- that he accessed his e-mail account from a computer installed in DRI office at Ahmedabad and checked for the incoming and outgoing mails in the Inbox folder and Sent folder for 25.02.2010 and found that he had not received any mail on that day from Mohammed S Saleem and in confirmation of the same he produced a printout of the page of the Inbox and Sent box folder of his e-mail account covering the date 25.02.2010 which showed that no such e-mail was received by him on that date.
- that on being asked to explain the reason for such mismatch in the above two e-mails, he stated that the print out of e-mail shown to him today was actually never received by him.
- that as per his knowledge the e-mail account lic@sunkkalp.com actually used by Shri Vishal Vyas, an employee of M/s Sunkkalp Creations Pvt. Limited of Mumbai and the said firm was engaged in the trading/brokerage of export incentive licences and they had sold many licences through the said firm.
- that apart from Mr.Vishal of Sunkkalp Creations Pvt.Limited he had also met one Shri Kalpesh Daftary who was one of the directors of the firm.
- that he was shown the print out of an e-mail dated 07.11.2009 shown to be sent from his e-mail account to info@sunkkalp.com with cc marked to Prasad V Kane. He found that the mail actually contained the list of 18 VKGUY licences pertaining to their group companies and the mail also bore the mention that these licences were sold to M/s Reliance Industries Limited.
- that he once again accessed his e-mail account from the computer and finds that no such e-mail had actually been forwarded from his sent folder. However, he undertook to confirm the sale details of all the 18 licences from their company and the actual port of registration and details of release advices issued against these licences and submit it by this weekend.

117. A statement of Shri Tarak Maheshbhai Joshi, Senior Executive of M/s. United Phosphorus Limited, Ankleshwar, Gujarat was recorded on 14/09/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he joined M/s United Phosphorus Limited in the year-Sept. 2008 and since then he was working there and looking after the purchases of raw materials
- that prior to this job he was working with M/s. Hindalco Industries Ltd.(Unit: Birla Copper) at Dahej [M/s HIL]. He joined the company in the year-2004 as Junior Assistant. During that period he was reporting to the Senior Manager-Shri.A.M Mehta.
- that he was assisting in the Commercial Department of the company where the work related to Central Excise and Customs being handled.

- that when he left the job of M/s HIL, he was designated as Officer(Commercial & Logistics) and Shri.Jigar Shah succeeded him in the same position.
- that during his tenure at HIL as part of his job he was assisting in the work of Custom clearance of the goods imported by M/s Hindalco Industries Limited (Unit: Birla Copper) at Dahej.The job of preparation of customs documents for exports and imports, submitting of documents before customs, customs examination, final assessment of bill of entry and shipping bills etc. was given to M/s Kshitij Marine Private Limited(KMPL) having office at O-2,Madhulika Apartments,Bhatar Road,Surat.
- that during the period of his service with M/s HIL,the Commercial department of M/s HIL headed by Shri.Bikash Kumar Pilaniwala, Senior Manager, then Shri.Naveen Kumar, Vice President and Shri.N.M.Patnaik, President. In the Commercial section, he was working with Shri.Amit Shah, Officer;Shri.Vikas Siddhiwala etc.
- that during that period M/s HIL utilizing various export incentive transferable licences e.g.DEPB,DEEC,FMS,FPS,DFIA etc. The utilization of VKUY/VKGUY licences started at a very later stage about the year-2008.
- that these licences were purchased by M/s HIL from the open market through various brokers/traders of licences.
- that all these brokers/traders of licences were required to be registered as a vendor with the company for supplying of licences.
- that some of the brokers/traders supplying licences to M/s HIL during that period were M/s Trident India Limited,Ahmedabad; M/s. Padmavati Agencies Pvt.Limited, Ahmedabad; M/s Kundalia Brothers,Kolkata and M/s Vivid Visions, Mumbai.
- that these licence traders/brokers were supplying these export incentive transferable licences to M/s HIL through a Contract made with them.This contract was signed by Shri.Naveen Kumar on behalf of M/s HIL.
- that during that period these licences were received at a discounted rate than their duty credit.
- that since the licences were available in the market at about 95% to 98% of the original value, the company saved on payment of import duty to the extent of the discount at which the licences were purchased by the company from the market.
- that after receiving the monthly planner from the head office at Mumbai with indications of the customs duty projected to be payable during the month, the company was sending enquiries to their vendors of licences. On receipt of the rates from the vendors, he and Shri Pilaniwala were negotiating with the vendors as and when required to have a uniform purchase.
- that the offers from the vendors were submitted to Shri Naveen Mathur and after his approval the same sent to Shri N.M.Patnaik, President (Finance and Commercial) of their company. On receipt of approval from Shri Patnaik, an order to supply the licences was issued to the vendors.
- that in the order issued to the vendors, the rate at which the licences were to be purchased, the period during which the licences were to be supplied by the vendors etc. were mentioned.

The conditions and rate fixation in these contracts were decided by Shri.Pilaniwala and Shri.Naveen Kumar.

- that once the offer by the vendor approved they started supplying the licences to M/s HIL.The vendors delivered the licences either directly by Courier or through some specific person and the licences were delivered at Dahej either to him or Shri Pilaniwala.
- that in case of purchase of licences from M/s Padmavati Agencies P. Ltd, Ahmedabad, the original licences and all original documents like the TRA's, transfer letters etc. were received through Maruti Courier and were delivered to the company at Dahej either by Shri Shalesh Rodge or Shri Hitesh Solanki both employees of Padmavati Agencies Pvt.Limited.
- that the complete set of original documents consisted of original transfer letter from the original licence holder, signatures duly attested by the bank, the licence forwarding letter of the DGFT, the licence, the list of shipping bills in respect of which the licence was issued, one open Release Advice (RA) issued by the Customs at the port of registration of the licence and one RA in Sealed covered all documents in original.
- that after receiving the original set of licences and other documents from the trader, they were forwarded to M/s.KMPL.
- that the licences and the documents were actually handed over to Shri David or Shri Fahad of M/s.KMPL at Dahej.
- that before using the licences, the genuineness of the RAs were required to be confirmed by the issuing Customs.
- that the letters for confirmation of genuineness of the release advices were prepared by him in the computer and then given to David or Fahad for getting signatures of the Custom Superintendent from Dahej Customs. After getting the signature the original letter again handed over to him. Thereafter he was faxing them to their vendors who had supplied these licences. He used the fax number 02641-251024 installed at their office at Dahej.
- that as per practice the letters of confirmation of genuineness were faxed to the respective vendors who had supplied these licences and release advices. In case the fax was not working properly the scanned copy of the letter mailed to the vendors using his e-mail i.d – tarak.joshi@adityabirla.com .
- that similarly the confirmation of these genuineness were also received from the vendors by him either on his e-mail or by fax and he further forwarding them either by fax or e-mail to M/s KMPL.
- that regarding the licences and release advices received by them from M/s Padmavati Agencies Pvt.Limited, Ahmedabad, he stated that in case of the licences registered at Mangalore Sea Port the fax for confirmation of genuineness was never faxed to the Mangalore Customs directly and they always faxed to M/s Padmavati for arranging the confirmation of genuineness.
- that in some cases he had also scanned these letters and mailed them to Shri.Kalpesh Darji of M/s Padmavati Agencies Pvt.Limited. Similarly the replies to the abovementioned verifications were received via fax from Padmavati or via e-mail from Kalpesh Darji. They had never received any fax directly from Mangalore Customs.

- that M/s Hindalco was filing the import documents with customs on self basis.
- that sometimes he was also contacting Shri.Parag Gathani of M/s Padmavati Agencies Pvt.Limited for any queries.
- that on being asked regarding the verification of licences done by the staff of Commercial department at M/s HIL during his tenure with the said company he stated that, as instructed to him after receiving the export incentive transferable licences from the vendors they were physically verified alongwith the corresponding Release Advices and the duty figure appearing on the licences were also verified with those appearing on the release advice as also the port of registration mentioned on the licences verified with the port from which the RA issued.
- that he was never instructed by his seniors to verify the details of the licences from the DGFT website.

118. In the meantime, M/s.Hindalco Industries Ltd, Dahej vide their letter dtd.16/9/2010 was addressed to the Assistant Commissioner of Customs, Surat and copy endorsed to DRI, Ahmedabad informed that they had made voluntary payment of duty amounting to Rs.46,71,34,796/- along with interest amounting to Rs.9,92,63,238/- vide TR-6 Challan No.250/2010-11 dtd.15/09/2010, under Section 28 (2B) of the Customs Act, 1962. The duty payment was made in respect of the 85 licences/TRAs found forged under investigation by DRI. M/s.Hindalco Industries Ltd, Dahej were informed vide letter dtd.20/09/2010 that the provisions of Section 28 (2B) of the Customs Act, 1962 were not applicable in the present case as the same was hit by Explanation (1) to sub-section (2B) of Section 28 of the Customs Act, 1962. They were also informed that the case was still under investigation and therefore, the payment of duty under the said Section 28 (2B) of the Customs Act, 1962 was premature. The Commissioner of Customs, Ahmedabad was also informed similarly vide letter dtd.20/09/2010.

119. A further statement of Shri Vijay Amrutlal Gadhiya, Proprietor of M/s.Shivangi Enterprises and employed as Supervisor in M/s.Krish Overseas was recorded on 17/9/2010 under Section 108 of the Customs Act, 1962, wherein he stated inter alia :-

- that the facts stated by him in his statements dtd.12/5/2010 and 13/5/2010 were true;
- that M/s. Shivangi Enterprise, Shop No.11, Atika Industrial Area, Rajkot started by him in the year 2005-2006 for doing job work of machinery parts on the lathe machine;
- that his firm's current account with HDFC Bank, Rajkot and the account number was 1012020002162**;**
- that M/s.Shivangi Enterprises in which he was doing lathe machining work was not doing well and he was running in loss;
- that he had decided to join Shri Piyush Surendra Viramgama's firm M/s.Krish overseas, Rajkot;
- that at that time Shri Piyush Surendra Viramgama informed him that he should open a current account with HDFC Bank, Rajkot;

- that as per the instructions of Shri Piyush Surendra Viramgama he had opened a new account with HDFC bank, Kalawad Road Branch, Rajkot and the account number 03729000002927;
- that as he was an existing customer of HDFC Bank he did not require any introducer for opening this account;
- that he had permitted Shri Piyush Surendra Viramgama to use this account No.03729000002927 for his business purpose;
- that Shri Piyush Surendra Viramgama was in need of this account for doing the business of forged licences;
- that as per his knowledge, all the forged licences were sold to either M/s.Hindalco or M/s.Reliance and these two companies did not make cash payments and for the payments received from them, Shri Piyush Surendra Viramgama needed a bank account, therefore, he got him to open this bank account;
- that he came to know about all the details because as admitted/confirmed by him in his earlier statements; he had helped Shri Piyush Surendra Viramgama in forging the documents viz. Licences, release advises, bank attested documents and therefore, he was having full knowledge about these forged licences;
- that since he was also looking after the work of operating bank account, he knew as to how much and from where the money received and how much and to where the money was transferred from this bank account.
- that he had opened the current account in July, 2008 in the name of M/s.Shivangi Enterprise as per the directions of Shri Piyush Surendra Viramgama and the a/c number 03729000002927;
- that the entire amount deposited in this account pertained to the proceeds received towards sale of forged licences; whenever sale of forged licences took place, the payment towards the same was received in the account of M/s.Shivangi Enterprise at HDFC bank through RTGS/Cheque/Transfer etc.;
- that he was shown the account statement of M/s.Shivangi Enterprise, Rajkot HDFC bank a/c no.03792000002927;
- that the account statement was pertaining to the period from July, 2008 to 31/03/2010 and contained the details of all the credit-debit transactions which had taken place during that period;
- that the credit transactions of the said statement contained the date wise details of amounts credited and from these transactions it was apparent that a total of Rs.35,25,11,530/- was shown on the credit side of the said bank account statement;
- that the said amount credited in his bank account was not his money but all this money was got deposited by Shri Piyush Surendra Viramgama in his account;
- that he was not concerned with this amount and had not benefitted from this amount;
- that as stated by him earlier, this account was opened as per the directions of Shri Piyush Viramagama for the benefit of Shri Piyush Surendra Viramgama and use in the business of Shri Piyush Surendra Viramgama;

- that he had handed over the cheque book of this bank account to Shri Piyush Surendra Viramgama after signing all the leaves of the cheque book on both from and reverse side;
- that Shri Piyush Surendra Viramgama was operating this account and Shri Piyush Surendra Viramgama got all the amount credited and that such amount was relating to proceeds received towards sale of forged licences;
- that the debit side of the said account statement contained the date wise details of the amounts debited and from these transactions it was apparent that a total of Rs.35,35,11,530/- was shown on the debit side of the said bank account statement;
- that all these debit transactions were done by Shri Piyush Surendra Viramgama from his account;
- that whatever amount was debited from his bank account in the name of (i) Indiyana Marketing (ii) Indiyana Shoes (iii) Niyaz Ahmed (iv) Nizam Ahmed (v) Qamar Jahan (vi) Ashok Kumar Gupta (vii) Unique Fabricator (viii) A.K.Gupta & Sons (ix) A.K.Gupta (x) Indiyana Enterprise (xi) Indiyana had all been transferred to one Shri Niyaz Ahmed at Kanpur;
- that he knew all these details because he had helped Shri Piyush Surendra Viramgama in preparing the forged licences.

120. A statement of Shri Rewat Mal Kothari, Director of M/s.Baazigar Trading Pvt Ltd, Kolkata was recorded on 22/09/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that in the month of May 2006 he joined M/s Bazigar Trading Pvt. Ltd., Kolkata as a Director. Shri S.N. Nahata and Shri Tiwari were other directors of the company during that period. In the year 2008, Shri Nahata and Shri Tiwari resigned from the company and three other directors namely, Shri Vinay Maloo, Shri Hanuman Mal Tater and Shri Jagdish Mal Lodha joined the company. At present there were four directors in M/s Bazigar Trading Pvt. Ltd., Kolkata including himself.
- that M/s Bazigar Trading Pvt. Ltd., was a Non Banking Finance Company having RBI registration no. B-05.06226. He produced a copy of certificate of registration issued by RBI.
- that the office of the company was situated at 19, R.N. Mukherjee Road, Main Building, 2nd Floor, Kolkata, having telephone no. 033-32434331 and fax no. 033-22312510. In the month of April' 2009, the registered office of the company was shifted to Mumbai as the other three directors of the company were all based in Mumbai.
- that Shri Vinay Maloo,residing at 221-Maker Tower-B, Cuffe Parade, Mumbai-400005; Shri Hanuman Mal Tater (having mobile no.9323890490 and 9867761804) whose residence address was not known to him; and Shri Jagdish Mal Lodha who was residing at Om Ratan, 8th Floor,70/71-Pochkanawala Road, Worli, Mumbai. The registered office of the company was presently situated at 72, Maker Chambers VI, 7th Floor, 220, Nariman Point, Mumbai-400021, having telephone no. 022-22815665, 22815666 and 22815667.

- that the PAN of M/s Bazigar Trading Pvt. Ltd., was AABCB3052B and it was having current account no.00080340029201 with HDFC BANK, Stephen House Branch, 4, B.B.D. Bagh (East), Kolkata. He produced a copy of bank statement of said account of the company for the month of March' 2010 alongwith copy of ledger of company and bank book (in respect of HDFC account) for the period 01.04.2009 to 31.03.2010 maintained by them. He also produced the copies of ledger contained ledger accounts in respect of M/s Vani Exports, M/s Shivangi Enterprises and Shri Kalpesh Bhai.
- that M/s Bazigar Trading Pvt. Ltd., had financed a loan of Rs.4,29,61,862/- (with interest) @ 18% interest per annum to Shri Kalpesh Bhai. This loan amount had been given to him through M/s Vani Exports. The date wise amount of loan had been reflected in the ledger of M/s Vani Exports, which was given to Shri Kalpesh Bhai. The repayment of the loan amount had been made by Shri Kalpesh Bhai through M/s Shivangi Enterprises. The date wise repayment of loan amount had been reflected in the ledger of M/s Shivangi Enterprises.
- that as on 31.03.2010, an amount of Rs. 3,05,25,534 had been paid by Shri Kalpesh Bhai as repayment of loan amount against the total loan of Rs.4,29,61,862/-, therefore the balance amount of Rs. 1,24,36,328/- has been reflected in the ledger account of Shri Kalpesh Bhai. All the above transaction had been made through cheques.
- that he did not know Shri Kalpesh Bhai, M/s Vani Exports or M/s Shivangi Enterprises. All the above said transactions had been done on the directions of Shri Hanuman Mal Tater one of the director of their company.
- that he was only looking after the accounts and taxation work of the company and had been given the designation of director of M/s Bazigar Trading Pvt. Ltd., actually the entire work of the company was being done as per the directions of our director Shri.Hanuman Mal Tater who was based in Mumbai.
- that on being further asked regarding M/s Shivangi Enterprise and the amounts received from M/s Shivangi Enterprise through their current account no.03792000002927 he stated that as stated by him above he was not aware regarding the details of the firm.
- that all the receipts from M/s Shivangi Enterprise was received during the month of March-2010 and no other transaction was made with the said firm either before or after that period.
- that he once again stated that further details of the said transaction may be had from their director Shri.Hanuman Mal Tater.
- that all the transactions detailed by him above are made from their current account No.00080340029201 with HDFC Bank.
- that he was shown the copy of account opening form of the said bank account and confirmed that the documents pertain to their bank account and the photograph appearing on the said form was his and the other photograph was of Shri.Vinay Maloo.

- that they availed the facility of anywhere banking on this account and transactions from Mumbai were also done in this account number.
- that he was shown the account statement of the abovementioned bank account and he identified the transactions of receipt/credit in the said account evidencing the receipt of money from the account of M/s Shivangi Enterprise and the transactions of debit showing the payments made to M/s Vani Exports,Kolkata.

121. A statement of Shri Gangadhar V. Shetty, Assistant Manager of M/s.Ganesh Shipping Agency, Mangalore was recorded on 18/10/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that in the year 1982 he joined M/s Sri Ganesh Shipping Agency, Sri Ram Building, 4-152/14, Kottara Chowki, Derebail, Mangalore as a clerk and looking after work relating to Customs documentation. Thereafter, from time to time he got promotion and at present he was working as Assistant Manager. M/s Sri Ganesh Shipping Agency was a partnership firm and having three following partners.

  (i). Smt. B.Madavi Shetty
  (ii). Shri B. Nagaraja Shetty
  (iii). Shri B.Nithyananda Shetty

- that he had passed examination conducted under Regulation 8 of the Customs House Agent Licensing Regulation and was holding Card –F bearing No.10/2007.
- that the following three persons were working under him.

  (i). Shri Kiran Kumar Shetty – Card-H holder, looking after liaisoning working relating to import.
  (ii). Shri Prashant Chowta - Card-H holder, looking after liaisoning working relating to export and issuance of TRA.
  (iii). Shri Shivanand Shetty - looking after Misc paper work.

- that M/s Sri Ganesh Shipping Agency was a Custom House Agent and having CHA Licence No.2/80 issued by Custom House, Mangalore. They were having three branch offices, at Mangalore, Bangalore and Karwar. Mangalore Branch office telephone numbers are 0824-2459229/219, Fax No.0824-2458003.
- that they were doing Custom clearing work for mainly Timber importers and Cashew, Coffee and fish products exporters. Their main timber importing clients are M/s Jawahar Saw Mill, Mumbai, M/s Associate Lumbers, Mumbai, M/s Sharp Enterprises, Latur etc. Their major Cashew, Coffee and fish product exporter clients were M/s Mangalore Cashew, M/s Bola Raghvendra Kamat, M/s Bola Sunder Kamat, M/s Gayatri Exports, M/s Raj Fish & Oil Company, M/s Mukka Sea Foods etc.
- that they do the custom clearing work for their clients at Mangalore Port.

- that some of their exporter clients also gave them export incentives licences such as DEPB and VKGUY duly issued by respective DGFT authority, for registration at Mangalore port.
- that they used to get issued RA from Mangalore Customs in respect of licences registered at Mangalore port
- that the export incentive scheme licences were procured by their clients and handed over to their firm. They get these licences verified and registered by the Superintendent of Customs, at Mangalore. Thereafter these licences were sold by the exporters and the purchasing importer or the agent through whom the importer had purchased the licence sometimes approach them for issue of Release Advice, confirmation of genuineness of Release Advise etc.
- that on receipt of the request for verification of the genuineness of the Release Advise, the Superintendent of Customs addressed the concerned port authorities in favour whom the RAs were issued. Once, the RA's were verified, the credit of duty mentioned therein in the licences/RAs were availed/debited by their clients at their port of import.
- that regarding their connection with M/s Sunkalp Creation Pvt. Ltd., Mumbai, he stated that in the year 2007-08, one person who introduced himself as Shri Kalpesh Daftary, contacted him on their office telephone and informed him that he was Director of M/s Sunkalp Creation Pvt. Ltd., Mumbai.
- that he (Shri Daftary) also informed him that his firm was engaged in trading of export incentive licences and asked him to get TRA issued for him in respect of licences which were sold through his firm and registered at Mangalore Port. He offered him Rs.2000/- per TRA. He accepted his (Shri Daftary) offer and started working for him.
- that he did not remember whether Shri Kalpesh Daftary had while talking to him for the first time give the reference of any other firm or person.
- that Shri Kalpesh Daftary used to send him original licence and transfer letter through Blue Dart courier or First Flight Courier to him at M/s Sri Ganesh Shipping Agency's office address under M/s Sunkalp Creation P. Ltd.'s letter head.
- that on the basis of these documents, he with the help of Shri Prashant Chowta get the TRA issued and sent the original TRA in sealed cover, original licence and transfer letter to Shri Kalpesh Daftary at his Mumbai office address.
- that for the assistance provide by Shri Prashant Chowta, he paid him Rs.500/- per RA.
- that after issue of the RA, he issued invoice showing "Malini G. Shetty" as consulting firm for recovery of liaisoning charges from M/s Sunkalp Creation Pvt. Ltd., and Shri Kalpesh used to transfer the said amount to either his bank account or his wife's bank savings account no. 101001010004845. He produced the bank statement for the period from 03/04/2007 to 31/07/2010 in respect of his Canara Bank account and for the period from 21/08/2008 to 31/07/2010 in respect of State Bank of Mysore account.

- that he would submit copy of the bank statement of his wife's account within 7 days.
- that one of his (Shri Daftary) employee-Ms.Alean Khambhatta used to talk him on phone in this regard.
- that he had never personally met or seen Shri Kalpesh Daftary of M/s Sunkalp Creation. Pvt. Ltd.
- that he also used to talk to another person in M/s.Sunkalp Creation Pvt Ltd with regard to the issue of RA, however, he presently do not recall his name.
- that the said person's mobile no. is 09930259613.
- that he did not know Shri Piyush Viramgama or M/s Krish Overseas, Rajkot.

122. A statement of Shri Vinod Poovappa D.V, Superintendent, Central Excise & Customs, Mangalore was recorded on 21/10/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he was working as a Superintendent of Central Excise & Customs in Customs Commissionerate, Mangalore and was presently posted at International Airport, Mangalore from June-2010 onwards. During June-2009 to June-2010 he was posted with Custom House,Penambur, Mangalore.
- that in the Custom House he was posted in the Appraising section and working as Appraiser.As an Appraiser he was handling the appraising work pertaining to imports under Chapter 01 to Chapter 50, additionally he was also looking after the work of Licence Section.
- that in the licence section he was looking after the duties of registration of licences, issuance of release advice, additionally he was holding the charge of EDI section also.
- that in Mangalore Custom House regular Appraisers were not posted and the work of appraising was being looked after by the Superintendents on regular basis.
- that during the period of his posting at Mangalore Custom House the major importers were M/s Mangalore Refineries Private Limited; M/s Udipi Power Corporation Limited, M/s Ruchi Soya Industries Limited, M/s Rajashree Packagers Limited, M/s Mangalore Chemicals and Fertilisers Limited etc.
- that in Mangalore Custom House the import bills of entries and export shipping bills were filed and assessed in the EDI system and the EDI system was operational in the Custom House since the year-2000.
- that in the Licence Section the transferable duty free licences under different export promotion schemes like DEPB, FMS, FPS, VKGUY, DFRC, Advance authorization etc were produced by the importers for registration with the Appraising Section. These licences were issued by the DGFT offices. These licences were then registered in the EDI system and the EDI system generated a registration number to each licence.
- that in the EDI system any Licence could be registered only once and the EDI system would never accept any duplicate licence of the same number. Once the licences were received at the

Appraising Section for registration the same were processed on file and after approval of the concerned Asstt./Deputy Commissioner the licence was forwarded to the EDI section for registration. After successful registration of the licence a signature was appended on the reverse side of the licence alongwith the stamp which marks the successful registration of the licence. After this the licence was returned back by the EDI section to the Appraising Section. Thereafter as per the requirement, if the licence was required to be utilized at Mangalore Port the same was debited in the bill of entry and the details of the bill of entry was endorsed on the reverse side of the licence along with the balance amount, if any. In case the licence was intended to be utilized at some other port in India, a release advice for the licence value was issued in favour of the port of utilization.

- that the Release Advice was signed by the Superintendent/ Appraiser of the appraising section and countersigned by the Asstt./Deputy Commissioner of the appraising section.
- that during his period in the appraising section of Mangalore Custom House he was reporting to his Deputy Commissioner Shri.E.Sukumaran. Shri.Sukumaran was presently posted to Central Excise, Calicut.
- that regarding the release advices issued by Mangalore Custom House in favour of Dahej Custom House during the period 2009-10, he stated that he did not remember exactly but he might have signed some release advices in respect of some licences for being utilized at Dahej, Magdalla or any other Custom House in Gujarat.
- that he produced a list all the Release Advices issued by Mangalore Custom House for being utilized in the ports of Gujarat like Dahej(INDAH1); Magdalla (INMDA1); ICD Dashrath (INBRC6); Okha (INOKH1) and Navlakhi(INNAV1).
- that out of these only the release advices issued between 25.06.2009 to 07.06.2010 were signed by him and the remaining might have been signed by the predecessor officers officiating as Superintendent, Appraising Section,Custom House, Mangalore, namely Shri.S Shiva Prasad and Shri.G Nataraj.
- that on being asked the name and contact details of the Custom House agents approaching Custom House Mangalore for obtaining Release Advices in favour of Gujarat Ports, he stated that one of the Custom House agents were M/s Ganesh Shipping Agency, Mangalore for which Shri.Gangadhar Shetty the contact person having mobile number-09845085089.
- that one Shri.Prashant also approached them on behalf of M/s Ganesh Shipping in absence of Shri.Gangadhar,
- that the other CHA firm M/s Cargo Links, Mangalore for which Mr.Sandeep the contact person and his mobile number was 09880704606.
- that he was shown the signatures and rubber stamps appearing on the reverse side of 13 VKGUY licences, said to be of Vinod Poovappa D.V. i.e himself :

Sr. No.	Licence No.	Licence Date	Release Advice No.	Release Advice Date	Amount of duty Credit (in Rs.)	IEC of the RA holder
1	310526777	02.07.09	2476	10.11.2009	4470235	0388066415
2	310523564	11.06.09	2468	10.11.2009	4003373	0388066415
3	310528212	10.07.09	2475	10.11.2009	6590018	0388066415
4	310529284	16.07.09	2464	10.11.2009	5626358	0388066415
5	310528689	13.07.09	2465	10.11.2009	4776335	0388066415
6	310523562	11.06.09	2474	10.11.2009	5753032	0388066415
7	310531532	10.11.09	2467	10.11.2009	6005453	0388066415
8	310521936	29.05.09	2459	10.11.2009	4426478	0388066415
9	310522743	05.06.09	2462	10.11.2009	7778161	0388066415
10	310512901	24.03.09	2460	10.11.2009	4572385	0388066415
11	310518177	04.05.09	2461	10.11.2009	5247824	0388066415
12	310522738	05.06.09	2463	10.11.2009	5173856	0388066415
13	310523566	11.06.09	2473	10.11.2009	5130380	0388066415

- that he had read and understood the documents and minutely examined the signatures and rubber stamps appearing on the reverse side of the licence and on the release advice and confirmed that all the signatures appearing on the above licences and release advices and the rubber stamps were forged.
- that the same was also evident from the impression of the rubber stamp which was different from the genuine rubber stamp being used by him during that period.
- that he also confirmed that the format and printing of the forged release advices were different from the genuine release advices being generated by the EDI system at Mangalore Customs.
- that these release advices were shown to be issued for utilization at Dahej Port which was wrong as no such licences were registered at Mangalore Port and neither any such release advices were signed by him.
- that he was shown 08 DEPB licences and their corresponding release advices as detailed below:

Sr. No	Licence No.	Licence Date	Release Advice No.	Release Advice Date	Amount of duty Credit (in Rs.)	IEC of the RA holder
1	310504365	29.01.09	2662	12.02.2010	2784840	0388147237
2	310514866	08.04.09	2663	12.02.2010	3003596	0388147237
3	310514855	08.04.09	2664	12.02.2010	2294517	0388147237
4	310504347	29.01.09	2665	12.02.2010	2599495	0388147237
5	310505127	03.02.09	2661	12.02.2010	2653468	0388147237
6	310538513	18.09.09	2666	12.02.2010	519084	0388147237
7	310536516	09.09.09	2668	12.02.2010	2235500	0388147237
8	310533750	13.08.09	2667	12.02.2010	1055532	0388147237

- that he had read and understood the documents and minutely examined the signatures and rubber stamps appearing on the reverse side of the licence and on the release advice and confirmed that all the signatures appearing on the above licences and release advices and the rubber stamps were forged.

- that the same was also evident from the impression of the rubber stamp which was different from the genuine rubber stamp being used by him during that period.
- that he also confirmed that the format and printing of the forged release advices were different from the genuine release advices being generated by the EDI system at Mangalore Customs.
- that he also confirmed that the signature appearing on the top left on the reverse side of the licence were also not his as actually the same were done by the Superintendent/Appraiser of the Export Section after verification of the Shipping Bills mentioned in the list of shipping bills accompanied with the Licence.
- that since he was never posted in the said section in Custom House Mangalore he cannot sign there. The said signatures were also forged.
- that these release advices were shown to be issued to M/s Hindalco Industries Limited, Dahej for utilization at Dahej Port which was wrong as although licences of the same number were registered at Mangalore Port no such release advices were issued by Mangalore Customs or signed by him for being utilized at Dahej Port.
- that this fact was also evident from the list of release advices issued by Mangalore Custom House, submitted by him.
- that it can be seen from the list of release advises that the release advises in respect of the above mentioned license were issued to M/s.Viraj Impex Pvt Ltd, Mumbai for use at INBOM1 which was the port code of New Custom House, Mumbai.
- that he was shown another set of 08 DEPB licences and their corresponding release advices having details as below:

Sr. No.	**Licence No.**	**Licence Date**	**Release Advice No.**	**Release Advice Date**	**Amount of duty Credit (in Rs.)**	**IEC of the RA holder**
1	310504365	29.01.09	2511	19.11.2009	2784840	0388215691
2	310514866	08.04.09	2508	19.11.2009	3003596	0388215691
3	310514855	08.04.09	2509	19.11.2009	2294517	0388215691
4	310504347	29.01.09	2505	19.11.2009	2599495	0388215691
5	310505127	03.02.09	2510	19.11.2009	2653468	0388215691
6	310538513	18.09.09	2512	19.11.2009	519084	0388215691
7	310536516	09.09.09	2506	19.11.2009	2235500	0388215691
8	310533750	13.08.09	2507	19.11.2009	1055532	0388215691

- that he had read and understood the documents and minutely examined the signatures and rubber stamps appearing on the reverse side of the licence and on the release advice and confirmed that the signatures and rubber stamps were genuine and these DEPB licences were actually registered with Mangalore Custom House EDI system and the release advice were actually issued by Mangalore Custom House through EDI system and the signatures appearing on the release advices were his as also the rubber stamps appearing on them.
- that he also confirmed that the signature appearing on the top left corner on the reverse side of the DEPB licences appeared to be that

of Shri.G Natraj, Superintendent of Central Excise and Customs, Mangalore who was one of his predecessors.

- that as per his knowledge Shri.Natraj was presently posted with Central Excise, Bangalore.
- that he also confirmed that in some cases he had also signed as Superintendent/Appraiser of Export in the absence of the regular officer and these signatures were genuine.
- that the signatures of the Dy.Commissioner of Customs, Mangalore appearing on the release advices appeared to have been done by the then Dy.Commissioner of Customs at Mangalore Custom House, Shri.E.Sukumaran.
- that he also confirmed that Shri.Sukumaran was actually using a pen with green ink for his signatures. Shri.E Sukumaran was presently posted with Central Excise, Calicut.
- that the other officers posted as Superintendent/Appraiser in the Export registration section are Shri.Srinivas Igal during the period 2008-2009 and he was presently posted with Central Excise, Mangalore.
- that his predecessor Shri S.Shiva Prasad was presently posted at Central Excise, Headquarters, Mangalore.
- that he was shown a copy of letter dated.25.02.2010 where file number was not clear. The contents of the letter indicated that the same was purportedly issued under his signature and was regarding confirmation of RA in favour of M/s Hindalco Industries Limited in respect of the 08 DEPB licences shown to him today and detailed in the above paras and was addressed to the Superintendent of Customs, Dahej, Gujarat.
- that he minutely examined the document and though it is a photocopy he was able to make out that the signature appended to his name in the said letter was forged.
- that he also confirmed from the records of Custom House Mangalore that no such letter had been issued and the said document was a forged one.
- that as shown to him in the earlier paras he also confirmd that these 08 licences and their release advices were actually issued in favour of M/s Viraj Impex Pvt.Limited , Mumbai and not to M/s Hindalco Industries Limited, Dahej.

123. A statement of Shri Prashant Kumar Chowta, Customs Clerk of M/s.Ganesh Shipping Agency, Mangalore was recorded on 22/10/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was working as Customs Clerk with M/s Sri Ganesh Shipping Agency since the year-1999. M/s Sri Ganesh Shipping Agency was having their office at Darebail, Kottara Chowk, Mangalore, Karnataka. M/s Sri Ganesh Shipping Agency was a partnership firm having PAN-AAFFS2694K and was engaged in the business of custom clearing with a valid Custom House Agent licence.
- that his office telephone numbers were 2459219 and 2458003. He was using Mobile number 09880297189.

- that the partners of M/s Sri Ganesh Shipping Agency were Mrs.Madhavi, Mr.Nagaraj Shetty and Mr.Nityanand Shetty. Mr.Gangadhar Shetty was the Manager of their company who was looking after the entire work of the firm and he also the authorized signatory of the firm.
- that he was holding H-Pass (issued under regulation 19(6)(iii) by the Custom department, Mangalore and produced a copy of the same.
- that he was having bank account with Canara Bank–A/c No.7573 & 27773 and HDFC bank A/c No. 12691000001828.
- that M/s Sri Ganesh Shipping Agency was handling the work of custom clearance at Mangalore Port, Karwar Port and Bangalore ICD. They were having an office at Bangalore also.
- that in the office of M/s Sri Ganesh Shipping Agency he was doing the work of online filing of Shipping Bills, registration of DEPB/VKGUY licences, issuance of Release Advice from Customs, following up the work of export through Mangalore Port and obtaining copies of Shipping Bills from the EDI system at Mangalore Custom House.
- that the major exporters are M/s Bola Surendra Kamath, M/s Bola Raghavendra Kamath, M/s Mukka Sea Foods etc. M/s Bola Surendra Kamath, M/s Bola Raghavendra Kamath were exporting Cashew Kernels and Coffee and M/s Mukka Sea Foods were exporting Fishmeal and Fish oil.
- that the exporters get DEPB/VKGUY licences depending upon the scheme under which they had exported their goods. After issue of the licences by the concerned DGFT office the same had to be registered with the Customs. The exporters approach them to get the licence registered with the Customs department.
- that the exporters give them the original licence, licence forwarding letter of the DGFT, list of shipping bills in respect of which the licence issued, photocopies of the concerned shipping bills and original bank realization certificate (BRC). Thereafter, he takes these documents to the Custom Export Section in the case of VKGUY licences and Import Section in the case of DEPB licences.
- that the Customs Inspector at the concerned section verifies the licence and the shipping bills, and also checks the shipping bills online and if the duty credit of the licence and the shipping bills tally, he forwards the file to the Superintendent who forwards the file to the Assistant/Deputy Commissioner for approval. After approval the Superintendent signs on the reverse side of the licence and also in the register where the licence particulars were entered. The licence was then retained in the Custom House, however, he takes a photocopy of the reverse side of the licence and returns it to the exporter.
- that thereafter if the licence was sold by the exporter, he sends them a transfer letter which contains the details of the licence and the party to whom the licence had been sold and transferred by them. In cases where the buyer was an agent, the agent sends another transfer letter in favour of the final user of the licence. The agents also send them a request letter from the end user to the

Customs requesting issue of Telegraphic Release Advise (TRA) in favour of the port where they intend to use the licence.

- that he takes the transfer letter and the TRA request letter to the Customs and retrieves the original licence from the records and takes it to the Import Section who issues the TRA.
- that in the Import section the Inspector verifies the licence, transfer letter and TRA request letter and sends the file for approval to the Assistant/Deputy Commissioner through the Superintendent/appraiser.
- that after approval the Inspector enters the details of the licence, the IEC of the exporter, the amount of licence and file number in the EDI system and registers the licence. Thereafter a registration checklist is generated and a printout is taken and placed in the file and sent to the Superintendent. The Superintendent enters the registration number in the EDI system and sends the file back to the Inspector.
- that the Inspector then generates a TRA checklist from the EDI system and takes a printout in three copies – one for their records, one for the importer and one for the Customs at the port of use. The file along with the TRA checklist is then sent to the Superintendent who enters the TRA number in the EDI system and takes a printout of the TRA and signs it. The TRA and the file is sent to the Assistant/Deputy Commissioner for signature on the TRA.
- that two copies of the TRA is then handed over to him along with the original licence. One copy of the TRA is given in a sealed cover which is to be handed over to the Customs at the port of use.
- that he then forwards all the above documents to the agent who had entrusted the work of getting the TRA issued.
- that the documents were then sent to the concerned parties by Courier and in a few cases by flight.
- that he had got TRAs issued for M/s. Sabari Quality Foods, Bangalore, M/s.Maharaja Exim, Bangalore, M/s.Sunkkalp Creations Pvt Ltd, Mumbai and M/s.Dhanlakshmi Traders, Bangalore.
- that he had got about 60 TRAs issued for M/s.Sabari Quality Foods and the TRAs were mainly issued in favour of Chennai, Dahej, Mumbai, JNPT etc.
- that the TRAs of M/s.Maharaja Exim were mainly for Bangalore ICD and Chennai and he had got issued about 100 TRAs for them.
- that he had got about 50 TRAs issued for M/s.Dhanlakshmi Traders and these were mainly for Bangalore ICD, Chennai and Mumbai.
- that regarding M/s.Sunkkalp Creations Pvt Ltd, he stated that he had got issued about 25 TRAs issued for them and these were mainly for Dahej, Magdalla, JNPT and Mumbai.
- that the original licence holders in the case of M/s.Sunkkalp Creations Pvt Ltd were M/s.Allanasons Ltd, Mumbai, M/s.Bola Surendra Kamath, Mangalore, M/s.Ned Commodities, Bangalore, M/s.General Commodities, Bangalore, M/s.Olam Exports, Cochin.
- that in M/s.Sunkkalp Creations Pvt Ltd, Mumbai he used to contact Shri Kalpesh Daftary.

- that on being asked how he came into contact with Shri Kalpesh Daftary, he stated that about 2 years back i.e. sometime in 2008 Shri Kalpesh Daftary called him on his mobile phone and said that he had some work of issuance of TRAs and that his name had been suggested by one of the exporters from whom he was purchasing the licences.
- that actually the work of getting TRAs was agreed upon between Shri Gangadhar Shetty and Shri Kalpesh Daftary.
- that subsequently, Shri Kalpesh Daftary called him again and informed him that he was having a contract with the Coffee and Cashew exporters and to ensure that the exporters sold the licences to him only he wanted him to inform him details of the licences registered from time to time to which he agreed.
- that no remuneration was discussed for the above work, however, Shri Kalpesh Daftary told him that he would be giving him some money as gift.
- that for getting TRAs issued, he did not receive any amount directly from Shri Kalpesh Daftary, however, Shri Gangadhar used to pay him Rs.1000/- per TRA.
- that in addition to the above work, Shri Kalpesh Daftary also used to call him from time to time and ask for details of the TRAs being issued from Mangalore Custom House. Shri Kalpesh Daftary wanted details of the TRA no,, the port to whom the TRA issued etc. Accordingly, he had provided Shri Kalpesh Daftary details of the TRAs got issued by them for their various clients.
- that he used to telephonically inform Shri Kalpesh Daftary the details of the TRA number and date, port to whom the TRA issued etc.
- that Shri Kalpesh Daftary had during 2009 paid by Rs.25000 by bank fund transfer to his account in Canara bank and told him that it a gift from him. As he was in need of money at that time, he had kept the amount and used it. However, after about 3 months i.e. during December, 2009, he returned the amount of Rs.25000 back to M/s.Sunkkalp Creations Pvt Ltd by Cheque.
- that for getting the TRAs issued Shri Kalpesh Daftary used to send the transfer letter to their office by Courier and he used to fax the request letters to their office.
- that the transfer letters were received by Shri Gangadhar Shetty in their office and he used to give them to him. He used to take the transfer letters and the request letters to the Custom house for getting TRAs issued.
- that after issue of the TRAs, he sent them to the office of M/s.Sunkkalp Creations Pvt Ltd in Mumbai by DHL Courier and in a few cases where Shri Kalpesh Daftary wanted them urgently he had sent them by either Kingfisher Airlines or Jet Airways as per his instructions.
- that regarding the confirmation of genuineness of the TRAs, he stated that Shri Kalpesh Daftary used to call him and ask him to pursue the matter with the Customs officers for speeding up the matter.
- that the request for confirmation were received by Mangalore Customs directly from the concerned Custom Houses.

- that Mangalore Customs sent their replies by fax to the concerned custom houses and no copy was given to them.
- that Shri Kalpesh Daftary occasionally used to call him to inform that a confirmation request letter had wrongly been sent to Mangalore Custom House instead of Cochin and asked him to check with Mangalore Customs whether any such letter received.
- that he used to check with the concerned section of Mangalore Custom and except one time, he came to know from the Custom officers that no such letters had been received by them.
- that once during 2009, he did not remember the exact month, he had on the request of Shri Kalpesh Daftary enquired from Mangalore Customs and came to know from them about receipt of a letter from Dahej Customs requesting confirmation of TRA and that no such licence registered in Mangalore Customs.
- that he had then called Shri Kalpesh Daftary and informed him. He was not aware what subsequently happened about the said matter.
- that he had never met Shri Kalpesh Daftary in Mangalore and he was not aware whether he(Shri Daftary) had come to Mangalore or not. However, he had been to Mumbai during November, 2009 to attend the marriage of one of his relatives. At that time he had contacted Shri Kalpesh Daftary and he asked him to come to his office at Juhu, Mumbai. He had accordingly visited his office and met him and during the meeting he told that they are also selling bikes and asked him to take a dealership for the bikes in Mangalore, he had not agreed to the same.
- that on being asked whether he had met any employee of Shri Kalpesh Daftary in Mangalore, he stated that once during August-September,2008 Shri Kalpesh Daftary told him over telephone that one of his employee was coming to Mangalore in connection with TRA of some licence.
- that thereafter one person called me on him his mobile phone and asked him their office address and then came to their office.
- that the said person introduced himself as Kamlesh and told him that he was the partner of Shri Kalpesh Daftary and ooking after the business in Gujarat.
- that on being asked regarding the phone number from which Kamlesh called him, he stated that he did not remember the same and had not kept any record of it.
- that apart from him Kamlesh had met Shri Gangadhar in their office. That Kamlesh left Mangalore the same day.
- that Kamlesh had come to get the TRA of some licence which he told him was urgently required. Thereafter, he took Kamlesh and went to the Custom House, however, he left Kamlesh in the canteen as only pass holders were allowed inside the Custom House office.
- that he then checked the status of the TRA and found that the same would not be issued that day. He then informed Kamlesh and he (Kamlesh) left Mangalore the same day.
- that he was shown the printout of a photograph and he identified the person in the photograph as Kamlesh whom he had met in Mangalore.

- that he was informed that the said person was not Kamlesh but Piyush Viramgama to which he stated that he was not aware of the same as the said person had introduced himself as Kamlesh.
- that he had last spoken to Shri Kalpesh Daftary sometime during 19th or 20th April, 2010. However, Shri Kalpesh Daftary did not attend the phone and his employee Shri Vishal Vyas answered the phone. Shri Vishal Vyas told him that Shri Kalpesh Daftary was out of town.
- that on being asked the purpose of the call, he states that about the 19th or 20th April, 2010 he was in Mangalore Custom House and came to know that DRI officers from Ahmedabad had come and were seeking details of the licences and TRAs.
- that since he had got TRAs issued for M/s.Sunkkalp Creations Pvt Ltd for use at Dahej which was in Gujarat he had called Shri Kalpesh Daftary to enquire whether there was any problem.
- that Shri Vishal Vyas informed him that there was no problem with their licences and that the problem was in respect of the licences of M/s.Sabari Quality Foods.
- that he has not spoken to Shri Kalpesh Daftary subsequently. He had spoken to Shri Vishal Vyas on 18/10/2010 after receiving summons. He informed him (Shri Vishal Vyas) about receipt of the summons and he told him that there was nothing to worry about and go to DRI office.

124. A further statement of Shri Naveen Kumar Mathur, Vice-President (Commercial & Logistics), M/s.Hindalco Industries Ltd, Dahej was recorded on 19/11/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was shown his previous statement dated.25.05.2010 and he confirmed the facts stated therein
- that he was shown letter dated 03.06.2010 addressed to the Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad and signed by him. He confirmed that the facts stated in the letter stood withdrawn and this statement was overriding the facts stated in his letter dated 03.06.2010.
- that based upon the DRI investigation he was aware that M/s Hindalco Industries Limited (Unit: Birla Copper) had utilized about 85 forged VKGUY licences which had been purchased from a broker/trader of licences M/s Padmavati Agencies Pvt.Limited, Ahmedabad. Being a law abiding corporate, their company had deposited an amount of Rs.56.64 Crores against the differential duty arising out of those forged licences including applicable interest.
- that he was shown 08(eight) original DEPB licences bearing numbers as detailed below alongwith their Release advice and transfer letters:

Sr. No.	**DEPB Licence No & Date**	**Amount of duty credit (in Rs.)**	**Port of Registration (as mentioned on the licence)**	**Transferred from**
1	0310504365; dtd.29.01.09	2784840.00	Mangalore	M/s Allanasons Limited

2	0310504347; dtd.29.01.09	2599495.00	Mangalore	M/s Allanasons Limited
3	0310505127; 03.02.09	2653468.00	Mangalore	M/s Allanasons Limited
4	0310514855; 08.04.09	2294517.00	Mangalore	M/s Allanasons Limited
5	0310514866; 08.04.09	3003596.00	Mangalore	M/s Allanasons Limited
6	0310533750; 13.08.09	1055532.00	Mangalore	M/s Allanasons Limited
7	0310536516; 09.09.09	2235500.00	Mangalore	M/s Allanasons Limited
8	0310538513; 18.09.09	519084.00	Mangalore	M/s Allanasons Limited
	Total :	**17146032.00**		

- that he had read and understood the details mentioned in all the above DEPB licences. He also confirmed that in the first set of licences shown to him the name of the transferor was mentioned as M/s Allanasons Limited and they also bore the remark "Signature and rubber stamp was forged" made by the Superintendent of Customs, Mangalore on the reverse side of each licence.
- that he was also shown a letter of confirmation of genuineness dated 25.02.2010 purportedly issued by Shri.Vinod Poovappa, Superintendent of Customs,Mangalore and addressed to Superintendent of Customs, Custom House, Dahej confirming that these licences were genuine.
- that he noted that Shri.Vinod Poovappa had made a remark on 21.10.2010 on the body of the said letter as 'Signature is Forged'.These remarks made by the Custom Officer confirmed that these licences, their Release Advices and other transfer letters were forged as also the letter of confirmation of genuineness dated.25.02.2010 which was also forged.
- that he was shown a set of 08 (eight) DEPB licences and their corresponding Release Advices as detailed below:

Sr. No.	**DEPB Licence No & Date**	**Amount of duty credit (in Rs.)**	**Port of Registration (as mentioned on the licence)**	**Release Advice issued in favour of.**
1	0310504365; dtd.29.01.09	2784840.00	Mangalore	M/s Viraj Impex Pvt.Limted
2	0310504347; dtd.29.01.09	2599495.00	Mangalore	M/s Viraj Impex Pvt.Limted
3	0310505127; 03.02.09	2653468.00	Mangalore	M/s Viraj Impex Pvt.Limted
4	0310514855; 08.04.09	2294517.00	Mangalore	M/s Viraj Impex Pvt.Limted
5	0310514866; 08.04.09	3003596.00	Mangalore	M/s Viraj Impex Pvt.Limted
6	0310533750; 13.08.09	1055532.00	Mangalore	M/s Viraj Impex Pvt.Limted
7	0310536516; 09.09.09	2235500.00	Mangalore	M/s Viraj Impex Pvt.Limted
8	0310538513; 18.09.09	519084.00	Mangalore	M/s Viraj Impex Pvt.Limted
	Total :	**17146032.00**		

- that he had read and understood the contents of these licences and the corresponding Release Advices. On the release advices he also noted the remark 'seen and identified as genuine' made by Shri.Vinod Poovappa, the Custom Officer signing the Release Advices. On comparison of these DEPB licences and Release Advices with the first set of DEPB licences and release advices shown to him he confirmed that the first set of 08 DEPB licences shown to him were forged and the second set of DEPB licences utilized by M/s VIraj Impex Pvt.Limited were genuine.
- that he was shown a letter bearing C.No.S-01/05/2010 IMP; dated 03.08.2010 issued by Shri.Ajazuddin, Additional Commissioner, New Custom House, Mangalore.
- that he had read the contents of the said letter and the sheet enclosed with it and he understood that Custom house Mangalore had confirmed that the above mentioned 08 genuine DEPB licences were registered with Custom House, Mangalore and the Release Advices for these licences were issued to M/s VIraj Impex Pvt.Limited, Mumbai and all the Release Advices were issued for utilization at New Custom House, Mumbai (INBOM1) and not for Custom House, Dahej.
- that from this letter he confirmed that the 08 DEPB licences utilized by M/s Hindalco Industries Limited(Unit: Birla Copper) for clearances of import consignments at Dahej Port are forged.
- that he was shown a list of 85 VKGUY licences utilized by M/s Hindalco Industries Limited (Unit: Birla Copper) for clearance of their imports at Dahej. The entire list of the licences containing the details of Licence No., Date, Amount of duty credit, name of issuing DGFT,Port of registration as mentioned in forged licences; actual port of registration, name of the original licence holder, actual port of utilisation in separate vertical columns is enclosed as per annexure-A to this statement.
- that on going through the entire list he confirmed that all these licences were actually utilized by their company M/s Hindalco Industries Limited(Unit: Birla Copper) at Dahej Port and they had already deposited the amount of total duty amount in respect of all the 85 VKGUY licences was being found as forged based on investigations carried out by DRI.
- that he also confirmed from the sheet that the total duty involvement in all these 85 VKGUY licences is Rs.46.71 Crores.
- that he was shown two sets of VKGUY licences and their corresponding release advices and transfer letters. Out of these two sets of licences, one set were genuine and one set were forged based on the documents shown to him and all the forged licences had been sold to M/s Hindalco Industries Limited (Unit: Birla Copper) and utilized by them at Dahej port.
- that the genuine licences were utilized by M/s Reliance Industries Limited, M/s Maithan Alloys, M/s Universal Chemicals & Industries (P) Limited, M/s Ispat Industries Limited etc. and utilized at ports like Nhava Sheva, Chennai, Kolkata etc. He made endorsements on the forged licences as well as the genuine licences with his dated signature on all the licences.

- that he confirmed that some copies of genuine as well as forged licences were not shown to him, however from letters C.No.S-12/8/2009-Apprg.I PII dated 20.04.2010 and C.No.S-01/05/2010 IMP/4571 dated 19.07.2010 both issued by Shri.Ajazuddin, Additional Commissioner of Customs, Custom House, Mangalore it was clear that all the 85 licences appearing in the list enclosed as Annexure-A showing port of registration as Mangalore Sea and utilized at Dahej Port were forged licences.
- that he confirmed that all these licences were purchased by them from M/s Padmavati Agnecies Pvt.Limited, Ahmedabad however, in cases of the sale of some of the licences M/s Padmavati Agencies Pvt.Limited might have raised bills from any other licence trading/brokerage firm and they may had made payments according to the bills but actually they were purchased from M/s Padmavati Agencies Pvt.Limited who were registered with their company as Licence vendors/traders.
- that M/s Padmavati Agencies Pvt.Limited were not registered as Licence trader/broker with any authority as they had not produced any such proof of registration to them.
- that M/s Padmavati Agencies Pvt.Limited were supplying licences to them since 2002-03.
- that in case of any queries they were contacting either Shri. Kalpesh Darji or Shri.Dharmesh Gathani of M/s Padmavati Agencies Pvt.Limited.
- that as per their terms and conditions with the licence traders/dealers they were releasing the payments on receipt of original licences and Release Advices from the licence traders/dealers.
- that regarding the procedure of verification adopted by them in course of procurement of duty free licences like VKGUY, VKUY, DEPB etc, he stated that, they were procuring these licences from registered vendors who were supplying these licences to them since long time therefore, they did not perform any verification at their level at the time of procuring these licences. However, in the contract documents made by them with the licence traders/buyers they had mentioned the clause that 'in case of any licence being found forged or bogus the amount of duty credit is required to be recovered by their company from them'.

125. A statement of Shri (now the late) S. Shiva Prasad, Superintendent, Central Excise & Customs, Mangalore was recorded on 22/12/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was working as a Superintendent of Central Excise & Customs and was posted at Vigilance Section, Headquarters, Central Excise Commissionerate, Mangalore. That on 17/10/2007 he was transferred and posted to the Appraising Section of Custom House, Panambur, Mangalore and working as Appraiser. He worked in the Appraising Section till 24/10/2008.
- that as an Appraiser he was handling the appraising work pertaining to imports under Chapter 01 to Chapter 49, additionally he was also looking after the work of Licence Section i.e. Group

VII. In the licence section he was looking after the duties of issuance of release advice and confirmation of the same.

- that in Mangalore Custom House regular Appraisers were not posted and the work of appraising was being looked after by the Superintendents on regular basis.
- that in Mangalore Custom House the import bills of entries and export shipping bills were filed in the EDI system which was in operation since the year-2000.
- that in the Licence Section the transferable duty free licences under different export promotion schemes like DEPB, FMS, FPS, VKGUY, DFRC, Advance authorization etc were produced by the importers for registration with the Export Section. These licences were issued by the DGFT offices. These licences were then registered in the EDI system and the EDI system generated a registration number to each licence.
- that in the EDI system any Licence could be registered only once and the EDI system would not accept any licence of the same number twice. After registration of the licence with the Export Section, if the licence was to be utilized at Mangalore Port the same was debited in the bill of entry and the details of the bill of entry was endorsed on the reverse side of the licence along with the balance amount, if any.
- that in case the licence was intended to be utilized at some other port in India, either the licence holder or the transferee i.e. the buyer of the transferrable licence submitted a request to the Licensing Section for issue of a Release Advice (RA) in favour of the port where the licence was to be utilized. Accordingly, a release advice for the licence value or for the value requested by the licence holder/transferee was issued in favour of the port of utilization. The Release Advice was signed by the Superintendent/ Appraiser of the appraising section and countersigned by the Asstt./Deputy Commissioner of the appraising section.
- that during his period in the appraising section of Mangalore Custom House he was reporting to Deputy Commissioner Shri.E. Sukumaran. Shri Sukumaran now posted to Central Excise, Calicut.
- that regarding the release advices issued by Mangalore Custom House in favour of Dahej Custom House during his tenure in the Licence Section i.e. from October, 2007 to October, 2008, he stated that he did not remember exactly but he had signed release advices in respect of some licences for being utilized at ports located in Gujarat, he presently did not remember the names of the ports. Dahej, Magdalla or any other Custom House in Gujarat.
- that name and details of the Custom House agents approaching Custom House Mangalore for obtaining Release Advices in favour of ports located in Gujarat, M/s Ganesh Shipping Agency, Mangalore and Shri Gangadhar Shetty was the contact person, his mobile number was 09845085089. In addition to Shri Gangadhar, one Shri Prashant was also approaching them on behalf of M/s Ganesh Shipping. The other CHA firm was M/s Cargo Links, Mangalore and Shri Sandeep the contact person, his mobile number is 09880704606.

- that he was shown the signatures stamps appearing on the reverse side of 85 VKGUY licences purportedly registered with Custom House, Mangalore during the period from May, 2008 to March, 2009 and purportedly signed by him:

Sr. No.	**Licence No.**	**Licence Date**	**Release Advice No.**	**Release Advice Date**	**Amount of duty Credit (in Rs.)**	**IEC of the RA holder**
1	5310007004	24.11.08	1908	17.02.2009	6268780	0388147237
2	5310006898	11.11.08	1907	17.02.2009	4294243	0388147237
3	5310006894	11.11.08	1906	17.02.2009	5099797	0388147237
4	5310006892	11.11.08	1905	17.02.2009	3882931	0388147237
5	5310006873	11.11.08	1903	17.02.2009	4771165	0388147237
6	5310006856	11.11.08	1904	17.02.2009	6273237	0388147237
7	5310006911	11.11.08	1909	17.02.2009	5480267	0388147237
8	5310006973	24.11.08	1910	17.02.2009	5903697	0388147237
9	5310006829	05.11.08	1913	17.02.2009	6191243	0388147237
10	5310006880	11.11.08	1865	09.01.2009	5681619	0388147237
11	5310006867	11.11.08	1859	09.01.2009	8150713	0388147237
12	5310006882	11.11.08	1863	09.01.2009	6740954	0388147237
13	5310006874	11.11.08	1858	09.01.2009	8300303	0388147237
14	5310006825	05.11.08	1862	09.01.2009	6979498	0388147237
15	5310006896	11.11.08	1860	09.01.2009	7696239	0388147237
16	5310006893	11.11.08	1864	09.01.2009	6313154	0388147237
17	5310006883	11.11.08	1861	09.01.2009	7667008	0388147237
18	5310006876	11.11.08	1819	03.12.2008	4399075	0388147237
19	5310006884	11.11.08	1818	03.12.2008	4596457	0388147237
20	5310006869	11.11.08	1816	03.12.2008	5005100	0388147237
21	0710060173	26.09.08	1813	03.12.2008	3726014	0388147237
22	0710060736	27.10.08	1809	02.12.2008	4086584	0388147237
23	0710060737	27.10.08	1812	03.12.2008	4900580	0388147237
24	5310006885	11.11.08	1815	03.12.2008	5023350	0388147237
25	5310006878	11.11.08	1814	03.12.2008	5073945	0388147237
26	5310006906	11.11.08	1820	03.12.2008	4379309	0388147237
27	5310006910	11.11.08	1817	03.12.2008	4883716	0388147237
28	5310007402	20.01.09	2001	06.04.2009	4671811	0388147237
29	5310007406	20.01.09	2000	06.04.2009	4183166	0388147237
30	5310007379	19.01.09	1999	06.04.2009	4081003	0388147237
31	5310007357	16.01.09	2010	06.04.2009	6847571	0388147237
32	0710063439	05.03.09	2011	06.04.2009	5161612	0388147237
33	5310007364	19.01.09	2009	06.04.2009	3710439	0388147237
34	5310007393	20.01.09	2007	06.04.2009	3597633	0388147237
35	5310007276	09.01.09	2003	06.04.2009	3870740	0388147237
36	5310007389	20.01.09	2006	06.04.2009	3039898	0388147237
37	5310007407	20.01.09	2004	06.04.2009	3197361	0388147237
38	5310006694	20.10.08	1786	20.11.2008	8254315	0388147237
39	5310006671	20.10.08	1784	20.11.2008	7485061	0388147237
40	5310006661	20.10.08	1783	20.11.2008	7335173	0388147237
41	0710057639	29.05.08	1709	29.09.2008	5371995	0388147237
42	5310006811	05.11.08	1911	17.02.2009	5459158	0388147237
43	0710063262	25.02.09	1970	25.03.2009	7098890	0388147237
44	5310007384	20.01.09	1969	25.03.2009	4602610	0388147237
45	5310007372	19.01.09	1968	25.03.2009	5656451	0388147237
46	5310007361	19.01.09	1967	25.03.2009	5538470	0388147237
47	5310007387	20.01.09	1966	25.03.2009	4834592	0388147237
48	5310007391	20.01.09	1965	25.03.2009	4742336	0388147237
49	5310007345	16.01.09	1953	25.03.2009	5838663	0388147237
50	5310007349	16.01.09	1954	25.03.2009	5666976	0388147237
51	5310007337	16.01.09	1955	25.03.2009	5461698	0388147237
52	5310007265	05.01.09	1956	25.03.2009	5690966	0388147237
53	5310006391	11.09.08	1957	25.03.2009	6210199	0388147237

54	5310007404	20.01.09	1958	25.03.2009	7557528	0388147237
55	5310007194	22.12.08	1959	25.03.2009	4927875	0388147237
56	5310007301	09.01.09	1960	25.03.2009	4993935	0388147237
57	5310007180	19.12.08	1961	25.03.2009	4963862	0388147237
58	5310007309	09.01.09	1962	25.03.2009	6701782	0388147237
59	5310006861	11.11.08	1912	17.02.2009	5063013	0388147237
60	5310007401	20.01.09	2008	06.04.2009	3682816	0388147237
61	5310007120	17.12.08	2005	06.04.2009	3789985	0388147237
62	5310007305	09.01.09	2002	06.04.2009	4375823	0388147237
63	0710057647	30.05.08	1665	28.08.2008	7123471	0388147237
64	0710057375	13.05.08	1693	18.09.2008	5097978	0388147237
65	0710057530	22.05.08	1708	29.09.2008	4174117	0388147237
66	0710058005	19.06.08	1710	29.09.2008	5628582	0388147237
67	0710058085	24.06.08	1711	29.09.2008	4022044	0388147237
68	0710057493	21.05.08	1721	03.10.2008	4680410	0388147237
69	0710057638	29.05.08	1720	03.10.2008	4059297	0388147237
70	0710059325	27.08.08	1725	16.10.2008	1584203	0388147237
71	0710059272	21.08.08	1726	16.10.2008	4387551	0388147237
72	0710058726	25.07.08	1733	30.10.2008	6918371	0388147237
73	0710058485	14.07.08	1734	30.10.2008	5752191	0388147237
74	5310006554	07.10.08	1736	30.10.2008	2542897	0388147237
75	5310006586	10.10.08	1737	30.10.2008	2052749	0388147237
76	5310006718	21.10.08	1738	30.10.2008	9331817	0388147237
77	0410099033	06.10.08	1740	31.10.2008	9394430	0388147237
78	0410099030	06.10.08	1741	31.10.2008	9273703	0388147237
79	0410099029	06.10.08	1742	31.10.2008	6982738	0388147237
80	5310006702	20.10.08	1743	31.10.2008	9126709	0388147237
81	5310006672	20.10.08	1785	20.11.2008	5004478	0388147237
82	5310006698	20.10.08	1787	20.11.2008	6666201	0388147237
83	5310006706	20.10.08	1788	20.11.2008	3993732	0388147237
84	5310006726	21.10.08	1789	20.11.2008	6944244	0388147237
85	5310007353	16.01.09	1964	25.03.2009	7008360	0388147237

- that he had read and understood the documents and carefully examined the signatures appearing on the reverse side of the licence and on the release advices corresponding to these licences and confirmed that all the signatures appearing on the above licences and release advices were not his and the signatures had not been made by him.
- that the signatures were forged and the person who had forged the signature had imitated his signature.
- that on examining the rubber stamp of the Superintendent affixed on the Licences and the Release Advices he noticed that in many of the rubber stamps “Mangalore” had been spelt as “Manglore” which was incorrect and never spelt as such in Mangalore.
- that licences registered after October, 2008 and the release advices issued after the October, 2008 also bore forged signatures imitating his signature.
- that he was transferred out of the Appraising Section and handed over charge on 24/10/2008 and posted to International Airport, Mangalore. Subsequently, he was posted in Disposal Section of Custom House, Mangalore.
- that the format and printing of the forged release advices were different from the genuine release advices generated by the EDI system at Mangalore Customs. The above mentioned release advices were shown to be issued for utilization at Dahej Port which was wrong as except for the licences at Sr. No. 21, 22, 23, 32, 43,

72 and 73 of the above table the other 78 licences were not registered with Custom House, Mangalore Port and neither were any release advices in respect of these 78 licences issued or signed by him.

- that as regards the 07 licences at Sr. No. 21, 22, 23, 32, 43, 72 and 73 of the above table, he stated that though the same were registered with Custom House, Mangalore the Release Advices in respect of these licences were issued for use at Magdalla Port, Nhava Sheva Port and Chennai Port but these release advices were not issued or signed by him.
- that regarding the procedure relating to confirmation of genuineness of the release advices, he stated that in respect of the release advices issued by Mangalore Custom House for use at other Custom Houses/Port, the Custom authorities at the port of use of the release advice generally sends a letter to them by fax requesting confirmation of the release advice. The request letter contained details of the licence number, release advice number, amount and name of the importer in whose name the release advice was issued.
- that on receipt of such request letter the Inspector in the Licensing Section checks the concerned licence file from which the release advice issued. If the details and particulars tally with the office copy of the release advice a letter confirming the genuineness was prepared and submitted to the Assistant/Deputy Commissioner incharge of the Licensing Section, through the Superintendent/ Appraiser for signature. After the letter was signed, the same was faxed to the Custom House which had requested the confirmation of genuineness of the release advice.
- that the confirmation letter was not sent by post. The confirmation letter or a copy was not given to either, the licence holder, the importer or his agent. It was only sent by fax from the Custom House to the requesting Custom House.
- that on being asked whether during his tenure in the Licensing Section any letter received from Dahej Customs requesting confirmation of genuineness in respect of the 85 release advices mentioned in the above table, he stated that as far as he could recollect one letter received from Dahej Customs some time during 2008 and as the licence number, release advice number etc. mentioned in the said letter did not tally with the office copy of the release advice of the same number, a letter issued to Dahej Customs informing the discrepancies.
- that he was shown photocopy of a letter No. CH/DJ/32/2008-09 dtd.10/9/2008 of Custom House, Dahej and photocopy of another letter No. S-01/02/2008-imp dtd.12/09/2009 and he confirmed that the letter dtd. 10/9/2008 was received at Custom House, Mangalore and as the particulars contained in release advice number 1665 dtd.28/8/2008 did not tally with the particulars of release advice number 1665 dtd.28/8/2008 contained in their office files, a letter dtd.12/9/2008 issued to Dahej Customs under his signature.

126. A statement of Shri E. Sukumaran, Deputy Commissioner of Central Excise & Customs, Calicut was recorded on 22/12/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was working as a Deputy Commissioner of Central Excise & Customs in Customs Commissionerate, Calicut Central Excise and posted at Central Excise Division Calicut and holding additional charge of Central Excise Division Kannur from August-2010 onwards.
- that in the year July-2007 he was posted to Mangalore Customs Commissionerate and further posted with Custom House, Penambur, Mangalore where he worked upto July-2010. In the Custom House he was handling the charges of Appraising Section, EDI, Prosecution, Legal, Adjudication and occasionally he was also posted with International Airport, Mangalore.
- that in the Appraising section he was supervising the duties of registration of licences, issuance of release advice and issuance of confirmation letters.
- that he was counter signing on the Release Advice and the letters for verification of genuineness of the release advice were also signed by him.
- that being a supervisory head he was unable to recollect each and every documents signed by him unless they were shown to him.
- that during the period 2008-2010 he was being assisted by many Superintendents of central excise and customs who were directly looking after the work of licence section and they were namely Shri Vinod Poovappa, Shri.S. Shiva Prasad, Shri.G. Nataraj and Shri Srinivas Igal.
- that in Mangalore Custom House regular Appraisers were not posted and the work of appraising being looked after by the Superintendents on regular basis.
- that in Mangalore Custom House the import bills of entries and export shipping bills were filed and assessed in the EDI system and the EDI system was operational in the Custom House since the year-2000.
- that in the Licence Section at Custom House, Mangalore transferable duty free licences under different export promotion schemes like DEPB, FMS, FPS, VKGUY, DFRC, Advance authorization etc were produced by the importers for registration with the Appraising Section. These licences were issued by the DGFT offices. These licences were then registered in the EDI system and the EDI system generated a registration number to each licence.
- that in the EDI system any Licence could be registered only once and the EDI system would never accept any duplicate licence of the same number. Once the licences were received at the Appraising Section for registration the same were processed on file and after approval of the concerned Asstt./Deputy Commissioner the licence was forwarded to the EDI section for registration. After successful registration of the licence a signature was appended on the reverse side of the licence alongwith the stamp which indicated the successful registration of the licence. After this the licence was returned back by the EDI section to the Appraising Section.

- that thereafter as per the requirement, if the licence was required to be utilized at Mangalore Port the same was debited in the bill of entry and the details of the bill of entry was endorsed on the reverse side of the licence along with the balance amount, if any. In case the licence was intended to be utilized at some other port in India, a release advice for the licence value was issued in favour of the port of utilization. The Release Advice was signed by the Superintendent/Appraiser of the appraising section and countersigned by the Asstt./Deputy Commissioner of the appraising section i.e himself.
- that during his tenure at Custom House, Mangalore he was in-charge of the Appraising Section and the Appraising Section was the section from where the Release Advices were issued in respect of the duty free transferable licences which were registered at Mangalore Custom House.
- that as a Asst./Dy. Commissioner of the appraising section he was also having the password of the EDI system and once the licences were registered in the system the same were visible in the menu of the Asst./Dy. Commissioner. However as a Asst./Dy.Commissioner he looked into the file only after the same was perused before him alongwith the print out of the Release Advice for counter signature.
- that as and when he was transferred and relieved from Custom House, Mangalore he had surrendered his password and the same was killed by the system incharge.
- that he does not exactly remember the release advices issued by Mangalore Custom House in favour of Dahej Custom House during the period 2008-09 and 2009-10, but he might have signed release advices in respect of licences for being utilized at Dahej, Magdalla or any other Custom House in Gujarat.
- that he was shown the signatures and signature rubber stamp appearing on the release advice of 07 VKGUY licences, bearing the stamp as 'Asst.Commissioner of Customs (Docks), Penambur, Mangalore also in Hindi Language and confirmed them as his genuine signatures.
- that he confirmed that out of the seven release advices, five were issued for utilization by M/s Reliance Industries Limited at Magdalla Port, one for utilization by M/s Ispat Industries at Nhava Sheva port and one for utilization by M/s MIRC Electronics at Chennai Sea Port.
- that he also made endorsements on the body of one copy of each release advice confirming that these release advices were genuine.
- that he also confirmed that all the signatures done by him were in green ink as he using a pen with green ink during the period. The details of the release advices seen and confirmed by him today as genuine were detailed as under :

Sr. No.	**Release Advice No.**	**Release Advice Date**	**Amount of duty Credit (in Rs.)**	**IEC of the RA holder**	**Licence No.**	**Licence Date**
1	1638	13.08.2008	6918371	0288032519	0710058726	25.07.2008
2	1620	30.07.2008	5752191	0388063394	0710058485	14.07.2008
3	1789	20.11.2008	4086584	0388066415	0710060736	27.10.2008
4	1790	20.11.2008	4900580	0388066415	0710060737	27.10.2008

5	1788	20.11.2008	3726014	0388066415	0710060173	26.09.2008
6	1975	24.03.2009	7098890	0388066415	0710063262	25.02.2009
7	1996	31.03.2009	5161612	0388066415	0710063439	05.03.2009

- that he was shown the signature stamps and signature appearing on the release advices issued against 85 VKGUY licences purportedly registered with Custom House, Mangalore during the period from May, 2008 to March, 2009 and the release advices purportedly counter signed by him :

Sr. No.	**Release Advice No.**	**Release Advice Date**	**Amount of duty Credit (in Rs.)**	**IEC of the RA holder**	**Licence No.**	**Licence Date**
1	1908	17.02.2009	6268780	0388147237	5310007004	24.11.08
2	1907	17.02.2009	4294243	0388147237	5310006898	11.11.08
3	1906	17.02.2009	5099797	0388147237	5310006894	11.11.08
4	1905	17.02.2009	3882931	0388147237	5310006892	11.11.08
5	1903	17.02.2009	4771165	0388147237	5310006873	11.11.08
6	1904	17.02.2009	6273237	0388147237	5310006856	11.11.08
7	1909	17.02.2009	5480267	0388147237	5310006911	11.11.08
8	1910	17.02.2009	5903697	0388147237	5310006973	24.11.08
9	1913	17.02.2009	6191243	0388147237	5310006829	05.11.08
10	1865	09.01.2009	5681619	0388147237	5310006880	11.11.08
11	1859	09.01.2009	8150713	0388147237	5310006867	11.11.08
12	1863	09.01.2009	6740954	0388147237	5310006882	11.11.08
13	1858	09.01.2009	8300303	0388147237	5310006874	11.11.08
14	1862	09.01.2009	6979498	0388147237	5310006825	05.11.08
15	1860	09.01.2009	7696239	0388147237	5310006896	11.11.08
16	1864	09.01.2009	6313154	0388147237	5310006893	11.11.08
17	1861	09.01.2009	7667008	0388147237	5310006883	11.11.08
18	1819	03.12.2008	4399075	0388147237	5310006876	11.11.08
19	1818	03.12.2008	4596457	0388147237	5310006884	11.11.08
20	1816	03.12.2008	5005100	0388147237	5310006869	11.11.08
21	1813	03.12.2008	3726014	0388147237	0710060173	26.09.08
22	1809	02.12.2008	4086584	0388147237	0710060736	27.10.08
23	1812	03.12.2008	4900580	0388147237	0710060737	27.10.08
24	1815	03.12.2008	5023350	0388147237	5310006885	11.11.08
25	1814	03.12.2008	5073945	0388147237	5310006878	11.11.08
26	1820	03.12.2008	4379309	0388147237	5310006906	11.11.08
27	1817	03.12.2008	4883716	0388147237	5310006910	11.11.08
28	2001	06.04.2009	4671811	0388147237	5310007402	20.01.09
29	2000	06.04.2009	4183166	0388147237	5310007406	20.01.09
30	1999	06.04.2009	4081003	0388147237	5310007379	19.01.09
31	2010	06.04.2009	6847571	0388147237	5310007357	16.01.09
32	2011	06.04.2009	5161612	0388147237	0710063439	05.03.09
33	2009	06.04.2009	3710439	0388147237	5310007364	19.01.09
34	2007	06.04.2009	3597633	0388147237	5310007393	20.01.09
35	2003	06.04.2009	3870740	0388147237	5310007276	09.01.09
36	2006	06.04.2009	3039898	0388147237	5310007389	20.01.09
37	2004	06.04.2009	3197361	0388147237	5310007407	20.01.09
38	1786	20.11.2008	8254315	0388147237	5310006694	20.10.08
39	1784	20.11.2008	7485061	0388147237	5310006671	20.10.08
40	1783	20.11.2008	7335173	0388147237	5310006661	20.10.08
41	1709	29.09.2008	5371995	0388147237	0710057639	29.05.08
42	1911	17.02.2009	5459158	0388147237	5310006811	05.11.08
43	1970	25.03.2009	7098890	0388147237	0710063262	25.02.09
44	1969	25.03.2009	4602610	0388147237	5310007384	20.01.09
45	1968	25.03.2009	5656451	0388147237	5310007372	19.01.09
46	1967	25.03.2009	5538470	0388147237	5310007361	19.01.09
47	1966	25.03.2009	4834592	0388147237	5310007387	20.01.09

48	1965	25.03.2009	4742336	0388147237	5310007391	20.01.09
49	1953	25.03.2009	5838663	0388147237	5310007345	16.01.09
50	1954	25.03.2009	5666976	0388147237	5310007349	16.01.09
51	1955	25.03.2009	5461698	0388147237	5310007337	16.01.09
52	1956	25.03.2009	5690966	0388147237	5310007265	05.01.09
53	1957	25.03.2009	6210199	0388147237	5310006391	11.09.08
54	1958	25.03.2009	7557528	0388147237	5310007404	20.01.09
55	1959	25.03.2009	4927875	0388147237	5310007194	22.12.08
56	1960	25.03.2009	4993935	0388147237	5310007301	09.01.09
57	1961	25.03.2009	4963862	0388147237	5310007180	19.12.08
58	1962	25.03.2009	6701782	0388147237	5310007309	09.01.09
59	1912	17.02.2009	5063013	0388147237	5310006861	11.11.08
60	2008	06.04.2009	3682816	0388147237	5310007401	20.01.09
61	2005	06.04.2009	3789985	0388147237	5310007120	17.12.08
62	2002	06.04.2009	4375823	0388147237	5310007305	09.01.09
63	1665	28.08.2008	7123471	0388147237	0710057647	30.05.08
64	1693	18.09.2008	5097978	0388147237	0710057375	13.05.08
65	1708	29.09.2008	4174117	0388147237	0710057530	22.05.08
66	1710	29.09.2008	5628582	0388147237	0710058005	19.06.08
67	1711	29.09.2008	4022044	0388147237	0710058085	24.06.08
68	1721	03.10.2008	4680410	0388147237	0710057493	21.05.08
69	1720	03.10.2008	4059297	0388147237	0710057638	29.05.08
70	1725	16.10.2008	1584203	0388147237	0710059325	27.08.08
71	1726	16.10.2008	4387551	0388147237	0710059272	21.08.08
72	1733	30.10.2008	6918371	0388147237	0710058726	25.07.08
73	1734	30.10.2008	5752191	0388147237	0710058485	14.07.08
74	1736	30.10.2008	2542897	0388147237	5310006554	07.10.08
75	1737	30.10.2008	2052749	0388147237	5310006586	10.10.08
76	1738	30.10.2008	9331817	0388147237	5310006718	21.10.08
77	1740	31.10.2008	9394430	0388147237	0410099033	06.10.08
78	1741	31.10.2008	9273703	0388147237	0410099030	06.10.08
79	1742	31.10.2008	6982738	0388147237	0410099029	06.10.08
80	1743	31.10.2008	9126709	0388147237	5310006702	20.10.08
81	1785	20.11.2008	5004478	0388147237	5310006672	20.10.08
82	1787	20.11.2008	6666201	0388147237	5310006698	20.10.08
83	1788	20.11.2008	3993732	0388147237	5310006706	20.10.08
84	1789	20.11.2008	6944244	0388147237	5310006726	21.10.08
85	1964	25.03.2009	7008360	0388147237	5310007353	16.01.09

- that as Asst./Dy. Commissioner he was signing only on the release advice alongside the signature of the Superintendent/Appraiser of Customs.
- that he minutely verified the signatures appearing on the said Release Advices above the stamp bearing impression as “Asstt.Commissioner of Customs (Ports), Panambur, Manglore-10” also in Hindi language.
- that on going through the impression of the said rubber stamp he stated that the rubber stamp was not the genuine rubber stamp used at Mangalore Custom House, because the rubber stamp used reads as “Asst.Commissioner of Customs (Docks), Penambur, Mangalore”. There was no post of Asst. Commissioner of Customs (Docks), Penambur, Mangalore in Mangalore Custom House.
- that he verified each and every signature appearing on the Release Advices and confirmed that all the signatures were forged and not done by him and put such endorsement on the body of each release advice as a confirmation to the facts stated by him.
- that he also confirmed that in all these 85 forged release advices shown as purportedly issued by Custom House, Mangalore the

port of utilization is shown as Dahej,Gujarat and these forged release advices were purportedly shown to be utilized by M/s Hindalco Industries Limited, Dahej.

- that he was shown the signatures and rubber stamps appearing on the 13 release advices issued against 13 VKGUY licences, purportedly registered at Mangalore Custom House :

Sr. No.	Release Advice No.	Release Advice Date	Amount of duty Credit (in Rs.)	IEC of the RA holder	Licence No.	Licence Date
1	2476	10.11.2009	4470235	0388066415	310526777	02.07.09
2	2468	10.11.2009	4003373	0388066415	310523564	11.06.09
3	2475	10.11.2009	6590018	0388066415	310528212	10.07.09
4	2464	10.11.2009	5626358	0388066415	310529284	16.07.09
5	2465	10.11.2009	4776335	0388066415	310528689	13.07.09
6	2474	10.11.2009	5753032	0388066415	310523562	11.06.09
7	2467	10.11.2009	6005453	0388066415	310531532	10.11.09
8	2459	10.11.2009	4426478	0388066415	310521936	29.05.09
9	2462	10.11.2009	7778161	0388066415	310522743	05.06.09
10	2460	10.11.2009	4572385	0388066415	310512901	24.03.09
11	2461	10.11.2009	5247824	0388066415	310518177	04.05.09
12	2463	10.11.2009	5173856	0388066415	310522738	05.06.09
13	2473	10.11.2009	5130380	0388066415	310523566	11.06.09

- that he had read and understood the documents and minutely examined the signature and signature rubber stamps appearing on the release advice and confirmed that all the signatures appearing on the above licences and release advices and the rubber stamps were forged.The same was also evident from the impression of the rubber stamp which was different from the genuine rubber stamp being used by Mangalore Custom House during that period.
- that the format and printing of the forged release advices were different from the genuine release advices being generated by the EDI system at Mangalore Customs. These release advices were shown to be issued for utilization at Dahej Port by M/s Reliance Industries Limited which was wrong as no such licences were registered at Mangalore Port and neither any such release advices were signed by him.
- that he was shown 08 release advices and their corresponding DEPB licences as detailed below:

Sr. No.	Release Advice No.	Release Advice Date	Amount of duty Credit (in Rs.)	IEC of the RA holder	Licence No.	Licence Date
1	2662	12.02.2010	2784840	0388147237	310504365	29.01.09
2	2663	12.02.2010	3003596	0388147237	310514866	08.04.09
3	2664	12.02.2010	2294517	0388147237	310514855	08.04.09
4	2665	12.02.2010	2599495	0388147237	310504347	29.01.09
5	2661	12.02.2010	2653468	0388147237	310505127	03.02.09
6	2666	12.02.2010	519084	0388147237	310538513	18.09.09
7	2668	12.02.2010	2235500	0388147237	310536516	09.09.09
8	2667	12.02.2010	1055532	0388147237	310533750	13.08.09

- that he had read and understood the documents and minutely examined the signatures and rubber stamps appearing on the release advice and confirmed that all the signatures appearing on the release advices and the rubber stamps were forged. The same was also evident from the impression of the rubber stamp which was different from the genuine rubber stamp being used by Mangalore Customs during that period.
- that the format and printing of the forged release advices were different from the genuine release advices being generated by the EDI system at Mangalore Customs. Further, these release advices were shown to be issued to M/s Hindalco Industries Limited,Dahej for utilization at Dahej Port which was wrong as although licences of the same number were registered at Mangalore Port no such release advices were issued by Mangalore Customs or signed by him for being utilized at Dahej Port.
- that he was shown another set of 08 Release advices and their corresponding DEPB licences having details as below:

Sr. No.	**Release Advice No.**	**Release Advice Date**	**Amount of duty Credit (in Rs.)**	**IEC of the RA holder**	**Licence No.**	**Licence Date**
1	2511	19.11.2009	2784840	0388215691	310504365	29.01.09
2	2508	19.11.2009	3003596	0388215691	310514866	08.04.09
3	2509	19.11.2009	2294517	0388215691	310514855	08.04.09
4	2505	19.11.2009	2599495	0388215691	310504347	29.01.09
5	2510	19.11.2009	2653468	0388215691	310505127	03.02.09
6	2512	19.11.2009	519084	0388215691	310538513	18.09.09
7	2506	19.11.2009	2235500	0388215691	310536516	09.09.09
8	2507	19.11.2009	1055532	0388215691	310533750	13.08.09

- that he had read and understood the documents and minutely examined the signatures and rubber stamps appearing on the release advice and confirms that the signatures and rubber stamps were genuine and these DEPB licences were actually registered with Mangalore Custom House EDI system and the release advice were actually issued by Mangalore Custom House through EDI system for utilization by M/s Viraj Impex Pvt.Limited at Nhava Sheva, Mumbai and the signatures appearing on the release advices were his as also the rubber stamps appearing on them.
- that he was shown copies of the following letters purportedly issued by E.Sukumaran, Asst. Commissioner, Custom House, Mangalore:

Sr. No.	**Letter F.No.**	**Letter dated**	**Subject**
1	C.No.S-01/10/2008 Imp	06.11.2008	Confirmation of genuineness of TRA under VKUY- reg.
2	C.No.S-01/02/2008 Imp	15.09.2008	Confirmation of genuineness of TRA under VKUY-reg.
3	C.No.S-01/07/2008 Imp	10.10.2008	Confirmation of genuineness of TRA under VKUY-reg.
4	C.No.S-01/06/2008 Imp	07.10.2008	Confirmation of genuineness of TRA under VKUY-reg.
5	C.No.S-01/47/2009 Imp	16.04.2009	Confirmation of genuineness of TRA under VKUY-reg.

6	C.No.S-01/06/2008 Imp	25.09.2008	Confirmation of genuineness of TRA under VKUY-reg.
7	Not clearly Visible	01.12.2008	Confirmation of genuineness of TRA under VKUY-reg.
8	C.No.S-01/29/2008 Imp	20.02.2009	Confirmation of genuineness of TRA under VKUY-reg.
9	C.No.S-01/38/2008 Imp	02.04.2009	Confirmation of genuineness of TRA under VKUY-reg.
10	C.No.S-01/23/2008 Imp	22.01.2009	Confirmation of genuineness of TRA under VKUY-reg.
11	C.No.S-01/28/2008 Imp	Not clearly Visible	Confirmation of genuineness of TRA under VKUY-reg.
12	C.No.S-01/12/2008 Imp	07.11.2008	Confirmation of genuineness of TRA under VKUY-reg.
13	C.No.S-01/12/2008 Imp	14.11.2008	Confirmation of genuineness of TRA under VKUY-reg.

- that the contents of the letter indicated that the same purportedly issued under his signature and was regarding confirmation of RA's in favour of M/s Hindalco Industries Limited in respect of the various licences shown to him today and detailed in the above paras and was addressed to the Superintendent of Customs, Dahej, Gujarat.
- that he minutely examined the document and though it was a photocopy he was able to make out that the signature appended to his name in the said letter was forged. None of the above mentioned letters had been issued by Custom House Mangalore during his tenure as Deputy Commissioner there.
- that he was shown the statement of Shri. Vinod Poovappa, Superintendent of Central Excise, Mangalore recorded on 21.10.2010 and Shri.S. Shiva Prasad, Superintendent of Central Excise, Mangalore dtd.22.12.2010. He agreed with the facts stated by them.

127. A statement of Shri S. Srinivasa Aigal, Superintendent of Central Excise & Customs, Mangalore was recorded on 23/12/2010 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he was working as a Superintendent of Central Excise & Customs and presently posted at P.L.A Section, Central Excise Headquarters, Central Excise Commissionerate, Mangalore. In June, 2005 he was posted to Mangalore Customs Commissionerate and further posted to Export Section on 01.06.2008 and he worked there till 05.06.2009. Thereafter, in June-2009, he was transferred and posted to the Central Excise, Bangalore.
- that he worked in the Export Section of Mangalore Custom House from 01.06.2008 to 05.06.2009. As Superintendent Export he was handling the work of processing the shipping bills filed under any export incentive scheme through the EDI system, additionally he was also looking after the work of Licence Section.
- that in the licence section he was looking after the work of registration of various export incentive licences utilized for import by various importers. He was having a password of the EDI system which was surrendered after his transfer and relieving on 05.06.2009.

- that after his transfer his charge at the Export Section was handled by Smt.Uma Devi as Superintendent of Customs.
- that in Mangalore Custom House regular Appraisers were not posted and the work of appraising was being looked after by the Superintendents on regular basis.
- that in Mangalore Custom House the import bills of entries and export shipping bills were filed in the EDI system which was in operation since the year-2000.
- that in the Licence Section the transferable duty free licences under export promotion schemes like FMS, FPS, VKGUY, EPCG etc were produced by the importers/their authorized agents for registration with the Export Section. These licences were issued by the DGFT offices. These licences were then registered in the EDI system and the EDI system generated a registration number to each licence. In the EDI system any Licence can be registered only once and the EDI system would not accept any licence of the same number twice.
- that once the licences were received in the Appraising Section for registration the same were processed on file and after approval of the concerned Asstt./Deputy Commissioner the licence was registered in the EDI section. After registration of the licence a signature was appended on the top left of the reverse side of the licence alongwith the stamp which indicated the registration of the licence. This signature was appended by the Superintendent, Export Section. Thereafter the licence was returned by the EDI section to the Appraising Section for carrying out the necessary procedure for debiting the same.
- that in the export section a register was being maintained manually containing the details of all the licences registered in the export section.
- that during his tenure at Export Section,Custom House Mangalore he was reporting to my Deputy Commissioner Shri.E.Sukumaran. Shri.Sukumaran was presently posted to Central Excise, Calicut.
- that on being asked the name and details of the Custom House agents/representatives approaching Custom House Mangalore for registering the VKUY/VKGUY licences obtained by the Cashew/ Coffee exporters, he stated that one of the Custom House Agents M/s Ganesh Shipping Agency, Mangalore and Shri Gangadhar Shetty the contact person, his mobile number was 09845085089. In addition to Shri Gangadhar, one Shri Prashant was also approaching them on behalf of M/s Ganesh Shipping. The other CHA firm was M/s Cargo Links, Mangalore and Shri Sandeep the contact person, his mobile number was 09880704606.
- that he was shown the signatures stamps appearing on the reverse side of 85 VKGUY licences purportedly registered with Custom House, Mangalore during the period from May, 2008 to March, 2009 and purportedly signed by him on the top left corner of the reverse side of each licence:

Sr. No.	Licence No.	Licence Date	Release Advice No.	Release Advice Date	Amount of duty Credit (in Rs.)	IEC of the RA holder
1	5310007004	24.11.08	1908	17.02.2009	6268780	0388147237
2	5310006898	11.11.08	1907	17.02.2009	4294243	0388147237
3	5310006894	11.11.08	1906	17.02.2009	5099797	0388147237
4	5310006892	11.11.08	1905	17.02.2009	3882931	0388147237
5	5310006873	11.11.08	1903	17.02.2009	4771165	0388147237
6	5310006856	11.11.08	1904	17.02.2009	6273237	0388147237
7	5310006911	11.11.08	1909	17.02.2009	5480267	0388147237
8	5310006973	24.11.08	1910	17.02.2009	5903697	0388147237
9	5310006829	05.11.08	1913	17.02.2009	6191243	0388147237
10	5310006880	11.11.08	1865	09.01.2009	5681619	0388147237
11	5310006867	11.11.08	1859	09.01.2009	8150713	0388147237
12	5310006882	11.11.08	1863	09.01.2009	6740954	0388147237
13	5310006874	11.11.08	1858	09.01.2009	8300303	0388147237
14	5310006825	05.11.08	1862	09.01.2009	6979498	0388147237
15	5310006896	11.11.08	1860	09.01.2009	7696239	0388147237
16	5310006893	11.11.08	1864	09.01.2009	6313154	0388147237
17	5310006883	11.11.08	1861	09.01.2009	7667008	0388147237
18	5310006876	11.11.08	1819	03.12.2008	4399075	0388147237
19	5310006884	11.11.08	1818	03.12.2008	4596457	0388147237
20	5310006869	11.11.08	1816	03.12.2008	5005100	0388147237
21	0710060173	26.09.08	1813	03.12.2008	3726014	0388147237
22	0710060736	27.10.08	1809	02.12.2008	4086584	0388147237
23	0710060737	27.10.08	1812	03.12.2008	4900580	0388147237
24	5310006885	11.11.08	1815	03.12.2008	5023350	0388147237
25	5310006878	11.11.08	1814	03.12.2008	5073945	0388147237
26	5310006906	11.11.08	1820	03.12.2008	4379309	0388147237
27	5310006910	11.11.08	1817	03.12.2008	4883716	0388147237
28	5310007402	20.01.09	2001	06.04.2009	4671811	0388147237
29	5310007406	20.01.09	2000	06.04.2009	4183166	0388147237
30	5310007379	19.01.09	1999	06.04.2009	4081003	0388147237
31	5310007357	16.01.09	2010	06.04.2009	6847571	0388147237
32	0710063439	05.03.09	2011	06.04.2009	5161612	0388147237
33	5310007364	19.01.09	2009	06.04.2009	3710439	0388147237
34	5310007393	20.01.09	2007	06.04.2009	3597633	0388147237
35	5310007276	09.01.09	2003	06.04.2009	3870740	0388147237
36	5310007389	20.01.09	2006	06.04.2009	3039898	0388147237
37	5310007407	20.01.09	2004	06.04.2009	3197361	0388147237
38	5310006694	20.10.08	1786	20.11.2008	8254315	0388147237
39	5310006671	20.10.08	1784	20.11.2008	7485061	0388147237
40	5310006661	20.10.08	1783	20.11.2008	7335173	0388147237
41	0710057639	29.05.08	1709	29.09.2008	5371995	0388147237
42	5310006811	05.11.08	1911	17.02.2009	5459158	0388147237
43	0710063262	25.02.09	1970	25.03.2009	7098890	0388147237
44	5310007384	20.01.09	1969	25.03.2009	4602610	0388147237
45	5310007372	19.01.09	1968	25.03.2009	5656451	0388147237
46	5310007361	19.01.09	1967	25.03.2009	5538470	0388147237
47	5310007387	20.01.09	1966	25.03.2009	4834592	0388147237
48	5310007391	20.01.09	1965	25.03.2009	4742336	0388147237
49	5310007345	16.01.09	1953	25.03.2009	5838663	0388147237
50	5310007349	16.01.09	1954	25.03.2009	5666976	0388147237
51	5310007337	16.01.09	1955	25.03.2009	5461698	0388147237
52	5310007265	05.01.09	1956	25.03.2009	5690966	0388147237
53	5310006391	11.09.08	1957	25.03.2009	6210199	0388147237
54	5310007404	20.01.09	1958	25.03.2009	7557528	0388147237
55	5310007194	22.12.08	1959	25.03.2009	4927875	0388147237
56	5310007301	09.01.09	1960	25.03.2009	4993935	0388147237
57	5310007180	19.12.08	1961	25.03.2009	4963862	0388147237
58	5310007309	09.01.09	1962	25.03.2009	6701782	0388147237
59	5310006861	11.11.08	1912	17.02.2009	5063013	0388147237

60	5310007401	20.01.09	2008	06.04.2009	3682816	0388147237
61	5310007120	17.12.08	2005	06.04.2009	3789985	0388147237
62	5310007305	09.01.09	2002	06.04.2009	4375823	0388147237
63	0710057647	30.05.08	1665	28.08.2008	7123471	0388147237
64	0710057375	13.05.08	1693	18.09.2008	5097978	0388147237
65	0710057530	22.05.08	1708	29.09.2008	4174117	0388147237
66	0710058005	19.06.08	1710	29.09.2008	5628582	0388147237
67	0710058085	24.06.08	1711	29.09.2008	4022044	0388147237
68	0710057493	21.05.08	1721	03.10.2008	4680410	0388147237
69	0710057638	29.05.08	1720	03.10.2008	4059297	0388147237
70	0710059325	27.08.08	1725	16.10.2008	1584203	0388147237
71	0710059272	21.08.08	1726	16.10.2008	4387551	0388147237
72	0710058726	25.07.08	1733	30.10.2008	6918371	0388147237
73	0710058485	14.07.08	1734	30.10.2008	5752191	0388147237
74	5310006554	07.10.08	1736	30.10.2008	2542897	0388147237
75	5310006586	10.10.08	1737	30.10.2008	2052749	0388147237
76	5310006718	21.10.08	1738	30.10.2008	9331817	0388147237
77	0410099033	06.10.08	1740	31.10.2008	9394430	0388147237
78	0410099030	06.10.08	1741	31.10.2008	9273703	0388147237
79	0410099029	06.10.08	1742	31.10.2008	6982738	0388147237
80	5310006702	20.10.08	1743	31.10.2008	9126709	0388147237
81	5310006672	20.10.08	1785	20.11.2008	5004478	0388147237
82	5310006698	20.10.08	1787	20.11.2008	6666201	0388147237
83	5310006706	20.10.08	1788	20.11.2008	3993732	0388147237
84	5310006726	21.10.08	1789	20.11.2008	6944244	0388147237
85	5310007353	16.01.09	1964	25.03.2009	7008360	0388147237

- that he had read and understood the documents and carefully examined the signatures appearing on the reverse side of the licence and confirmed that the signatures had not been made by him.
- that the signatures were forged and the person who had forged the signature had imitated his signature.
- that on examining the rubber stamp of the Superintendent affixed on the Licences he found that in many of the rubber stamps “Mangalore” had been spelt as “Manglore” which was incorrect and never spelt as such in Mangalore.
- that licences registered after 05.06.2009 bore forged signatures imitating his signature. He was transferred out of the Export Section and handed over charge on 05.06.2009.
- that he was shown the signatures and signature rubber stamp appearing on the reverse side of original copies of 07 VKGUY licences and confirmed them as his genuine signatures and made endorsements on the body of the licence confirming that these signatures were genuine and done by him. The details of the licences seen and confirmed by him today as genuine were detailed as under :

Sr. No.	**Licence No.**	**Licence Date**	**Amount of duty Credit (in Rs.)**
1	0710058726	25.07.2008	6918371
2	0710058485	14.07.2008	5752191
3	0710060736	27.10.2008	4086584
4	0710060737	27.10.2008	4900580
5	0710060173	26.09.2008	3726014
6	0710063262	25.02.2009	7098890
7	0710063439	05.03.2009	5161612

128. A statement of Shri Gaviyappa Natraj, Superintendent of Central Excise & Customs, Bangalore was recorded on 19/01/2011 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he was working as a Superintendent of Central Excise & Customs with Central Excise Bangalore-III Commissionerate and was presently posted at Review Section, Central Excise Headquarters in the Central Excise Commissionerate, Bangalore-III.
- that he worked in the Appraising-I Section of Mangalore Custom House from November-2008 to June-2009. As a Superintendent in the Appraising – I section he was entrusted and handling the appraising work pertaining to imports under Chapter 01 to Chapter 49, additionally he was also looking after the work of Licence Section i.e. Group VII.
- that in the licence section he was looking after the duties of issuance of release advice and confirmation of the same. He was having a password of the EDI system which was surrendered after his transfer and relieving in May-2009.
- that as a Superintendent of Appraising-I section with Mangalore Custom House, he succeeded Shri.Shiv Prasad and after his transfer his charge handled by Shri Vinod V Poovappa as Superintendent of Customs.
- that, in Mangalore Custom House regular Appraisers were not posted and the work of appraising was being looked after by the Superintendents on regular basis.
- that in Mangalore Custom House the import bills of entries and export shipping bills are filed in the EDI system which is in operation since the year-2000.
- that in the Licence Section the transferable duty free licences under different export promotion schemes like DEPB, FMS, FPS, VKGUY, DFRC, Advance authorization etc were produced by the importers for registration with the Appraising Section. These licences were issued by the DGFT offices.
- that these licences were then registered in the EDI system and the EDI system generated a registration number to each licence. In the EDI system any Licence could be registered only once and the EDI system would not accept any licence of the same number twice.
- that once the licences were received in the Appraising Section for registration the same were processed on file and after approval of the concerned Asstt./Deputy Commissioner the licence was forwarded to the EDI section for registration. After registration of the licence a signature was appended on the reverse side of the licence alongwith the stamp which indicated the registration of the licence. Thereafter the licence was returned by the EDI section to the Appraising Section.
- that if the licence was to be utilized at Mangalore Port the same was debited in the bill of entry and the details of the bill of entry was endorsed on the reverse side of the licence along with the balance amount, if any.
- that in case the licence was intended to be utilized at some other port in India, either the licence holder or the transferee i.e. the

buyer of the transferrable licence submitted a request for issue of a Release Advice (RA) in favour of the port where the licence was to be utilized. Accordingly, a release advice for the licence value or for the value requested by the licence holder/transferee was issued in favour of the port of utilization.

- that the Release Advice was signed by the Superintendent/ Appraiser of the appraising section and countersigned by the Asstt./Deputy Commissioner of the appraising section.
- that during his period in the appraising section-I of Mangalore Custom House, he was reporting to his Deputy Commissioner Shri.E. Sukumaran who was presently posted to Central Excise, Calicut.
- that regarding the release advices issued by Mangalore Custom House in favour of Dahej Custom House during his tenure in the Licence Section i.e. from November-2008 to June-2009, he stated that he did not remember the specific names of the ports exactly, but he remembers to had signed release advices in respect of some licences for being utilized at ports located in Gujarat like Dahej, Magdalla or any other port/Custom House in Gujarat.
- that on being asked the name and details of the Custom House agents/representatives approaching Custom House Mangalore for registering the VKUY/VKGUY licences obtained by the Cashew/ Coffee exporters, he stated that one of the Custom House Agents M/s Ganesh Shipping Agency, Mangalore and Shri Gangadhar Shetty the contact person, his mobile number was 09845085089. In addition to Shri Gangadhar, one Shri.Prashant was also approached them on behalf of M/s Ganesh Shipping. The other CHA firm was M/s Cargo Links, Mangalore and Shri Sandeep was the contact person, his mobile number is 09880704606.
- that he was shown the signatures stamps appearing on the reverse side of 05 VKGUY licences shown as registered with Custom House, Mangalore and their corresponding Release Advices. He had carefully verified his signatures appearing on the following documents :

Sr. No.	**Licence No.**	**Licence Date**	**Release Advice No.**	**Release Advice Date**	**Amount of duty Credit (in Rs.)**	**IEC of the RA holder**
1	0710063262	25.02.09	1975	24.03.2009	7098890	0388066415
2	0710063439	05.03.09	1996	31.03.2009	5161612	0388066415
3	0710060737	27.10.08	1790	20.11.2008	4900580	0388066415
4	0710060736	27.10.08	1789	20.11.2009	4086584	0388066415
5	0710060173	26.09.08	1788	20.11.2008	3726014	0388066415

- that he had read and understood the documents and carefully examined the signatures appearing on the reverse side of the licence and on the release advices, and noticed that the signatures appearing on the reverse side of the licence mentioned at Sr.No.1 of the above table was his genuine signature and he had made an endorsement on the said licence to that effect.
- that regarding the licences and their release advices appearing at Sr.No.2 to 5 of the above table, he confirmed that his signatures

appearing on the reverse side of the licences as well as the corresponding release advices were his genuine signatures and he had made endorsements alongside the signatures on the documents.

- that he was shown the following DEPB licences and their corresponding release advices as detailed below:

Sr. No.	Licence No.	Licence Date	Release Advice No.	Release Advice Date	Amount of duty Credit (in Rs.)	IEC of the RA holder
1	0310504365	29.01.09	2511	19.11.2009	2784840	0388215691
2	0310514866	08.04.09	2508	19.11.2009	3003596	0388215691
3	0310514855	08.04.09	2509	19.11.2008	2294517	0388215691
4	0310504347	29.01.09	2505	19.11.2009	2599495	0388215691
5	0310505127	03.02.09	2510	28.02.2009	2653468	0388215691

- that he had read and understood the documents and carefully examined the signatures appearing on the reverse side of the above mentioned licences and noticed that, his signatures appearing on the reverse side of the licences were genuine signatures and he made an endorsements on each licence to that effect.
- that he was shown the following DEPB licences and their corresponding release advices as detailed below:

Sr. No.	Licence No.	Licence Date	Release Advice No.	Release Advice Date	Amount of duty Credit (in Rs.)	IEC of the RA holder
1	0310504365	29.01.09	2662	12.02.2010	2784840	0388147237
2	0310514866	08.04.09	2663	12.02.2010	3003596	0388147237
3	0310514855	08.04.09	2664	12.02.2010	2294517	0388147237
4	0310504347	29.01.09	2665	12.02.2010	2599495	0388147237
5	0310505127	03.02.09	2661	12.02.2010	2653468	0388147237

- that he had read and understood the documents and carefully examined the signatures appearing on the reverse side of the above mentioned licences and noticed that, these signatures were not his and the signatures had not been made by him. The signatures were forged and the person who had forged the signature had imitated his signature, he made an endorsement on each licence to that effect.

129. A statement of Shri Ashok Kumar Gupta of Kanpur was recorded on 28/01/2011 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was having following bank accounts.

  i. Account No. 43580210502698 in Union Bank of India, Kaushapuri Branch, Kanpur.
  ii. Account No. 141104000011510 in IDBI Bank, Civil Lines, Kanpur.
  iii. Account No. 30637732563 in State Bank of India, G.T. Road, Kanpur in the name of A.K. Gupta & Sons.

iv. Account No. 20774492912 in Allahabad Bank, Vijay Nagar, Kanpur.
v. Account No. 0577053000000299 in South Indian Bank, 80 Feet Road, Kanpur.

- that his uncle (chacha) Late Shri Ram Krishna Gupta having a firm in the name and style of M/s Pearls Pvt. Ltd., who was engaged in the business of sale and purchase of export incentive licences at Kanpur. After completing his education he joined his uncle's firm M/s Pearls Pvt. Ltd. and started working there.
- that in the firm he was handling the work related to liasioning with DGFT and other office work. He used to prepare application on behalf of clients, take the applications to the DGFT office, got them approved after following the required procedure of DGFT and got the licence issued from DGFT.
- that he also assisted in finding the prospective buyers for their client, who purchased the said licence.
- that he worked there for 5-6 years and got full knowledge of the said business and also maintained good contacts with DGFT officials and trade / exporters.
- that thereafter, he decided to work independently, so he left the said job. During 1976-77, he started his own work. He got the advantage of his past contacts and his business was going smoothly.
- that about 2005-06, his said business was badly affected and he was facing deep financial crisis. His financial position went on from bad to worse. Thereafter, besides doing the said business, during April' 2008, he joined M/s Air Messageries India, who was an IATA approved Air Cargo Agents. It was a Delhi based firm and Shri S.S.Chawla is its Proprietor. He looked after their marketing works and search clients for them. He was getting salary of Rs.10,000/- for his above job and also some commission on the sales..
- that some major exporters who were his clients are M/s Kushna Exports, M/s Royal Saddle Corporation, M/s Star Saddlery, M/s Liberty Chaple Company, M/s Indian Leather Industries, M/s H.R. Agencies, M/s King International Ltd., M/s Zaid International etc. All these exporters were based at Kanpur. Out of above exporters M/s King International Ltd., M/s Zaid International were still his clients and he was still doing DGFT liasioning work for them.
- that there were different types of transferable licences /authorizations such as DEPB (Duty Entitlement Passbook Scheme), VKGUY, DFIA (Duty Free Import Authorisation), EPCG (Export promotion of Capital goods scheme), FMS(Focus Market Scheme), FPS (Focus Product Scheme) etc. However, he had dealt with and was still dealing with FPS (Focus Product Scheme) licences only.
- that he was shown a document in the form of a copy of account statement of the bank account of M/s Shivangi Enterprise, Kishan Chambers, 5/6 Atika Indus. Area, Shop No.11, Rajkot 360002 having account no.03792000002927 with HDFC Bank, Kalawad Road Branch, Rajkot. He was also shown the entries detailed below:

Date	Narration	Chq/ Ref. Number	Date	Withdrawal Amount (Rs.)
14/10/2008	RTGS ASHOK GUPTA	0378988	14/10/2008	500000
01/12/2008	RTGS ASHOK KUMAR	0379003	01/12/2008	500000
01/12/2008	RTGS ASHOK KUMAR	0379002	01/12/2008	500000
16/12/2008	CHQ PAID-HIGH VALUE-ASHOK KUMAR GUPTA	0379011	16/12/2008	1002541
10/02/2009	RTGS A K GUPTA	0419135	10/02/2009	999890
02/03/2009	RTGS A K GUPTA AND SONS	0419147	02/03/2009	1000000
07/05/2009	RTGS A K GUPTA AND SONS	0419174	07/05/2009	994629
				5497060

- that he had read and understood the contents of the above entries and confirmed that the withdrawals shown against the above entries had actually been transferred to his bank accounts at Kanpur.
- that a total of Rs.5497060.00 (Rupees Fifty four lakhs ninety seven thousand and sixty only) was transferred from the account of M/s Shivangi Enterprise, Rajkot to his bank accounts at Kanpur.
- that he confirmed the receipt of the said amount of Rs.5497060.00 (Rupees Fifty four lakhs ninety seven thousand and sixty only).
- that the entire amount of Rs.5497060.00 (Rupees Fifty four lakhs ninety seven thousand and sixty only) was received in his bank accounts on behalf of Shri.Niyaz Ahmed of Kanpur.
- that as and when the amounts were received in his bank account Shri.Niyaz informed him that the amount had been transferred to his account and the same was required to be given back to him in cash. Then he alongwith Shri.Niyaz Ahmed would go to the concerned bank and he withdrew the required amount from his bank account and gave it to Shri.Niyaz and Shri.Niyaz would give him back his commission, which was about 10% of the transacted amount.
- that on being asked as to how he knew Shri Niyaz Ahmad of Kanpur, he stated that one Shri Mohamed Quresh, a friend of his uncle Late Shri Ram Krishna Gupta. He (Shri Quresh) used to come to meet his uncle in the office of M/s Pearls Pvt. Ltd., where he was working. His uncle introduced him to Shri Mohamed Quresh.
- that Shri Mohamed Quresh working in Government Harness Factory, Kanpur. Slowly, Shri Mohamed Quresh and he became good friends.
- that since he was fond of having drinks and good food, he enjoyed the company of Md.Quresh.
- that during this period he met Shri.Niyaz Ahmed who was a friend of Shri Mohamed Quresh and some times he also joined them in the drinking sessions.
- that Shri Mohamed Quresh told him that Shri Niyaz was engaged in manufacturing and export of chappals and shoes. In this way Shri Niyaz Ahmad, he and Shri Mohamed Quresh became friends. Latter on he also came to know the Shri Niyaz Ahmad was having a

shoe manufacturing unit in the name of M/s Indiyana Shoes, at Chamangaj, Kanpur.

- that during the year 2007, when he was facing severe financial crisis, he told Shri Niyaz Ahmad to help him out, to which he (Niyaz) assured him of some monetary help.
- that after some time Shri Niyaz Ahmad contacted him and said that he had sold some licences and was expecting to receive money for them. He also informed him that he did not want to receive sale proceeds of the same in his own bank accounts.
- that he (Niyaz) told him to lend his bank account for the said purpose and offered him around 10% of the amount that would be deposited. He accepted his proposal and thereafter, the above said deal occurred.
- that he was shown a document containing a photograph, and he identified the person as Shri.Niyaz Ahmed of Indiyana Shoes, Kanpur.
- that he was the same person to whom he had made a deal of lending his bank accounts for receiving money actually meant for him.
- that the amounts mentioned against the entries dated 14/10/2008 and 01/12/2008 were received at his savings bank Account No. 435802010502698 with Union Bank of India, Kaushalpuri Branch, Kanpur;
- that the amount mentioned against 01/12/2008 i.e the third entry of the above table, received in his bank account with IDBI Bank, Civil Lines,Kanpur and then he transferred the said amount from that account to his savings bank account with Union Bank of India, Kaushalpuri Branch, Kanpur.
- that he was shown the copy of his the account opening form and account statement pertaining to his bank account No. 435802010502698 with Union Bank of India,Kaushalpuri Branch, Kanpur and confirmed that the said documents pertain to his savings bank account only.
- that on being asked regarding the remaining transactions mentioned at table above, he stated that he did not remember exactly in which account the said amounts were received. However, he understood to submit the details of his bank accounts where the amounts had been received and how they had been withdrawn.
- that he submitted copies of account statements of his bank account No. 435802010502698 with Union Bank of India, Kaushalpuri Branch, Kanpur and Account No. 141104000011510 in IDBI Bank, Civil Lines, Kanpur.
- that he had not met Shri Niyaz Ahmed since January-2010. That he was aware that DRI department had searched his residence and office for some forged licence case.
- that, as per his knowledge Shri Niyaz Ahmed had closed down his factory-Indiana Shoes at Kanpur and was not staying at his residence at Kanpur.

130. As the statement of Shri Kalpessh Daftary, Director of M/s.Sunkkalp Creations Pvt Ltd, Mumbai, who was lodged in Sabarmati Central Jail, was required to be recorded, an application was made

before the Hon'ble Additional Chief Metropolitan Magistrate, Ahmedabad on dtd.07/02/2011 seeking permission to record statement of Shri Daftary in Sabarmati Jail. The Hon'ble ACMM, Ahmedabad was pleased to grant pemission and accordingly, a further statement of Shri Kalpessh Daftary recorded on 09/02/2011 under Section 108 of the Customs Act, 1962, wherein he stated inter alia :

- that regarding the general system of payment in respect of the buyers and sellers, he stated that they made payment to their sellers after issue of Release Advice and within a day or two of the Release Advice issue date.
- that their buyers make payment within a day or two of receiving the licence and Release Advice
- that regarding advance payment, he stated that sometimes they make advance payment to their sellers two or three days before issue of Release Advice.That their buyers make payment only on receipt of licence and Release Advice.
- that he was shown letter dtd.06/01/2011 of M/s. Padmavati Agencies Pvt Ltd along with its enclosures. That the enclosures contained payment details in respect of 85 licences.
- that he was shown a worksheet containing details pertaining to the 85 licences, names of the licence holder, RA No. and date, date of payment.
- that he was informed that the date of payment mentioned in the worksheet was based on the details provided by M/s.Padmavati Agencies Pvt Ltd, Ahmedabad vide letter dtd.06/01/2011.
- that his attention was drawn towards Sr.No.18 to 27, 31, 31,35,37, 50 to 58, 62 and 85 wherein the payments had been made after about 7 months from the data of Release Advice and on being asked to explain he stated that these 85 licences were forged licences sold to M/s.Padmavati Agencies Pvt Ltd, Ahmedabad.
- that the invoice/debit note in respect of these 85 licences were raised by M/s.Vani Exports, M/s.Merill Impex Pvt Ltd and in some cases by the exporters in the name of M/s.Padmavati Agencies Pvt Ltd.
- that as per his understanding with Shri Dharmesh Gathani, Director of M/s.Padmavati Agencies Pvt Ltd. he (Shri Dharmesh Gathani) used to make part payment of the licence value to M/s.Sunkkalp Creations Pvt Ltd by cheque out of which 20% was returned to him in cash. This 20% was his (Shri Dharmesh Gathani) share of the proceeds of the sale of forged licences.
- that after receiving his share of 20% he (Shri Dharmesh Gathani) would make further payment by cheque to M/s.Sunkkalp Creations Pvt Ltd and he would again return back 20% in cash to Shri Dharmesh Gathani. By this way after receiving back his share of 20% of the licence value, Shri Dharmesh Gathani would make payment by cheque to the firm/company which had issued the sale invoice/debit note to M/s.Padmavati Agencies Pvt Ltd.
- that sometimes generating cash was delayed and therefore, payment of the 20% share to Shri Dharmesh Gathani too takes time and in such cases the payment to the seller i.e. M/s.Vani

Exports or other such firm was made after a period of 2 to 7 months.

- that on being asked to explain the above stated method of payment by example, he stated that the licence at Sr.No.18 to 27 of the worksheet shown to him are of Rs.4,60,74,130/-. These licences were sold at about 91% of their face value i.e. at about Rs.4,19,27,458/-. The 20% share was paid to Shri Dharmesh Gathani in cash was out of this value of Rs.4,19,27,458/- and amounted to Rs.83,85,492/-.
- that in the case of these 10 licences the Release Advices were issued on 03/12/2008 while the payment to M/s. Vani Exports made in July, 2009. This delay was on account of delay in payment of 20% share to Shri Dharmesh Gathani.
- that his attention was drawn towards Sr. No.65, 66,67,41,70,71,63 and 64 of the statement of payment submitted by M/s.Padmavati Agencies Pvt Ltd vide their letter dtd.06/01/2011 wherein the purchase of the licences had been shown to be directly from the original licence holder/exporters and on being asked as to how the licences were sold at discount of about 33% to M/s.Padmavati Agencies Pvt Ltd, he stated that these 08 licences were among the initial forged licences sold by them.
- that at that time it was decided that the sale proceeds of the forged licences would be received in the account of M/s.Padmavati Agencies Pvt Ltd and Shri Dharmesh Gathani would make their share in cash after retaining his 20% share of the sale proceeds. However, he used to give their share of the profit after lot of delay. Therefore, for sale of the subsequent forged licences it was decided that the sale invoice/debit note in respect of the forged licences would be raised in the name of M/s.Shivangi Enterprise and distribution of profit in cash would be done by him and Shri Piyush Viramgama from the account of M/s.Shivangi Enterprise.

131. In the course of his statement recorded on 09/02/2011, Shri Kalpessh Daftary had divulged new facts known to him, hitherto not stated. These new facts were required to be corroborated with the voluminous documentary evidences available in the office of the Directorate of Revenue Intelligence and it was not practically possible to take them to Sabarmati Central Jail for recording a further statement of the accused. Therefore, the Hon 'ble ACMM, Ahmedabad was requested to direct the jail authorities of Sabarmati Jail to bring Shri Kalpessh Daftary to the office of DRI, Ahmedabad on 02 days for recording his statement. The Hon 'ble Court was pleased to allow the request and accordingly, Shri Kalpessh Daftary was brought to the office of DRI, Ahmedabad on 07/03/2011 and 08/03/2011 and his statement was recorded under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that regarding the sale and purchase of licences with M/s.Padmavati Agencies Pvt Ltd (PAPL) and M/s.Vrinda Agencies Pvt Ltd (VAPL) during the period 2008-2009 and 2009-2010, he stated that as far as he could remember, M/s.Sunkkalp Creations Pvt Ltd (SCPL) had totally purchased licences of approximately

Rs.10 crores during 2008-2009 and 2009-2010 from PAPL. SCPL had totally purchased licences of approximately Rs.6.50 crores from VAPL during 2008-2009 and 2009-2010.

- that SCPL had totally sold licences of approximately Rs.14 crores to PAPL during 2008-2009 and 2009-2010. Similarly licences of approximately Rs.40 lakhs sold to VAPL during 2008-2009 and 2009-2010.
- that presently he did not have the details with him and the same were available in his office at Mumbai.
- that he was shown page no.13 and 14 of the enclosure to letter dtd.24/2/1011 and after going through the details contained in the said documents he stated that to the best of his memory the details regarding sale of licences by SCPL to PAPL were correct.
- that as per the said document SCPL had sold licences valued at Rs.1,38,45,255/- to PAPL during 2008-2009 and 2009-2010, towards which PAPL had made payment of Rs.15,09,59,190/-
- that he was shown page no.1 of the enclosure to letter dtd.24/2/2011 of VAPL and after going through the details contained in the said document, he stated that to the best of his memory, the details regarding the sale of licences by SCPL to VAPL were correct.
- that as per the said document, SCPL had sold licences valued at Rs.44,12,594/- to VAPL during 2008-2009 and 2009-2010, towards which VAPL had made payment of Rs.55,00,000/-.
- that he was shown a letter dtd.5/3/2011 of VAPL containing the details of the licences sold by them to SCPL.
- that as per his memory the details contained in the said document regarding sale of licences by VAPL to SCPL were correct. As per the said document VAPL had sold licences valued at Rs.6,51,02,479/- during 2008-2009 and 2009-2010, towards which SCPL had made payment of Rs.6,55,00,000/-.
- that on being asked regarding the payment made to and received from PAPL and VAPL during 2008-2009 and 2009-2010, he stated that SCPL had approximately paid Rs.50.10 crores to PAPL and received from them approximately Rs.57 crores. Further SCPL had paid VAPL approximately Rs.6.50 crores and received from them Rs.1 crore.
- that in addition to the payment directly made to PAPL, SCPL had also made some payments to other firms on behalf of PAPL, similarly, PAPL had also made some payments on behalf of SCPL. He however did not presently remember the amount of such payments.
- that his attention was drawn towards his statement dtd.9/2/2011 wherein he had stated that in respect of the forged licences sold to Hindalco Industries Ltd, initially 08 licences were shown to be purchased by PAPL directly from the original licence holders like M/s.Ned Commodities, M/s.General Commodities, M/s.Ecom Gill, in this regard he stated that these 08 licences were of original value of Rs.3.74 crores and they were shown to be purchased at Rs.2.83 crores by PAPL from the original licence holders. These licences were sold by PAPL to Hindalco Industries for Rs.3.59 crores.

- that PAPL had paid the original licence holders the purchase value of Rs.2.83 crores.
- that on being asked how the payment was made to the original licence holders when the licences were forged, he stated that he and SCPL had outstanding to be paid to these licence holders in respect of the genuine licences purchased from them.
- that the amount paid by PAPL was adjusted towards the outstanding amount of purchase of genuine licences.
- that on being asked regarding the difference amount of Rs.76 lakhs, he stated that the same was retained by PAPL and out of which Rs.71 lakhs was the share of Shri Dharmesh Gathani @ 20% of the sale value of the forged licences.
- that in respect of the amount of Rs.2.83 crores paid by PAPL on his behalf, he stated that the 20% share of Shri Piyush Viramgama and Shri Niyaz Ahmed was paid to them by him in cash.

132. In terms of the order of the Hon'ble ACMM, Ahmedabad, Shri Kalpessh Daftary was brought to the office of DRI, Ahmedabad on 08/03/2011 and his further statement was recorded under Section 108 of the Customs Act, 1962 , wherein he stated inter alia:

- that on being asked to explain the payment of approximately Rs.50 crores made to PAPL and receipt of approximately Rs.57 crores from PAPL, he stated that in respect of the 77 forged licences the sale invoice/debit notes were raised by Vani Exports or Merill Impex to PAPL and PAPL sold them to Hindalco Industries Ltd who made the payment for the licences to PAPL.
- that before making payment of Vani Exports or Merill Impex, PAPL made part payment by cheque or RTGS to SCPL. For instance, if the value of one lot of the licence was Rs.2 crores, PAPL would pay Rs.1 crores to SCPL and he would pay PAPL Rs.20 lakhs in cash which was his 20% share of the forged licences. Thereafter, PAPL would make a further payment of Rs.1 crore to SCPL by cheque or RTGS and he would again return Rs.20 lakhs in cash to PAPL.
- that after he paid the 20% share of the sale proceeds to PAPL in cash, PAPL would make payment to Vani Exports or Merill Impex towards their sale invoice/debit notes in respect of the licences.
- that since the payments were made by PAPL by cheque/RTGS to SCPL the same had to be accounted for in the books of account of PAPL and SCPL.
- that wherever possible the payments were adjusted towards the sale or purchase of licences between PAPL and SCPL. However, since the payments from to PAPL to SCPL was in excess of the purchase/sale of genuine licences, SCPL returned the amount back to PAPL be cheque/RTGS.
- that in SCPL the amount received in excess of the sale/purchase transaction of licences shown as temporary hand loan i.e. interest free loan from PAPL in their books of accounts and to his understanding PAPL too must had similarly accounted for the transaction.

- that it was not true that the amount of 20% paid by him in cash to PAPL towards the discount given to PAPL but was returned in cash.
- that there was no reason for giving such discounts to PAPL or any other firm in the sale of licences.
- that if he had purchased the licences at a lower value as compared to the face value, he would retain the profit and not give the same to his buyer. He would sell the licence at the normal discount prevailing in the market at that time.
- that it could also be seen from almost all the licences sold by SCPL to PAPL that the sale was at about 90 to 97% of the face value of the licences, which was the discount rate prevailing in the market at that time.
- that on being asked as to how 20% as claimed by him was paid in cash to PAPL, he stated that the cash out was done through Shri Sashin Koradia and he (Sashin Koradia) maintained his account in the name of 'zoo'.
- that he had also identified the cash transactions from the said 'zoo' account which was annexed to his statement recorded in July, 2010.
- that he was shown the annexure to his statement dtd.18/7/2010 and he identified the transactions pertaining to cash paid to PAPL. These transactions were prepared by the DRI officer as a separate sheet which was annexed to his present statement.
- that from the transactions identified by him that he had already paid an amount of Rs.7,68,22,000/- in cash to PAPL.
- that this amount paid in cash was the share of PAPL in respect of the sale proceeds of the forged licences.
- that he knew Shri Dharmesh Gathani since long and having good relation with him.
- that during March, 2008 he and Shri Dharmesh Gathani had met in his office at Mumbai to discuss the sale of the forged licences and he had put the proposal to Shri Dharmesh Gathani as he was the major supplier of licences to Hindalco Industries Ltd at Dahej and as Dahej was a non-EDI port, it would have been easy to utilize the forged licences there.
- that as Hindalco Industries Ltd was using a large number of licences at Dahej it would have been easy to mix the forged licences with the genuine licences.
- that in the course of the discussion he had also shown one forged licence to Shri Dharmesh Gathani.
- that he had asked Shri Dharmesh Gathani regarding verification of the Release Advices at Dahej and he (Shri Dharmesh Gathani) had informed him the a fax would be sent to Release Advice issuing port for confirmation. That nothing positive emerged from the discussion.
- that they again met in April, 2008 in his office at Mumbai during which he (Shri Dharmesh Gathani) asked him whether Shri Piyush Viramgama aware of his being involved in the sale of the forged licences. That he had informed him that he had not informed Shri Piyush Viramgama.

- that Shri Dharmesh Gathani informed him that he would try to manage that the fax for verification of the Release Advices would not be sent to the issuing port.
- that Shri Dharmesh Gathani had asked for 40% share of the sale value of the forged licences and he had told him that he would think and inform later.
- that he had subsequently talked to Shri Dharmesh many times over phone and had informed him that he agreed to give him 40% share.
- that in the initial lot of 8 licences Shri Dharmesh Gathani given 40% of the realised value of the forged licences.
- that later he and Shri Piyush Viramgama discussed the matter and found that in giving 40% share to Shri Dharmesh Gathani they were facing loss.
- that he had informed Shri Dharmesh Gathani that they could not afford giving him 40% in view of the expenses incurred in converting the money to cash and that they would give him only 20% share.
- that Shri Dharmesh Gathani had enquired as to who was preparing the forged licences and he had told him that he would ask Shri Piyush Viramgama and inform him.
- that he had after enquiry with Shri Piyush Viramgama informed Shri Dharmesh Gathani that the forged licences were supplied by Shri Niyaz Ahmed of Kanpur.
- that Shri Dharmesh Gathani had informed him that he was agreeable to 20% share on the condition that if a Release Advice verification letter faxed from Dahej to the RA issuing port, they would have to manage at the RA issuing port end and all the expenses in this regard would be on their account.
- that he had discussed the matter with Shri Piyush Viramgama and they agreed to the condition of Shri Dharmesh Gathani.
- that they then started showing sale of the forged licences through M/s.Shivangi Enterprise and its bank account with HDFC bank.
- that thereafter the sale of the forged licences in lots of about Rs.5 crores each started and the same sold by Shri Dharmesh Gathani to Hindalco Industries Ltd.
- that he had never discussed the matter of forged licences with either Shri Parag Gathani or Shri Kalpesh Darji of PAPL and he was not aware whether Shri Dharmesh Gathani had discussed it with them.

133. A statement of Shri Girish Ghelani, Proprietor of M/s.Vani Exports, Kolkata was recorded on 18/03/2011 under Section 108 of the Customs Act, 1962, wherein he stated inter alia:

- that regarding the pattern/system of payments existing in the business of trading (sale and purchase) of duty free transferable licences like DEPB, VKGUY etc., he stated that:-
  - i) In case of purchases made from the original licence holders/exporters directly payments are required to be made immediately against delivery of the licence.

ii) In case of purchases from other brokers/traders of licences the payments are made maximum within 6-7 days of receipt of the licence and their corresponding release advices.

iii) In case of sales made to the end users directly the payments are received by them within 2-3 days of delivery of the licence and release advice.

iv) In case of sales made to the other licence traders/brokers the payments are received within 3-5 working days after delivery of the licence and release advice

- that the above practice was followed in general, in some exceptional cases the receipt/payments may be delayed depending upon the circumstances.
- that he was shown a worksheet containing the details pertaining to the 85 licences, name of the licence holder, RA No. and data, and date of payment and informed that the date of payment mentioned in the said worksheet was based on the details provided by M/s. Padmavati Agencies Pvt Ltd, Ahmedabad vide their letter dtd.06/01/2011.
- that his attention was drawn towards Sr.No.18 to 27, 50 to 58 and 85 wherein the payments had been made after about 7 months from the date of RA.
- that on being asked to explain the reason for such delayed payments, he stated that the sale invoice in respect of these licences were issued by them to PAPL/VAPL on the instructions of Shri Kalpessh Daftary and the sale/purchase of these licences was a matter between Shri Kalpessh Daftary and Shri Dharmesh Gathani of PAPL.
- that his firm had only issued sale invoices and had nothing to do with either the purchase or sale of these licences. Therefore, they were also not concerned with the payments for the same. As and when the payments were received from PAPL/VAPL they made payment to the firm from whom Shri Kalpessh Daftary had arranged their purchase invoices and that too on the instructions of Shri Kalpessh Daftary.
- that he was shown a letter of M/s Padmavati Agencies Pvt. Limited, Ahmedabad (PAPL) dated 06.01.2011 alongwith enclosures.
- that the said document was actually a list of 85 transferable duty free licences purchased and sold by M/s Padmavati Agencies Pvt. Limited, Ahmedabad/Kolkata, containing the details of purchase, sale and payments made in respect of these licences.
- that after reading the enclosed list he noticed that against many licences it was shown that they had been sold by his firm M/s Vani Exports, Kolkata.
- that on being asked to verify the sales made by his firm, he stated that he had prepared a sheet containing the details of sale of 85 VKGUY licences sold by his firm M/s Vani Exports to M/s Padmavati Agencies Pvt Limited or M/s Vrinda Agencies Pvt. Limited (VAPL).

- that he produced a print out containing the details of 85 VKGUY licences sold to M/s Padmavati Agencies Pvt. Limited or M/s Vrinda Agencies Pvt. Limited, Kolkata during the period 2008-09 and 2009-10.
- that on being asked to explain the details of sale mentioned in the sheet/document produced by him, he compared the details of sale mentioned in the sheet produced by him with the details mentioned in the sheet produced by Shri Dharmesh Gathani of PAPL vide their letter dated 06.01.2011.
- that upon comparison he noticed that there were certain discrepancies in the details produced by PAPL vide their letter dated 06.01.2011 as compared to the sales record of his firm i.e. Vani Exports.
- that he had also filed sales tax returns as per the sales record produced by him. In order to explain the same he produced a detailed sheet in respect of the sale of these 85 licences and the discrepancies are detailed as under :

  i) In respect of the licences mentioned at Sr.No.6 to 13 the sale as their record was from VANI to VAPL where as the sale as per PAPL sheet shows purchase in PAPL.

  ii) In respect of the licences mentioned at Sr.No.30 and 31 the sale as per their records was from VANI to PAPL whereas as per PAPL sheet shows as purchase in VAPL.

  iii) In respect of the licences mentioned at Sr.No.40 and 49 the sale as per their records was from VANI to VAPL whereas as per PAPL sheet shows as purchase in PAPL.

  iv) In respect of the licences mentioned at Sr.No.50 the sale as per their records was from VANI to PAPL whereas as per PAPL sheet shows as purchase in VAPL from Emend Technologies directly.

  v) In respect of the licences mentioned at Sr.No.51,52,54,55 and 58 to 64 the sale as per their records was from VANI to VAPL whereas as per PAPL sheet shows as purchase in PAPL.

  vi) In respect of the licences mentioned at Sr.No.53, 56,57 and 66 the sale as per their records was from VANI to VAPL whereas as per PAPL sheet shows as purchase in VAPL from M/s General Commodities Pvt.Limited.

  vii) In respect of the licences mentioned at Sr.No.65 and 67 the sale as per their records was from VANI to VAPL whereas as per PAPL sheet shows as purchase in VAPL from M/s Ned Commodities Pvt.Limited.

  viii) In respect of the licences mentioned at Sr.No.68 and 69 the sale as per their records was from VANI to VAPL whereas as per PAPL sheet shows as purchase in VAPL from M/s E-com Gill.

- that the Sale Invoice issued by his firm showed the actual sale made by Vani Exports as per their records and in respect of which sales tax returns had also been filed by them.
- that the licence number 5310006518 was wrongly mentioned in their sale Invoice No.VE/0806 dated 08.11.2008 and the same should have been mentioned as 5310006718. Further the licence number 5303001032 was wrongly mentioned in their sale Invoice No.VE/1001 dated 17.1.2009 and the same should have been mentioned as 5310006880. The mistake was due to typing error during the preparation of the Invoices.
- that on being asked to explain the payments received by his firm in respect of the sale of 85 licences mentioned by him in previous paras, he stated that the same may be confirmed from his ledgers.
- that he was shown the copies of his ledgers submitted vide their letter dated 03.07.2010. In respect of the sales made to M/s PAPL and M/s VAPL by his firm, they had received on account payments in lumpsum amount after raising bills. However, from the ledger account of M/s PAPL and VAPL maintained and submitted by him, he noticed that the entries showing the sale and the Corresponding Invoice numbers were mentioned by him was against the entries and a photocopy of the said ledger account was attached with this statement.
- that he also submited the copies of ledger account for the corresponding period in respect of M/s Tirupati Vyapar Pvt. Limited, M/s Rajputana General Commercial Corporation Pvt. Limited and M/s J.K Cements limited also.
- that on going through the details of payments received in the abovementioned ledger accounts, he stated that in the ledger account of M/s VAPL for the year-2008-09 the sale value shown against Invoice No.1237 was mentioned as Rs.27079720.00 whereas the actual sale amount as per the said sale invoice was Rs.26125994.00.
- that the amount mentioned in the ledger account was not correct as the mistake had occurred during making the entries in the computer.
- that on being asked regarding the payments received from M/s VAPL and M/s PAPL against the sales of licences, he stated that, in the ledger account of M/s PAPL as on 31.03.2009 a debit balance of Rs.2,30,65,449.00 was outstanding. Thereafter as on 31.03.2010 the ledger account showed a Credit balance of Rs.10,26,69,133.00 which showed that an excess payment received from PAPL in VANI as against the sales made to them.
- that in the ledger account of M/s VAPL as on 31.03.2009 there was a debit balance of Rs.18,39,25,496.00. Thereafter as on 31.03.2010 the account showed a debit balance of Rs.15,30,38,682.00 which showed that an amount of Rs.15,30,38,682.00 was outstanding receivable as on 31.03.2010 from M/s VAPL to VANI.
- that in order to settle the outstanding receivable from VAPL and the excess received from PAPL a journal entry created on 01.06.2010 where an amount of Rs.10,26,69,133.00 was adjusted against the receivables of VAPL (Rs.15,30,38,682.00) and as a

result as on date an outstanding amount of Rs.5,03,69,549.00 was receivable against by Vani from VAPL.

- that on being asked as to how the said discrepancy arose, he stated that the same was due to the discrepancy shown in the purchase of M/s PAPL and VAPL from VANI discussed in the previous pages.
- that he was shown some sale invoices of Vani Exports contained in File No.2 having description as 'Vani Invoices, 08/09-09/10' and informed that these Invoices were recovered from the premises of M/s Padmavati Agencies Pvt. Limited, Ahmedabad under Panchnama dated 21.04.2010.
- that he had read and understood the Invoices contained in the said file and confirmed the below mentioned discrepancies noticed in the Invoices :
- In respect of the 21 Sale Invoices bearing Nos.VE/797/2008-09 dated 26.10.2008, VE/798/2008-09 dated 26.10.2008, VE/799/2008-09 dated 26.10.2008, VE/800/2008-09 dated 26.10.2008, VE/801/2008-09 dated 26.10.2008, VE/790/2008-09 dated 26.10.2008, VE/791/2008-09 dated 26.10.2008, VE/792/2008-09 dated 26.10.2008, VE/793/2008-09 dated 26.10.2008, VE/794/2008-09 dated 26.10.2008, VE/795/2008-09 dated 26.10.2008, VE/796/2008-09 dated 26.10.2008, VE/802/2008-09 dated 28.10.2008, VE/803/2008-09 dated 28.10.2008, VE/804/2008-09 dated 28.10.2008, VE/805/2008-09 dated 28.10.2008, VE/806/2008-09 dated 28.10.2008, VE/807/2008-09 dated 28.10.2008, VE/808/2008-09 dated 28.10.2008, VE/809/2008-09 dated 28.10.2008 and VE/810/2008-09 dated 28.10.2008 he stated that these Invoices were not issued by him or his firm, because the round stamp appearing on the bottom right corner of each sale invoice was not of his firm as their round seal bears 'KOL' was in the centre which was not appearing on the seal in these invoices. He confirmed that as per practice they were not putting round stamp on any of their sale invoices. He produced a sheet containing 04 specimens of the round stamp of Vani Exports. Further, the quality of paper was also different from that of their genuine Invoices, and also they mentioned the remark of Vat exemption in each Sale Invoice which was not appearing on any of these 21 Invoices. These 21 Invoices were forged Invoices prepared after scanning of their genuine Invoice or after taking a colour photocopy of the genuine invoice in blank and then printing the matter by means of a printer using the same font as that appearing in their genuine invoices. The details mentioned on all these Invoices were correct but the dates were not correct.
- Further regarding sale invoice numbers VE/0977/09-10 dated 03.12.09; VE/0949/09-10 dated 26.11.09 he stated that these sale invoices were not issued by him or his firm as they did not bear his signature, the quality of the paper and size of the invoice was totally different than their genuine invoices and the sale tax exemption remark was also absent. However the details in the said invoice were same as appearing on their genuine invoices of same

number, therefore he stated that these Invoices were also forged/fake.

- In the case of sale invoice no.VE/1096/09-10 dated 26.11.09 he stated that the said invoice was also forged/fake and not their genuine invoices as the paper quality was different as well as the signature was forged, size of the invoice was larger, and he confirmed that the details mentioned in the said invoice was not genuine as they had never issued such a sale invoice for that particular licence no. 2410026477 dated 16.11.2009 having value of Rs.5,38,067/- to M/s PAPL. They had sold licence no. 0410110497 dated 31.12.2009 having value of Rs. 1924259/- to M/s Merrill Impex Pvt. Limited vide Invoice No. 1096 dated 09.01.2010 at the bill amount of Rs.14,43,194/-. He produced a copy of the ledger account M/s.Merill Impex Pvt Ltd for the period 2009-2010 as per the books of accounts of M/s.Vani Exports.

134. A further statement of Shri Ashok Kumar Gupta of Kanpur was recorded on 06/04/2011 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was shown his letter dated nil vide which he had forwarded copies of account statement of following bank accounts held by him.

  i. Account No. 141104000011510 in IDBI Bank, Civil Lines, Kanpur.
  ii. Account No. 30637732563 in State Bank of India, G.T. Road, Kanpur in the name of A.K. Gupta & Sons.
  iii. Account No. 20774492912 in Allahabad Bank, Vijay Nagar, Kanpur.
  iv. Account No. 0577053000000299 in South Indian Bank, 80 Feet Road, Kanpur.

- that he was shown copy of account statement of his Account No. 43580210502698 in Union Bank of India, Kaushalpuri Branch, which submitted by him during recording of his statement dated 28.01.2011.
- that he was shown copy of account statement of above said bank accounts obtained by DRI from the respective bank authorities.
- that he has read and understood all pages of the document. He compared the above said each bank account statements submitted by him with bank account statements obtained by DRI from respective bank authorities and stated that entries made therein were same.
- that on the basis of credit entries made in respective bank accounts, he stated that he had received Rs. 59,98,649/- from M/s Shivangi Enterprise, Kishan Chambers, 5/6 Atika Indus. Area, Shop No.11, Rajkot 360002 having bank account no.03792000002927 with HDFC Bank, Kalawad Road Branch, Rajkot. The details of the transactions were as under:

Date	Name of Bank & Account No. vide which the money received from M/s Shivangi Enterprise, Rajkot.	Narration	Credited Amount (Rs.)
14/10/2008	Union Bank of India, Account No. 43580210502698	RTGS 03792000002927	500000.00
01/12/2008	IDBI Bank, Account No. 141104000011510	RTGS 03792000002927	500000.00
01/12/2008	Union Bank of India, Account No. 43580210502698	RTGS 03792000002927	500000.00
16/12/2008	Union Bank of India, Account No. 43580210502698	Cheque Paid High Value- HDFC Bank, Rajkot	1002541.00
10/02/2009	State Bank of India, Account No. 30637732563	RTGS 03792000002927	999890.00
02/03/2009	State Bank of India, Account No. 30637732563	TR 03792000002927	1000000.00
07/05/2009	State Bank of India, Account No. 30637732563	RTGS 03792000002927	1496218.00
			5998649.00

- that according to his above bank account statements a total amount of Rs.59,98,649.00 (Rupees Fifty nine lakhs ninety eight thousand six hundred and forty nine only) transferred from the bank account of M/s Shivangi Enterprise, Rajkot (account No. 03792000002927) to his bank accounts at Kanpur. He confirmed the receipt of the said amount of Rs.59,98,649.00 (Rupees Fifty nine lakhs ninety eight thousand six hundred and forty nine only).
- that he confirmed that the entire amount of Rs.59,98,649.00 (Rupees Fifty nine lakhs ninety eight thousand six hundred and forty nine only) received in his bank accounts on behalf of and as per the directions of Shri.Niyaz Ahmed of Kanpur.
- that he referred to his previous statement dated 28.01.2011 and clarified that, at page no. 3 of his earlier statement dated 28.01.2011, the details of amount received by him from M/s Shivangi Enterprise, Kishan Chambers, 5/6 Atika Indus. Area, Shop No.11, Rajkot 360002 having account no.03792000002927 with HDFC Bank, Kalawad Road Branch, Rajkot, were given as per the account statement of HDFC Bank, Rajkot shown to him during recording of his statement. In the said table the amount of Rs.994629.00 was wrongly mentioned against 07.05.2009 i.e. seventh entry of the said table as it was wrongly shown in the account statement of HDFC Bank, Rajkot. As per bank statement of his State Bank of India, Account No. 30637732563, he had actually received Rs. 14,96,218.00 instead of Rs.9,94,629.00.
- that as and when the amounts were received in his bank account Shri.Niyaz informed him that the amount has been transferred to his account and the same was required to be given back to him in cash. Then he alongwith Shri.Niyaz Ahmed would go to the concerned bank and withdrew the required amount from his bank account vide 'Self' cheques and gave the amount to Shri.Niyaz.

- that he was shown copies of bank instruments received from SBI, Kanpur as detailed below:
  i) Copy of SBI pay-in-slip dated 14.01.2009 for deposit of Rs.1,50,000.00 in my SBI account by way of deposit of Cheque No.218590 dated 13.01.2009, The said amount transferred by him from his bank account with Union Bank of India, Kaushalpuri Branch to the SBI account.
  ii) Copy of Cheque No.456543 dated 03.03.2009 drawn on Self for Rs.5,00,000.00 (rupees five lakhs only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
  iii) Copy of Cheque No.456545 dated 04.03.2009 drawn on Self for Rs.5,00,000.00 (rupees five lakhs only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
  iv) Copy of Cheque No.456586 dated 04.09.2009 drawn on Self for Rs.1,00,000.00 (rupees one lakh only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
  v) Copy of Cheque No.456591 dated 06.10.2009 drawn on Self for Rs.1,00,000.00 (rupees one lakh only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
  vi) Copy of Cheque No.735470 dated 17.03.2010 of M/s Raj & Company drawn on A.K Gupta & Sons for Rs.5,42,300.00 (rupees five lakh forty two thousand and three hundred only) and concerned pay-in slip dated 18.03.2010. The said amount was received by him from M/s Raj & Co. in connection with the sale of duty free transferable licences of Focus Product Scheme. The said firm was handled by Shri.Vishal Agarwal and office was situated at 16/17, Civil Lines, Kanpur.
  vii) Copy of Cheque No.188788 dated 03.04.2010 drawn on Self for Rs.1,00,000.00 (rupees one lakh only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
  viii) Copy of Cheque No.188796 dated 12.05.2010 drawn on Self for Rs.6,00,000.00 (rupees six lakhs only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.

- that out of all his bank accounts he had received money on behalf of Shri.Niyaz Ahmed in his bank accounts with Union Bank of India, State Bank of India and IDBI Bank Limited only.
- that on being asked regarding his profit in lending his bank accounts to Shri. Niyaz, he stated that as stated by him he had received about 10% of the transacted value as his commission and that was his profit.
- that since he was in deep financial crisis he agreed to the proposal of Niyaz. He never asked Niyaz as to what the money was related to.

- that in his earlier statement dated 28.01.2011 at page no.5 in para three, he had stated that the amount (Rs. 5,00,000/-) mentioned against 01/12/2008 i.e the third entry of the table, received in his bank account with IDBI Bank, Civil Lines,Kanpur and then he had transferred the said amount from that account to his savings bank account with union Bank of India, Kaushalpuri Branch, Kanpur, which is not correct. As per bank statement of his IDBI Bank, Account No. 141104000011510, he had not transferred the said amount to his savings bank account with union Bank of India, Kaushalpuri Branch, Kanpur.
- that regarding the present status of Shri.Niyaz Ahmed he stated that he had not met Shri Niyaz Ahmed since January-2010 and does not know his present whereabouts.

135. A further statement of Shri Ashok Kumar Gupta of Kanpur was recorded on 07/04/2011 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was shown copies of bank instruments obtained by DRI from IDBI Bank, Mall Road Branch, Kanpur in respect of his bank account no. 141104000011510 and the details of same were as below:

    1. Copy of Cheque No.022413 dated 08.12.2008 drawn on Self for Rs.1,00,000.00 (rupees One lakhs only). On being asked he stated that the said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
    2. Copy of Cheque No.022411 dated 03.12.2008 drawn on Self for Rs.2,00,000.00 (rupees Two lakhs only). On being asked he states that the said amount was withdrawn by him in cash and handed over to Shri.Niyaz.
    3. Copy of IDBI pay-in-slip dated 14.11.2008 for deposit of Rs.90,000.00 in his IDBI account by way of deposit of Cheque No.216398 dated 14.11.2008, he had read and understood the document and put my dated signature on the same. On being asked he explained that, the said amount was transferred by him from his bank account with Union Bank of India, Kaushalpuri Branch to the IDBI account.
    4. Copy of Cheque No.022414 dated 10.12.2008 drawn on 11.12.2008 on account of Self for Rs.2,00,000.00 (rupees one lakh only). On being asked he stated that the said amount was withdrawn by him in cash and handed over to Shri.Niyaz.

- that he was shown copies of bank instruments obtained by DRI from Union Bank of India, Kanpur in respect of his bank account no. 43580210502698 and the details of same were as below:

i) Cheque No.216396 dated 10.11.2008, issued on account of Ashok Kumar Gupta (Account Payee cheque) for Rs.25,000.00 (rupees Twenty Five Thousand only). The said amount was transferred by him from his bank account with Union Bank of India, Kaushalpuri Branch to the IDBI account.

ii) Copy of Cheque No.216390 dated 14.10.2008 drawn on Self for Rs.2,00,000.00 (rupees Two lakh only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.

iii) Copy of Cheque No. 216391 dated 17.10.2008 drawn on Self for Rs.1,80,000.00 (rupees one lakhs eighty thousand only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.

iv) Copy of Cheque No. 216394 dated 27.10.2008 drawn on Self for Rs.50,000.00 (rupees fifty thousand only). The said amount was withdrawn by him for expenses.

v) Copy of Cheque No. 216399 dated 14.11.2008 drawn on Self for Rs.2,10,000.00 (rupees two lakhs ten thousand only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.

vi) Cheque No.216398 dated 14.11.2008, issued on account of Ashok Kumar Gupta (Account Payee cheque) for Rs.90,000.00 (rupees ninety thousand only). The said amount was transferred by him from his bank account with Union Bank of India, Kaushalpuri Branch to the IDBI account.

vii) Copy of Cheque No. 216390 dated 13.01.2009 drawn on Self for Rs.1,50,000.00 (rupees one lakhs fifty thousand only). The said amount withdrawn by him in cash and handed over to Shri.Niyaz.

viii) Copy of Cheque No. 218534 dated 02.12.2008 drawn on Self for Rs.5,00,000.00 (rupees five lakhs only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.

ix) Copy of Cheque No. 218585 dated 02.12.2008 drawn on Self for Rs.1,00,000.00 (rupees one lakhs only). The said amount withdrawn by him in cash and handed over to Shri.Niyaz.

x) Copy of Union Bank Of India pay-in-slip dated 12.12.2008 for deposit of Rs.10,02,541.00 in his Union Bank Of India account by way of deposit of Cheque No.379011 dated 12.12.2008 of HDFC Bank Ltd., Rajkot. The said cheque given to him by Shri Niyaz Ahmad and he had deposited the said cheque to the Union Bank Of India account.

xi) Copy of Cheque No. 218587 dated 17.12.2008 drawn on Self for Rs.6,00,000.00 (rupees six lakhs only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.

xii) Copy of Cheque No. 218588 dated 20.12.2008 drawn on Self for Rs.4,00,000.00 (rupees four lakhs only). The

said amount was withdrawn by him in cash and handed over to Shri.Niyaz.

xiii) Copy of Cheque No. 218597 dated 24.03.2009 drawn on Self for Rs.1,00,000.00 (rupees one lakhs only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.

xiv) Copy of Union Bank Of India pay-in-slip dated 07.05.2009 for deposit of Rs.1,50,000.00 in his Union Bank Of India account by way of deposit of Cheque No.456559 dated 07.05.2009 of SBI, Kanpur.The said amount was transferred by him from his bank account with SBI Bank to the Union Bank Of India account.

xv) Copy of Cheque No. 209471 dated 28.05.2009 drawn on Self for Rs.1,20,000.00 (rupees one lakhs and twenty thousand only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.

xvi) Copy of Union Bank Of India pay-in-slip dated 09.06.2009 for deposit of Rs.97,421.00 in his Union Bank Of India account by way of deposit of Cheque No.615358 dated 08.06.2009 of Overseas Bank.The said amount received by him from one of his party/ client in connection with the sale of duty free transferable licences, however, he did not remember the name of said party.

xvii) Copy of Cheque No. 209476 dated 04.07.2009 drawn on Self for Rs.1,00,000.00 (rupees one lakhs only). The said amount was withdrawn by him in cash and handed over to Shri.Niyaz.

xviii) Cheque No.321 dated 11.09.2009, issued on account of Ashok Kumar Gupta (Account Payee cheque) for Rs.50,000.00 (rupees fifty thousand only). The said amount was transferred by him from his bank account with Union Bank of India, Kaushalpuri Branch to his SBI, Bank account.

- that he was shown four computer print out of photographs of some persons, He identified them as under:

  i. PHOTOGRAPH/ PIC-1: Identifed as Shri Mohammad Ali @ Munnabhai of Kanpur. He was a close friend of Shri Niyaz since long time and was also having fabrication unit where he was doing fabrication work on fabrics for using them on the saddles. He had seen him a couple of times with Shri.Niyaz.

  ii. PHOTOGRAPH/ PIC-2: Identified as Shri Haseeb Ahmed an employee of M/s Indiyana Shoes, Kanpur. He had seen him at the factory of Indiana shoes run by Shri.Niyaz Ahmed and Shri.Niyaz introduced him as his employee..

  iii. PHOTOGRAPH/ PIC-1: Identified as Shri Mohammad Ali @ Munnabhai.

  iv. PHOTOGRAPH/ PIC-1: Identified as Shri Mohammad Ali @ Munnabhai.

- that on being asked regarding the present whereabouts of Shri Munnabhai he stated that he was not in contact with the person at present. On being asked regarding the involvement of Shri Munnabhai in the business of Shri Niyaz he stated that he was not aware of the same, but after the raid by DRI officers at the factory of Indiayana Shoes, he came to know that Shri Munnabhai was very close friend of Niyaz and they were meeting frequently.
- that he was not aware regarding the present whereabouts of Niyaz. However, he came to know that he was not staying at his residence any more and had shifted away to some other place alongwith his family. That as per his knowledge the factory of Indiyana Shoes was not working at present.

136. A further statement of Shri Sashin Jayantilal Koradia, was recorded on 27/04/2011 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that Shri Dharmesh and Shri Parag Gathani were known to him and he was aware that they were residing at Ahmedabad and running a business of trading of transferable licences in the name of M/s Padmavati Agencies Pvt.Limited at Ahmedabad.
- that Sh.Dharmesh and Sh.Parag both were following Jainism and he was also following the same. About 8 years back, he met Shri.Dharmesh in a religious function at Mumbai and then maintained contact with him. Thereafter he also met Sh.Parag at Mumbai. He remembered visiting their office at Ahmedabad long time back and the office was situated at Abhijeet Complex in Ahmedabad city.
- that as per the requirement of Sh.Dharmesh and Sh.Parag, he was arranging parties through different brokers for taking/giving performance and maintaining accounts for Shri Dharmesh and Shri Parag Gathani similar to what he was doing for Shri.Kalpesh Daftary of M/s Sunkkalp Creations Pvt. Limited.
- that the accounts maintained for Dharmesh coded as 'DRG-account', the account maintained for Shri.Parag Gathani coded as 'Padma-Parag' in their records and the account maintained for M/s.Padmavati Agencies Pvt Ltd coded as 'Padma 09-10'.
- that on being asked as to whether Shri.Kalpesh Daftary was aware of the above two accounts, he stated that as per the norms of their business he had never informed Sh.Kalpesh Daftary regarding the same.
- that on being asked whether the entries contained in the above mentioned accounts contained transactions relating to M/s. Sunkkalp Creation Pvt Ltd or Shri Kalpessh Daftary, he stated that where the money was received or paid to M/s.Sunkkalp Creations Pvt Ltd or Shri Kalpessh Daftary the same was reflected in the above said accounts of Shri Dharmesh, Shri Parag and M/s. Padmavati Agencies Pvt Ltd.
- that on being asked whether he was aware about the business activities of Sh.Dharmesh and Sh.Parag Gathani he stated that he was aware that they were engaged in the purchase/sale of duty free licences of customs.

- that he was shown the statement dtd.08.03.2011 of Shri Kalpessh Daftary of M/s.Sunkkalp Creations Pvt Ltd and on being asked regarding the details of the cash payment made to M/s.Padmavati Agencies Pvt Ltd., Shri Dharmesh Gathani contained in the Annexure to the statement dtd.08.03.2011 of Shri Kalpessh Daftary, he requested that he be allowed to compare the same with the Zoo Account of M/s. Sunkkalp Creations Pvt Ltd./Shri Kalpessh Daftary.
- that he was shown the 'Zoo' Account submitted by him in the course of his statement dtd. 11.06.2010. After comparing the details contained in the Annexure to statement dtd.08.03.2011 of Shri Kalpessh Daftary with the details contained in the Zoo Account maintained by him, he confirmed that the payment details contained in the said Annexure dtd.08.03.2011 were true and correct
- that an amount of Rs.7,68,22,000/- was paid in cash by M/s.Sunkkalp Creations Pvt Ltd/Shri Kalpessh Daftary to M/s.Padmavati Agencies Pvt Ltd/Shri Dharmesh Gathani/Shri Parag Gathani.
- that cash payments were made by Shri Kalpessh Daftary or by his employees on his instructions either directly to Shri Dharmesh Gathani or to the employees of Shri Dharmesh Gathani or the persons nominated by Shri Dharmesh Gathani. The transaction particulars entered in the Zoo account maintained by them were on the basis of the details provided by Shri Kalpessh Daftary.
- that he was shown the printouts of the following emails taken from the email account of his employee Shri Vishal Wadkar wadkar_vs@yahoo.co.in in the course of recording of his statement on 03.06.2010 :

  1) email dtd.13.04.2010 sent to Shri Dharmesh Gathani at dharmesh@groupgathani.com forwarding account coded as 'padma 07.07.07, 'Padma- Choice' and Padma- Parag (08-09)'.

  2) email dtd.14.04.2010 sent to Shri Dharmesh Gathani at dharmesh@groupgathani.com forwarding account coded as 'Dharmesh Gattani'.

  3) email dtd.13.04.2010 sent to Shri Dharmesh Gathani at dharmesh@groupgathani.com forwarding account coded as 'DRG', 'Padma 09-10' and 'Padma – HCL09-10'.

- that as already stated by him in his earlier statement dtd.11.06.2010 the mentioned accounts maintained by them pertained to the transactions of M/s.Padmavati Agencies Pvt Ltd, Shri Dharmesh Gathani and Shri Parag Gathani.
- that the transactions contained in the said accounts were in respect of the transactions arranged by them for M/s.Padmavati Agencies Pvt Ltd, Shri Dharmesh Gathani and Shri Parag Gathani and their other firm M/s.Vrinda Agencies Pvt Ltd and were in respect of the licences traded by them.

- that the transactions were with M/s.Punjab Chemical and Crop Protection Ltd, M/s.Twilight Litaka Pharmaceuticals Ltd, M/s.Hindustan Continental Ltd.
- that the transactions contained in the Zoo account would not be reflected in the accounts maintained by them for M/s.Padmavati Agencies Pvt Ltd, Shri Dharmesh Gathani and Shri Parag Gathani as the same pertained to different transactions. Similarly the transactions maintained in the accounts for M/s.Padmavati Agencies Pvt Ltd, Shri Dharmesh Gathani and Shri Parag Gathani would not be reflected in the Zoo account maintained by them for M/s.Sunkkalp Creations Pvt Ltd/Shri Kalpessh Daftary.
- that on being asked to identify the cash payments made by M/s.Padmavati Agencies Pvt Ltd/ Shri Dharmesh Gathani to M/s.Sunkkalp Creations Pvt Ltd/Shri Kalpessh Daftary from the accounts maintained by him for them, he requested to be allowed to again to see their accounts.
- that after going through the said accounts, he identified the cash transactions, account wise, the details of which were as under :-

Account coded as Padma (07.07.07) 1.04.2007 to 1.04.2010.				
S.No.	Date	Particulars	Receipt/Payment	Amount (Rs.)
1	06.10.2008	To ATM – By SJK to Sankkalp on Sunday	Payment	75,00,000/-
2	08.10.2008	To ATM – at Rajkot to P.Daftary Amrut Kanti Angadia	Payment	10,00,000/-
3	14.10.2008	To ATM – HSK to Sankkalp (to Kalpesh a/c Padma)	Payment	5,00,000/-

Account coded as Padma – Parag (08-09) 1.04.2007 to 1.04.2010.				
S.No.	Date	Particulars	Receipt/Payment	Amount (Rs.)
1	25.03.2009	By ATM – Chotu at our off.	Receipt	24,00,000/-

Account coded as Dharmesh Gattani 1.04.2004 to 1.04.2010.				
S.No.	Date	Particulars	Receipt/Payment	Amount (Rs.)
1	29.08.2009	To ATM – Chotu.	Payment	6,00,000/-

Account coded as DRG 1.04.2009 to 31.03.2010.				
S.No.	Date	Particulars	Receipt/Payment	Amount (Rs.)
1	04.03.2010	By Zoo – total amt of 1.5 cr. Paid to DRG = 97.00+ 36,00+200+15,00 = 1.5.	Receipt – Journal entry.	1,50,00,000/-

- that cash payment amounting to Rs.96,00,000/- was made to M/s.Sunkkalp Creations Pvt Ltd/Shri Kalpessh Daftary from the accounts of M/s.Padmavati Agencies Pvt Ltd, Shri Dharmesh Gathani, Shri Parag Gathani.
- that cheque payment amounting to Rs.1,56,00,000/- was received by M/s. Padmavati Agencies Pvt Ltd, Shri Dharmesh Gathani, Shri Parag Gathani from M/s. Sunkkalp Creations Pvt Ltd/ Shri Kalpessh Daftary.

- that cash payments indicated above were made to the persons as per the instructions of Shri Dharmesh Gathani and he did not know any of the persons or their identity. The transaction particulars were mentioned in the accounts maintained by them as per the details provided by Shri Dharmesh Gathani.
- that on being asked regarding the transactions with M/s.Accurate Multitrade Pvt Ltd, he stated that the transaction with the said firm were arranged by Shri Pravin Jain of Mumbai who was having his office at 626, 6th Floor, Panchratna Building, Charni Road, Mumbai and having mobile no.09322655953. He did not know any of the Directors of the said firm.

137. A further statement of Shri Dharmesh Gathani, Director of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad was recorded on 18/07/2011 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that he was shown panchnama dtd.26/05/2010 and 27/05/2010 under which the laptop computer – Apple Macbook Air examined and printouts of some documents were taken. He agreed with the facts stated therein.
- that he was shown the panchnama dtd.21/06/2010, 23/06/2010 and 25/06/2010 under which the laptop computer – Compaq – of his employee Shri Kalpesh Darji was examined and printouts of some documents were taken. He agreed with the facts stated therein.
- that M/s.Padmavati Agencies Pvt. Ltd.,(PAPL) was engaged in the trading of DEPB/VKGUY/FMS/FPS/DFIA export incentive licences. All his family members were Directors of the above company viz. his father Shri Ramesh Gathani, his mother Smt. Harsha Gathani, he, his wife Smt. Bharti Gathani, his younger brother Shri Parag Gathani and his wife Smt. Parita Gathani. However, he and his younger brother were the active Directors, while others were sleeping Directors of the company.
- that with effect from April, 2010 Shri Ramesh Gathani, Smt Harsha Gathani, Smt Bharti Gathani resigned as Directors and only he and his brother Shri Parag Gathani were presently the Directors of PAPL. He agreed to produce a copy of Form-32 filed by them with the Registrar of Companies (ROC) informing the change in constitution of the Directors.
- that the said Directors were as such only silent(sleeping/non-active) Directors and were not playing any active role in the activities of PAPL. It was therefore, decided to retain only the active Directors and accordingly the other Directors resigned.
- that on being asked regarding the shares held by Shri Ramesh Gathani, Smt.Harsha Gathani Smt.Bharti Gathani in PAPL after they resigned as Directors of PAPL, he stated that he shall check with his Chartered Accountant and inform the details.
- that the bank accounts of their firm was maintained with the following banks and the account numbers were mentioned against each bank.

Sr. No.	Name of the Bank	Branch	Account No.
1	HDFC Bank	Mithakhali	00062320003858
2	State Bank of India	Memnagar	30033366883
3.	ICICI Bank	Drive-in	006405500047

- that apart from PAPL they also traded in licences in the name of the following firms M/s.Vrinda Agencies Pvt Ltd (VAPL).
- that the Directors of VAPL were Shri Kalpesh Darji, who was their Full time Auditor and Shri Shrirang Bhatt who was an employee of PAPL, however, the said VAPL belonged to them i.e. Gathani family and their Full time Auditor and employee were made Directors with a view to create a different business entity which was necessary for various purposes viz. maintaining secrecy of their source of purchase, submitting quotations of two firms etc.
- that PAPL and VAPL had branch office in Kolkata and previously there was also a branch office in Mohali, Punjab.
- that there was no VAT on sale of export incentive transferable duty free licences in Punjab and West Bengal states. Many of their buyers of licences insisted on bills for sale of transferable duty free Licences without VAT, therefore, they billed them from their Mohali and/or Kolkata offices.
- that subsequently Punjab levied VAT on sale of licences and therefore, they discontinued billings from Mohali and started selling licences on bills issued from Ahmedabad or Kolkata.
- that the branch office in Kolkatta was manned by only one person Shri Subhash Mishra and he simply collected mails/ correspondences in Kolkata and forwarded the same to their office in Ahmedabad as well as delivering mails/correspondences in Kolkata.
- that they procured the above export incentive transferable duty free licences from the exporters directly, as well as, traders of such licences and sell them to the importers who utilize the same for payment of Customs duty at the time of import.
- that they approached the exporters who were holding export incentive transferable licences and who wished to sell the licences for a consideration and negotiate the rates with them. Upon agreement they purchase such export incentive licences and after adding their margin, which varies from 0.25% to 0.75%.
- that they sell them to the importers who were looking for buying such transferable licences for using them in lieu of payment of Customs duty at the time of import. For sale of export incentive licences, they entered into agreement with the interested importers.
- that since they were in the business of import-export consultancy, they were in contact with many importers, as well as, exporters. Hence, many importers contacted them for purchase of licences and many exporters contact them for sale/transfer of licences.
- that apart from trading of export incentive licences, they helped the exporters in making application, issuance of their licences from the office of DGFT and verification/registration of these licences with the office of customs.

- that some times when their buyers were in need of export incentive licences and they did not have such licences with them, they bought licences from other licence traders and subsequently sold the same to their buyers. They also sold licences to other licence traders.
- that the following were the major exporters from whom they directly purchase the export incentive transferable licences
    a) M/s.Adani Enterprises Ltd.,
    b) M/s.Sanghi Cements Ltd.
    c) M/s.N.K. Proteins Ltd.,
    d) M/s.Keshodwala Foods
    e) M/s. Silver Sea Foods, etc.

- that the following were the major importers to whom they sold/transfer the export incentive transferable licences
    1. M/s.Hindalco Industries Ltd.
    2. M/s.Appollo Tyres
    3. M/s.Hind Prakash
    4. M/s.Astral
    5. M/s.Visakha Polyfab etc.

- that the major traders from whom they bougght export incentive transferable licences were :-
    a) M/s.Sunkkalp Creations Pvt Ltd, Mumbai
    b) M/s.Krish Overseas, Rajkot
    c) M/s. Vani Exports, Kolkata
-

- that the major traders to whom they sell export incentive transferable licences were :-
    a) M/s..S.J.Impex, Mumbai
    b) M/s. Global Exim, Mumbai
    c) M/s. Sunkkalp Creations Pvt Ltd, Mumbai.

- that on being asked regarding the terms of payment with the exporters from whom they bought licences, he stated that the payments were mostly against delivery and in some cases the exporters agreed to a credit period of 07 days to 15 days from the date of delivery of licences.
- that here 'delivery' actually meant 'the delivery of the entire set of documents consisting of the Original export incentive Licence issued by DGFT and registered with Customs at concerned port, the original licence forwarding letter issued by DGFT, the original list of shipping bills in respect of which the licence was issued, transfer letter signed by the holder of the licence and signature verified by their Bank'.
- that in some cases where the licence was registered in a port outside Gujarat, the exporter also arranges to get 'Release Advice' (RA) issued from the Customs at the port of registration in the name of the buyer informed by them. This was because they did have personnel outside Gujarat or tie-up with firms outside Gujarat for dealing with Customs.

- that in such cases, the documents delivered by the licence holder includes one sealed cover containing RA for Custom purpose and one RA in open condition which was meant for the importer.
- that on being asked regarding the terms of payment with the traders from whom they bought export incentive licences, he stated that the payment was made against delivery of documents and no credit period is given.
- that on being asked regarding the documents, he stated that as stated above, if the export incentive licence pertains to Gujarat the RAs were got issued by them and for States other than Gujarat the traders get the RA issued and forwarded the same to them along with the other original documents.
- that on being asked regarding the terms of payment with the exporters to whom they sold export incentive licences, he stated that they had contracts with their regular and major buyers of licence and as per the contract the agreed terms of payment was within 1 to 7 days from the date of delivery of the licence along with RA.
- that a small part of the payments were sometimes withheld and made after verification of genuineness the RA. In cases where the buyer was importing at the same port where the licence was registered, RA was not required as the licence was directly debited.
- that where there was no contract and the buyer was not a regular firm, the terms were payment against delivery of the export incentive licence and its corresponding documents.
- that on being asked regarding the issuance of RAs in the case of licences purchased from/through M/s.Sunkkalp Creations Pvt Ltd, Mumbai (SCPL), he stated that the RAs were got issued by SCPL and the documents were sent by SCPL from Mumbai including the RAs in favour of the buyer of the licences.
- that on being asked regarding verification of genuineness of the licences/RAs, he stated the Customs at the port where the licences were to be used send letters to the RA issuing port for confirmation of genuineness of the RA. Where the licences had been purchased by them directly from the exporters and RAs were got issued by them they arranged follow-up for speedy verification at the RA issuing port through their personnel or through the firms with whom they have tie-up and who got the RA issued.
- that in cases where they did not get the RA issued and the same got issued by the exporter/seller of the licence, they asked the exporter/seller of the licence to arrange follow-up for speedy verification of genuineness of the RA.
- that the letter regarding confirmation of genuineness of the RA was sent by the Customs at the RA issuing port directly to the port where the RA was used. The letters were sent by Fax from Custom House to Custom House. However, a copy of the letter was given to them, the exporter/seller and they forward the same to their buyers.
- that on being asked regarding the verification of the genuineness of RAs in the case of licences purchased from/through M/s.Sunkkalp Creations Pvt Ltd, Mumbai (SCPL), he stated that on their buyers request for verification of RAs, they used to ask SCPL for follow-up

of the verification with the RA issuing port and SCPL in turn used to get it done at their end and forwarded a copy of the verification letter to them which in turn was sent by them to the importer/buyer by Fax and sometimes a scanned copy was sent by email.

- that on being asked regarding the manner of delivery of the licences, he stated that where the licences are pertaining to Gujarat Ports like Pipavav, Kandla, Mundra the seller of the licence used to send the same to their Ahmedabad office by Courier and they in turn send it by Courier or through their persons to the concerned buyer or the concerned port.
- that in other cases the seller of licence send the documents by Courier directly to the buyer/ importer or his Custom House Agent (CHA) as per the instructions of the importer/buyer. In the case of Dahej port the seller send the documents by Courier to Bharuch where the documents were collected by their office boys – Shri Shailesh Rodge and Shri Hitesh Rajput and thereafter handed over to the importer/buyer.
- that on being asked regarding delivery of the licences transacted with M/s.Sunkkalp Creations Pvt Ltd, Mumbai (SCPL) and sold to M/s.Hindalco Industries Ltd, Dahej, he stated that most of the licences purchased by them from/through SCPL were received by Courier from Mumbai to Bharuch where the same were collected by their office boys Shri Shailesh Rodge and Shri Hitesh Rajput from the Courier office and delivered to M/s.Hindalco Industries Ltd, Dahej.
- that in some cases the licences were received by Jet Airways Cargo at Baroda Airport where the same were collected by their office boys and delivered to M/s.Hindalco Industries Ltd, Dahej.
- that he was shown a letter dtd.06/01/2011 of PAPL sent to DRI, Ahmedabad under his signature forwarding the payment details in respect of 85 licences. He confirmed that the details of the licence wise payments contained in the enclosure to the said letter were true and correct.
- that on being asked regarding the purchases in many licences being shown as VAPL, he stated that the licences purchased by them from/through SCPL - Shri Kalpessh Daftary were in the name of their other firm M/s.VAPL, Kolkata.
- that on being asked regarding the purchases in respect of these 85 licences, he stated that Shri Kalpessh Daftary used to provide them with the sale invoices of the firms mentioned i.e. M/s.Vani Exports, Kolkata, M/s.Merril Impex Pvt Ltd, Kolkata and M/s.Emend Technology, Kolkata. They had no dealings with any of these firms and neither had they made any purchases directly from them.
- that regarding the licences where purchases were shown from M/s.Ecom Gill Coffee, M/s.Ned Commodities and M/s.General Commodities, he stated that these firms were the exporters and original licence holders of the licences and Shri Kalpessh Daftary had in these cases told them that there would be direct billing of the licence holders and provided them with the sale invoices of these firms.

- that as per the instructions of Shri Kalpessh Daftary they had made payments by Cheque directly to the original licence holders.
- that the licences shown to be directly purchased by them from the original licence holders were given to them by Shri Kalpessh Daftary at a higher discount i.e. at about 65% to 74% whereas the other licences were at about 90% to 95% i.e. at market rates prevailing at that time.
- that on being asked regarding the higher discount in the case of direct billing by the original licence holders, he stated that though they were provided with sale invoices of the original licence holders showing sale at about 65% to 74%, Shri Kalpessh Daftary had actually sold these licences to them at the market rates only i.e. 90% to 95%.
- that the difference in the billed rate and their actual purchase rate i.e. difference between 65%-74% and 90%-95% was given back by them to Shri Kalpessh Daftary in cash.
- that the difference amount in cash was paid to Shri Kalpessh Daftary within a month from the purchase of the licence. The cash was generated through Shri Sashin Koradia of Mumbai and paid to Shri Kalpessh Daftary.

138. A further statement of Shri Dharmesh Gathani, Director of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad was recorded on 19/07/2011 under Section 108 of the Customs Act, 1962 wherein he stated inter alia:

- that he produced copies of the Form-32 regarding resignation of Directors as well as copies of the shareholding pattern of M/s.PAPL as on 08/06/2010 and 19/7/2011.
- that he was shown a letter dtd.26/5/2010 of M/s.PAPL signed by him under which the payment details of 85 licences were submitted by them to DRI, Ahmedabad. He confirmed the facts contained therein.
- that he was shown a worksheet containing details pertaining to 85 licences, name of the licence holder, RA No. & date and date of payment.
- that he was informed that the date of payment mentioned in the worksheet was based on the details provided by him vide their letter dtd.06/01/2011.
- that his attention was drawn towards his statement dtd. 18/7/2011 wherein he had stated that the payment terms with the traders from whom they bought export incentive licences was payment against delivery of documents and that no credit period was given.
- attention drawn towards Sr.No. 1 to 40, 42, 50 to 62, 68, 69 81, 85 of the said worksheet pertaining to purchase of licences from other traders and asked to explain the fact of the being made after about 02 to 10 months from the date of issue of RA, he stated that he and Shri Kalpessh Daftary were well known to each other for quite a long time as they had business dealings and also were purchasing and selling licences from and to each other.

- that he was expecting contracts from M/s.Hindalco Industries Ltd, Dahej for bulk supply of licences from 2008 onwards. He learnt that Shri Daftary had a contract with the coffee exporters and was in a position to supply them a large number of licences.
- that Shri Daftary supplying licences to them during 2008-2009 and 2009-2010 on a regular basis, therefore, as per the understanding between them, they were making on account payments to Shri Daftary as well as the companies from whom he had arranged sale bills.
- that there was no licence wise co-related payments and therefore, it was not possible to directly co-relate payments made by them to any particular licence. However, after going through the worksheet shown to him while recording his statement, he confirmed that payments had been made in advance as well as after a delay upto 10 months. He would again try to co-relate the licence wise payments and submit the details.
- that he produced the following documents :-

  i) Details of the purchase bills(where available with them) and bill dates in respect of the 85 licences.
  ii) Ledger account of M/s.Sunkkalp Creations Pvt Ltd, Mumbai maintained by M/s.Padmavati Agencies Pvt Ltd, Ahmedabad for the period 2008-2009 and 2009-2010.
  iii) Ledger account of M/s.Sunkkalp Creations Pvt Ltd, Mumbai maintained by M/s. Vrinda Agencies Pvt Ltd, Ahmedabad and Kolkata for the period 2008-2009 and 2009-2010.

- that his attention drawn towards letters dtd.24/2/2011 of M/s.PAPL and M/s.VAPL vide which the details of licences purchased from M/s.Sunkkalp Creations Pvt Ltd, Mumbai were submitted by them. Similarly they had vide their letters dtd.7/3/2011 submitted the details of sale of licences to M/s.Sunkkalp Creations Pvt Ltd, Mumbai (SCPL). The details of the sale and purchase of export incentive transferable licences between M/s.SCPL, M/s.PAPL- M/s.VAPL were as below :-

	Purchases from SCPL	**Sales to SCPL**
M/s.PAPL	Rs.13.84 crores	Rs.9.42 crores
M/s.VAPL	Rs.0.44 crores	Rs.6.51 crores

- that he was informed that as per the ledger account of SCPL submitted by him, the total transaction between PAPL and SCPL during 2008-09 and 2009-2010 was about Rs.66 crores and between VAPL and SCPL it about Rs.8.40 crores. As against this the sales and purchase between PAPL and SCPL was only about Rs.23 crores and between VAPL and SCPL it was about Rs.6.95 cores.
- that on being asked to explain the difference between the sale/purchase and the total amounts transacted, he stated that as

stated by him above, he and Shri Kalpessh Daftary were well known to each other for a long time and had ongoing business relations. They had made many advance payments, loans to SCPL and which were subsequently returned by them. Therefore, there was a vast difference between the sale/purchase and the amounts transacted.

- that on being asked whether any such similar advance payments or loans were given to any other firm apart from M/s.SCPL, he stated that they did not have any such transactions with any other licence trading firms.

139. A statement of Shri N. M. Patnaik, President (Commercial) of M/s. Hindalco Industries Ltd, Dahej was recorded on 20/09/2011 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that as a President (Finance & Commercial), at Dahej, he was looking after following five departments and directly reporting to Shri Shambhu Sharma, Unit Head.

  (i). In the Commercial & Logistics Department Shri Naveen Kumar Mathur Senior Vice president, who reported to him directly.
  (ii). In the Finance & Accounts Department they were having Shri Bajrang Bardia, as Assistant Vice President, who also reported to him.
  (iii). For the Information Technology Department they had Shri Pravin Patel, as Assistant Vice President, who reported to him.
  (iv). In the Production & Planning Department Shri V.C. Gupta the General Manager, who reported to him.
  (v). The Materials Management Department had Shri Rangit Gangopadhyay, as Assistant Vice President, who was also reporting to him.

- that the matter of indirect taxations at their unit at Dahej dealt by Commercial & Logistics Department i.e by Shri Naveen Kumar Mathur, Vice President (Commercial And Logistics) and Shri.Bikash Kumar Pilaniwala, Senior Manager and his team of about 7 staff members. They looked after payment of customs and central excise duties, import clearances and DGFT related activities like procurement of duty free transferable licences, their utilization etc.
- that their factory/plant at Dahej was engaged in the import of raw materials mostly Copper Concentrates from various countries like Chile, Brazil and other South American countries.
- that the Customs work included, work relating to obtaining of export incentives from the DGFT, filing of bills of entry for import of goods at Dahej Port, preparation of documents viz. invoice, packing list etc. for export of goods through JNPT, procurement and utilization of duty free transferable licences from the market for payment of import duty at the time of import, applying and procuring licences viz. Advance Licence and EPCG licence from

DGFT, submission of documents to the DGFT for discharge of export obligation are done by the officer of Commercial & Logistics Department, at Dahej.

- that the work relating to the DGFT was done by their own staff, while for Customs work relating to imports at Dahej their company had appointed M/s.Kshitij Services Private Limited, Surat (KSPL) as agents.
- that M/s KSPL were doing the job on behalf of their company since the year-2000-2001, i.e prior to his joining Aditya Birla group.
- that they paid customs duty in respect of the goods imported by their unit at Dahej by debiting from various export incentive transferable licences purchased/procured by them from the market by way of transfer.
- that they purchased/procured various types of post export transferrable licences viz. DEPB, FMS, FPS, VKGUY etc.
- that these licences were available in the market at about 95% to 98% of the original value, the company saved on payment of import duty to the extent of the discount at which the licences were purchased by them from the market.
- that this practice of procurement and utilization of duty free transferable export incentive licences was prevalent since long time in the Dahej manufacturing unit of their group.This practice was prevalent even before he joined this company.
- that their major vendors for procurement of licences were M/s. Padmavati Agencies Pvt Ltd, Ahmedabad, M/s. Trident (India) Ltd, Ahmedabad, M/s.Kundalia Brothers Pvt Ltd, Kolkata, M/s. Rahul Enterprises, Kolkata, M/s. Rajesh Poddar HUF, Mumbai, M/s. Sumadhu Overseas Pvt Ltd, Mumbai etc.
- that on being asked as to why their unit at Dahej procured these licences through some selected traders/brokers, he stated that the practice of procuring transferable licences from brokers/traders was in vogue in the company since the year 2000-2001 and therefore this was continuing.
- that regarding their practice of procuring these licences from some selected brokers, he stated that these traders like M/s Padmavati Agencies Pvt. Limited, Ahmedabad; M/s Trident (India) Ltd., Ahmedabad; M/s Kundalia Brothers, Kolkata etc were supplying licences to them since long time and their services had been satisfactory, therefore they decided to continue with them and to avoid new and unknown brokers/traders, they had not floated tenders in the open market.
- that on being asked to explain the procedure relating to purchase/procurement of duty free transferable export incentive licences at Dahej Unit, he stated that although he was not looking after the day to day activity of the said section, he had learnt from the concerned staff that the procedure goes as : after receiving the monthly import schedule from their head office at Mumbai, the Commercial & Logistics Department at Dahej were able to project an estimation of the customs duty required to be payable during the projected period. Based on this, enquiries were caused with the registered vendors of duty free transferable licences. On receipt of the rates from the vendors, the offers were submitted before Shri

Naveen Kumar Mathur and after his approval the same was put up to him. After, his approval, an order for supply of the licences was issued to the vendors. In the order issued to the vendors, the rates at which the licences were to be purchased by them, the period during which the licences were to be supplied by the vendors etc. were mentioned. The orders/contracts were signed by Shri Naveen Kumar on behalf of their company.

- that on being asked since when their company started procuring export incentive licences from the market and utilizing them on payment of customs duty, he stated that transferable DEPB/VKGUY/FMS/FPS licences were being used for payment of Customs duty by their company since the year 2000-2001.
- that he was shown statement dtd.27/4/2010 of Shri Jigar J. Shah, Officer (Commercial), statements dtd. 27/4/2010, 24/5/2010 and 19/11/2010 of Shri Bikas Pilaniwala, Senior Manager (Commercial) and statements dtd. 25/5/2010 and 19/11/2010 of Shri Naveen Kumar Mathur, Senior Vice president (Commercial & Logistics) all recorded before DRI. He agreed with the facts stated by these persons in their statements.
- that he was shown the contents of Para-3 at page-8 of the statement of Shri.Kalpesh N Daftary dated 16/07/2010 recorded before DRI at Ahmedabad. He stated that now he was aware that Shri.Kalpesh N Daftary was one of the main conspirators of the scam of utilization of forged VKGUY licences utilized by Hindalco Industries Limited, Unit-Birla Copper, Dahej, he was also aware that Shri.Daftary was arrested by DRI during July-2010.
- that on being asked regarding the contents of Para-3 at page-8 of the statement of Shri.Kalpesh N Daftary dated 16/07/2010 regarding his meeting with Shri.Daftary, he stated that, during May-2010 when the investigation in the case of utilization of forged duty free licences started by DRI, Ahmedabad and many speculations were reaching their office regarding utilization of forged licences by their company at Dahej. By that period DRI had conducted searches various premises including the office premises of M/s Padmavati Agencies Limited at Ahmedabad. M/s Padmavati Agencies Limited at Ahmedabad were their main licence trader from/through whom they have procured majority of the transferable duty free licences during the period 2008-09, 2009-2010. However, they were not aware of the quantum of the fraud.
- that during this period, he received a call from a business person, whom he had met in Delhi during Business trips but their Company did not have any business transaction with him, to come to Delhi for a discussion in connection with the DRI case. Since, he was scheduled to visit New Delhi within a short time, he informed him about his arrival date.
- that upon reaching New Delhi he contacted him and arranged a meeting at a public place near the Airport. There, he introduced to one person who did not disclose his name, but informed that some forged licences have been utilized at Dahej Port by Hindalco Industries Limited-Unit:Birla Copper and as a result the duty credit utilized against these forged licences required to be deposited with the Government by the company who had utilized

these forged licences. He mentioned that he would arrange to deposit 50% of the differential duty arising out of the forged licences with Hindalco within a short time and the remaining 50% would be given by him in installments to the Company.

- that he was scared to hear these things and not knowing what to do in the situation, he immediately left the place and returned to Mumbai availing the next flight. After returning to Mumbai he called the said person who arranged the meeting and rebuked for arranging such meetings without any prior briefing.
- that on being asked about the present whereabouts of the said person he stated that he did not have any contact with the person since then and did not know his present contact.
- that on being asked as to why the incident was not brought to the notice of DRI, he stated that since he did not pay much attention to the issue he did not report it to any person whatsoever.

140. A further statement of Shri Dharmesh Gathani, Director of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad was recorded on 26/09/2011 under Section 108 of the Customs Act, 1962 wherein he stated inter alia :

- that on being asked regarding the details of the co-relation between the licence wise payment which he had in his statement dtd.19/07/2011 undertaken to submit, he stated that they had tried to co-relate the payments licence wise however, it was not possible to do so as they were making payment on account and hence he was not able to submit the same.
- that he produced the ledger account of M/s. Ned Commodities India Pvt Ltd, M/s. Ecom Gill Coffee Trading Pvt Ltd and M/s.General Commodities Private Ltd maintained by them for the period 2008-2009.
- that on being asked how M/s. Hindalco Industries Ltd made payment to them in respect of the licences of M/s. Ned Commodities India Pvt Ltd, M/s. Ecom Gill Coffee Trading Pvt Ltd and M/s.General Commodities Private Ltd as detailed below :-

Sr. No.	**Name of the original Licence Holder**	**Licence No. & Date**	**Licence Value**
1	M/s.Ned Commodities	0710057639 dtd.29/5/2008	Rs.53,71,995/-
2	M/s.Ned Commodities	0710057530 dtd.22/5/2008	Rs.41,74,117/-
3	M/s.Ecom Gill Coffee	0710058005 dtd.19/6/2008	Rs.56,28,582/-
4	M/s.Ecom Gill Coffee	0710058085 dtd.24/6/2008	Rs.40,22,044/-
5	M/s.General Commodities Pvt Ltd	0710057647 dtd.30/5/2008	Rs.71,23,471/-
6	M/s.General Commodities Pvt Ltd	0710057375 dtd.13/5/2008	Rs.50,97,978/-
7	M/s.General Commodities Pvt Ltd	0710059325 dtd.27/8/2008	Rs.15,84,203/-

- that these licences were billed to them directly by the exporters and they had in turn raised sales invoices to M/s.Hindalco

Industries Ltd, Dahej. Accordingly, the payments in respect of these licences were made to them by M/s.HIndalco Industries Ltd.

- that his attention being drawn towards his earlier statement dtd.19/7/2011 wherein he had stated that they had made advance payments to M/s.Sunkkalp Creations Pvt Ltd, Mumbai. On being asked as to whether these payments were accounted for as advance payments or loans in their books of accounts, he stated that these payments were not accounted as advances or loans in their books of accounts. However, the balance outstanding at the end of the financial year was shown as advance to suppliers or loan to suppliers and was accordingly shown in the balance sheets.

141. In his further statement recorded on 10/10/2011 under Section 108 of the Customs Act, 1962, Shri Dharmesh Gathani, Director of M/s. Padmavati Agencies Pvt Ltd, Ahmedabad stated inter alia :

- that he was shown the statement dtd.18/03/2011 of Shri Girish Ghelani, Proprietor of M/s.Vani Exports, Kolkata.
- that on being asked regarding the discrepancies in the sales record of M/s.Vani Exports and purchase record of M/s.Padmavati Agencies Pvt Ltd (PAPL) and M/s.Vrinda Agencies Pvt Ltd (VAPL) pointed out by Shri Girish Ghelani at page 3 of his said statement, he stated that they had shown purchases as per the invoices received by them.
- that the purchase invoices of M/s.Vani Exports were received by them from M/s.Sunkkalp Creations Pvt Ltd, Mumbai (SCPL).
- that on being asked why the invoices of M/s.Vani Exports were received from SCPL, he stated that these invoices were arranged by SCPL and therefore they forwarded the same to them.
- that on being asked whether they had in any way checked the authenticity or genuineness of these invoices of M/s.Vani Exports forwarded to them by SCPL, he stated that they had not taken any steps to verify the genuineness of the invoices of M/s. Vani Exports, Kolkata forwarded to them by SCPL.
- that he was shown the ledger account of M/s.PAPL for the period 2008-2009 and 2009-2010 maintained by M/s.Vani Exports, Kolkata. That as per the said ledger accounts, PAPL had paid Rs.10,90,00,000/- to M/s.Vani Exports during 2008-2009 and Rs.31,42,02,088/- during 2009-2010.
- that he was shown the ledger account of M/s.VAPL for the period 2008-2009 and 2009-2010 maintained by M/s.Vani Exports, Kolkata. That as per the said ledger accounts, VAPL had paid Rs.7,95,00,000/- to M/s.Vani Exports during 2008-2009 and Rs.6,91,62,931/- during 2009-2010.
- that he was shown the statements of Shri.Sashin Jayantilal Koradia of Mumbai recorded on 02.06.2010, 10.06.2010 and 11.06.2010 before DRI, Mumbai and Ahmedabad :
- that he had read and understood para-3 of page-3 of the statement dated 02.06.2010 of Shri.Sashin J Koradia and agreed with the facts stated therein.
- that he had read and understood the statement dated 10.06.2010 of Shri.Sashin J Koradia and he was also shown the 13 page print out of e-mail dated 13.04.2010 and email dtd.14.04.2010 and its

01 page printout sent from the e-mail id - wadkar_vs@yahoo.co.in. The said e-mail id was maintained by Shri.Vishal Wadkar who was an employee of Shri.Sashin J Koradia and these e-mails were sent as per the instructions of Shri.Sashinbhai. He had read and understood the details stated by Shri.Sashin Koradia in his statement dated 10.06.2010 and co-related the same with the print out of the e-mail dated 13.04.2010 and 14.04.2010 and agreed with the facts stated therein.

- that he had read and understood the statement dated 11.06.2010 of Shri Sashin J Koradia and agreed with the facts stated therein.
- that the entry dtd.20/2/2010 for Rs.15 lakhs was cash received in his account and not cash paid on his instruction.
- that the entry dtd.4/3/2010 for Rs.1.5 crores was not payment or receipt but a journal entry.

142. In his further statement recorded on 11/10/2011 under Section 108 of the Customs Act, 1962, Shri Dharmesh Gathani, Director of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad stated inter alia :

- that he produced copies of the ledger account of M/s.Vani Exports, Kolkata maintained by M/s.Padmavati Agencies Pvt Ltd, Ahmedabad (PAPL), PAPL, Kolkata and M/s.Vrinda Agencies Pvt Ltd, Ahmedabad (VAPL) for the period 2008-2009 and 2009-2010.
- that there was some difference in the payments shown to be received by M/s. Vani Exports, Kolkata in their ledger accounts and the payments shown to be made by PAPL in its ledger accounts.
- that this was on account of certain payment made by them in March, 2009 and the same being accounted in April, 2009 by M/s.Vani Exports, Kolkata. Further, some payments made by them had been shown as journal entries by M/s.Vani Exports, Kolkata. Except for the difference on account of these reasons, the payments as per both accounts match.
- that he was shown the statements of Shri Sashin Jayantilal Koradia of Mumbai recorded on 12.06.2010 and 27.04.2011 before DRI, Ahmedabad :
- that he had read and understood the statement dated 12.06.2010 of Shri.Sashin J Koradia and agreed with the facts contained in the said statement.
- that he had read and understood the statement dated 27.04.2011 of Shri.Sashin J Koradia and the annexure, referred to in the said statement, dtd.8/3/2011. In this regard he stated that the transactions mentioned in the said annexure pertain to a period covering 2008, 2009 and 2010. During this period there were a lot of transactions done through cheque as well as cash between himself/PAPL/VAPL and SCPL/Shri Kalpessh Daftary as they were involved in trading of many export incentive licences and many projects related to export incentive licences.
- that as per the requirement of Shri Kalpesh Daftary they had financed Shri Kalpessh Daftary in many of these projects and also in purchase of licences. These finances were by way of cheque as well as cash payments.

- that regarding the amount of Rs.7,68,22,000/- stated by Shri Kalpessh Daftary and Shri Sashin Koradia to had been paid to them in cash, he stated that they might have received the said amount in cash. However, he was not sure regarding the mode of receipt of the amount and he needed to check his books of account to confirm the same.
- that the cash stated to have been paid to them was probably return of the amount paid by them in cash to Shri Kalpessh Daftary.

143. In his further statement recorded on 12/10/2011 under Section 108 of the Customs Act, 1962, Shri Dharmesh Gathani, Director of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad stated inter alia:

- that he had checked the transactions made between Myself/PAPL/VAPL and SCPL/Shri Kalpessh Daftary and confirmed that following amounts, mentioned in Annexure dated 8/3/2011, enclosed to the statement dated 27.04.2011 of Shri.Sashin J Koradia, had been received by him in cash from Shri Kalpesh Daftary.

  (i). Receipt of cash amount of Rs.4750000/- and Rs.250000/- on 29/05/2009. However, he did not record exact date of receipt of said amounts in his records.

  (ii) Receipt of cash amount of Rs.3000000/- and Rs.2000000/- on 09/11/2009. However, as per his records the said amount were received by him on 11/09/2009 and date in Annexure appeared to have been wrongly mentioned as 09/11/2009.

  (iii). Receipt of cash amount of Rs.1000000/- on 15/09/2009.

  (iv). Receipt of cash amount of Rs.5000000/- on 16/09/2009.

  (v). Receipt of cash amount of Rs.2500000/- on 23/09/2009.

  (vi). Receipt of cash amount of Rs.2500000/- on 10/07/2009. However, as per his records the said amount were received by him on 07/10/2009 and date in Annexure appeared to have been wrongly mentioned as 10/07/2009.

  (vii). Receipt of cash amount of Rs.2497000/- on 12/03//2009. However, as per his records the said amount were received by him on 03/12/2009 and date in Annexure appeared to have been wrongly mentioned as 12/03/2009.

  (viii).Receipt of cash amount of Rs.15000000/- (Rs.97.00+36.00+2.00+15.00) on 03/04/2010. However, this was not payment from Shri Kalpessh Daftary but cash of their own account generated by issuing cheque to M/s.Hindustan Continental Ltd.

  (ix). Receipt of cash amount of Rs.1000000/- and Rs.2000000/- on 14/05/2009.

(x). Receipt of cash amount of Rs.2125000/- on 01/10/2009.

- that during the period Oct' 2008 to Dec' 2008, he had given about Rs. 4 Crores to Shri Kalpessh Daftary, out which Rs. 2.50 Crores to Rs. 3.00 Crores were given in cash and remaining amount given through cheques, he did not remember the details of the cheques.
- that in the month of April'2009, he had given Rs.80 Lakh in cash to Shri Kalpessh Daftary.
- that on being asked as to how these amounts were accounted for, he stated that they were shown as hand loan.
- that on the said amount of Rs.4.80 Crore he was not taking any interest, in other words the said amount of Rs.4.80 Crores was given as interest free loan.
- that on being asked as to who were the other traders/business persons to whom he had given similar type of loans, he stated that they had not given any loan of such type to any other trader/ businessman.
- that on being asked regarding source of funds for these cash amount, he stated that part of the cash was generated by Shri Sashin J Koradia by way of managing their accounts, as Shri Sashin managing their accounts since the year-2006.
- that the cash generated and returned by Shri Sashin Koradia was actually the profit of his business transactions i.e. sale of transferable export incentive licenses.
- that he was shown the statements of Shri. Kalpessh Daftary, Director of M/s Sunkkalp Creation P. Ltd., Mumbai recorded on 09/02/2011, 07/03/2011 and 08/03/2011 :
- that he had carefully read and understood the statement dated 09/02/2011 of Shri Kalpessh Daftary alongwith the enclosures and agreed with the facts stated therein
- that he, however, does not agree to the facts stated by Shri Kalpesh Daftary at page no.3 of the statement regarding return of 20% of amount in cash.
- that regarding the payments made against the licences mentioned at Sr.No.18 to 27, 31,32,35,37,50,62 and 85 of their letter dated 06.01.2011, he stated that he agreed to the fact that the payments had been made after a lapse of 7 months after the issuance of the corresponding Release Advices whereas in their trade all payments were made within 3 days of issue of the Release Advice. That these payments were delayed because their companies M/s PAPL and M/s VAPL were always having some outstanding amount with M/s Sunkkalp Creations Pvt Limited / Kalpesh Daftary, therefore they had made the payments only after settlement of the said outstanding amounts.
- that during Nov-Dec-2008 they had received transferable export incentive licences at highly discounted rates from M/s SCPL/Kalpesh Daftary. These licences were purchased by them at a value of about 60% of the actual value and sold by them at the prevailing market rates i.e about 90% to 95% of the actual value. The differential amount between 60% and 90-95% was returned by them in cash to Shri.Kalpesh Daftary.

- that after some time they started receiving export incentive transferable licences at full value and the invoicing done by traders like Vani Exports, R R Impex etc.
- that he did not agree to the facts stated in the first para of page no.5 of the statement regarding formation of M/s Shivangi Enterprise and sale of licences through the said firm as well as cash paid to him.
- that he had carefully read and understood the facts stated in the statement dated 07.03.2011
- that he did not agree with the facts stated by Shri.Kalpesh Daftary regarding the purchase of 08 licences from M/s Ned Commodities, M/s General Commodities and M/s E Com Gill Coffee which were purchased by M/s PAPL at an amount of Rs.2.83 Crores and sold by M/s PAPL to M/s Hindalco Industries Limited at Rs.3.59 Crores.
- that regarding the differential amount of Rs.76 Lakhs generated with them on account of sale of these 08 licences, he stated that this amount returned to Shri Kalpesh Daftary in cash. He did not recollect how the cash delivered.
- that he had carefully read and understood the facts stated in the statement dated 08.03.2011.
- that he did not agree with the facts stated by Shri Kalpessh Daftary in the said statement. As regards the amount of Rs.7,68,22,000/- being paid to him in cash by Shri Kalpessh Daftary, he again stated that he had received only Rs.2,76,22,000/- in cash from Shri Kalpessh Daftary.

144. In his further statement was recorded on 21/10/2011, under Section 108 of the Customs Act, 1962, Shri Dharmesh Gathani, Director of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad stated inter alia:

- that M/s Vrinda Agencies Private Limited (VAPL) was a company having two Directors namely Shri Kalpesh Darji and Shri Shrirang Bhatt both residents of Ahmedabad.
- that though these persons are the Directors of M/s VAPL, the said firm was actually belonged to them i.e. Gathani family. As
- that as stated by him in his earlier statement dtd.18/7/2011, Shri Kalpesh Darji was the Full time Auditor of PAPL Ahmedabad and Shri. Shrirang Bhatt though working in PAPL and VAPL was not on the payroll of either company. Shri Bhatt was one of the Director of M/s.VAPL.
- that he had wrongly stated earlier that Shri Bhatt was the employee of M/s.PAPL which he rectified today after confirming from his office records.
- that these two persons were made Directors of a new company i.e VAPL with a view to create a different business entity which was necessary for various purposes viz. maintaining secrecy of their source of purchase, submitting quotations of two firms etc.
- that Shri Kalpesh Darji and Shri Shrirang Bhatt were not involved in the purchase or sale of the Licences in the name of M/s.VAPL.
- that the sale and purchase of licences was handled mostly by him and to some extent by his brother Shri Parag Gathani. Both Shri

Kalpesh Darji and Shri Shrirang Bhatt were however, involved in the day to day work of both the companies in their respective tasks.

- that as stated earlier Shri Darji was the Full time Auditor of the firm and Shri Bhatt looked after the computers and software related work of both the firms.
- that on being asked whether the profits earned by M/s.VAPL was shared by its Directors i.e. Shri Kalpesh Darji and Shri Shrirang Bhatt, he stated that the profits after tax was not distributed among the Directors but was retained in the company.
- that Shri Kalpesh Darji was paid fees by PAPL for providing full time audit services and Shri Shrirang Bhatt was paid remuneration from VAPL.
- that on being asked regarding the emails recovered from the Laptop of Shri Kalpesh Darji under panchnama dtd. 21/06/2010, 23/06/2010 and 25/06/2010 and which were shown to him in the course of recording of his statement dtd.18/7/2011, he stated that apart from being the Fulltime auditor of PAPL, Shri Darji also used to assist in the day to day work of PAPL and VAPL. As such he also corresponded with their buyers as well as their sellers and the buyers and sellers also corresponded with him regarding the licence trade.
- that the emails recovered from his laptop were the emails sent and received by him and pertained to the licence trading activity of PAPL and VAPL.

145. A statement of Shri Dharmesh Singh @ Pammu, Director of M/s Accurate Multitrade Pvt.Limited, B-3/41,Singh Ni, Janta Colony, Jogeshwari (East), Mumbai-400060 was recorded on 11/05/2012 under Section 108 of the Customs Act, 1962, wherein he stated inter alia:

- that after completing his graduation he changed some odd jobs and then he started doing the business of sub-brokerage of shares. Thereafter, in the year-2007, he started a firm in the name of M/s Accurate Multitrade Pvt Limited with Shri Jitendra Shukla and himself as the directors. Their company was engaged in the trading of various commodities items like diamond, metals and also duty free licences. Presently this company was almost in-active as he was concentrating more on the share brokerage business.
- that during the period 2010-11 his company was not doing proper business in trading activities, therefore in consultation with Shri Sashin Koradia of Mumbai they decided to raise invoices for sale of duty free transferable export incentive licences of customs like DEPB, VKGUY etc.
- that he was aware that there were some export incentive licences of customs which were issued by DGFT and then utilized by various importers during the time of clearance of their import consignments and these licence amounts were debited in lieu of cash payment of duty by the importers. He was also informed that these licences were freely transferable and was sold by way of trading in the open market.

- regarding purchase and sale of licence no.0310504365 dtd. 29.01.2009, 0310504347 dtd.29.01.2009, 0310505127 dtd.03.02.2009, 0310514855 dtd.08.04.2009, 0310514866 dated 08.04.2009, 0310533750 dtd. 13.08.2009, 0310536516 dtd. 09.09.2009 and 0310538513 dtd.18.09.2009 he stated that, on confirmation with his accountant he had obtained the sale bills and ledger account in respect of these 08 licences and he stated that Shri Sashin Koradia had informed him that Shri Kalpessh Daftary of M/s. Sunkkalp Creations had instructed that sale invoices should be raised to M/s Padmavati Agencies Pvt. Limited of Ahmedabad. Details of the sale invoices were as under :

Licence No. & date	**Duty amount of Licence**	**Debit Note No. / Invoice No.& date**	**Amount / value of Sale**
0310504365 dtd. 29.01.2009	Rs.2784840/-	AM/LI/33 dtd.13.02.2010	Rs.2672900.29
0310504347 dtd. 29.01.2009	Rs.2599495/-	AM/LI/34 dtd.13.02.2010	Rs.2495005.44
0310505127 dtd. 03.02.2009	Rs.2653468 /-	AM/LI/30 dtd.13.02.2010	Rs.2546826.21/-
0310514855 dtd. 08.04.2009	Rs.2294517/-	AM/LI/34 dtd.13.02.2010	Rs.2202286.37
0310514866 dtd. 08.04.2009	Rs.3003596/-	AM/LI/31 dtd.13.02.2010	Rs.2882863.15
0310533750 dtd. 13.08.2009	Rs.1055532/-	AM/LI/32 dtd.13.02.2010	Rs.1013103.73
0310536516 dtd. 09.09.2009	Rs.2235500/-	AM/LI/32 dtd.13.02.2010	Rs.2145641.62
0310538513 dtd. 18.09.2009	Rs.519084/-	AM/LI/31 dtd.13.02.2010	Rs.498218.85
Total	**Rs.17146032.00**	**Total**	**Rs.16456845.66**

- that from the above table he also confirmed that against the total face value(duty credit) of Rs.17146032.00 all the above 08 licences were sold at a discounted price and the total sale value for all the 08 licences comes to Rs. 16456845.66. These were as per the instructions of M/s.Sunkkalp Creations Pvt Ltd passed on to him by Shri Sashin Koradia.
- that they had sold all these licences to M/s Padmavati Agencies Pvt. Ltd., Ahmedabad at discounts as instructed M/s.Sunkkalp Creations Pvt Ltd and passed on to him by Shri Sashin Koradia he submited the originals of all the 05 sale invoices detailed above, vide which the licences were sold to M/s Padmavati Agencies Pvt Limited, Ahmedabad.
- that he did not know anybody in M/s Padmavati Agencies Pvt Limited, Ahmedabad as their company was only raising the bills for sale of licences as per the directives of Shri.Sashin Koradia and they had never received any licence physically at their office. The sale shown in the above invoices were on paper and reflected in our account.
- that Shri.Sashin Koradia had informed him that purchase invoices in respect of these licences would be provided by M/s Sunkkalp Creations Pvt.Limited of Mumbai.
- that he had directed his accountant to send the scanned copies of the Purchase Invoices of Sunkkalp Creations Pvt.Limited and also

the ledger by e-mail to the e-mail i.d of DRI, Ahmedabad i.e driazu@nic.in. The e-mail account driazu@nic.in was accessed and print out of scanned copies of five Tax Invoices of M/s Sunkkalp Creations Pvt.Limited, Mumbai and two pages of ledger account of M/s Sunkkalp Creations Pvt.Limited was also received and after going through the print out he submited the same. The purchase details of the 08 licences were detailed as under :

Licence No. & date	**Duty amount of Licence**	**Tax Invoice No. & date**	**Amount / Purchase price (Rs.)**
0310504365 dtd. 29.01.2009	Rs.2784840/-	SCPL/VKGUY/09-10/118, dtd.09.02.2010	1395568.87
0310504347 dtd. 29.01.2009	Rs.2599495/-	SCPL/VKGUY/09-10/119, dtd.09.02.2010	553932.89
0310505127 dtd. 03.02.2009	Rs.2653468 /-	SCPL/VKGUY/09-10/115, dtd.09.02.2010	928827.89
0310514855 dtd. 08.04.2009	Rs.2294517/-	SCPL/VKGUY/09-10/119, dtd.09.02.2010	488944.36
0310514866 dtd. 08.04.2009	Rs.3003596/-	SCPL/VKGUY/09-10/116, dtd.09.02.2010	1122419.50
0310533750 dtd. 13.08.2009	Rs.1055532/-	SCPL/VKGUY/09-10/117, dtd.09.02.2010	387986.12
0310536516 dtd. 09.09.2009	Rs.2235500/-	SCPL/VKGUY/09-10/117, dtd.09.02.2010	821711.68
0310538513 dtd. 18.09.2009	Rs.519084/-	SCPL/VKGUY/09-10/116, dtd.09.02.2010	193977.49
Total	**Rs.17146032.00**	**Total**	**Rs.5893368.80**

- that from the above table he noted and confirmed that against the total face value/duty credit of Rs.17146032.00 in respect of these 08 licences, all the licences were purchased at a total amount of Rs. 5893368.80, i.e at heavily discounted prices ranging from 21.3% to 50% of the actual value of the licences.
- that he would submit the originals of the above purchase invoice immediately on reaching Mumbai.
- that he was shown the original of the following tax invoices of M/s Sunkkalp Creations Pvt.Limited, Mumbai for sale of duty free transferable licences to M/s Accurate Multitrade Pvt.Limited, Mumbai i.e their company, the details of sale shown in the Invoices as under :

Tax Invoice No. & date	**Details of sales shown in the Invoice**	**Total sale Amount shown in the Invoice including VAT @ 4% (Rs.)**
SCPL/VKGUY/09-10/115, dtd.09.02.2010	This invoice shows sale of total 13 licences each at a discounted rate of 81.83%	1663396.00
SCPL/VKGUY/09-	This invoice shows sale of total	2357474.00

10/116, dtd.09.02.2010	13 licences each at a discounted rate of 81.83%	
SCPL/VKGUY/09-10/117, dtd.09.02.2010	This invoice shows sale of total 13 licences each at a discounted rate of 81.83%	2166391.00
SCPL/VKGUY/09-10/118, dtd.09.02.2010	This invoice shows sale of total 13 licences each at a discounted rate of 81.83%	2499257.00
SCPL/VKGUY/09-10/119, dtd.09.02.2010	This invoice shows sale of total 12 licences each at a discounted rate of 81.83%	1867640.00

- that he had read and understood the contents of all these invoices and that he was informed that these Invoices were withdrawn from the premises of M/s Sunkkalp Creations Pvt.Limted, Mumbai by the officers of DRI under Panchnama dated 30/4/2010.
- that he compared the details of sale mentioned in these 5 invoices with the Invoices of Sunkkalp Creations Pvt.Limited given to their company and submitted by him in the form of scanned copies via e-mail. He noticed that the Invoices bore the same numbers and dates. However, he found that the sale details in both the set of invoices were different and the difference as :

Tax Invoice No. & date	**Details of sales shown in the Invoices given to M/s AMPL.**	**Details of sales shown in the Invoices withdrawn by DRI from M/s SCPL.**	**Total sale Amount shown in the Invoice in Col-2. (Rs.)**	**Total sale Amount shown in the Invoice in Col.3 (Rs.)**
1	**2**	**3**	**4**	**5**
SCPL/VKGUY/09-10/115, dtd.09.02.2010	This invoice shows sale of total 14 licences each at a discounted rate of 34.31% and one at 35%	This invoice shows sale of total 13 licences each at a discounted rate of 81.83%	1663396.00	1663396.00
SCPL/VKGUY/09-10/116, dtd.09.02.2010	This invoice shows sale of total 15 licences each at a discounted rate of 34.31% and two licences at 37.37%	This invoice shows sale of total 13 licences each at a discounted rate of 81.83%	2357474.00	2357474.00
SCPL/VKGUY/09-10/117, dtd.09.02.2010	This invoice shows sale of total 15 licences each at a discounted rate of 34.31% and two licences at 36.76%	This invoice shows sale of total 13 licences each at a discounted rate of 81.83%	2166391.00	2166391.00

SCPL/VKGUY/09-10/118, dtd.09.02.2010	This invoice shows sale of total 14 licences each at a discounted rate of 34.31% and one at 50.11%	This invoice shows sale of total 13 licences each at a discounted rate of 81.83%	2499257.00	2499257.00
SCPL/VKGUY/09-10/119, dtd.09.02.2010	This invoice shows sale of total 14 licences each at a discounted rate of 34.31% and two at 21.31%	This invoice shows sale of total 12 licences each at a discounted rate of 81.83%	1867640.00	1867640.00

- that after comparison he noticed that in one set of Invoices which were given to their company the details of the eight DEPB licences were mentioned distributed among these five invoices, however, these eight licences were not mentioned in the five invoices withdrawn by DRI from the premises of M/s SCPL under Panchnama. He also noticed that the amount mentioned in both the set of invoices were same and he also seen that the sale rate of the licences were adjusted to keep the total amount same in both the set of invoices.
- regarding the payments received from M/s.Padmavati Agencies Pvt Ltd, Ahmedabad, he stated that they had totally received an amount of Rs. 2,96,66,659/- from them in their HDFC Bank account. The details of the date of receipt and amount was as under :

Sr.No.	Date	Amount
1	3/3/2010	Rs.50,00,000/-
2	4/3/2010	Rs.50,00,000/-
3	8/3/2010	Rs.50,00,000/-
4	9/3/2010	Rs.50,00,000/-
5	17/3/2010	Rs.96,66,659/-
	TOTAL =	**Rs.2,96,66,659/-**

- that he produced a copy of the ledger account of M/s.Padmavati Agencies Pvt Ltd, Ahmedabad maintained by them for the period 1/4/2010 to 31/3/2010.
- regarding the payment made to M/s.Sunkkalp Creations Pvt Ltd, Mumbai towards the licence purchases, he stated that they had made payment of Rs.97,00,000/- to them from their HDFC bank account on 17/3/2010 i.e. on receipt of payment from M/s. Padmavati Agencies Pvt Ltd.

- regarding the balance amount of approximately Rs.2 crores received from M/s. Padmavati Agencies Pvt Ltd, he stated that this amount paid by them to M/s. JPK Trading and M/s. Osatwal Trading by RTGS. The payments were made by them on the basis of the instructions communicated to them by Shri Sashin Koradia. The details of the payments were as under :

Sr.No.	Date	Amount
1	4/3/2010	Rs.50,00,000/-
2	5/3/2010	Rs.50,00,000/-
3	8/3/2010	Rs.50,00,000/-
4	9/3/2010	Rs.50,00,000/-
	TOTAL =	**Rs.2,00,00,000/-**

- he submited a copy of the bank statement of account from which RTGS for the above amounts was done.

146. In the course of the investigations statements of the original exporters to whom the 85 genuine VKGUY licences were issued by DGFT were recorded on different dates under Section 108 of the Customs Act, 1962. These original licence holders had in their statements submitted the details of the licences sold by them and the name of the broker/firm to whom the licences were sold. The details were as under:-

Sr. No.	Name of the exporter/licence holder	Licences sold	To whom sold/ transferred	Statement dtd.
1	M/s.General Commodities Pvt Ltd, Bangalore	0710057647/30-5-2008 0710057375/13-5-2008, 0710059325/27-08-2008 0710059272/21-08-2008 0710058485/14-7-2008 0710063439/05-3-2009 0710063262/25-2-2009	M/s.Sunkkalp Creations Pvt Ltd, Mumbai	21/06/2010 and 22/06/2010
2	M/s.Ramesh Exports Pvt Ltd, Bangalore,	0710057493/21-5-2008	Through M/s.Sunkkalp Creations Pvt Ltd, Mumbai. Licence used by M/s.Apollo Tyres Ltd, Cochin.	23/06/2010
3	M/s.Ned Commodities India Pvt Ltd, Bangalore	0710057530/22-5-2008 0710057638/29-5-2008 0710058726/25-7-2008 0710057639/29-5-2008	M/s.Sunkkalp Creations Pvt Ltd, Mumbai	23/6/2010
4	M/s.Ecom Gill Coffee	0710058085/24-	M/s.Sunkkalp	23/06/2010

	Trading Pvt Ltd, Bangalore	6-2008 0710058005/19-6-2008	Creations Pvt Ltd, Mumbai	
5	M/s.Gayathri Exports, Udipi,	0710060736/27-10-2008 0710060737/27-10-2008	M/s. Sabari Quality Foods, KOllam	23/06/2010
6	M/s.Bola Raghvendra Kamat & Sons	0710060173/26-9-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	23/06/2010
7	M/s.Prasanthi Cashew Company, Kollam	5310006825/5-11-2008 5310007407/20-1-2009 5310006885/11-11-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	29/06/2010
8	M/s.Sai Export Enterprises, Kollam	5310006554/7-10-2008 5310007389/20-1-2009	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	29/6/2010
9	M/s. Quilon Exoprt Enterprises, Kollam	5310006892/11-9-2008 5310006911/11-9-2008 5310006856/11-9-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	29/6/2010
10	M/s. Rajan Cashew Company, Kollam	5310007004/24-11-2008 5310006973/24-11-2008 5310006874/11-11-2008 5310006896/11-11-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	30/6/2010
11	M/s.Sandhya Cashew Factory, Kerala	5310007393/20-1-2009	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	01/07/2010
12	M/s.Shyam Cashews, Kollam	5310006873/11-11-2008 5310006894/11-11-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	01/07/2010
13	M/s.South Kerala Cashew Exporters, Kollam	5310006706/20-10-2008 5310006698/20-10-2008 5310007361/19-1-2009 5310007387/20-1-2009	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	02/07/2010

		5310007391/20-1-2009 5310007401/20-1-2009 5310007402/20-1-2009 5310007406/20-1-2009		
14	M/s.Vijaylaxmi Cashew Company, KOllam	5310006391/11-9-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	02/07/2010
15	M/s.Abbas Cashew Company, Kollam	5310006878/11-11-2008 5310007384/20-1-2009	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	17/6/2010 08/07/2010
16	M/s.A.S.Cashew Exporters, Kollam	5310007309/9-1-2009	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	17/6/2010 08/07/2010
17	M/s.Central Cashew Company, Kollam	5310007364/19-1-2009	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	21/6/2010 08/07/2010
18	M/s.Emmanuel Cashew Industries, Kollam	5310006867/11-11-2008 5310006910/11-11-2008 5310006893/11-11-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	22/6/2010 09/07/2010
19	M/s.Johns Cashew Company, Kollam	5310006586/10-10-2008 5310006880/11-11-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	23/06/2010
20	N.Sateesh Kumar, M/s.Kumar Cashew Exports, Kollam	5310006882/11-11-2008 5310006906/11-11-2008 5310006661/20-10-2008 5310006694/20-10-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	25/06/2010
21	M/s.Poornachandra Cashew Company, Kollam	5310006883/11-11-2008 5310006884/11-11-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	28/6/2010

22	M/s.Sree Durga Cashew Factory, Kollam	5310007357/16-1-2009	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	28/6/2010
23	M/s. Anzar Cashew Company, Kollam	5310006876/11-11-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	18/6/2010 06/07/2010
24	M/s.Beena Cashew Company, Kerala	5310007404/20-1-2009	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	21/6/2010 06/07/2010
25	M/s.Chandra Cashew Factory, Kollam	5310006861/11-11-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	22/6/2010 06/07/2010
26	M/s.Kailas Cashew Exports, Kollam	5310006671/20-10-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	23/6/2010
27	M/s.Nila Exports, Kollam	5310006869/11-11-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	23/6/2010
28	M/s.Kerala Nut Food Company, Kollam	5310006718/21-10-2008 5310006702/20-10-2008 5310006672/20-10-2008 5310006726/21-10-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	24/6/2010
29	M/s.Krishnan Food Processors, Kollam	5310006811/5-11-2008 5310006829/5-11-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	24/6/2010
30	M/s. Lekshmi Enterprises, Kollam	5310006898/11-11-2008	Through M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	25/6/2010
31	M/s.Alphonsa	5310007379/19-	Through	18/6/2010

	Cashew Industries,Kollam	1-2009 5310007372/19-1-2009 5310007276/9-1-2009 5310007345/16-1-2009 5310007349/16-1-2009 5310007337/16-1-2009 5310007265/5-1-2009 5310007194/22-12-2008 5310007301/9-1-2009 5310007180/19-12-2008 5310007120/17-12-2008 5310007305/9-1-2009 5310007353/16-1-2009	M/s.Sabari Quality Foods to M/s.Reliance Industries Ltd, Hazira	25/6/2010
32	M/s.Rajkumar Impex (P) Ltd, Chennai	0410099033/6-10-2008 0410099030/6-10-2008 0410099029/6-10-2008	M/s.Sabari Quality Foods.	18/6/2010

147. The investigation conducted by DRI brought out that forged Duty Entitlement Pass Book (DEPB) / Vishesh Krishi and Gram Udyog Yojana (VKGUY) licences were used by M/s. Hindalco Industries Limited, Dahej, towards payment of Customs Duty at the time of importation. Accordingly, on completion of investigation, the Additional Director General, DRI, Ahmedabad Zonal unit issued show cause notice under F.No: DRI/AZU/INQ-03/2010 dated 05.11.2012 alleging contravention of provisions of Section 7 and 11 of the Foreign Trade (Development and Regulation) Act, 1992; Rule 14 of Foreign Trade (Regulation) Rules, 1993 to M/s. Hindalco Industries Ltd, Dahej and others to show cause to the Commissioner of Customs as to why:-

(a) The goods valued at **Rs.314,91,25,623/-, (as detailed in Annexure 'B' annexed to the notice)** imported by presenting 85 forged/fake VKGUY and 08 forged/fake DEPB licences **(as detaileds in Annexure 'A' annexed to the notice)** should not be held liable for confiscation under Section 111 (d), (j) and (o) of the Customs Act, 1962;

(b) The Customs duty totally amounting to **Rs.48,42,80,689/-** which debited utilizing the forged/fake VKGUY and 08 forged/fake DEPB licences **(as detaileds in Annexure 'B' to the notice)** should not be demanded and recovered from them under Section 28 (4) (erstwhile proviso to Section 28 (1) of the Customs Act, 1962;

(c) Interest should not be recovered from them on the said differential duty, as at (b) above, under Section 28AA (erstwhile 28AB) of the Customs Act, 1962;

(d) Penalty should not be imposed upon them under Section 112A of the Customs Act, 1962;

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

(f) The Customs duty totally amounting to Rs.48,42,80,828/- and Interest totally amounting to Rs.10,10,83,066/- already paid and credit to Govt. a/c vide vide TR6 Challan No.250/2010-11 dtd.15/09/2010 and 415/2010-11 dtd.22/12/2010 should not be appropriated against demand of duty and interest mentioned at (b) and (c) above respectively.

148. **(I)** Shri Kalpessh Daftary, of M/s. Sunkkalp Creations Pvt Ltd, Mumbai and M/s. Bansi Overseas, Rajkot; **(II)** Shri Piyush Viramgama of M/s. Krish Overseas and M/s. Bansi Overseas, Rajkot; **(III)** Shri Niyaz Ahmed of M/s. Indiyana Shoes and M/s. Indiyana Marketing, Kanpur and **(IV)** Shri Vijay Gadhiya of M/s. Krish Overseas and M/s. Shivigangi Enterprise, Rajkot and **(V)** Shri Dharmesh Gathani, Director of M/s. Padmavati Agencies Pvt Ltd, Ahmedabad were also called upon to show cause to the Principal Commissioner of Customs as to why :-

1) Penalty should not be imposed upon them under Section 112 (a) of the Customs Act, 1962 and
2) Penalty should not be imposed upon them under Section 114AA of the Customs Act, 1962.

FINDINGS OF THE ORIGINAL ADJUDICATING AUTHORITY

149. The show cause notice F.No: DRI/AZU/INQ-03/2010 dated 05.11.2012 was adjudicated by the Commissioner, Customs, Ahmedabad vide Order-in-Original No. 2/Commr/DRI/2014 dated 28.02.2014, wherein:-

(i) the goods valued Rs.314,91,25,623 were confiscated under Section 111(d), (j) and (o) of the Customs Act, 1962, but no fine was imposed as goods were not available for confiscation.

(ii) the total Customs duty of Rs.48,42,80,689/- was confirmed under Section 28(8) of the Customs Act, 1962. The customs duty of Rs.48,42,80,828/- paid by M/s Hindalco paid was also appropriated.

(iii) the recovery of interest was ordered under Section 28AA of the Customs Act, 1962. Interest of Rs.10,10,83,066 already paid by M/s Hindalco was appropriated.

(iv) No penalty was imposed under Section 112 or Section 114 of the Customs Act, 1962 on M/s Hindalco.

(v) Penalty was imposed on the following persons:

Sr. No.	Name of the person	Amount of penalty (In Rs.)	
		Under Section 112 (a) of CA, 1962	Under Section 114AA of the CA, 1962
1.	Shri Kalpessh Daftary of M/s Sunkkalp Creations Pvt. Ltd., Mumbai and M/s Bansi Overseas, Rajkot	3,40,00,000	1,45,00,000
2	Shri Piyush Viramgama of M/s.Krish Overseas and M/s. Bansi Overseas, Rajkot;	3,40,00,000	1,45,00,000
3	Shri Niyaz Ahmed of M/s. Indiyana Shoes and M/s.Indiyana Marketing, Kanpur	4,85,00,000	4,85,00,000
4	Shri Vijay Gadhiya of M/s. Krish Overseas and M/s. Shivigangi Enterprise, Rajkot	1,25,00,000	1,25,00,000
5	Shri Dharmesh Gathani, Director of M/s. Padmavati Agencies Pvt Ltd, Ahmedabad	3,40,00,000	1,45,00,000

APPEAL FILED BY SHRI KALPESSH DAFTARY OF M/S SUNKKALP CREATIONS PVT. LTD., MUMBAI AND M/S BANSI OVERSEAS, RAJKOT BEFORE THE HON'BLE TRIBUNAL, AHMEDABAD AGAINST ORDER-IN-ORIGINAL NO. 02/COMMR/DRI/2014 DATED-28/02/2014.

150. An appeal was filed by Shri Kalpessh Daftary before the Hon'ble Tribunal, Ahmedabad and the same was decided by the Tribunal vide its Final Order No. A/10520/2020 dated 11.02.2020.

The remand proceedings in the instant case has arisen out of Final Order No. (*operative portion are reproduced for ready reference*)

> *"4. We have heard both sides and perused the records. We find that as per the facts narrated by the learned counsel, this appeal may be disposed of only on the ground of natural justice. Therefore, we are not going into the merit of the case. We find that though two hearing notices were issued but the same were sent to the jail, whereas the appellant was released prior to the date of hearing notice. Therefore, the hearing notices were not served to the appellant. It is also observed that the appellant has sought for cross examination of various witnesses in his reply submitted through jail to the Adjudicating Authority but the same was also not considered. In this position, we find that there is clear violation of natural justice. Therefore, ex-parte order passed by the Adjudicating Authority will not sustain. Accordingly, we set aside the impugned order in respect of this appellant and remand the matter to the Adjudicating Authority for passing a fresh order after granting sufficient personal hearing. The appeal is allowed by way of remand to the Adjudicating Authority."*

APPEAL FILED BY SHRI PIYUSH VIRAMGAMA OF M/S. KRISH OVERSEAS AND M/S. BANSI OVERSEAS, RAJKOT, BEFORE HON'BLE TRIBUNAL, AHMEDABAD AGAINST ORDER-IN ORIGINAL NO. 02/COMMR/DRI/2014 DATED-28/02/2014.

151. An appeal was filed by Shri Piyush Viramgama before the Hon'ble Tribunal, Ahmedabad and the same was decided by the Tribunal vide its Final Order No. A/10956/2022 dated 10.08.2022.

> *"4. We have heard both the sides and perused the records.*
>
> *4.1 Without expressing opinion on the merits and other aspects, we find that as per the facts narrated by the Ld. Counsel, these appeals may be disposed of only on the ground of natural justice. Therefore, we are not going into the merit of the case. We noticed that in appellant's matter Ld. Commissioner has decided the matter ex-parte. It is also observed that the appellant has sought for cross–examination but the same was also not considered by Ld. Commissioner.*
>
> *4.2 It is the basic principle of the Natural justice that no one can be condemned unheard. Natural Justice is an un codified law purely based on principle of substantial justice and judicial spirit. Principles of Natural Justice are the cardinal principles, which must be followed in every judicial and quasi judicial proceeding. Authorities should exercise their powers fairly reasonably & impartially in a just manner. They should not decide a matter in back of the party.*
>
> *4.3. In this position, we find that there is clear violation of natural justice.Therefore, ex-parte order passed by the Adjudicating Authority will not sustain. Accordingly, we set aside the impugned order in respect of these Appellants and remand the matter to the Adjudicating Authority for passing a fresh order after granting sufficient personal hearing. The Appeals are allowed by way of remand to the Adjudicating Authority."*

DEFENCE SUBMISSION SUBMITTED BEFORE EARLIER ADJUDICATING AUTHORITY:

SHRI KALPESH DAFTARY:

152. Shri Kalpesh Daftary has filed his written submission vide his letter dated 16.01.2013 and 06.02.2013 and denied the charges made in the show cause notice. In fact his reply does not actually counter the allegations made in the show cause notice and makes allegations on other conspirators who happened to be his associates when the offence was committed. Such allegations on other associates are not reproduced here in view of the fact that it has got nothing to do with the charges made in the show cause notice against Shri Daftary.

152.1. He claimed that it is case of Padvamati Agencies (P) Ltd., in connivance with Custom Officers of the port issuing and confirming the licenses and forged the documents and used the same for their personal gain. He also stated that he has retracted the statement recorded by DRI. Shri Daftary argued that Shri Dharmesh Gathani of Padmavati Agencies Pvt. Ltd in his statement has stated that they have been supply licences to Reliance Industries Ltd. Therefore, Daftary stated that Shri Dharmesh Gathani wss having easy access to Xerox copies of thes used licenses by Reliance Industries Ltd at Dahej or Magdala port.

152.2. Shri Kalpesh Daftary pointed out that letter of verification of genuineness of RA was actually prepared by Mr. Jigar Shah of Hindalco. Thereafter Shri Jigar Shah never faxed any letter of genuineness to Mangalore customs but Jigarbhai send all conformation of genuineness letter send to Padmavati hence Shri Jigar Shah of Hindalco is key planner of all forge licenses which used at Dahej and he managed all fax for genuiness of conformation on behalf of Padmavati Agencies Pvt. Ltd. It is pertinent to note here that before the using licenses, the genuineness of the RA's are required to be confirmed by RA issuing Custom from Supdt. of Custom, Dahej port and are then faxed by the Custom to Custom at the port in this case Dahej Custom. Though in the present case nor any fax or any letter of confirmation is sent from Dahej, Custom to Mangalore, Custom.

152.3. He further stated that Show-Cause Notice is prima-facie time barred. That the DRI had arrested him for alleged irregularity or illegality of DEPB licenses. Hence the department is having notice of all the details at least prior to the arrest, in spite of this fact notice issued after period of more than one year and hence it is time barred and hence not maintainable in eye of law. The extended period of issuance of Show Cause Notice is not available after disclosure of facts and on the said basis arrest of the notice has taken place. Therefore in view of true and correct interpretation of Section 28 of Custom Act notice it-self is time barred.

152.4. He further stated that the allegation under Custom Act raised u/s 111 (d), (j) and (o) as well as for invocation of personal penalty, do not apply to facts and circumstances of present case. In fact entire transaction of purchase and sale of DEPB licenses is neither done by noticee or his company, therefore any of the provision of Section 111 are not invocable nor any of the provisions of personal penalty are invocable against him.

152.5. He further contended that reliance has been placed on his statement recorded and at that time, he was imprisoned and was not having legal guidance, nor having documentary evidence. Such statement was immediately retracted by him.

152.6. He argued that it is evident from the content of notice itself and more particularly from the procedure required to be followed to obtain

the credit of the licenses that the Padvamati Agencies Pvt. Ltd., in connivance with custom officers of the port issuing and confirming the licenses as genuine licenses and of the utilizer port have forged the documents and used the same for their personal gain.

SHRI PIYUSH VIRAMGAMA:

153. Shri Piyush Viramgama, filed his reply to aforesaid show cause notice vide his letter dated 28.03.2013. Brief of the same are as under:

- He confirmed having received the show cause notice and conversant with facts and circumstances of the case. He filed the reply/at this stage, with a view to bring certain important aspects, with a request to withdraw/drop this notice. He was an under-trial prisoner and unable to get any temporary bail, he could not properly instruct his lawyer. Hence on this count also, he submitted that he reserves his right to file further reply after getting released from imprisonment.
- He denied the charges made against him in the notice.
- He stated that the Show Cause Notice refers to number of statements of various persons and such persons mentioned in SCN have allegedly described the incident, which has been made basis of initiating proceeding against him. Therefore, requested to provide opportunity for cross-examination of such person through his lawyer with a view to prove that the facts stated by such persons are not complete and hence cannot be made basis for issuance of SCN.
- He contended that the right to cross examination is a right given under statue and hence same cannot be taken away.
- He further stated that Show-Cause Notice is prima-facie time barred. That the DRI had arrested him for alleged irregularity or illegality of DEPB licenses. Hence the department is having notice of all the details at least prior to the arrest, in spite of this fact notice issued after period of more than one year and hence it is time barred and hence not maintainable in eye of law. The extended period of issuance of Show Cause Notice is not available after disclosure of facts and on the said basis arrest of the notice has taken place. Therefore in view of true and correct interpretation of Section 28 of Custom Act notice it-self is time barred.
- He further stated that the allegation under Custom Act raised u/s 111 (d), (j) and (o) as well as for invocation of personal penalty, do

not apply to facts and circumstances of present case. In fact entire transaction of purchase and sale of DEPB licenses is neither done by notice or his company, therefore any of the provision of Section 111 are not invocable nor any of the provisions of personal penalty are invocable against him.

- He further contended that reliance has been placed on his statement recorded and at that time, he was imprisoned and was not having legal guidance, nor having documentary evidence. Such statement was immediately retracted by him.
- He argued that it is evident from the content of notice itself and more particularly from the procedure required to be followed to obtain the credit of the licenses that the Padvamati Agencies Pvt. Ltd., in connivance with custom officers of the port issuing and confirming the licenses as genuine licenses and of the utilizer port have forged the documents and used the same for their personal gain.
- Shri Viramgama submitted that Dharmesh Gathani had given his statement recorded on 22.04.2010. Padmavati agencies Pvt. Ltd is CHA (Custom House Agent). That CHA license was issued from Jamnagar Custom and said Padmavati Agencies are consultant of M/s. Hindalco and other such companies and hence they are fully aware of custom formality. Further in his statement he has further said that they help exporters in application DGFT/Custom verification work. What is most relevant to note is that his statement differs from Police statement in 145/2010 register at Dahej. And as per Civil suit filed by M/s. Hindalco Industries Ltd at city Civil Court Ahmedabad they mentioned that they pay Rs. 3.75 crore for one licences consultancy charge to Padmavati Agencies Pvt.Ltd that show that they adjust forge licensees profit from other way.
- He submitted that statement of Bikas Pinaliwala he stated that it is only Padmavati Agencies who gave low rate and higher quantity. That the genuineness of the RA's are required to be confirmed by RA issuing Customs Authority, Dahej Port. Though in the present case nor any fax or any letter of confirmation is sent from Dahej, Custom to Mangalore, Custom.
- Further Shri Viramgama submitted that Shri Bikas Pilaniwala of M/s. Hindalco mentioned stated that in addition to the Custom Authorities, the confirmation of genuineness of the release advice in respect of the alleged 85 licensees were also managed by none

other but M/s. Padmavati Agencies (P) Ltd. Dharmesh Gathani is main conspirer of these forge licensees.

- Dharmesh Gathani of M/s Padmavati Agencies (P) Ltd stated that due to huge loss to M/s. Padmavati Agencies (P) Ltd in stock market and he took more money by borrowing same from market that's why they wanted easy money by selling forged license to M/s. Hindalco.
- Shri Viramgama stated that from the above facts and discrepancy mentioned above the allegation leveled against him with regards to act of omission and commission in forging and sale of forged DEPB/VKGUY licenses to M/s. Hindalco Industries Ltd is totally baseless, arbitrary and illegal. Hence, action proposed in the notice needs to be dropped.

DETAILS OF PERSONAL HEARING/CROSS-EXAMINATION

154. In view of the remand orders passed by the Hon'ble Tribunal, Ahmedabad, vide its Final Order No. A/10520/2020 dated 11.02.2020 and A/10956/2022 dated 10.08.2022, personal hearing for the purpose of conducting cross-examination was initially scheduled on 10.10.2023.

In case of Shri Kalpessh Daftary:

155. In response to this hearing opportunity, Shri Kalpessh Daftary, through his letter dated 09.10.2023, had requested a postponement of the hearing by one month. By accepting his request, a subsequent hearing was scheduled for 08.11.2023. By following the principle of natural justice for adjudicating the matter in due course, another opportunity for personal hearing was granted to Shri Kalpessh Daftary vide letter dated 29.12.2023. In response, Shri Kalpessh Daftary, through his letter dated 03.01.2024, submitted a list of 40 individuals for cross-examination, however, he did not provide any specific reasons or justification for requiring the cross-examination of such a large number of witnesses. I find that the Hon'ble Tribunal remanded the case for fresh adjudication to ensure compliance with the principles of natural justice, particularly the right to cross-examine witnesses. However, this right is not unfettered or absolute. I further find that it is a settled principle of law that the noticee must provide specific and sufficient reasons for seeking the cross-examination of any witness. The adjudicating authority is not obligated to permit cross-examination merely upon a request; the noticee must substantiate their request with cogent reasons to establish the relevance and necessity of such cross-examination. In the present

case, Shri Kalpessh Daftary's submission of a lengthy list of 40 individuals for cross-examination, without providing any justification, appears to be an attempt to misuse the opportunity provided under the remand order. I note that this conduct does not align with the principles enunciated in judicial pronouncements regarding the right to cross-examination. I further find that various courts in their judgments have reiterated the requirement for noticees to provide valid and specific reasons for cross-examination of witnesses. In support of my statement, I rely on the following judgements:

1. **K.L. Tripathi v. State Bank of India & Ors., (1984) 1 SCC 43** – The Hon'ble Supreme Court held that the principles of natural justice do not require an unlimited or unrestricted right to cross-examine witnesses. The necessity of cross-examination must be assessed based on the facts and circumstances of the case.
2. **Surjeet Singh Chhabra v. Union of India, (1997) 89 ELT 646 (SC)** – The Court emphasized that cross-examination is not an inherent right but must be justified by the noticee to ensure that it serves a meaningful purpose in the adjudication process.
3. **CCE v. Dhiren Chemical Industries, 2002 (139) ELT 3 (SC)** – The Hon'ble Court held that the adjudicating authority has the discretion to allow or deny cross-examination based on the relevance and necessity demonstrated by the noticee.
4. In the case of ***M/s. Fortune Impex* v. *Commissioner of Customs, Calcutta***, *as* reported at 2001 (138) E.L.T. 556 (Tri. - Kolkata), Hon'ble Tribunal observed at Para 12 that:
   "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 crossexamination without indicating the specific reasons for cross-examining the...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." This 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. A134 (S.C.)".
5. **Hon'ble CESTAT Kolkata in its decision in *Dipu Das* v. *Commissioner of Customs Kolkata***, reported at 2010 (261) E.L.T. 408 (Tri. - Del), has held that;

   ".....In adjudication proceedings, cross-examination cannot be claimed as a matter of right on mere asking for it, without furnishing reasons for the same".

In light of the above decisions, it is evident that the submission of a list of witnesses for cross-examination, without providing specific reasons or relevance, does not fulfill the criteria laid down by law. Shri Kalpessh Daftary's failure to substantiate his request undermines the objective of the remand order, which was intended to facilitate a fair and just

adjudication process. I further find that in the list submitted by Shri Kalpessh Daftary for cross-examination, he has not initially sought the cross-examination of Shri Somnath Chaudhary, the Investigating Officer of the case. However, Shri Kalpessh Daftary, vide his letter dated 21.10.2024, has submitted that he intends to cross-examine Shri Somnath Chaudhary after the cross-examination of all other witnesses. This is the first instance in the present case where Shri Kalpessh Daftary has specifically mentioned the name of Shri Somnath Chaudhary for cross-examination. Recognizing the importance of adhering to the principles of natural justice and the directions issued by the Hon'ble Tribunal, the request made by Shri Kalpessh Daftary has been considered and the witnesses including Shri Somnath Chaudhary were called for to cross examination.

156. To ensure fairness and compliance with the remand order, out of 40 witnesses, letters were subsequently issued to 19 witnesses as identified by Shri Kalpessh Daftary and on whose statements were mainly relied in the present proceedings, requesting their appearance for cross-examination. Details of the same are as under:

Sr. No.	Name of the person whose cross-examination sought	Date on which cross-examination granted	Whether cross-examination conducted
1	Dharmesh Gathani	17.09.2024, 01.10.2024, 24.10.2024, 07.11.2024, 24.12.2024	Appeared on 01.10.2024, but Shri Kalpesh not appeared. Cross-examination conducted on 24.12.2024
2	Kalpesh Darji	17.09.2024, 01.10.2024, 24.10.2024, 08.11.2024, 24.12.2024	Appeared on 01.10.2024, but Shri Kalpesh not appeared. Cross-examination conducted on 24.12.2024.
3	Ashok Gupta	20.09.2024, 04.10.2024, 23.10.2024	Postal authority has returned the letter with remark that the receiver has expired.
4	Girish Ghelani	20.09.2024, 03.10.2024, 23.10.2024	Letter returned undelivered from both addresses by postal authorities with remark "Left".
5	Bikas Pinaliwala	18.09.2024	Letter returned by postal authorities with remark "No such person at that address"
6	Jigar Shah	18.09.2024, 30.09.2024, 24.10.2024, 07.11.2024, 24.12.2024	M/s Hindalco vide letter dated 13.11.2024 has submitted that the concerned person has left the job on 28.02.2011. No whereabouts available.

7	David Abraham	18.09.2024, 04.10.2024, 24.10.2024	Letters returned by the postal authorities with remark “Left” from one address and with remark “No such person” from second address.
8	Vishal Wadkar	19.09.2024	Letters returned by the postal authorities with remark “Not Known”.
9	Vishal Vyas	19.09.2024 15.01.2025	Letters returned by the postal authorities with remark “Left”. Cross examination letter were send on new address and cross examination conducted on 15.01.2025
10	S.P. Mojar	19.09.2024, 03.10.2024, 22.10.2024, 06.11.2024, 23.12.2024	Did not appear in response to four letters, however, in response to 5th opportunity, appeared and cross-examination conducted on 23.12.2024.
11	Sachin Koradia	19.09.2024, 03.10.2024, 22.10.2024, 07.11.2024, 24.12.2024	Did not appear on any dates.
12	Surendra Kulhari	20.09.2024, 04.10.2024, 23.10.2024, 06.11.2024, 24.12.2024	Did not appear on any dates.
13	PiyushViramgama	10.09.2024, 30.09.2024, 21.10.2024	Did not appear on any dates.
14	Vijay Gadhiya	10.09.2024, 01.10.2024, 22.10.2024	Letters returned by the postal authorities with remark “No such person”.
15	Hiten Parekh	17.09.2024, 30.09.2024, 21.10.2024, 06.11.2024, 23.12.2024	Cross-examination conducted on 23.12.2024.
16	Rajesh Sajnani	18.09.2024, 01.10.2024, 22.10.2024, 06.11.2024, 23.12.2024	Appeared on 01.10.2024 but cross-examination not conducted as Shri Kalpesh did not appear. Cross-examination conducted on 23.12.2024.
17	DeepeshViramgama	17.09.2024	Letters returned by the postal authorities with remark “Left”
18	Rakesh Bainle	11.09.2024, 01.10.2024, 21.10.2024	Appeared on 11.09.2024 but cross not done as Shri Kalpesh did not appear. Cross-examination conducted on 21.10.2024.
19	Somnath Chaudhary	08.11.2024, 26.12.2024	Appeared on 08.11.2024 but cross-examination not conducted as Shri Kalpesh did not appear.

			Shri Kalpesh submitted letter dated 26.12.2024 for extension of dates for cross-examination.
20	N.S. Mangava		Cross-examination not granted by the adjudicating authority as no specific points given by the noticee to confront.
21	Sameer Bhagat, Director of M/s Mac Alloys (P Ltd., Hyderabad.		
22	BindiVora, employee of M/s Hindustan Continental Ltd., Mumbai		
23	Prakash Changela, Proprietor of M/s Reliance Enterprises, Rajkot.		
24	Sunil Kumar, Proprietor of M/s. Sabari Quality Foods, Kollam		
25	Mohamed Fahad, Junior Executive, M/s Kshitij Marine Services Pvt. Ltd., Surat.		
26	Manish Jain, Director of M/s Ostwal Trading India Pvt. Ltd.		
27	Vipul Joshi, Chief Financial Officer, M/s Punjab Chemical & Crop Protection Ltd., Mumbai.		
28	Sangita Parekh, Director of M/s Sunkkalp Creations Pvt. Ltd., Mumbai.		
29	Tarak Joshi, Senior Executive of M/s United Phosphorus Ltd., Ankleshwar.		
30	Vinod Poovappa, Superintendent, C.Ex., & Customs, Mangalore.		
31	Hitesh Rajput		
32	Prashan Chowta, Customs Clerk of M/s Ganesh Shipping Agency, Mangalore.		
33	Nirav Patel		
34	Parag Gathani, Director of M/s. Padmavati Agencies Pvt. Ltd.		
35	Niyaz Ahmed of M/s.Indiyana Shoes and M/s.Indiyana Marketing, Kanpur		
36	Arvind Sonawane, Export Executive of M/s Allanasons Ltd., Mumbai.		
37	Basir Jasani, Manager of M/s Allanasons Ltd., Mumbai.		
38	Dharmendra Singh, Director of M/s Accurate Multitrade Pvt. Ltd., Mumbai.		
39	N.M.Patnaik, President of M/s		

	Hindalco Industries, Dahej.	Cross-examination not granted by the adjudicating authority as no specific points given by the noticee to confront.
40	Naveen Kumar Mathur, VP, M/s Hindalco Industries Ltd.	
41	Praveen Dixit, Director of M/s Kshitij Marine Services Pvt. Ltd., Surat	

Further, personal hearing in the matter was held on 11.02.2025 through video conferencing. Shri N.K. Tiwari, consultant of Shri Kalpessh Daftary and Shri Kalpessh Daftary himself appeared for personal hearing and during the hearing, Shri Tiwari, on behalf of Shri Kalpessh Daftary, raised certain points and stated that they would submit a detailed written reply incorporating the submissions made during the hearing by 17.02.2025. They were accordingly granted time until 17.02.2025 to file their final written submissions. As the personal hearing was conducted through video conferencing, the record of personal hearing was sent to Shri Kalpessh Daftary via email on 11.02.2025, with a request to return a signed copy of the same. However, signed copy of the record of personal hearing was not received from Shri Kalpessh Daftary even after passing of sufficient time. Consequently, a letter dated 13.02.2025 was issued to Shri Kalpessh Daftary, reminding him of the deadline for submission of the final written reply by 17.02.2025. Subsequently, vide email dated 14.02.2025, Shri Kalpessh Daftary submitted a modified version of the record of personal hearing prepared by him. In the said record, additional points were incorporated which had not been raised during the actual personal hearing. Further, it is observed that the record submitted by Shri Kalpessh Daftary includes new contentions that were not part of the personal hearing proceedings. Moreover, during the hearing, they had voluntarily sought time to submit a detailed reply covering all their contentions and they were granted time accordingly.

In case of Shri Piyush Viramgama:

157. In pursuance of the Hon'ble Tribunal order dated 10.08.2022, Shri Piyush Viramgama was granted opportunities for two personal hearings on 15.09.2023 and 19.10.2023, to represent their defence. However, in response to both the personal hearings, Shri Piyush Viramgam has neither turned up for the hearing on the scheduled date nor submitted any reply in this regard. On request of cross-examination of Shri Piyush Viramgama by Shri Kalpesh Daftrary, three letters dated 03.09.2024, 18.09.2024, and 04.10.2024, were issued to Shri Piyush Viramgama,

requesting to remain present at the Office of the Principal Commissioner of Customs, Ahmedabad, on the scheduled date and time for cross-examination. But, Shri Piyush Viramgama has neither appearred for the cross-examination nor made any request for postponement in this matter. In addition, in order to follow the principle of natural justice on the direction of the Hon'ble Tribunal, this office has issued letter dated 28.10.2024 to Shri Piyush Viramgama, for seeking the list of witnesses whom to be desired for cross-examination within seven days. This office letter was acknowledged and received by him in person on 29.10.2024. Despite of providing the list of person to be cross-examine within the stipulated time, Shri Piyush, vide letter dated 07.11.2024, has requested for one-month extension without adducing any specific reason. I further find that subsequent to his request for an extension, further communications, including a letter dated 08.11.2024 and reminders dated 19.11.2024 and 04.12.2024, were issued to Shri Piyush Viramgama, instructing him to submit the list of witnesses for cross-examination. Till the beginning of this adjudicating proceedings, no reply was received from Shri Piyush Viramgama in continuation for their postponement. Although, the very fact reveals that the opportunity of cross-examination is not being taken in serious manner which reflects the contradictory approach of Shri Piyush Viramgama towards the opportunity provided by the Hon'ble Tribunal to controvert statements and cross examine the statements on which the department places its reliance. Without any presupposition, it is imperative to mention that such casual approach of postponement is not appreciable and may adversely affect the adjudication process to complete in a reasonable time in the interest to safeguard the Govt. Revenue. In a fair and just way, I observe that the right of cross examination is not an tenable right which can be asserted irrespective of the facts and circumstances without participating in the adjudicating proceedings up to the final stage. In such circumstance, I find that the cross-examination would not be helpful to their defence or nothing fruitful would be elicited in cross-examination to conclude the adjudication process. Taking into considering the above facts and circumstances, I find that several opportunities have been granted to Shri Piyush Viramgama to participate in the adjudicating proceeding indicating sopecifically that failure to join the proceedings would compel to proceeds on the available records, however, in each and every occasion, Shri Piyush Viramgama has failed to avail opportunity for representing their contentions with the support of corroborative evidence before the adjudicating authority. Thus, there is

no option left before me to proceed the adjudicating process on the basis of available records as well as per procedure and substance.

158. RECORD OF CROSS EXAMINATION CONDUCTED

A. Shri Rakesh Bainley and Shri N K Tiwari with Shri Kalpesh Daftary appeared for the cross examination on 21.10.2024 at 11:30 hrs, the details are:-

Q.1. There were two statement dated 23.07.2010 & 27.08.2012, have you signed both these statements?

Ans: Yes, I have signed both these statements.

Q.2. In your statement you have stated that you were posted at Dahej, please state whether it is a EDI port or Non-EDI port?

Ans: It was a Non-EDI port.

Q.3. In your statement you have stated that there were two fax machines were installed in the Custom House, Dahej, please state the exact location, where these fax machines were installed?

Ans: As the matter was more than 12 years old, I am not able to recall the same.

Q.4. In your statement you have stated that the fax received from the fax machines were also not legible, please state that have you ever brought to notice of higher authorities?

Ans: Do not remember.

Q.5. In your statement you have stated that M/s Hindalco Industries Limited were filing bill of entries and shipping bills on self basis but their work was being handled by M/s Kshitij Marine Services Private Limited, Surat. Please tell me the provisions of Customs Act, 1962, which provide such a dual method of clearance of imported goods or export of cargo?

Ans: Do not remember

Q.6. Do you know the directors of M/s Kshitij Marine Services Private Limited, Surat?

Ans: No, I do not know any of the director of M/s Kshitij Marine Services Private Limited, Surat.

Q.7. Please state the process of debiting the Customs Duty in a license.

Ans: At present, I am not able to recall this.

Q.8. Please state where was the Assistant Commissioner of Customs, Dahej sitting at that time?

Ans: The Assistant Commissioner of Customs, Dahej usually sat at Surat, office, however, he regularly visited the Dahej office for official work.

Q.9. Please state the medium or how the files were being taken from Dahej port to the Surat office of Assistant Commissioner of Dahej Customs.

Ans: I do not remember exact medium, however, it might be send through the departmental officers.

Q.10. Is there any provision in Customs Act, 1962 to facilitate the importer, who does not have the facility of storage or bonded warehouse? In such cases who is empowered to permit such facilitation, Assistant Commissioner or Superintendent?

Ans: Do not remember.

Q.11. In your statement, you have mentioned that you have sent the letter no. CH/DJ/32/2008-09 dated 10.09.2008 to Mangalore Customs. Please state that how this letter was sent to the Mangalore Customs, while the fax machine was not working and how they vide letter no. S-01/02/2008 imp dated 12.09.2008 reply of the said letter?

Ans: As the matter is too old, I am not able to recall the same at present.

Q.12. In your statement you have stated that approx. 4000 plus licenses were used by M/s Hindalco Industries Limited in a year, can you please inform as to how many licenses per month were being used by M/s Hindalco in a month?

Ans: As the matter is too old, I am not able to recall the same at present.

Q.13. Is there any provision in the Customs Act, 1962 to provide the documents to the private person for carrying from one office to another office?

Ans: Do not remember.

Q.14. Please state about your present place of posting?

Ans: At present I am working as an Assistant Commissioner, Nahava Sheva-2, Mumbai.

B. <u>Shri Hiten Parekh, Shri N K Tiwari consultant of Shri Kalpesh Daftaryand Shri Kalpesh Daftary appeared for the cross examination on 23.12.2024 at 12:30 hrs. the details are as below:-</u>

Q.1. Is any case booked by DRI/Customs against you?

Ans: No.

C. <u>Shri Sarjerao Parbati Mojar, Shri N K Tiwari consultant of Shri Kalpesh Daftary and Shri Kalpesh Daftary appeared for the cross examination on 23.12.2024 at 13:00 hrs., the details are:-</u>

Shri N K Tiwary asked his name and he stated that his name is Sarjerao Parbati Mojar, also known as "Chhotu". On being asked about his qualification, he replied that he is 8th class pass in Marathi Medium. When asked whether before signing the statement on 18.06.2010, he had read his statement, he replied that the statement was recorded in English and he was frightened, he did not know the content of the statement and signed without reading it.On being asked about his job in M/s Sankalp Creation Private Limited, he replied that earlier he used to work with Shri Pareshbhai and alongwith him he had worked in M/s Sankalp Creation Private Limited for approx. 28 years. On being questioned about his duties as a peon, he stated that his responsibilities included preparing and serving tea and water, as well as delivering and receiving letters for other staff members. When inquired whether he knew Shri Sashin Koradia, he responded that Shri Sashin Koradia used to visit their office to meet Shri Kalpesh Daftary; however, he did not know the nature of Shri Koradia's work. He further stated that Shri Koradia did not visit during Shri Pareshbhai's tenure but started visiting during Shri Kalpesh Daftary's tenure. In response to a question about the circumstances under which his statement was recorded, he disclosed that he had received a summons from the DRI office and, in compliance with the summon, he visited the office to give his statement.When asked about Shri Vishal Wadkar, he stated that Shri Wadkar was an employee of Shri Sashin Koradia and occasionally visited their office to perform part-time work.

The contents of the cross-examination were read out and explained in Hindi to Shri Sarjerao Parbati Mojar, also known as "Chhotu," in the presence of Shri N.K. Tiwari and Shri Kalpesh Daftary.

D. <u>Shri Rajesh Sajnani, retired Superintendent of Customs and Shri Kalpesh Daftary appeared for the cross examination on 23.12.2024 at 15:30 hrs, the details are:</u>

Q.1. There were two statement dated 20.07.2010 & 27.08.2012, have you signed both these statements?
Ans: Yes, I have signed both these statements.

Q.2. In your statement you have stated that you were posted at Dahej, please state whether it is a EDI port or Non-EDI port?
Ans: It was a Non-EDI port.

Q.3. In your statement you have stated that two fax machines were installed in the Custom House, Dahej, please state the exact location, where these fax machines were installed?
Ans: As far as I remember, there was only one fax machine installed in the Custom House Dahej. As the matter is more than 15 years old, I am not able to recall the same.

Q.4. In your statement you have stated that M/s Hindalco Industries Limited were filing bill of entries and shipping bills on self basis but their work was being handled by M/s Kshitij Marine Services Private Limited, Surat. Please tell me the provisions of Customs Act, 1962, which provide such a dual method of clearance of imported goods or export of cargo?
Ans: I do not remember the provisions now, however, M/s Hindalco Industries Limited used to submit authorization letter in each case in favor of M/s Kshitij Marine Services Private Limited, Surat to attend the custom related work on their behalf.

Q.5. Do you know the directors of M/s Kshitij Marine Services Private Limited, Surat during 2007 to 2009?
Ans: Yes. Shri Parvin Dixit was one of its director.

Q.6. As per your statement, you have resigned from the department on 24.07.2009, however, you have joined M/s Kshitij Marine Services Private Limited, Surat on 01.08.2009 i.e. within 07 days, please state whether code of conduct is not applicable to you?
Ans: I have resigned from the department on 24.07.2009. I do not remember the date of joining in M/s Kshitij Marine Services Private Limited, Surat and my joining in this firm is also not related in the present case.

Q.7. Please state the process of debiting the Customs Duty in a license.
Ans: At present, I am not able to recall about the process.

Q.8. Please state where was the Assistant Commissioner of Customs, Dahej sit at that time?
Ans: The Assistant Commissioner of Customs usually sits at Surat office, however, he also used to visit the Dahej office whenever needed.

Q.9. Please state the medium or how the files were being taken from Dahej port to the Surat office of Assistant Commissioner of Dahej Customs.
Ans: I do not remember exact medium, however, files might have been sent through the departmental officers.

Q.10. Is there any provision in Customs Act, 1962 to facilitate the importer, who does not have the facility of storage or bonded warehouse? In such cases who is empowered to permit such facilitation, Assistant Commissioner or Superintendent?
Ans: As far as I remember neither Assistant Commissioner nor Superintendent is empowered to permit such facilitation.

Q.11. Is there any provision in the Customs Act, 1962 to provide the documents to the private person for carrying from one office to another office?
Ans: No.

E. <u>Dharmesh Gathani, Director of M/s Padmavati Agencies Pvt Ltd and Shri Kalpesh Daftary appeared for the cross examination on 24.12.2024 at 15:00 hrs., the details are:-</u>

Q.1. There are nine statements dated 22.04.2010, 20.05.2010, 10.07.2011, 19.07.2011, 26.09.2011, 10.10.2011, 11.10.2011, 12.10.2011 & 21.10.2011. Have you signed all these statements?
Ans: Yes, I have signed all these statements.

Q.2. Since when you know Shri Kalpesh Daftary?
Ans: I do not exactly remember the time and I have mentioned the same in my statements.

Q.3. Please state name of the firms provided by Shri Sashin Koradia for billing of duty free transferable license?
Ans: The question is not related to my statements.

Q.4. Do you know Shri Niyaz Ahmed?
Ans: The question is not related to my statements.
Q.5. As per your statement dated 12.10.2011, you have stated that you have paid cash amounting to Rs. 3.00 Cr to Shri Kalpesh Daftary, please state whether the said amount is declared by you in income tax?
Ans: I reiterate my statement and I don't have anything else to say.

Q.6. Do you know Shri Nirav V Patel?
Ans: The question is not related to my statements.

Q.7. During the search, your laptop has been seized by the DRI and given back to you after one month, did you file any application before the DRI?

Ans: The question is not related to my statements.

Q.8. Please state whether any case is running against M/s Padmavati Agencies Private Limited by any other agency?

Ans: The question is not related to my statements.

Q.9. Please state whether M/s Padmavati Agencies Private Limited is registered for doing CHA activity?

Ans: The question is not related to my statements.

Q.10. Have you given any statement in any other agencies related to fraud license utilized at Dahej?

Ans: The question is not related to my statements.

F. <u>Shri Kalpesh Darji, Ex Auditor of M/s Padmavati Agencies Pvt Ltd and Shri Kalpesh Daftary appeared for the cross examination on 24.12.2024 at 16:30 hrs., the details are as below:-</u>

Q.1. Please state name of the firms in which you have worked as an auditor from 2008 to 2010?

Ans: VKJD and Associates.

Q.2. Did you do sale purchase transactions of transferable license in M/s Padmavati Agencies Private Limited?

Ans: Yes, I did the transactions under the guidance of Shri Dharmesh Gathani and Shri Parag Gathani.

Q.3. Did you inform your CA firm about your directorship in M/s Vrinda Agencies Private Limited?

Ans: The question is not related to my statement.

Q.4. Have you given any statement in any other agencies related to fraud license utilized at Dahej?

Ans: The question is not related to my statement.

Q.5. Do you know Shri PiyushViramgama of Krish Overseas?
Ans: The question is not related to my statement.

Q.6. Do you know Shri SashinKoradia?
Ans: The question is not related to my statement.

G. <u>Shri Vishal Vyas, Shri N K Tiwari consultant of Shri Kalpesh Daftary and Shri Kalpesh Daftary appeared for the cross examination on 15.01.2025 at 14:00 hrs., the details are:-</u>

Q.1. What is your qualification?
Ans: I have 12th class passed.

Q.2. Are you well conversant in reading, writing and understanding the English language?

Ans: I am not fluent in English but I can read and understand to my ability.

Q.3. Were the statements recorded by the DRI, in English, explained to you in a language you understand well?
Ans: No

Q.4. Were the statements recorded based on your version of events and the facts you provided?

Ans: Mostly it is correct except only one thing I want to add that the sale purchase transactions were mainly looked after by Shri Paresh Parekh.

Q.5. Were you employed at Sankalp Creation Private Limited? If yes, since when and what were your duties at Sankalp Creation Private Limited, and to whom did you report?

Ans: I have joined this company in December 2008 and I was looking after the coordination related to sale purchase of license and I reported to Shri Paresh Parekh.

Q.6. Please name the office staff members of Sankalp Creation Private Limited during 2008-2010 and mention their respective duties or roles.

Ans: Following persons were working as office staffs during 2008 to 2010.

Mamta Ben Shah: Accounts related activity

Samir Sathbhaya: E-bike related activities

Alien Madam: Overall management

Chhotu @ Sarejarao Mojar: Peon

Ganesh DK: Courier, Xerox of license related

Q.7. How many types of business were Sankalp Creation Private Limited doing in the year of 2008-2010 ?

Ans: Sankalp Creation Private Limited were doing trading of licenses, showroom of clothes, mobile lamination in the name of Skinzam, E-bike export related activity.

Q.8. When did you leave Sankalp Creation Private Limited?
Ans: I have left the company in 2011.

Q.9. Who was responsible for the sales and purchase of licenses?
Ans: Pareshbhai looked after the sales and purchase of license in Sankalp Creation Private Limited.

Q.10. How were the licenses purchased, and how were they received?
Ans: The licenses were purchased by Shri Paresh bhai and were received through courier or messenger.

Q.11. After the receipt of the licenses, who verified them?
Ans: I verified the licenses received as per the list given by Shri Pareshbhai and thereafter handed over the same to Pareshbhai for further action.

Q.12. Were you called by the DRI? If so, for what purpose?
Ans: I was called for by the DRI to record my statement. On 18.06.2010, DRI officers came to our office and enquired about the Directors. Thereafter, they took me alongwith Chhotu and Shri Ganesh bhai to DRI office, Mumbai. They asked us about the Directors and beaten me and Chhotubhai and thereafter issued summons to me to appear on 25.06.2010.

Q.13. In your statements, you have mentioned that you followed the instructions of Kalpesh Daftary and carried out all activities as per his directions. Please explain how Kalpesh Daftary was involved if the entire license work was supervised by Paresh Parekh.
Ans: Shri Paresh Parekh was looking after the work of sale and purchase of license.

Q.14. What was Kalpesh Daftary's role at Sankalp Creation Private Limited?
Ans: He looked after the work related to DGFT, mobile lamination related work, export and manufacturing of E-Bike.

Q.15. Do you know Vishal Wadkar? Did he ever visit the office of Sankalp Creation Private Limited?
Ans: Yes, he usually comes to visit the office of Sankalp Creation Private Limited.

Q.16. As per your statement dated 28.05.2010, you were shown email printouts dated 14.07.2009 and 25.02.2010. Were these printouts taken by the officers from your computer at the time your statement was recorded?

Ans: No, I was only shown the emails printouts.

Q.17. As per your statement dated 25.06.2010, you were shown email printouts that were said to have been taken from the inbox of Shri Vishal Wadkar's computer. Was the inbox of Shri Vishal Wadkar's computer shown to you during recording of your statement?
Ans: No, I was shown copy of the printouts.

Q.18. In your statement dated 25.06.2010, you mentioned that the email ID "info@sunkkalp.com" was used by Kalpeshbhai. Is this correct?
Ans: No, the email id was used by Shri Paresh Parekh and others. I am not aware whether it was used by Shri Kalpesh Daftary or not.

Q.19. Did Paresh Parekh visit the Sankalp Creation Private Limited office during 2008-2010?
Ans: Yes, he regularly visited the office.

Q.20. I am referring to your statements where you mentioned that emails regarding the sale or purchase of licenses were sent under the instructions of Kalpeshbhai. Please confirm if this is accurate.
Ans: No, I have sent these emails on the direction of Shri Paresh Parekh.

Q.21. During the search at the Sankalp Creation Private Limited office on 30.04.2010, were you present? If yes, were any computers, laptops, hard drives, or pen drives seized by the DRI?
Ans: Yes, I was available during the Search. The DRI has not taken any computers, laptops, hard drives, or pen drives.

Q.22. As per your statement dated 25.06.2010, you mentioned that Vishal Wadkar visited only on Sundays. Did he visit on any other days as well?
Ans: He usually comes to Sunday, however, he sometimes used to come on other days also.

The contents of the cross-examination were read out and explained in Hindi to Shri Vishal Vyas in the presence of Shri N.K. Tiwari and Shri Kalpesh Daftary.

DEFENCE REPLY OF SHRI KALPESH DAFTARY:

159. The Noticee vide letter dated 17.02.2025 has submitted their defence reply and a summary of the said submission is as follows:

159.1. The Noticee vide his letter dated 03.01.2024 requested 40 witness for Cross Examination. Out of 40 witnesses, the Adjudicating Authority allowed cross examination of only 19 witnesses and out of these 19 witness only 7 were offered for cross examination and the oral evidence of the said 7 witnesses could only relied upon in sustaining the allegation against Noticee and the oral evidence of remaining 33 witnesses cannot be considered in the preceding to arrive any adverse inference against Noticee in the proceedings;

159.2. In one case of Shri Nirav Patel, cross examination was requested as he was Panch Witness, Whose testimony was essential to put on record that he was not an independent witness. However out of 40 witnesses requested, only 19 were allowed and the cross examination of remaining 21 was not considered and no reasons for denial of the cross examination of the reaming 21 witnesses was assigned. Denial of cross examination of the said 21 witness has severity prejudice Noticee defense. Panch witness were not independent as panch was employee of M/s Padmavati Agencies Pvt. Ltd. The entire panchnama was bad in eye of law;

159.3. Further it also bring to notice that present Noticee has already retracted statements recorded by DRI from Jail on 03.08.2010. Thus said statements cannot be relied upon against the noticee;

159.4. Shri Hiten Parekh was cross examined on 23.12.2024. As Shri Parekh did not implicate Noticee in his oral evidence, he was cross examined only to astern as to whether any DRI or Customs case booked against him to which he replied negative. The deposition made by Shri Hiten Parekh during cross examination in faculty not correct. Here reference to Case No 346/RA/2001/ before the Chief Metropolitan Magistrate at Mumbai against Shri Hiten Parekh. The prayer were had made by Shri Paresh Parekh a request for release of cash security and had Surety through Shri Paresh Parekh. On going through above oral evidence of Shri Hiten Parekh and the

documentary evidence it reviled that in the cross examination he has not revealed the true and correct facts, however even in the oral evidence nowhere he has implicated Noticee in the trading of export incentive licences and thus the oral evidence of the Shri Hiten Paresh does not render any assistance to sustain allegation against Noticee;

159.5. During the course of cross examination of Shri Sarjerao Parbati Mojar @ Chhotu, it was stated by him that the statement was recorded in English and he was frightened and has signed without reading and knowing contain of the statement. Shri Sarjerao has also submitted copy of affidavit dated 27.07.2010 filed by him, where he has made complaint of ill-treatment. Therefore, the said statement of Shri Sarjerao Parbati Mojar @ Chhotu can not be considered as an admissible evidence in the proceeding against Noticee;

159.6. During cross-examination, Shri Kalpesh Darji provided evasive responses to Questions 3 to 6, undermining the purpose of cross-examination and violating the principles of natural justice. Further, as Director of M/s Vrinda Agencies Pvt. Ltd., he had transactions with M/s Krish Overseas, owned by Shri Piyush Viramgama, prompting an inquiry from income tax authorities regarding the nature of these transactions, as evidenced by a letter dated 02.09.2011. The records suggest that Shri Darji, a Chartered Accountant, established offices in Kolkata with a malafide intention to evade taxes, casting doubt on his credibility. Data retrieved from his laptop during the panchnama dated 23.06.2010 reveals an email from Shri Vishal Wadkar confirming his auditing role with M/s Padmavati Agencies Pvt. Ltd., as well as a blank RA request letter from M/s Hindalco Industries Limited, indicating collusion involving forged DEPB/VKGUY licences licenses. Additionally, an email from Shri Deepesh Viramgama about licenses further demonstrates Shri Darji's proximity to Shri Piyush Viramgama of M/s Krish Overseas. In view of the contradictory statements, tax evasion indications, and documentary evidence retrieved, Shri Darji's testimony is unreliable and cannot form the basis for any adverse inference against the Noticee;

159.7. During the course of cross-examination of Shri Rakesh Bainle, he gave evasive answers to most of the questions by stating that the matter was too old and he was not able to recollect the same at

present. It is noticed that RA No.1784 appears at two places on 17.11.2008 and 20.11.2008. Similarly, RA No.1785 also appears at two places on the similar date. It is surprising to note as to how the RA's having same numbers were generated on two different dates for two different licenses and for two different amounts and still it was signed by the said Superintendent and also seen by him, thus, there was a gross negligence of duty on the part of the Superintendent;

159.8. During the course of cross-examination of Shri Rajesh Sajnani, he was asked to provide the provisions under the Customs Act, which provided a dual method where the importer was allowed to file the Bills of Entry on self basis and also to authorize some other agencies for handling the document to which he replied that he did not remember the provisions now. The Noticee crave to submit that the Customs Law does not provide for such a dual method for clearance of import cargo. Shri Sajnani was specifically asked about the details of directors of M/s. Kshitij Marine during 2007-2009 and he deliberately avoided the names of other directors as his wife was a Director in M/s. Kshitij Marine during the period. Thus, Shri Sajnani had vested interest in the functioning of M/s Kshitij Marine and had ensured that M/s. Hindalco authorized Kshitij for handling the documents. Thus, there was a gross misconduct on the part of Shri Sajnani, which has led to the defraud and loss to Government revenue at that material time;

159.9. Shri Vishal Vyas, during his cross-examination, stated that he was not fluent in English, and the statements recorded in English were not explained to him. He clarified that the work relating to the trading of licenses was handled by Shri Paresh Parekh, while he only coordinated the sale and purchase of licenses under the instructions and supervision of Shri Paresh Parekh. Licenses were purchased by Shri Paresh Parekh, received through courier or messenger, verified by Shri Vishal Vyas as per the list provided, and then handed over to Shri Paresh Parekh for further action. He further stated that the Noticee was involved in work related to DGFT, mobile lamination, export, and manufacturing of e-bikes, and not in the sale and purchase of licenses. The printouts of emails shown to him were not taken in his presence, and the emails were sent under the instructions of Shri Paresh Parekh. He also confirmed that no laptop, pen drive, hard disk, or any other digital media was seized during the search conducted by DRI at

the premises of M/s Sunkkalp Creation Pvt. Ltd. These facts make it clear that the Noticee had no involvement in the trading of licenses, and his name appears in the proceedings solely because he was one of the directors at the relevant time. Shri Vishal vide letter dated 02.01.2025, submitted that he had filed a police complaint before the Senior Police Officer, Azad Maidan Police Station, Mumbai for ill treatment by DRI officers;

159.10. During the course of cross-examination, Shri Dharmesh Gathani provided evasive and misleading responses, undermining the objective of establishing true facts. When asked about firms provided by Shri Sashin Koradia for billing duty-free licenses, Shri Gathani replied that it was not related to his statement. However, his statement dated 11.10.2011 referred to Sashin Koradia's statements, making his denial evasive. Regarding cash transactions declared in income tax returns, Gathani merely reiterated his earlier statement, avoiding proper disclosure. This hindered the adjudicating authority from arriving at a just conclusion. When questioned about Shri Nirav Patel, Gathani again dismissed it as unrelated, though he had been introduced to Patel during a panchnama on 21.04.2010 at Padmavati Agencies. Notably, Patel was an employee of Padmavati Agencies and a defendant in Civil Suit No. 588 of 2010 filed by Hindalco Industries Limited. Further, Civil Suit No. 2525 of 2010 filed by Padmavati Agencies and Vrinda Agencies mentioned Shri Niyaz Ahmed's address. This raises the question of how Gathani knew Ahmed's details when DRI's investigation suggested Ahmed had only met Shri Piyush Viramgama and had not appeared before DRI. This indicates Gathani's association with both Piyush and Niyaz. Additionally, Gathani's statement on 04.12.2013 before Dahej Police in FIR No. I/77 of 2010 mentioned that Customs had not accused him, despite DRI issuing a Show Cause Notice on 08.11.2012, naming him as a co-noticee. This contradiction further undermines the credibility of his statements. Being a co-noticee, Gathani's statements require independent corroboration, which is lacking. His evasive and contradictory deposition renders his statements unreliable and insufficient to sustain allegations against the Noticee;

159.11. The whole purpose to cross examine the other witnesses was to confirm their statements against Noticee which were factually incorrect statements and said statements were recorded under

pressure or coercion. Further, the only case of department against Noticee is based on statements of said witnesses. There is no other corroborative evidences against Noticee other than said statements of co-noticees. In such a scenario the whole proceeding against Noticee does not survive and thus said statements of Shri Kalpessh and other 33 witnesses cannot be relied upon in adjudication against Shri Kalpessh;

159.12. Shri Dharmesh Gathani's statement under Section 108 of the Customs Act, 1962, mentions his involvement in procuring and selling export incentive licenses and provides bank details of three accounts. However, further investigation revealed an undisclosed HDFC Bank account in Rajkot linked to M/s Padmavati, along with multiple transactions involving with various companies. Additionally, the concealment of M/s Reliance Industries Ltd. as a major buyer raises doubts about the credibility of his statement. Documents seized, including invoices and panchnamas, indicate that key details were withheld. Furthermore, the involvement of M/s Padmavati as consultants to major companies like Hindalco suggests their familiarity with customs procedures. The business association between Shri Gathani and Shri Sashin Koradia, established before the noticee's acquaintance with Sashin Koradia, further questions the allegations against the noticee. Since Shri Gathani is a co-noticee, his statement alone, without independent corroboration, cannot be solely relied upon to sustain allegations. The lack of independent evidence makes it unreliable as proof against the noticee;

159.13. From the Statement of Shri David Abrahm, it is evident that Shri Jigar Shah of M/s Hindalco Industries Limited was key person who was involved enabling utilization of forged DEPB/VKGUY licence/ RA's which were used at Dahej and he ensured that all fax for genuineness of conformation on behalf of M/s. Padmavati Agencies Pvt. Ltd were not sent to customs house Mangalore so that actual fact of forgery did not come into light or discovered by customs. Further, as the department has failed to produce Shri David Abraham, the evidence tendered by him during the investigation cannot be considered as an admissible evidence;

159.14. CBI also investigated the matter for utilization of forged licenses at Dahej Port. In the charge-sheet submitted by CBI, it had produced certain documents, which clearly revealed that there was a gross negligence and an act performed by the officers of Customs Dahej,

at the material time, which was unbecoming of a government servant. From the statement of Shri N S Mangava clearly goes to show that in order to facilitate M/s Hindalco Industries Limited a short-cut method unknown un-prescribed under the Customs Law, was being followed for clearance of goods of M/s Hindalco, which has resulted in the misuse of the licenses by M/s. Hindalco. As Shri Mangava was not offered for cross-examination, the evidence tendered by him could not be considered as an admissible evidence in the proceedings;

159.15. On going through the panchnama at RUD 103, it is revealed that the said panchnama was not drawn in presence of any of the authorized person of Shri Vijay Gadhiya but was drawn in presence of a house owner named Mrs. Dayaben Vinodbhai Varmura. Further, on going through the annexure to the said panchnama, specifically Annexure-B, it is revealed that it has impression of certain stamps said to have been recovered from the said premises, which are in English. On going through the signatures appended by the panchas and the house owner, it doesn't come out that either the said panchas or the house owner were acquainted with English language. It may be seen that the panchas profession has been shown as "owner of a Grocery and another involved in Carpentry work. Therefore, no such reliance on recovery of the said impression could be made if the panchas did not understand the nature of the recovery made by the officers during the course of search;

159.16. Shri Jigar Shah stated that he never faxed any confirmation letter to Mangalore Customs. However, the Noticee submits that the DRI officer did not question Shri Jigar Shah regarding the reasons for not faxing the confirmation letter. Upon reviewing the statements of Shri David Abraham and Shri Fahad, it becomes evident that it was, in fact, Shri Jigar Shah who managed the process of obtaining genuineness confirmation from Mangalore Customs. He had instructed these two employees not to send any fax to Mangalore Customs and to hand over the letters to him instead. This establishes that Shri Jigar Shah played a key role in the entire chain of events involving forgery. Surprisingly, despite the confessional statements made by the two employees of M/s Kshitij Marine, no action has been proposed against Shri Jigar Shah in the present proceedings. Since the department failed to produce him for cross-examination, the evidence tendered by Shri Jigar Shah during the investigation cannot be considered admissible;

159.17. Further, as the department has failed to produce Shri Piyush Viramgama, Shri Vijay Gedhiya, Shri Deepesh Viranmgama and Shri Girish Ghelani, the evidence tendered by them during the investigation cannot be considered as an admissible evidence;

159.18. Shri Manish Jain, Director of M/s Ostwal Trading Co. Pvt. Ltd., stated that there was no link between M/s Sunkkalp Creation Pvt. Ltd. or the noticee with their company. He also disclosed that he purchased licenses for Rs. 3.53 crore and sold them for Rs. 6.04 crore, earning a profit of Rs. 2.50 crore from the sale of 17 forged licenses. However, no proceedings were initiated under the Customs Act against them regarding this transaction. The licenses were sold to M/s New Planet Trading Co. Pvt. Ltd., but no evidence was collected regarding their purchase or use, indicating a biased and pre-planned DRI investigation. M/s New Planet is linked to Shri Pravin Jain, who owns 57 companies, while Shri Manish Jain is only a director of M/s Ostwal Trading, with ownership traced back to Shri Pravin Jain, as confirmed by High Court and Income Tax Tribunal orders. Despite the noticee's request, Shri Manish Jain was not offered for cross-examination, rendering his statement inadmissible;

159.19. Shri Vipul Joshi, CFO of M/s Punjab Chemical Crop Protection Ltd., in his statement confirmed the details of sales and purchases. All the details pertained solely to Shri Sashin Koradia. Further, as per RUD-41/20, Shri Vipul Joshi clearly stated that his company made a profit of Rs. 6.0 crore. However, during the investigation and upon its conclusion, no notice appears to have been issued to the company concerning the sale of 23 forged licenses. This failure on the part of the investigating authority indicates that the investigation was not conducted in a true and fair manner, thereby compromising the protection of government revenue. In both instances, it has been demonstrated that a total of 44 licenses were traded, and despite clear evidence showing that these 44 licenses were forged, no action appears to have been taken against the two concerned parties. Despite the noticee's request, Shri Vipul Joshi was not offered for cross-examination, rendering his statement inadmissible;

159.20. Shri Paresh Parekh traveled in 2008 and 2009 for business and personal purposes, indicating his health was not critical, and he was actively involved in license transactions. The Noticee, as Director of Sunkkalp, merely accompanied him to meetings with

exporters and license sellers. RUD-226 also shows his last foreign travel in December 2009 and domestic travel in January 2010, but DRI did not verify his passport. Statements of exporters confirm dealings with Shri Paresh Parekh on behalf of M/s Sunkkalp Creation Pvt. Ltd. Further, a letter from the Coffee Exporters Association dated 22.01.2010 and an Agreement dated 14.01.2010, recovered during a search on 30.04.2010, bear his signature, proving he was fit and actively corresponding with license holders;

159.21. In the proceedings before the Court, initiated based on the complaint filed by the CBI, Shri Neeraj Jadwani, the email domain supplier confirmed that the email password of Sunkkalp had been reset on numerous occasions by Shri Vishal Wadkar. It was also brought on record that a complaint regarding this issue had been made by the noticee in December 2009. This cross-examination establishes that the email account of Sunkkalp was being accessed and potentially misused by Shri Vishal Wadkar through repeated password resets. Therefore, it cannot be said that whatever documents or details, which have been recovered from the e-mail I.D. of Sunkkalp were created by Sunkkalp itself;

159.22. Shri Rewatmal Kothari stated that he had given a loan of Rs. 4,29,61,862/- at 18% interest to Kalpeshbhai. However, he later clarified that he did not know Shri Kalpeshbhai, M/s Vani Exports, or M/s Shivangi Enterprises. It is not evident that the "Kalpeshbhai" referred to is the Noticee, as the firms mentioned had no connection with the Noticee. The loan was routed through M/s Vani Exports and repaid via M/s Shivangi Enterprises, but the source of repayment was not investigated. Shri Kothari also expressed unawareness of loan details, suggesting other directors may know. Despite entries being made in the Noticee's name, the DRI failed to ascertain how such a large amount was financed without security or contact. The Noticee contends that the transactions were handled by Shri Girish Ghelani or Shri Paresh Parekh, and other directors who managed bank transactions were not examined. The investigation appears pre-planned and incomplete;

159.23. Shri Prashant Chowta, an employee of M/s. Ganesh Shipping Agency, Mangalore, in his statement stated that about 25 TRA were issued for M/s. Sunkkalp Creation, Mumbai. He mentioned that the Noticee contacted him in 2008 and introduced himself through some

exporters, but he could not recall their names. Shri Chowta also stated that he never met the Noticee in Mangalore, but one person met him there and introduced himself as Kamlesh. However, this individual was later identified as Shri Piyush Viramgama. Upon being informed that the person who introduced himself as Kamlesh was actually Shri Piyush Viramgama, Shri Chowta stated that he was unaware of the person's true identity. When a photograph was shown to Shri Chowta, he identified the person as Kamlesh, although it was actually Shri Piyush Viramgama. This act of impersonation by Shri Piyush clearly indicates his malicious intent and dubious character;

159.24. The statement of Shri Ashok Gupta, recorded almost six months after the date of getting bank account details of M/s Shivangi Enterprise, Rajkot, indicates that he received money on behalf of Shri Niyaz Ahmed. In his statement he also stated that Shri Niyaz Ahmed was aware of the DRI search in connection with forged licenses from January 2010. According to the CBI charge sheet, Shri Ashok Gupta is the primary creator of the forged licenses, while Shri Niyaz Ahmed is identified as an approver, and he attended the court proceedings in Ahmedabad. However, till date, Shri Niyaz Ahmed has not been found by DRI. It is important to note that Shri Ashok Gupta was arrested by the CBI in connection with the utilization of forged licenses at Dahej. The noticee submits that, as per the DRI investigation, Shri Ashok Gupta is considered a witness only. As the department has failed to produce Shri Ashok Gupta, the evidence tendered by him during the investigation cannot be considered as an admissible evidence;

159.25. The letter dated 24.02.2011 from M/s PAPL outlines the details of licenses purchased from M/s Accurate Multitrade Pvt. Ltd., invoiced for the same party, and mentions that these licenses were acquired through M/s Sunkkalp. Since the letter was issued in 2011 for purchases from 2008 and 2009, it was the responsibility of PAPL to provide legitimate documentation to prove the purchases were made through M/s Sunkkalp. The payment details show that out of the total amount of Rs. 6,08,50,381/-, Rs. 3,11,83,722/- remains unpaid, yet the DRI investigation did not raise any objections to this matter. Additionally, a statement reveals purchases from M/s New Planet Trading Co. Pvt. Ltd. for Rs. 4,43,02,725/-, with Rs. 71,93,385/- unpaid through the bank but adjusted via JV. This shows that the amount was not directly paid but rather adjusted in the records. In another letter dated

26.05.2010, M/s Padmavati Agencies claimed to have submitted details of 85 licenses sold/purchased. However, in a statement recorded on 22.04.2010, Shri Dharmesh did not disclose accounts held by M/s Padmavati Agencies with HDFC Bank in Rajkot, indicating a deliberate omission of crucial information during the investigation. Despite the letter dated 07.03.2011 claiming to have submitted bank ledgers and details of licenses sold to M/s Sunkkalp, no ledger statements were provided. The noticee argues that the DRI investigation failed to request essential details such as the full purchase chain, invoice numbers, and complete payment records, which would have clarified the full extent of the transactions;

159.26. On 07.03.2011 and 08.03.2011, the DRI Ahmedabad obtained permission from the court to take Shri Kalpesh from jail to the DRI office. From the beginning, the DRI provided him with a typed letter, which he was required to write in his own handwriting. The police escort waited outside the DRI officer's cabin during this process. The statement, which seemed to have been written solely to protect Shri Dharmesh Gathani and Shri Paresh Parekh, was filled with figures that the Noticee claimed to have no recollection of. He also informed the DRI that both Shri Dharmesh and Shri Paresh were fully aware of the scheme;

159.27. In the statement of Shri N.M. Patnaik, President (Commercial) of M/s Hindalco Industries Limited, the entire process followed by M/s Hindalco for purchasing the licenses was recorded. He also mentioned the major vendors involved in procuring the licenses. During the evidence recording, Shri Patnaik was shown paragraph 3 of the statement of the Noticee, dated 16.07.2010. After reviewing the paragraph, he signed alongside it. When asked further, he immediately labeled the Noticee as one of the main conspirators, although he did not explicitly identify M/s Sunkkalp or the Noticee as the major vendors. This indicates that Shri Patnaik had a biased view against the Noticee even while recording his evidence. Further, as the department has failed to produce Shri N.M. Patnaik, the evidence tendered by him during the investigation cannot be considered as an admissible evidence;

159.28. Regarding the fax header, it is important to note that only mention of a fax number does not conclusively prove that a fax was sent from the number indicated in the header. It is within the prerogative of the sender to adjust or manipulate the fax number

as per their choice, as per the circumstances. Further, during the investigation, the CBI requested MTNL Mumbai to provide details of the telephone number 26121841. MTNL Mumbai informed the authorities that no information was available regarding the installation of a fax machine on the said telephone number. As the relevant authorities have confirmed that no fax was associated with the mentioned telephone number, the issue of sending a fax from that number does not arise. Consequently, any adverse inference based on the fax number mentioned in the header under RUD 130 should be disregarded;

159.29. Para 202 mentions that the RA for 93 forged licenses used by M/s Hindalco at Dahej were countersigned by the Assistant Commissioner and also bear the signatures of the Superintendent of Customs in Mangalore. Oral evidence from both the Assistant Commissioner and the Superintendent was recorded, but they denied that the RA for the 93 licenses bore their signatures. The issue to consider here is how the investigation concluded that both the Assistant Commissioner and the Superintendent were providing true and correct facts. The investigating officer was not an expert in examining signatures, and in such cases, it was obligatory for the investigation to have the signatures examined by an expert. In the absence of any such examination during the investigation, the evidence provided by the Assistant Commissioner and the Superintendent cannot be considered reliable or credible;

159.30. Para 253, dealt with Shri Niyaz Ahmed summons issue. Noticee would like to submitted that as thus DRI Officers to ascertain whether sincere efforts were taken by the Investigating Officers to trace out the Shri Niyaz Ahmed Only issued summons mentioned in the impugned SCN. Further, without prejudice Noticee would like to submit that Shri Niyaz Ahmed already given his statement before CBI s well as CBI Court Ahmedabad;

159.31. The failure of DRI to trace Shri Niyaz Ahmed raises serious concerns regarding the effectiveness and integrity of the investigation in this case. The Noticee asserts that they sought an opportunity to cross-examine DRI Officer Shri Somnath Chowdhary to determine whether sufficient efforts were made by the Investigating Officers to locate Shri Niyaz Ahmed, an aspect not addressed in the impugned Show Cause Notice (SCN). Section 122A of the Customs Act applies the principles of natural justice

to adjudication proceedings, thereby granting the Noticee the right to cross-examine individuals whose statements or evidence are relied upon by the Department. Several judicial decisions support this right, including *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra*, *Mehar Singh v. Appellate Board Foreign Exchange*, *M/s. Kesoram Cotton Mills Ltd. v. Gangadhar*, and others. The Noticee submits that although Shri Niyaz Ahmed has been presented before the CBI Delhi and the CBI Court in Ahmedabad, the DRI officers did not take his statement, despite having the opportunity. The reasons for this omission remain known only to the DRI officers. Moreover, the adjudicating authority did not allow the cross-examination of Shri Niyaz Ahmed, which the Noticee had requested, therefore, any evidence tendered by Shri Niyaz Ahmed should not be considered admissible in these proceedings;

159.32. The Noticee submits that Shri Somnath Chowdhary was not offered for cross-examination. However, in the CBI Court in Ahmedabad, Shri Somnath Chowdhary appeared on 23.03.2023, where he responded during cross-examination with the following statements:

"It is true that I have not endorsed that I have attested the document after seeing the original. It is true that I have neither personal information nor any action taken regarding the contents of the document I attested. It is true that during our D.R.I. investigation, the name of Niyaz Ahmed came up. I do not remember whether Niyaz Ahmed was wanted or not during my D.R.I. investigation. I do not remember hearing the name of Bhavesh Doshi during my D.R.I. investigation. I do not currently remember whether it came out during my D.R.I. investigation that Bhavesh Doshi and Niyaz Ahmed were in contact with each other and used to talk."

Shri Somnath Chowdhary, as the investigating officer in the case of forged licenses used at Dahej Port, failed to recall or mention the names of key co-noticees during the investigation. Furthermore, the Noticee submits, without prejudice, that Shri Somnath Chowdhary, the investigating officer in the present case, was arrested by DRI Ahmedabad in case no. DRI/AZU/GI-02/ENQ-78/INT-41/2019. The investigation was also conducted by CBI ACB Gandhinagar, which filed a charge sheet in case no. CBI SPCC/02/2022 at the City Civil Court in Ahmedabad against Shri Somnath Chowdhary as the prime accused. The Noticee

raises concerns regarding the integrity and effectiveness of the investigation conducted in the present case. The entire investigation was carried out with malafide intent and was motivated to protect the main individuals involved in the misuse of forged licenses;

159.33. The penalties on Noticee has been proposed under section 112(a) of the Customs Act, 1962. The issue of penalty under section 112 (a) came before the Hon'ble High Court of Gujarat in the case of Commissioner of Customs V/s Sanjay Agarwal and the Hon'ble Court held that penalty under section 112 (a) cannot be imposed on trader/broker in case of forged license. **Similar views were taken in the case of Commissioner of Customs Vs Shah Alloys Ltd. reported at 2011 (169) ELT 323 (Guj.).** It is further submitted that for imposition of a penalty, some degree of involvement or knowledge of the contravention on the part of the abettor must be shown. In the subject notice, no evidence, direct or indirect, has been presented to show that I had any knowledge of the contravention of law. Thus, applying the ratio of the above binding decision of the Hon'ble court in the present case, no penalty is imposable on the Noticee under section 112 (a) of the said Act. Reliance is placed on various judgements in respect of non applicability of penalty in the present case;

159.34. The subject notice proposes a penalty under Section 114(AA) of the Customs Act. In the present case, there is no evidence to suggest that the noticee had any knowledge of the licenses being forged or invalid. The noticee, as a director of the company, was not involved in the sale or purchase of licenses, which was handled by Shri Paresh Parekh. Therefore, there is no evidence to support any claim of knowledge or intention to commit the alleged offense, and as such, the penalty under Section 114(AA) is not applicable. Additionally, it is important to clarify that the noticee has not made any false statements or submitted fraudulent documents, and there is no such allegation in the Show Cause Notice. Penalty under Section 114(AA) can only be imposed when duty is evaded due to false or incorrect statements, and in this case, the duty has been paid along with interest. There is no denial of this fact in the Show Cause Notice. Therefore, the penalty cannot be imposed under Section 114(AA). The notice also suggests penalties under Sections 114(A) and 114(AA). It is well-established that penalties under Sections 112(a), 114(A), and 114(AA) cannot be imposed

simultaneously. Section 114(A) applies to cases of short or non-levy of duty due to fraud, and since the duty is owed by the importer, it cannot be invoked against the noticee. The entire action against the noticee appears to be based on statements made by co-noticees, Shri Piyush Viramgama and Shri Dharmesh Gathani. It has consistently been held by various courts and tribunals that statements made by co-noticees cannot be relied upon unless corroborated by other tangible evidence. In this case, there is no such corroborative evidence, and the allegations against the noticee are based on presumptions and assumptions. Consequently, no action can be taken based on mere presumption. In support of his contention, the Noticee rely on the decision of Hon'ble Supreme Court in case of *Radha Kishan Bhatia v. Union of India* (2004). In this case, there is no evidence suggesting the noticee was involved in the importation of the goods, and thus, they cannot be considered responsible for the goods. Furthermore, penalties should not be imposed in the ordinary course unless it is clear that the taxpayer acted in defiance of the law. The Hon'ble Supreme Court's decision in *Hindustan Steel Ltd. v. State of Orissa* (AIR 1970 SC 253) supports the contention that a penalty should only be imposed when it is demonstrated that the party acted deliberately in defiance of the law. In the present case, there is no such evidence, and the penalty imposed is legally unsustainable. Further, a confession alone cannot serve as the basis for imposing a penalty without independent, tangible evidence to support it;

159.35. The entire proceeding against the noticee is based on presumptions and assumptions and not supported by any fact and is thus vitiated by an error of law. There being no valid and tangible evidence against the noticee, no penalty is imposable. In support of of his contention he places reliance on the judgement of the following decisions;

(i) *Oudh Sugar Mills Ltd.* v. *Union of India* -1978 (2) E.L.T. 172 (S.C.)

(ii) *Kalvert Foods India Pvt. Ltd.* v. *CCE,Mumbai* -2003 (152) E.L.T. 131 (T)

(iii) Deepak Tandon v. *CCE, Bhubaneswar* -2000 (126) E.L.T. 1079 (T)

159.36. The proceedings against the noticee for imposition of penalty are entirely based on third party evidence. Here it may be submitted that the residential as well as office premises of the **Noticee** was

searched during the course of investigation. Thus, there is no direct or indirect evidence relatable to the noticee, which has been produced and brought on record in the present proceedings and all the evidences relied upon are based on third party statements and documents recovered from the third party premises. Such third party oral statements and documents received from third party premises alone cannot be considered as an admissible evidence to draw any adverse inference against the noticee in the present proceedings. In this regards reliance is placed upon following decisions:

i. *Santosh Tobacco v. Commissioner of Central Excise, Delhi-I, 2014 (311) E.L.T. 465 (Tri. - Del.)*

ii. *Commissioner of Central Excise, Delhi-I v. Vishnu & Co. Pvt. Ltd. - 2016 (332) E.L.T. 793 (Del.)*

159.37. It is settled law that even inculpatory statements are required to be supported by tangible evidences, which in the present case is absent. It was submitted that such un-authenticated documents cannot be relied upon to prove the charges of forgery merely on the basis of some of the statements whose veracity was not even tested. In this regards reliance is placed upon following decisions:

- *J&K Cigarettes Ltd. v. Collector reported at 2009 (242) E.L.T. 189 (Del.)*
- *Commissioner of C. Ex., Lucknow v. Premier Alloys Ltd. - 2019 (366) E.L.T. 659 (All.)*
- *Rama Spinners Pvt. Ltd. v. Commissioner of Cus. & C. Ex., Hyderabad-I, 2017 (348) E.L.T. 321 (Tri. - Hyd.)*

159.38. The noticee submits that he had retracted all his statements at the first available opportunity. Thus, the retracted statements could not be considered as an admissible evidence during the course of proceedings to arrive at any guilt against the noticee. In support of the above contention, the noticee craves to refer and rely on the following decisions;

(i) *Birendra Kumar Singh v. CC, Lucknow - 2006 (198) E.L.T. 460 (Tri. - Del.);*

(ii) *Narayan Das v. CC, Patna - 2004 (178) E.L.T. 554 (Tri. - Kol.)*

(iii) *Sharad Dugar v. CC, New Delhi - 2003 (151) E.L.T. 321 (Tri. - Del.)*

(iv) *Mahabir Prasad v. CC, Patna - 2000 (126) E.L.T. 803 (Tri.)*

159.39. The statements were recorded under pressure and coercion, and evidence to this effect has already been provided through a police

complaint filed by the noticee, which is included hereinabove. Furthermore, confessional statements alone are insufficient to draw adverse conclusions in the proceedings. In the case of Hissar Pipes, the Hon'ble Tribunal held that a confession is merely the starting point of an investigation, not its conclusion. Similarly, in the matter of Tejwal Dyestuff Industries v. Commissioner of C.Ex., Ahmedabad - 2007 (216) E.L.T. 310 (Tri.-Ahmd.), the Hon'ble Tribunal held that a confession does not bind a co-noticee without corroborative evidence. The court must consider all other relevant evidence and assess whether the confessional statement can be relied upon implicitly. Accepting a confessional statement without evaluating other materials may undermine the consideration of other evidence that could outweigh the evidentiary value of the confession;

159.40. The noticee submits that as per the directions of the Hon'ble Tribunal it had requested for cross-examination of 40 witnesses out of which cross-examination of only 19 witnesses were allowed. Out of the said 19 witnesses, only 7 witnesses were offered for cross-examination during the course of proceedings. Thus, effectively 33 witnesses who were either not called or not offered for cross-examination, the deposition made by them cannot be considered as an evidence in the present proceedings. He has placed reliance on various judgements;

159.41. In the present proceedings the investigation has withdrawn digital media i.e. pen drive and other digital media from various places, which have been relied upon in sustaining the allegations against the noticee. It is submitted that the data obtained from pen drive are not substantive evidence and therefore, based on the said data alone, no adverse inference can be drawn against the noticee. In this regards reliance is placed upon decision in case of **Principal Commissioner of CGST & Central Excise Vs Shah Foils - 2020 (372) E.L.T. 632 (Guj.);**

159.42. It is submitted that in view of above submissions, emails cannot be relied in the present case as conditions of Section 65 of Evidence Act is not satisfied in the present case. Thus, email communication cannot be relied upon in the present case. In this regards reliance is placed upon decision in case of **Modern Laboratories v. Commissioner — 2017 (358) E.L.T. 1179 (Tribunal**);

159.43. In view of the above facts, the case may be decided in favor of the noticee and the allegation mentioned in the SCN may be dropped accordingly.

DISCUSSION AND FINDINGS:

160. Now, I proceed to examine the evidences and records of the case in context of the two noticees, Shri Kalpessh Daftary, one of the Directors of M/s. Sunkkalp Creations Pvt Ltd, Mumbai (SCPL) and Shri Piyush Viramgama, Proprietor of M/s. Krish Overseas, Rajkot.

161. Before delving into the merits of the case, it would be pertinent to discuss the jurisdiction of DRI to issue show cause notice prior to 23.11.2010, *albiet* raised by the main noticee, M/s Hindalco Ltd. and not the noticees in the instant case.

162. I would like to refer to notice the judgment dated 07.11.2024 passed by the Hon'ble Supreme Court of India [INHERENT JURISDICTION] in case of Review Petition No.400 of 2021 in Civil Appeal No.1827 OF 2018 v/s Commissioner Of Customs, which analyzes, in detail, the jurisdictional issue to issue show cause notice by the DRI and other allied issues.

163. I reproduce the operative portion of the said judgment delivered by the Hon'ble Supreme Court on the following points:-

(a) The decision in Commissioner of Customs v. Sayed Ali

*"81. The decision in **Sayed Ali** (supra) proceeds on the assumption that for the "proper officer" to exercise the functions under Section 28 of the Act, 1962, such officer must necessarily possess the power of assessment and reassessment under Section 17. However, a plain reading of Sections 17 and 28 of the Act, 1962 does not bring out any such inter-dependence between the two provisions. Having looked into the statutory scheme of the Act, 1962, we are of the view that the observations pertaining to the interlinkage between Sections 17 and 28 respectively of the Act, 1962 made in **Sayed Ali** (supra) do not lay down the correct position of law.*

*82. Even otherwise, the decision in **Sayed Ali** (supra) could have been arrived at without deciding on the interdependence of Section 17 and Section 28 of the Act, 1962 as the Customs (Preventive) officers, whose jurisdiction to issue show cause notices was under challenge in that case, were not assigned the functions of the "proper officer" for the purposes of Section 28 through a notification issued by the appropriate authority. As we have observed in the foregoing parts of this judgment, assignment of functions is a mandatory requirement for the exercise of jurisdiction by the "proper officer". The observations made in **Sayed Ali** (supra)*

on the connection between Sections 17 and 28 of the Act, 1962 are obiter dicta at best and do not constitute the binding ratio decidendi of that judgment.

83. Further, ***Sayed Ali*** *(supra) could not have been relied upon by this Court in* ***Canon India*** *(supra) as it could not have been applied for the period subsequent to 08.04.2011 in view of the fact that Section 17 of the Act, 1962 has undergone a radical change by virtue of the amendments made by the Finance Act, 2011."*

(b) Changes to Section 17 w.e.f. 11.04.2011 – the assessment of bill(s) of entry and shipping bill(s)

"It is evident from the aforesaid that the attention of this Court in ***Canon India*** *(supra) was not drawn to the important changes brought to Section 17 of the Act, 1962 vide Section 38 of the Finance Act, 2011 with effect from 08.04.2011.*

92. The observation in paragraph 13 in ***Canon India*** *(supra) that "where one officer has exercised his powers of assessment, the power to order reassessment must also be exercised by the same officer or his successor and not by another officer of another department though he is designated to be an officer of the same rank" has been made without taking note of the*
changes to Section 17 of the Act, 1962 with effect from 08.04.2011.

93. Similarly, the observation in paragraph 14 in ***Canon India*** *(supra) is erroneous. The relevant paragraph is reproduced below:*

"We find it completely impermissible to allow an officer, who has not passed the original order of assessment, to re-open the assessment on the grounds that the duty was not paid/not levied, by the original officer who had decided to clear the goods and who was competent and authorised to make the assessment. The nature of the power conferred by Section 28(4) to recover duties which have escaped assessment is in the nature of an administrative review of an act. The section must therefore be construed as conferring the power of such review on the same officer or his successor or any other officer who has been assigned the function of assessment."

In other words, the conclusion that an officer who did the assessment, could only undertake reassessment under Section 28(4) was arrived at without taking note of the abovementioned amendment to Section 17 of the Act, 1962 with effect from 08.04.2011 vide Section 38 of the Finance Act, 2011. The judgment in ***Canon India*** *(supra) also recorded an erroneous finding that the function of re-assessment is with reference to Section 28(4) when in fact it is an exercise of function under Section 17.*

94. Further, in ***Canon India*** *(supra) the subject show cause notice was dated 19.09.2014 in respect of the Bill of Entry filed on 20.03.2012. This Court appears to have erroneously applied the provisions of Section 17 of the Act, 1962, as they stood prior to 08.04.2011 as opposed to the amended Section 17 which ought to have been applied."*

(c) Scheme of Sections 17 and 28 of the Act, 1962

"We are conscious of the fact that Section 110AA of the Act, 1962, which has been introduced by the Finance Act, 2022, stipulates that a show cause notice under Section 28 of the Act, 1962 can only be issued by that "proper officer" who has been conferred with the jurisdiction, by an assignment of functions under Section 5 of the Act, 1962, to conduct assessment under Section 17 of the Act in respect of such duty. However, we are of the view that the introduction of Section 110AA doesn't alter the statutory scheme of Sections 17 and 28 of the Act, 1962

as it stood prior to the introduction of Section 110AA. The legislature in its wisdom may introduce certain new provisions keeping in mind the exigencies of administration and taking into account the evolution of law. However, this would not by itself mean that the procedure which was being followed prior to the introduction of such changes was incorrect or in contravention of the law. The legality and correctness of an action has to be adjudged based on the statutory scheme prevailing at the time when such action took place, and incorrectness or invalidity cannot be imputed to it on the basis of subsequent changes in law. Seen thus, the contention of the respondents that Section 110AA of the Act, 1962 amounts to an admission by the petitioner on the invalidity of the legal position existing prior to its introduction, deserves to be rejected.

99. Therefore, in our considered view, the scheme of Sections 17 and 28 of the Act, 1962 indicates that there cannot be a mandatory condition linking the two provisions and the interpretation of this Court in the cases of ***Sayed Ali****(supra) and* ***Canon India*** *(supra) is patently erroneous.*

(d) Use of the article 'the' in the expression "the proper officer"

"102. As we have discussed in the foregoing parts of this judgment, the statutory scheme of the Act, 1962 necessitates that a proper officer can only perform specific functions under the Act if he has been assigned as "the proper officer" to perform such functions by an appropriate notification issued by the competent authority. Seen thus, it becomes clear that an officer of Customs can only perform the functions under Section 28 of the Act, 1962 if such officer has been designated as "the proper officer" for the purposes of Section 28 by an appropriate notification. The use of the article "the" in the expression "the proper officer" should be read in the context of that proper officer who has been conferred with the powers of discharging the functions under Section 28 by conferment under Section 5. In other words, the proper officer is qua the function or power to be discharged or exercised.

103. Thus, the definite article "the" in Section 28 refers to a "proper officer" who has been conferred with the powers to discharge functions under Section 28 by virtue of a notification issued by the competent authority under Section5. In other words, the use of article "the" in Section 28 has no apparent relation with the proper officer referred to under Section 17. The proper officer under Section 28 could be said to be determinable only in the sense that he is a proper officer who has been empowered to perform the functions under Section 28 by means of a notification issued under Section 5 of the Act, 1962.

104. In ***Canon India*** *(supra), this Court held that DRI officers did not have the power of issuing show cause notices under Section 28 as they did not fall within the meaning of the expression "the proper officers" used in Section 28 for the reason that they did not possess the power of assessment under Section 17 of the Act, 1962. However, as we have discussed in the previous parts of this judgment, contrary to the aforesaid observations of the Court, DRI officers were notified as "the proper officer" for the purposes of Sections 17 and 28 of the Act, 1962 respectively vide Notification No.44/2011–Cus–N.T. dated 06.07.2011 issued by the Central Government. Hence, those officers of DRI who were designated as "the proper officer" for the purpose of Section 28 by the aforesaid notification were competent to issue show cause notices under Section 28.*

105. Craies on Statute Law1 has stated that "the language of statutes is not always that which a rigid grammarian would use, it must be borne in mind that a statute consists of two parts, the letter and the sense". It was observed by this Court in ***State of Andhra Pradesh v. Ganeswaera Rao****, reported in* ***AIR****1 7th Ed., Page 83****1963 SC 1850*** *that the aforesaid rule of construction that the*

provisions of a statute are to be read together and given effect to and that it is the duty of the court to construe a statute harmoniously has gained general acceptance. In ***Management, S.S.L. Rly. Co. v. S.S.R.W. Union*** *reported in* ***AIR 1969SC 513****, this Court observed that the principle that literal meaning of the word in a statute is to be preferred is subject to the exception that if such literal sense would give rise to any anomaly or would result in something which would defeat the purpose of the Act, a strict grammatical adherence to the words should be avoided as far as possible. The above principles would help us to desist from affording undue stress on the definite article "the" used before the expression "proper officer" in Section 28 of the Act, 1962."*

(e) DRI officers as proper officers under section 2(34)

129. In our view, the assignment of functions of proper officers as mentioned in Section 2(34) and entrustment of functions of customs officers as mentioned in Section 6 operate on different planes. The assignment of functions of the proper officer is to be done only to officers of customs (whether they be appointed under Section 4 or entrusted with certain functions under Section 6). There may be some overlap between the assignment of functions of proper officers under Section 2(34) read with Section 5 and the entrustment of functions of officers of customs under Section 6 in some instances but there can be no scenario in which we can hold that the "functions" under Section 6 and Section 2(34) are congruent.

130. One of the bases for the decision in ***Canon India*** *(supra) was that no entrustment of functions under Section 6 was done in favour of the DRI officers. This, however, is a glaring misapplication of Section 6 of the Act and is in ignorance of the applicable law which is in fact Sections 2(34) read with Section 5 of the Act, 1962. Therefore, in light of the judgment of this Court in* ***Yashwant Sinha (supra)****, we find that it is necessary to allow this review petition to do complete justice.*

(f) Observations on the constitutional validity of Section 28 (11) of the Act, 1962

"153. We were apprised by the learned Additional Solicitor General during the course of the hearing that the Customs department has been following the protocol suggested in ***Mangali Impex*** *(supra) since 1999. Further, no substantial empirical evidence of the misuse of Section 28(11) which was enacted over a decade ago, was presented by the parties. Therefore, we are inclined to accept the policy of the Customs department that once a show cause notice is issued, the jurisdiction of other empowered proper officers shall be excluded for such notice. We find that such policy acts as a sufficient safeguard against the apprehension of chaos or confusion or misuse.*

154. Thus, we are of the considered view that the enactment of sub-section (11) of Section 28 cures the defect pointed out in ***Sayed Ali*** *(supra) and the judgment in* ***Mangali Impex*** *(supra) deserves to be set aside.*

155. It follows from the above discussion that sub-section (11) of Section 28 is constitutionally valid, and its application is not limited to the period between 08.04.2011 and 16.09.2011.

156. For the reasons in the foregoing paragraphs, we hold that the Bombay High Court judgment in ***Sunil Gupta*** *(supra) lays down the correct position of law, whereas the Delhi High Court decision in* ***Mangali Impex*** *(supra) is incorrect and is consequently set aside."*

164. I find that above mentioned point-wise decisions passed by the Hon'ble Supreme Court of India in case of Review Petition No.400 of 2021 in Civil Appeal No.1827 OF 2018 V/s Commissioner of Customs, has put to rest the jurisdictional issue of show cause notice issued by DRI and all other related points.

165. I find that the Hon'ble Tribunal, in its orders dated 11.02.2020 and 10.08.2022, has remanded the present case back to the adjudicating authority on the grounds of ensuring compliance with the principles of natural justice. It is pertinent to note that the Hon'ble Tribunal has not examined the merits of the case in its order. Furthermore, I note that the original adjudicating authority had already deliberated on and decided the merits of the case. Vide Order-in-Original (OIO) No. 02/COMMR/DRI/2014 dated 28.02.2014, the adjudicating authority confirmed the demand against M/s Hindalco Industries Limited and imposed penalties on five other co-noticees, including Shri Kalpessh Daftary and Shri Piyush Viramgama. In this context, it is observed that on the basis of appeal filed by Shri Kalpessh Daftary and Shri Piyush Viramgama the Hon'ble Tribunal remanded the OIO No. 02/COMMR/DRI/2014 dated 28.02.2014 to the adjudicating authority with a direction to decide the matter afresh concerning these two noticees. The Tribunal also instructed the adjudicating authority to decide the case after following the principles of natural justice. I find that the Hon'ble Tribunal did not set aside the OIO in its entirety and refrained from commenting on the merits of the case. In light of the above, I find no justification to reexamine the merits of the case in its entirety. Therefore, I proceed to examine the merits of the case relating to both the noticees i.e. Shri Kalpessh Daftary and Shri Piyush Viramgama adhering to the principles of natural justice as emphasized by the Hon'ble Tribunal.

166. I note that Shri Kalpessh Daftary was one of the Directors of M/s. Sunkkalp Creations Pvt Ltd, Mumbai and was engaged in purchase and sale of transferrable licences. Shri Daftary was acquainted with Shri Sunil Kumar of M/s. Sabari Quality Foods. M/s. Sabari Quality Foods had during the period 2008-2010 in all sold 408 licences through Shri Kalpessh Daftary and M/s. SCPL. However, though these licences were sold through Shri Daftary, the sale invoices/debit notes for all these licences were in the names of M/s R.R Impex, Kolkata, M/s M.P.G International, Kolkata, M/s Hindustan Continental Limited, Kolkata and

M/s Padmavati Agencies Pvt. Ltd. Investigations conducted had also revealed that 85 VKGUY licences which were forged and sold to M/s. Hindalco were among these 408 licences sold by M/s Sabari Quality Foods to M/s SCPL/Daftary. At the same time, all the 408 licences sold by M/s. Sabari Quality Foods to M/s.Sunkkalp Creations Pvt Ltd were genuine licences issued by the jurisdictional DGFT to the exporters. Of these 408 licences sold by M/s Sabari Quality Foods, 85 VKGUY licences were those which came to be subsequently forged/faked and sold to M/s. Hindalco. The corresponding genuine 85 VKGUY licences were sold by/through M/s SCPL to M/s. Reliance Industries Ltd, M/s. Universal Chemicals & Industries, M/s. Maithan Alloys Ltd, M/s. Apollo Tyres Ltd, M/s.MIRC Electronics Ltd etc. The sales of these 85 genuine licences were affected by M/s SCPL not under their own invoices but through other firms viz. M/s. MPG International, M/s. Hindustan Continental, M/s. New Planet, M/s. Vani Exports. In addition to the 85 forged/faked VKGUY licences, 08 DEPB licences were also forged/faked and sold to M/s.Hindalco for use at Dahej. I note that these 08 DEPB licences were originally issued to M/s. Allanasons Ltd, Mumbai by DGFT Mumbai and the port of registration was Mangalore Sea. These licences were sold by M/s. Allanasons Ltd to M/s. Viraj Impex Pvt Ltd, Mumbai through M/s. Hemant N. Mehta (HUF), a licence broker/trader. The Release Advices in respect of these 08 DEPB licences were issued by Customs Mangalore to M/s. Viraj Impex Pvt Ltd for use at New Custom House, Mumbai and no Release Advice was issued to M/s.Hindalco for use at Dahej.

167. The 408 licences sold by M/s Sabari Quality Foods, to Shri Kalpessh Daftary were genuine licences. The 85 VKGUY licences which were forged and sold to M/s Hindalco were amongst these 408 licences. The evidences showed that after selling the 93 genuine VKGUY/DEPB licences, these very licences were forged/faked and again sold to M/s. Hindalco. I note that Shri Niyaz Ahmed of M/s. Indiyana Shoes, Kanpur was engaged in the forging of licences and was accomplice of Shri Piyush Viramgama. Shri Kalpessh Daftary was introduced to Shri Niyaz Ahmed by Shri Piyush Viramgama and they entered into a conspiracy to forge the licenses. Using the details and particulars of the genuine 93 VKGUY licences, Shri Niyaz Ahmed prepared forged/faked licences. The only difference between the genuine and the forged/faked licences was that the port of registration was changed to Mangalore Sea, whereas in the genuine licences it was Cochin Sea, Tuticorin, ICD Bangalore etc. From the evidences and the depositions of Shri Piyush Viramgama and Shri

Kalpessh Daftary, it was revealed that the licences were forged/faked using the genuine stationery of DGFT. Earlier, i.e. prior to 2007-2008 the licences were being issued in two copies i.e. 1) CUSTOM PURPOSE ONLY AND 2) EXCHANGE CONTROL PURPOSE. For payment of duty utilization of the licences, only the Custom Purpose licence was allowed, though this practice was discontinued, the pre-printed stationery bearing the printed marks "EXCHANGE CONTROL PURPOSE" was available with the DGFT and this stationery was managed and used by Shri Niyaz Ahmed for forging/faking the licences.

168. I note that the examination of the 93 forged/faked VKGUY/DEPB licences used by M/s. Hindalco revealed that the printed marks "EXCHANGE CONTROL PURPOSE" on the right hand side top corner of the licences were erased and over printed with the marks "CUSTOM PURPOSE ONLY". In a number of forged/faked licences, the erasure and over-printing was visible even on a simple visual examination, while in many licences, the same was visible only on a very close and careful examination. Shri Piyush Viramagama had in his statement dtd.13/5/2010 admitted to the above facts. These facts were also admitted to by Shri Kalpessh Daftary in his statement dtd.14/07/2010.

169. I find that the 93 VKGUY/DEPB licences used by M/s.Hindalco were forged/fake licences was also established from the correspondence/ verification made with jurisdictional DGFT. The 93 forged/fake licences were shown to have been issued by DGFT, Trivandrum, Chennai, Bangalore and Mumbai. Scrutiny of the photocopies received from these offices of the DGFT indicated that though the licences of these numbers and particulars were issued by them, except for 15 licences issued by the DGFT, Bangalore, the port of registration in the other 78 licences was Cochin Sea, Tuticorin Sea, ICD, Bangalore. Scrutiny of the licence issue register revealed that but for 07 VKGUY licences and 08 DEPB licences the other 78 VKGUY licences were not registered with them. However, even the 15 licences actually registered at Mangalore Sea were also forged as no Release Advices in respect of these 07 VKGUY licences & 8 DEPB licences were issued by Customs Mangalore Sea to M/s.Hindalco for use at Dahej. Further, the Annexures to the genuine licences containing the list of shipping bills indicated that the actual port of export was Bangalore, Tuticorin, Cochin, Chennai. However, the port of export in the forged annexures to the forged licences was shown to be Mangalore port. Shri Piyush Viramgama had in his statements also admitted that the signatures of the officer of DGFT appearing on the 93

forged/fake licences were forged by him. This fact was also confirmed by Shri Kalpessh Daftary in his statement recorded under Section 108 of the Customs Act, 1962. The officers of Mangalore Customs who had signed on the reverse side of the licence endorsing registration of the original licence have in their relevant statements stated that the rubber stamps and signatures appearing on the reverse side of the 93 licences used by M/s. Hindalco at Dahej were not genuine and that the signatures and stamps on the reverse side of these licences were forged.

170. I find that the verifications carried out with the DGFT as well as the concerned Custom House i.e. New Custom House, Mangalore confirmed that the annexure to forged licences too were forged/faked. The exporters to whom the genuine licence was originally issued by the DGFT had not exported goods from Mangalore port. The port of registration indicated in the DGFT letters forwarding the licences used by M/s. Hindalco was Mangalore Sea. Similarly, the forged/faked annexures indicated that the port of export was Mangalore. As per the copies of the licence forwarding letters furnished by the jurisdictional DGFT to DRI the port of registration in the genuine licences issued by them were Cochin Sea, Tuticorin Sea, ICD Bangalore etc. Therefore, it is amply clear that licence forwarding letters and the Annexures to the licences used by M/s. Hindalco and presented to Customs, Dahej were all forged/fake documents. The above stated position stands validated from the depositions of Shri Piyush Viramgama and Shri Kalpessh Daftary, who in their respective statements admitted to having forged the Licence forwarding letters of DGFT and the annexures to the Licence.

171. I further find that not only the licences were forged but also all other documents such as Release Advices, forwarding letters of DGFT, Annexures attached to the licences, were also simultaneously forged. The evidences recovered from the office premises of M/s. Bansi Overseas included one VKGUY licence bearing No. 0710059272/0/24/00 dated 21/8/2008 which was purportedly issued by the DGFT, Bangalore to M/s. General Commodities Private Limited, Bangalore for duty credit of Rs.43,87,551/-. The port of registration of the said licence was mentioned as Mangalore Sea. The said licence also contained endorsements purportedly made by the Superintendent of Customs, Mangalore. Shri Piyush Viramagama and Shri Kalpessh Daftary had in their voluntarily statements confirmed that the said licence was a forged/fake document. Further, during the course of the search, a list of 85 VKGUY licences was also recovered from the said premise. Shri

Piyush Viramgama and Shri Kalpessh Daftary in their voluntarily statements admitted that these 85 licences were forged/faked and sold to M/s. Hindalco. Apart from the above, during the search 18 debit notes/invoices of M/s. Shivangi Enterprise, 909, Centre Point, MG Road, Bangalore, 560 001 showing sale of 18 VKGUY licences to M/s.Vani Exports, Kolkata were also recovered. Shri Piyush Viramgama and Shri Kalpessh Daftary admitted that these 18 invoices/debit notes pertained to the sale of 18 VKGUY licences. They also admitted that the name and address of M/s. Shivangi Enterprise shown in the 18 invoices/debit notes was fake and that M/s. Shivangi Enterprise was actually a firm owned by Shri Vijay Gadhiya, employee and associate of Shri Piyush Viramgama.

172. I find that during the course of search in office premises of M/s. Bansi Overseas, Rajkot of Shri Kalpessh Daftary and Shri Piyush Viramgama, the following documents were recovered:

1) The licence forwarding letters purportedly of DGFT, Mumbai prepared in Microsoft Word showing the port of registration as Mangalore Sea.
2) Scanned copies of the Genuine licences issued by DGFT, Mumbai.
3) Release Advices prepared in Text files purported to have been issued by Mangalore Customs in favour of M/s.Hindalco Industries Ltd for use at Dahej Port.
4) Unsigned Transfer letters of the original licence holders of the forged/fake licences utilised by M/s.HIL.
5) An excel worksheet showing details of sale of 13 fake/forged licences from M/s Shivangi Enterprise to M/s Mac Alloy @67.444% and from M/s Vani Exports to M/s Vrinda @ 90.50%.
6) An excel workseet titled 'Shivangi Debit Note' containing debit notes/invoice in respect of 08 fake/forged licences.

173. I further find that during the course of search at the residential premises of Shri Piyush Viramgama, 02 Pen Drives, among other things were recovered. The said Pen Drives too were sent to the Directorate of Forensic Science (DFS), Gandhinagar for retrieval of the documents relevant to the investigations. The DFS vide their letter No. DFS/EE/2010/CF/115 dtd.11/09/2012 forwarded certified copies of the printouts. These contained the followings:-

1) The licence forwarding letters purportedly of DGFT, Bangalore prepared in Microsoft Word showing the port of registration as Mangalore Sea.
2) The licence forwarding letters purportedly of DGFT, Trivandrum prepared in Microsoft Word showing the port of registration as Mangalore Sea.
3) Annexures to the licences purportedly of DGFT, Trivandrum prepared in Microsoft Excel showing the port of export as Mangalore Sea.
4) Scanned copies of the genuine licence forwarding letters, licences and annexures to licences issued by DGFT, Bangalore.
5) Scanned copies of the genuine licence forwarding letters, licences and annexures to licences issued by DGFT, Trivandrum.
6) A Microsoft Word file titled 'STAMP' which contained the format and style of Rubber stamps in the name of various exporters to whom the genuine licences were issued.
7) A Microsoft Word document containing a scanned letter C.No.S-01/47/2009 Imp dtd.16/04/2009 duly signed and stamped, purportedly by Shri E. Sukumaran, Assistant Commissioner of Customs, New Custom House, Mangalore to Dahej Customs confirming the genuineness of 13 Release Advices all dtd.06.04.2009
8) A Microsoft Excel file titled as 'cst debit note' containing invoice/debit note of M/s.Shivangi Enterprise for sale of one fake/forged licence to M/s.Vani Export, Kolkata.

174. I find that incriminating evidences in the form of rubber stamps of the DGFT, Rajkot, Round Seal (Stamp) of Mangalore Customs, Rubber Stamps of different banks, negatives for preparing rubber stamps of the firms whose licence were forged as well as rubber stamps of the banks whose stamps were used for verification of signatures on the transfer letters etc were recovered during the course of search at the residential premises of Shri Vijay Gadhiya, employee and associate of Shri Piyush Viramgama. In their respective statements, Shri Piyush Viramgama, Shri Vijay Gadhiya, and Shri Kalpessh Daftary admitted that the round seal (rubber stamp) of Mangalore Customs was used for forging letters purportedly issued in the name of Customs, Mangalore, to confirm the genuineness of release advices. Additionally, the rubber stamps of different banks were used to forge the stamps and signatures of the banks on the transfer letters of DEPB/VKGUY licenses. These

admissions, coupled with the recovery of incriminating evidence, establish a clear link to the fraudulent activities.

175. From the statements of the exporters who were originally issued the 85 genuine VKGUY licenses by the DGFT, I find that it is evident that they sold these licenses to M/s Sabari Quality Foods Ltd., which, in turn, transferred them to M/s SCPL. The exporters further stated that the licenses were ultimately utilized by end-user companies such as M/s Reliance Industries Ltd., M/s Universal Chemicals & Industries Ltd., M/s MIRC Electronics Ltd., and M/s Apollo Tyres Ltd. Regarding the 08 DEPB licenses used by M/s Hindalco at Dahej, these licenses were originally issued by the DGFT, Mumbai, to M/s Allanasons Ltd., Mumbai. I find that M/s Allanasons Ltd. confirmed, via their letters ASL/186/2010 dated 06.07.2010 and ASL/187/2010 dated 08.07.2010, the details of the licenses sold or transferred by them during 2008-2009 and 2009-2010 and these licenses were transferred to M/s Viraj Impex Pvt. Ltd. Importantly, none of the original exporters who were issued the genuine VKGUY and DEPB licenses by the DGFT stated that the licenses were ultimately used by M/s Hindalco. The depositions of these exporters corroborate and reinforce the evidence that the genuine licenses issued to them were sold by Shri Kalpessh Daftary to various end users. Subsequently, these very licenses were forged or faked and sold to M/s Hindalco for use at Dahej.

176. I find that the investigation has established that the acts of forgery in this case were not limited to the creation of fake licenses alone. The fraudulent activities also extended to the preparation of forged release advices, transfer letters of original license holders, and letters purportedly issued by the Customs Department confirming the genuineness of release advices in favor of M/s Hindalco. As already stated hereinabove, transferrable licenses are sold in the open market and purchased by importers for the purpose of paying Customs duty at the time of import. To enable the buyer of the license to utilize it, the original license holder issues a letter transferring the license to the buyer. These transfer letters require the verification/authentication of the transferor's signature by the bank authorities with whom the license holder has an account. The transfer letters are issued on the letterheads of the concerned firms or companies. I further find that Shri Kalpessh Daftary was involved in trading of transferable licenses, dealing with genuine licenses, and selling them to various firms. As such, he was in possession of the transfer letters issued by the original holders of the

genuine licenses. Similar to the forgery of the licenses using photocopies of genuine licenses traded by him, it is evident that using the transfer letters and letterheads of the firms to whom the genuine licenses were issued, forged transfer letters were created in the names of these firms. The fact that the transfer letters were forged is supported by evidence obtained during the searches of Shri Vijay Gadhiya's residential premises and Shri Piyush Viramgama's office premises, where rubber stamps, negatives, and butter paper images used for preparing rubber stamps of different banks and exporter firms were recovered, like:-

i) Rubber stamp of Oriental Bank of Commerce,
ii) Rubber stamp of HDFC Bank Ltd,
iii) Rubber stamp of one V. NAGARAJAN (329), Chief Manager.
iv) Negative for preparing rubber stamp of Union Bank of India, Kollam Civil Stn.Branch
v) Negative for preparing rubber stamp of The Federal Bank Ltd, Kollam
vi) Negative for preparing rubber stamp of ING Vysya Bank Ltd, Kollam
vii) Negative for preparing rubber stamp of Indian Bank, Kollam
viii) Negative for preparing rubber stamp of Bank of Baroda.
ix) Negative for preparing rubber stamp of The Catholic Syrian Bank
x) Negative for preparing rubber stamp of Axis Bank Ltd, Kollam.
xi) Negative for preparing rubber stamp of The South Indian Bank Ltd, Kollam
xii) Negative for preparing rubber stamp of State Bank of India, Kollam
xiii) Negative for preparing rubber stamp of Emmanuel Cashew Industries
xiv) Negative for preparing rubber stamp of Abbas Cashew Company
xv) Negative for preparing rubber stamp of Quilon Export Enterprises
xvi) Negative for preparing rubber stamp of Bola Raghvendra Kamath & Sons.
xvii) Negative for preparing rubber stamp of Lekshmi Enterprises.
xviii) Negative for preparing rubber stamp of Poornachandra Cashew Co
xix) Negative for preparing rubber stamp of Peniel Cashew Co.

Shri Piyush Viramgama had **categorically** admitted in his statements that these negatives and butter paper images of the rubber stamps were actually used to make rubber stamps by his employee Shri Vijay A. Gadhiya as per his instructions and those rubber stamps were further utilized for forging the transfer letters of various parties and also forging the signature verifications by the bank officers. Shri Vijay Gadhiya in his statement admitted that he used to affix the rubber

stamps on the forged transfer letters as per instructions of Shri Piyush Viramgama. The fact that the signatures of bank officials were usually not verified by any agency at any point encouraged Shri Piyush Viramgama to indulge in this act.

177. I find that the licence transfer letters being forged/faked was also corroborated and strengthened by the fact that none of the exporters to whom the genuine licences were issued in their statements deposed that the ultimate user of their licences was M/s. Hindalco. In fact most of the exporters stated that they had issued transfer letters in the name of M/s. Reliance Industries Ltd. It was therefore, evident, that the licence transfer letters in respect of the 93 licences used by M/s.Hindalco were forged in the name of the original licence holders and also the signatures of the bank officials appearing on these transfer letters were forged too.

178. I find that the Release Advices in respect of 93 licences purported to have been issued by Mangalore Customs were verified by Mangalore Customs and it was reported by Mangalore Customs that out of the 85 VKGUY licences and 08 DEPB licences only 07 VKGUY and the 08 DEPB licences were registered at Mangalore Customs. However, I find that even in respect of these 15 licences registered with them, no Release Advices were issued by them to M/s. Hindalco or to any other importer for use at Dahej. The Release Advices in respect of these 15 licences were issued in favour of M/s. Reliance Industries Ltd for use at Magdalla and Nhava Sheva port, M/s. Ispat Industries Ltd for use at Nhava Sheva, M/s. Mirc Electronics Ltd for use at Chennai Sea and M/s.Viraj Impex Pvt Ltd for use at New Custom House, Mumbai. It is seen that the 08 DEPB licences were originally issued by DGFT, Mumbai to M/s. Allanasons Ltd, Mumbai. M/s. Allanasons Ltd, Mumbai vide their letters ASL/186/2010 dtd.6/7/2010 and ASL/187/2010 dtd.8/7/2010 submitted the details of the licences sold/transferred by them during 2008-2009 and 2009-2010. The details of the Release Advices issued by the Custom House concerned in respect of the genuine licences, corresponding to 85 forged VKGUY and 08 forged DEPB licences, also indicated that they had not issued any release advices in favour of M/s. Hindalco for use at Dahej which shows blatant forgery of Release Advices produced by Hindalco for use at Dahej.

179. I find that the relevant register of license, maintained by Mangalore Customs for the relevant period, revealed that but for 07 VKGUY licences and 08 DEPB licences, the other 78 VKGUY licences were not registered

with them. Further for confirmation of the endorsement purported to have been made by the officers of Mangalore Customs on the reverse side of the forged/fake licences, statements of the officers concerned were recorded. Shri Srinivas S. Aigal, Superintendent of Customs & Central Excise, Mangalore who was working in the Export Section of Mangalore Custom House during the period from 01/06/2008 to 05/06/2009 showed the forged/fake licences used by M/s. Hindalco bore signature, purportedly, made by Shri Srinivas Aigal. I find that it is on record, that Shri Srinivas Aigal was transferred out of the Export Section to Central Excise, Bangalore on 05.06.2009, the forged/fake licences purportedly registered with Mangalore Customs after 5/6/2009 bore signatures of Shri Srinivas Aigal, which is sufficient to conclude that these licences were fake and forged. He also confirmed that the signatures appearing on the 85 licences were not his signature and that the same were forged and that the rubber stamps affixed on these licences too were fake. Similarly, the other officers posted in the export section and licence section too confirmed that the signatures appearing on the reverse side of the 93 forged/fake licences were not made by them and confirmed that these signatures were forged.

180. I find that the facts show that the Release Advices issued by Mangalore Customs were all on plain stationery without any markings or watermarks. The Release Advices in respect of the 93 forged/fake licences used by M/s. Hindalco at Dahej were all purported to have been counter signed by Shri E. Sukumaran, the then Assistant Commissioner (Docks), Mangalore Custom. The Release Advices also bore the stamps and signature purported to be that of the Superintendent of Mangalore Customs. In the course of his statement, Shri Sukumaran stated that the Rubber stamp appearing on the Release Advices in respect of the 85 VKGUY licences, used by M/s.Hindalco were not genuine as there was no such post as Assistant Commissioner (Docks) in Mangalore Custom House. He stated that the signatures appearing on the 85 Release Advices were not made by him and that they were all forged signatures. As regards the Release Advices in respect of 08 DEPB licences, used by M/s.Hindalco, Shri Sukumaran stated that the stamp and signature appearing on these 08 Release Advices too were not genuine and were forged stamps and signatures. Statements of the Superintendents who had purportedly signed the Release Advices in respect of the 93 licences used by M/s. Hindalco were also recorded and all of them in their respective statements confirmed that the signature appearing on the 93

Release Advices were not made by them and stated that the signatures as well as the rubber stamp appearing on these 93 licences were forged.

181. Shri Piyush Viramgama, Shri Vijay Gadhiya and Shri Kalpessh Daftary in their respective statements had admitted that the endorsement of registration and issuance of Release Advices on the reverse side of the 93 licences used by M/s. HIL were forged by them. Shri Piyush Viramgama specifically admitted that the signatures of the Superintendent of Customs appearing on the reverse side of the licences were done by him. Shri Viramgama further admitted that the Release Advices were prepared by him on his computer on the basis of the actual Release Advices issued by Mangalore Customs and he had forged the signature of the Superintendent of Customs appearing on the Release Advices. Shri Vijay Gadhiya in his statement admitted to having prepared the Rubber stamps as well as affixing the same on Release Advices on the instructions of Shri Piyush Viramgama. The facts stated by Shri Piyush Viramgama were confirmed by Shri Kalpessh Daftary in his statements. Shri Daftary stated that the Rubber stamps and signatures on the Release Advices were forged by Shri Piyush Viramgama.

182. I note that the documents recovered and forwarded by the DFS, vide their report No. DFS/EE/2010/CF/115, DFS/EE/2010/CF/116 and DFS/EE/2010/CF/119 all dtd. 11/09/2012 contained printouts of 29 number of release advices prepared showing them to had been purportedly issued by Mangalore Customs in favor of M/s. Hindalco for use at Dahej Port. The details of these Release Advices recovered by the DFS were:

Sr. No.	**Release Advice No.& Date**	**Licence Number & Date**	**Duty Amount (Rs.)**
1	1720/03-10-2008	0710057638/29-05-2008	4059297/-
2	1726/16-10-2008	0710059272/21-08-2008	4387551/-
3	1725/16-10-2008	0710059325/27-08-2008	1584203/-
4	2512/19-11-2009	0310538513/18-09-2009	519084/-
5	1742/31-10-2008	0410099029/06-10-2008	6982738/-
6	1740/31-10-2008	041009033/06-10-2008	9394430/-
7	2459/10-11-2009	0310521936/29-05-2009	4426478/-
8	2460/10-11-2009	0310521936 /29-05-2009	4426478/-
9	2461/10-11-2009	0310518177/04-05-2009	5247824/-
10	2462/10-11-2009	0310522743/05-06-	7778161/-

		2009	
11	2464/10-11-2009	0310529284/16-07-2009	5626358/-
12	2465/10-11-2009	0310528689/13-07-2009	4776335/-
13	2467/10-11-2009	0310531532/30-07-2009	6005453/-
14	2468/10-11-2009	0310523564/11-06-2009	4003373/-
15	2469/10-11-2009	0310510861/09-03-2009	4031357/-
16	2470/10-11-2009	0310508092/18-02-2009	5679300/-
17	2471/10-11-2009	0310508089/18-02-2009	7992333/-
18	2473/10-11-2009	0310523566/11-06-2009	5130380/-
19	2474/10-11-2009	0310523562/11-06-2009	5753032/-
20	2475/10-11-2009	0310528212/10-07-2009	6590018/-
21	2476/10-11-2009	0310526777/02-07-2009	4470235/-
22	2518/20-11-2009	0710068313/17-11-2009	4168468/-
23	2519/20-11-2009	0710068346/18-11-2009	5061621/-
24	1721/03-10-2008	0710057493/21-05-2008	4680410/-
25	2665/12-02-2010	0310504347/29-01-2009	2599495/-
26	1741/31-10-2008	0410099030/06-10-2008	9273703/-
27	1734/30-10-2008	0710058485/14-07-2008	5752191/-
28	1665/28-08-2008	0710057647/30-05-2008	7123471/-
29	1813/03-12-2008	0710060173/26-09-2008	3726014/-

183. I note that in a general practice, before allowing utilization of the Release Advices, Customs authorities at the port of import, get the Release Advice verified from the RA issuing port by sending a letter seeking confirmation of genuineness of the Release Advice. Further, the procedure followed is that the letters seeking confirmation of genuineness is sent by Fax to the concerned RA issuing port and no letter is sent by post. Similarly, the letters confirming the genuineness are also received by Fax and no letter is sent by post. Thus, in the process, no letter in original is received by either the sending or receiving Custom House. While forging the Customs letters confirming genuineness of the Release Advices Shri Piyush Viramgama and Shri Kalpessh Daftary took advantage of the fact that original letters are not sent in original to the RA issuing port and only sent by Fax. It has also been brought out during the course of the investigations that the licence

broker/trader who had sold the licence to the ultimate user was responsible for getting the confirmation of genuineness of the Release Advice and he too was interested in getting the confirmation as soon as possible for the reason that the payment towards the licence was made by the buyer only after confirmation of genuineness of the Release Advice.

184. I also find that during the course of investigation, the letter purportedly issued by Mangalore Customs confirming the genuineness of the 93 Release Advices used by M/s. Hindalco at Dahej Port were obtained from Custom House, Dahej. Further, records regarding confirmation of the genuineness of the said Release Advices were also obtained from M/s Hindalco. Upon reviewing these letters, it was revealed that they were not the original copies but were received via fax. This was evident from the header at the top of the letters, which indicated their transmission through fax. The following header appeared at the top of these letters:

Sr. No.	**Letter No. & Date**	**RA number**	**Header detail**
1	S-01/38/2008 Imp dtd.02/04/2009	1953 to 1962, 1964 to 1970 all dtd.25/03/2009	FAX No. : 91 22 26121841, 2 Apr. 2009 12.26 PM P1.
2	S-01/10/2008 Imp dtd.06/11/2008	1725 and 1726 both dtd.16/10/2008	FROM: SUNKKALP, 02226121841, TO: 9160222033340077 5079P.1
3	S-01/47/2009 Imp dtd.16/04/2009	1999 to 2011 all dtd.06/04/2009	FROM :SUNKKALP, FAX NO. 009126121841
4	S-01/06/2008 Imp dtd.25/09/2008	1693 dtd.18/09/2008	FROM :SUNKKALP

From the above table, it is evident that the letters were faxed from M/s. Sunkkalp Creations Pvt. Ltd., Mumbai. The possibility that M/s. SCPL received the letters directly from Mangalore Customs and subsequently forwarded it to M/s. Hindalco has been categorically ruled out. This is due to the fact that, as per the official records, no Release Advices were ever issued by Mangalore Customs in respect of these 93 forged or fraudulent licenses that were used by M/s. Hindalco at Dahej Port.

185. I note from the headers at the top of the letters as detailed in the above table that these letters were faxed by/from M/s. Sunkkalp Creations Pvt Ltd, Mumbai. Release Advices in respect of the 93 forged/fake licences used by M/s. HIL were issued by Mangalore Customs to M/s. Hindalco or for use at Dahej Port. Out of the 93 licences, only 15 were actually registered with Mangalore Customs while

the other 78 licences were not at all registered with them. I find that Mangalore Customs confirmed that none of the letters were issued by them and that in respect of the said 93 licences except for one, no letter were received by them from Dahej Customs requesting confirmation of genuineness of the Release Advices. It was also informed by Mangalore Customs that the letter received by them from Dahej Customs was Letter No. CH/DJ/32/2008-09 dated 11.09.2008 seeking confirmation of genuineness of Release Advice No.1665 dtd.28.08.2008 issued in respect of Licence No.0710057647 dtd. 30/5/2008. Since the said Release Advice was not issued by Mangalore Customs, they vide letter No.S-01/02/2008 imp dtd.12.09.2008 informed Dahej Customs that the details viz. Licence number, RA number, duty credit etc. mentioned in their letter were not relevant to RA No.1665 dtd.28.08.2008 issued by Mangalore Customs.

186. I further find that apart from the categorical denial by Mangalore Customs regarding issuance of any letter confirming the genuineness of Release Advices (RA) allegedly issued by them, forged and fabricated nature of these letters is further corroborated by the recovery of a scanned copy of an apparently original letter. This letter was purportedly issued under the signature of Shri E. Sukumaran, Assistant Commissioner, New Custom House, Mangalore. The letter, bearing reference No. S-01/47/2009 Imp dated 16/04/2009, was recovered by the Directorate of Forensic Sciences (DFS), Gandhinagar, from the pen drive seized during the search of the residential premises of Shri Piyush Viramgama. The said purported letter from Mangalore Customs pertained to the confirmation of the genuineness of Release Advices numbered 1999 to 2011, all dated 06/04/2009, which were used by M/s. Hindalco at Dahej. As already stated hereinabove, communications confirming the genuineness of Release Advices are transmitted exclusively via fax or email and not through physical or original letters. Therefore, the presence of an original letter in possession of Shri Piyush Viramgama raises serious suspicion and strongly indicates its fabricated and forged nature, as such a document should not have been available with him under any circumstances.

187. I find that Shri Piyush Viramgama in his statement stated that the letter confirming genuineness of the Release Advices was prepared by Shri Kalpessh Daftary and mailed/faxed to him and he affixed the round seal of Custom House, Mangalore on the said letter and re-faxed or

mailed it back to Shri Kalpessh Daftary after scanning the same. Shri Kalpessh Daftary used to forge the signature of the Custom officer on the genuineness of verification report and fax it to M/s. PAPL. Shri Piyush Viramgama also stated that the letters of confirmation of genuineness were received by fax only and the original copies were not sent to the Custom Houses at the point of utilization of the forged licences and forged RAs, therefore, the signature on the letter of confirmation was also scanned by Shri Kalpessh Daftary from some document of customs and the scanned portion was affixed on the letter and the print out of the same was faxed. These facts were also confirmed and corroborated by the statement of Shri Vijay Gadhiya, the associate and employee of Shri Piyush Viramagama. Shri Vijay Gadhiya had admitted that he affixed/put rubber stamp on the verification letter of Customs on the instructions of Shri Piyush Viramgama.

188. I find that the forging of letters confirming genuineness of the Release Advices of Mangalore Custom House was confirmed by Shri Kalpessh Daftary in his statement wherein he stated that the forged letters confirming genuineness of the Release Advices were printed by Shri Piyush Viramgama on the basis of the genuine verification letters received from Mangalore Custom House. The letters of Mangalore Customs confirming the genuineness of the Release Advices used by M/s. Hindalco at Dahej were all forged/faked documents and the forgery was done by Shri Piyush Viramgama and Shri Vijay Gadhiya in active collusion and connivance of Shri Kalpessh Daftary. This was further corroborated by the fact that the scanned copy of an original letter No.S-01/47/2009 Imp dtd.16/04/2009 purportedly issued under the signature of Shri E.Sukumaran, Assistant Commissioner, New Custom House, Mangalore regarding confirmation of the genuineness of Release Advices 1999 to 2011 all dtd.06/04/2009 used by M/s.Hindalco at Dahej revealed that but, for the printed matter, the signature and the round seal (rubber stamp) the said document did not bear any other markings, text etc. The said letter did not contain any header or footer, which would otherwise have been found if the letter had genuinely originated from Mangalore Customs and had been sent by Fax to Customs at Dahej. Shri Piyush Viramgama and Shri Vijay Gadhiya have admitted the fact of having forged the letters of Mangalore Customs, by affixing of the Round Seal (rubber stamp) of Mangalore Customs.

189. From the statements of the employees of M/s. KMSPL, M/s. Hindalco it was forthcoming that the letters confirming genuineness of

the Release Advices were received via fax from M/s PAPL or e-mail from Kalpesh Darji of M/s PAPL. They had never received any fax directly from Mangalore Customs. These facts were further confirmed by the statements of Shri Kalpesh Darji and Shri Dharmesh Gathani of M/s PAPL wherein they had stated that a copy of the verification letter was sent to them by M/s SCPL and they had, in turn, forwarded it to M/s. Hindalco. Further, Shri Kalpessh Daftary had in his statement dtd.15/7/2010 stated that the letters confirming the genuineness of the Release Advices were forged by Shri Piyush Viramgama and faxed to him. He, in turn, faxed them to M/s PAPL, who forwarded the same to M/s Hindalco/Dahej Customs. This showed that the letters confirming the genuineness of the Release Advices were forged by Shri Piyush Viramgama and the same were forwarded to M/s Hindalco by Shri Kalpessh Daftary through M/s PAPL. These letters were presented by M/s Hindalco before the Customs authorities, Dahej presuming the same to have been issued by the concerned Custom authorities.

190. The 93 forged VKGUY and DEPB licences used by M/s.Hindalco was purchased by them from M/s.Padmavati Agencies Pvt Ltd and its other firm M/s.Vrinda Agencies Pvt Ltd. M/s PAPL revealed that these licences were sold to them by Shri Kalpessh Daftary of M/s. SCPL, however the billings were done by M/s. Vani Exports, Kolkata for 71 licences, M/s. Emend Technology, Kolkata for 01 licence, M/s. Merill Impex Pvt Ltd, Kolkata for 05 licences and in the case of 08 licences the billings were directly from the original licence holders. In respect of the 08 forged DEPB licences, M/s PAPL informed that these too were purchased by them from Shri Kalpessh Daftary but the billing was done by M/s. Accurate Multi Trade Pvt Ltd, Mumbai.

191. I find that Shri Girish Ghelani of M/s. Vani Exports, Kolkata in his voluntary statements recorded under Section 108 of the Customs Act, 1962, stated that he was not having any direct contacts with M/s PAPL. Shri Paresh Parekh had asked him to supply the licences to M/s PAPL to which he had agreed. Although he had issued Invoices for sale of licences to M/s PAPL, those licences were neither transferred to him or his firm nor were these licences either purchased or sold by him. He was only issuing Invoices to facilitate the sale of the licences to Hindalco by M/s. Sunkkalp Creations Pvt Ltd, Mumbai and that he had issued the sale invoices on the instructions of Shri Kalpessh Daftary of M/s SCPL. For this purpose, purchase invoices of M/s. Shivangi Enterprises, Bangalore,

M/s. New Planet Trading, Kolkata, M/s. Krish Overseas, Rajkot, M/s. Mac Alloys Ltd, Kolkata, M/s. Hindustan Continental Ltd, Kolkata, M/s. Sabari Quality Foods etc were provided to him by Shri Kalpessh Daftary and for issuing the sales invoices, M/s. Vani Exports was being paid commission ranging from 0.10% to 0.25% of the licence value.

192. I find that in case of the 08 forged DEPB licences used by M/s. Hindalco, evidences indicate that the same were sold to them by M/s. PAPL. When representative of M/s PAPL was questioned, they informed that they had purchased these licences from Shri Kalpessh Daftary of M/s SCPL but the invoice/debit note was received from M/s. Accurate Multi Trade Pvt Ltd, Mumbai (AMTPL). Shri Dharmesh Singh, Director of M/s. AMTPL in his statement informed that the transaction in respect of these 08 DEPB licences was arranged by Shri Sashin Koradia of Mumbai. Shri Sashin Koradia had informed him that the purchase invoices would be given by M/s. SCPL and as per the instructions of Shri Kalpessh Daftary, communicated to him by Shri Sashin Koradia, he had issued sales invoices to M/s. PAPL. The invoices issued by M/s. SCPL for sale of licences during the relevant period were withdrawn from their office under panchnama. Shri Dharmesh Singh of M/s AMTPL had informed that he was given sales invoices of M/s SCPL as under :

Licence No. & date	**Duty amount of Licence**	**Tax Invoice No. & date**	**Amount / Purchase price (Rs.)**
0310504365 dtd. 29.01.2009	Rs.2784840/-	SCPL/VKGUY/09-10/118, dtd.09.02.2010	1395568.87
0310504347 dtd. 29.01.2009	Rs.2599495/-	SCPL/VKGUY/09-10/119, dtd.09.02.2010	553932.89
0310505127 dtd. 03.02.2009	Rs.2653468 /-	SCPL/VKGUY/09-10/115, dtd.09.02.2010	928827.89
0310514855 dtd. 08.04.2009	Rs.2294517/-	SCPL/VKGUY/09-10/119, dtd.09.02.2010	488944.36
0310514866 dtd. 08.04.2009	Rs.3003596/-	SCPL/VKGUY/09-10/116, dtd.09.02.2010	1122419.50
0310533750 dtd. 13.08.2009	Rs.1055532/-	SCPL/VKGUY/09-10/117, dtd.09.02.2010	387986.12
0310536516 dtd. 09.09.2009	Rs.2235500/-	SCPL/VKGUY/09-10/117, dtd.09.02.2010	821711.68
0310538513 dtd. 18.09.2009	Rs.519084/-	SCPL/VKGUY/09-10/116, dtd.09.02.2010	193977.49
Total	**Rs.17146032/-**	**Total**	**Rs.5893368.80**

193. I find that during investigation, the invoices in original issued by M/s. SCPL for sale of licences during the relevant period were withdrawn from their office under panchnama. The invoices as stated above were therefore, retrieved from the files of M/s. SCPL and compared with the invoices given to M/s AMTPL. The comparison of the two sets of invoices bearing the same numbers and dates revealed the discrepancies as under:

Tax Invoice No. & date	**Details of sales shown in the Invoices given to M/s AMPL.**	**Details of sales shown in the Invoices withdrawn by DRI from M/s SCPL.**
1	**2**	**3**
SCPL/VKGUY/09-10/115, dtd.09.02.2010	This invoice shows sale of total 14 licences each at a discounted rate of 34.31% and one at 35%	This invoice shows sale of total 13 licences each at a discounted rate of 81.83%
SCPL/VKGUY/09-10/116, dtd.09.02.2010	This invoice shows sale of total 15 licences each at a discounted rate of 34.31% and two licences at 37.37%	This invoice shows sale of total 13 licences each at a discounted rate of 81.83%
SCPL/VKGUY/09-10/117, dtd.09.02.2010	This invoice shows sale of total 15 licences each at a discounted rate of 34.31% and two licences at 36.76%	This invoice shows sale of total 13 licences each at a discounted rate of 81.83%
SCPL/VKGUY/09-10/118, dtd.09.02.2010	This invoice shows sale of total 14 licences each at a discounted rate of 34.31% and one at 50.11%	This invoice shows sale of total 13 licences each at a discounted rate of 81.83%
SCPL/VKGUY/09-10/119, dtd.09.02.2010	This invoice shows sale of total 14 licences each at a discounted rate of 34.31% and two at 21.31%	This invoice shows sale of total 12 licences each at a discounted rate of 81.83%

From the above, it is evident that in one set of invoices issued to M/s. AMTPL, the details of eight forged DEPB licenses were distributed among five invoices. However, these eight licenses are not mentioned in the corresponding five invoices retrieved from the files seized from the premises of M/s. SCPL under Panchnama. While the total amounts mentioned in both sets of invoices are identical, the sale rates of the licenses were adjusted to ensure the total invoice value remained consistent in both sets. This clearly demonstrates that Shri Kalpessh Daftary engaged in a deceptive practice of an unprecedented nature. He issued invoices from M/s SCPL to M/s AMTPL, reflecting the sale of genuine licenses, and retained these invoices in M/s SCPL's records. However, the same invoice numbers and details were manipulated to include forged licenses in the invoices presented to M/s AMTPL. The invoices reflecting the sale of genuine licenses, as found in M/s SCPL's records, indicate that the licenses were sold at a rate of 81.83% of the face value. In contrast, the manipulated invoices provided to M/s AMTPL reflect sale rates ranging from 21.31% to 50.11% of the face value of the

licenses. By altering the sale rates in this manner, the overall invoice value was kept consistent, thereby justifying the amounts ultimately received by M/s SCPL. I find that through this scheme of manipulating invoices, the eight forged DEPB licenses were sold to M/s. PAPL, who further sold them to M/s. Hindalco and these forged licenses were subsequently utilized at Dahej Port to save the import duty.

194. It is a fact that 71 forged licences were sold by M/s.Vani Exports, Kolkata to M/s. PAPL, 05 forged licences were sold by M/s. Merill Impex Pvt Ltd to M/s. PAPL, 01 forged licence was sold by M/s. Emend Technology and the other 08 licences were shown to have been sold to M/s. PAPL by the original licence holders under their invoices. Shri Kalpessh Daftary in his statement recorded on 15/07/2010 stated that in the case of 13 forged licences were shown as having been directly sold by original licence holders to M/s. PAPL. The details of these 13 licences were:-

Sr. No.	**Name of the original Licence Holder**	**Licence No.& Date**	**Duty Credit involved (Rs.)**
1	M/s.Ecomm Gill Coffee Trading Pvt Ltd, Bangalore	0710058005/19-06-08	5628582/-
2	M/s.Ecomm Gill Coffee Trading Pvt Ltd, Bangalore	0710058085/24-06-08	4022044/-
3	M/s.Ned Commodities India Pvt Ltd, Bangalore	0710057639/29-05-08	5371995/-
4	M/s.Ned Commodities India Pvt Ltd, Bangalore	0710057530/22-05-08	4174117/-
5	M/s.Ned Commodities India Pvt Ltd, Bangalore	0710057638/29-05-08	4059297/-
6	M/s.Ned Commodities India Pvt Ltd, Bangalore	0710058726/25-07-08	6918371/-
7	M/s.General Commodities Pvt Ltd, Bangalore	0710059325/27-08-08	1584203/-
8	M/s.General Commodities Pvt Ltd, Bangalore	0710059272/21-08-08	4387551/-
9	M/s.General Commodities Pvt Ltd, Bangalore	0710057647/30-05-08	7123471/-
10	M/s.General Commodities Pvt Ltd, Bangalore	0710057375/13-05-08	5097978/-
11	M/s.General Commodities Pvt Ltd, Bangalore	0710058485/14-07-08	5752191/-
12	M/s.General Commodities Pvt Ltd, Bangalore	0710063439/05-03-09	5161612/-
13	M/s.General Commodities Pvt Ltd, Bangalore	0710063262/-25-02-09	7098890/-

195. From the statements of Shri Kalpessh Daftary, it was seen that the genuine licences of these original licence holders were sold through his firm M/s SCPL, and therefore, the payment in respect of these licences were required to be paid by them. However, M/s SCPL despite receiving

the payments from the ultimate buyer, did not make the payments to these firms in respect of the said licences. Thereafter, these very 13 licences were forged and sold to M/s. Hindalco and along with the other documents which were forged, the invoice/debit notes in the name of these firms too were forged showing the licences as having been sold by them to M/s. PAPL. As per the directions of Shri Kalpessh Daftary, the payments in respect of the genuine licences of these firms were made by M/s. PAPL to these firms and they were informed that the payments received by them from M/s. PAPL were to be adjusted towards the payments due from M/s. SCPL.

196. According to the details of purchase and sale of the 85 licences submitted by M/s PAPL, they had purchased only 08 licences directly from the original licence holders, the details of these 08 licences were:

Sr. No.	**Name of the original Licence Holder**	**Licence No.& Date**	**Duty Credit involved (Rs.)**
1	M/s.Ecomm Gill Coffee Trading Pvt Ltd, Bangalore	0710058005/19-06-08	5628582/-
2	M/s.Ecomm Gill Coffee Trading Pvt Ltd, Bangalore	0710058085/24-06-08	4022044/-
3	M/s.Ned Commodities India Pvt Ltd, Bangalore	0710057639/29-05-08	5371995/-
4	M/s.Ned Commodities India Pvt Ltd, Bangalore	0710057530/22-05-08	4174117/-
5	M/s.General Commodities Pvt Ltd, Bangalore	0710059325/27-08-08	1584203/-
6	M/s.General Commodities Pvt Ltd, Bangalore	0710059272/21-08-08	4387551/-
7	M/s.General Commodities Pvt Ltd, Bangalore	0710057647/30-05-08	7123471/-
8	M/s.General Commodities Pvt Ltd, Bangalore	0710057375/13-05-08	5097978/-

Shri Dharmesh Gathani of M/s PAPL had in his statement dtd.18/07/2011 stated that these firms were exporters and original licence holders of the licences and Shri Kalpessh Daftary in these cases told them that there would be direct billing of the licence holders and, accordingly, provided them with the sale invoices of these firms. These 08 licences were subsequently sold by M/s. PAPL to M/s. Hindalco. Shri Dharmesh Gathani further stated that as per the instructions of Shri Kalpessh Daftary M/s. PAPL had made payments in respect of these eight licenses by Cheque directly to the original licence holders.

197. From the analysis of the details furnished by M/s.PAPL, it was revealed that the above 08 licences shown to have been directly purchased by them from the original licence holders were, in fact, given

to them by Shri Kalpessh Daftary at a higher discount i.e. at about 65% to 74% whereas the other licences were sold at about 90% to 95% i.e. at market rates prevailing at that time. Shri Dharmesh Gathani stated that though they were provided with sale invoices of the original licence holders showing sale at about 65% to 74%, Shri Kalpessh Daftary had actually sold these licences to them at the market rates only i.e. 90% to 95%. The difference in the billed rate and the actual purchase rate of M/s. PAPL i.e. difference between 65%-74% and 90%-95% was given back by them to Shri Kalpessh Daftary in cash. Shri Dharmesh Gathani further stated that the difference amount in cash was paid to Shri Kalpessh Daftary within a month from the purchase of the licence. He also confirmed that the cash was generated through Shri Sashin Koradia of Mumbai and paid to Shri Kalpessh Daftary.

198. I find that Shri Kalpessh Daftary in his voluntary statement dated 09.02.2011 stated that Shri Dharmesh Gathani was involved in the sale of forged licences and was receiving 20% share of the sale proceeds of the forged licences. In respect of the 08 licences shown to have been directly sold by the original licence holders to M/s. PAPL, he stated that these 08 licences were among the initial forged licences sold by them. At that time it was decided that the sale proceeds of the forged licences would be received in the account of M/s. Padmavati Agencies Pvt Ltd and Shri Dharmesh Gathani would make their share in cash after retaining his 20% share of the sale proceeds. However, Shri Dharmesh Gathani used to give their share of the profit after lot of delay. Therefore, for sale of the subsequent forged licences, it was decided that the sale invoice/debit note in respect of the forged licences would be raised in the name of M/s. Shivangi Enterprise and distribution of profit in cash would be done by him and Shri Piyush Viramgama from the account of M/s. Shivangi Enterprise.

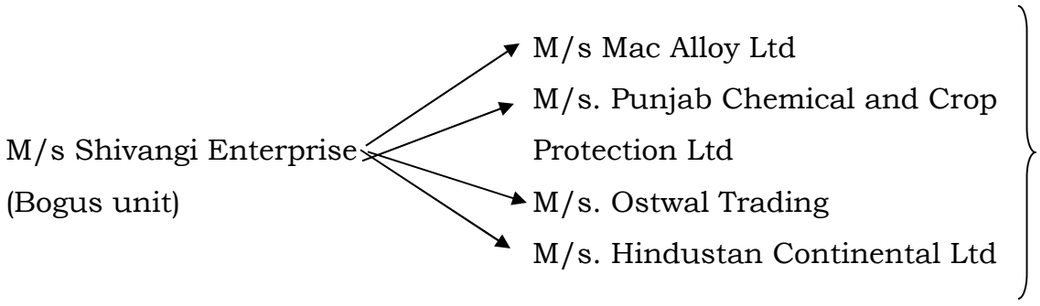
199. I find that in order to transact the sale of the forged licences, a non-existent firm in the name and style of M/s. Shivangi Enterprise, Bangalore was used by Shri Piyush Viramgama and Shri Kalpessh Daftary. Shri Piyush Viramgama in his statements admitted that his associate and employee Shri Vijay Gadhiya was having a firm in the name of M/s. Shivangi Enterprise, Rajkot and the said firm was having an account with HDFC Bank, Rajkot. Shri Piyush Viramgama also admitted that he had got the bills/debit note in the name of M/s. Shivangi Enterprise, Bangalore printed in Rajkot on the directions of Shri

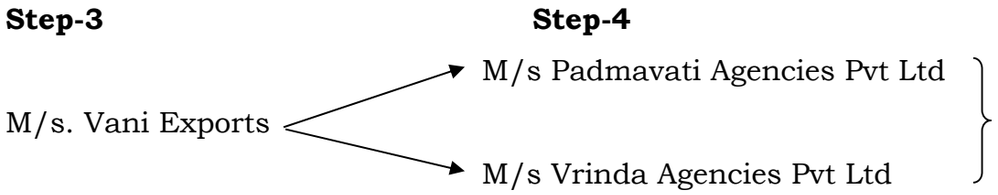
Kalpessh Daftary and these bills/debit notes in the name of M/s. Shivangi Enterprise, Bangalore were used by them for sale of the licences. Shri Piyush Viramgama also admitted that he had signed the debit note/bills issued in the name of M/s. Shivangi Enterprise, Bangalore for sale of the forged licences. The bank account of M/s. Shivangi Enterprise, Rajkot of Shri Vijay Gadhiya was used to rotate the funds in respect of the sale of the forged licences. This was evident from the fact that Shri Vijay Gadhiya was the Proprietor of M/s. Shivangi Enterprise, Rajkot and that he had allowed Shri Piyush Viramgama to use the HDFC bank account of his firm for depositing the amounts from sale of the forged licences and he handed over the signed cheque books to Shri Piyush Viramgama. Shri Vijay Gadhiya further stated that the amounts received in the bank account of his firm were mostly from M/s. Vani Exports, Kolkata. Further, Shri Daftary in his voluntary statements admitted that the forged licences were sold under the invoices of M/s. Shivangi Enterprises, Bangalore. The invoices were prepared in Rajkot by Shri Piyush Viramgama and the bank account of M/s. Shivangi Enterprise, Rajkot of Shri Vijay Gadhiya was used to receive and make payments. Shri Kalpessh Daftary further admitted that the licences were invoiced from M/s. Shivangi Enterprise to M/s. Vani Exports, M/s. Mac Alloys Ltd and M/s. Merill Impex and these firms in turn sold the same to M/s.Padmavati Agencies Pvt Ltd or their other firm M/s.Vrinda Agencies Pvt Ltd who, in turn, sold it to M/s. Hindalco Industries Ltd. The invoice/debit notes in the name of M/s. Shivangi Enterprise, Bangalore for sale of the forged licences were prepared and signed by Shri Piyush Viramgama. These invoices/debit notes of M/s. Shivangi Enterprises, Bangalore, a non existent and fictitious firm, was used by Shri Piyush Viramgama and Shri Kalpessh Daftary to show sale of the forged licences in M/s. Vani Exports, Kolkata, M/s. Mac Alloys Pvt Ltd, M/s. New Planet Trading etc. and they merely issued sales invoices and the licences were neither physically received nor seen by them.

200. I observe that it is beyond dispute that the face value of the 93 forged licences sold to M/s. Hindalco amounted to Rs.48,42,80,689/-. These licences were sold to M/s. Hindalco at a discounted price of about 96% to 98% of the face value. The licences were originally sold under the invoices of the non-existent firm M/s. Shivangi Enterprises, Bangalore to M/s. Vani Exports, Kolkata, M/s. Merill Impex Pvt Ltd, M/s. Emend Technology, M/s. New Planet Trading etc. at a highly discounted price of about 65% to 67%. These firms in turn raised sales invoices at a discounted rate of 94% to 96% to M/s. PAPL, who in turn sold them to

M/s. Hindalco at a rate of about 95% to 97%. On receipt of payment from M/s. Hindalco, M/s. PAPL made payments to the firms who had issued sales invoices to them i.e. M/s. Vani Exports, Kolkata, M/s. Merill Impex Pvt Ltd etc. These firms in turn made payments to the firms from whom they had originally purchased these forged licences or to other firms as per the instructions of Shri Kalpessh Daftary. I find from the case records that apart from the bank account of M/s. Shivangi Enterprises, Rajkot, the evidences available on records reveal that the services of Shri Sashin Koradia of Mumbai too was used for carrying out the financial transactions involved in sale of the forged licences. Shri Sashin Koradia in his voluntary statements recorded on different dates disclosed that he was arranging/providing different firms for billing purposes to Shri Kalpessh Daftary. The firms provided by Shri Sashin Koradia for billing purposes were M/s. Hindustan Continental Ltd, M/s. Priority Trading Pvt Ltd, M/s. Accurate Multi Trade Pvt Ltd, M/s. Ostwal Trading, M/s. New Planet Trading, M/s. R. R. Impex, M/s. Punjab Chemical and Crop Protection Ltd etc. Shri Kalpessh Daftary in the course of his statement recorded on 15/07/2010 stated that the sale of the forged licences originated from M/s. Shivangi Enterprise who raised invoices on M/s. Mac Alloy Ltd or M/s. Punjab Chemical and Crop Protection Ltd or M/s. Ostwal Trading or M/s. Hindustan Continental Ltd. These firms in turn raised sales invoice on M/s Vani Exports, Kolkata and M/s. Vani Exports raised sales invoice on M/s Padmavati Agencies Pvt Ltd, Kolkata or their other company M/s Vrinda Agencies Pvt Ltd. The sale of the forged licences to M/s Hindalco Industries was on the invoices of M/s. Padmavati Agencies Pvt Ltd or M/s.Vrinda Agencies Pvt Ltd. For better understanding of the facts of the case, the event of the forgery is mentioned as under:

Step-1 (Originator) **Step-2**





Step-5: M/s Hindalco Industries Limited (**End User**)

Therefore, M/s Hindalco Industries made payment to M/s. Padmavati Agencies or M/s. Vrinda Agencies Pvt Ltd. These firms in turn paid M/s. Vani Exports and M/s. Vani Exports paid M/s. Mac Alloy Ltd or M/s. Punjab Chemical and Crop Protection Ltd or M/s. Osatwal Trading or M/s. Hindustan Continental Ltd.

201. I find that examination of the emails recovered from the email account of Shri Vishal Wadkar, employee of Shri Sashin Koradia and part time employee of Shri Kalpessh Daftary clearly indicate that the payments were made and received in the names of various firms and the accounting in respect of these transactions were maintained by Shri Sashin Koradia. For instance, the account of Shri Kalpessh Daftary was maintained by Shri Sashin Koradia in the code name of 'zoo', while the accounts pertaining to M/s.PAPL and Shri Dharmesh Gathani were maintained in the code name of "DRG", "padma" etc. It was also revealed by Shri Sashin Koradia that funds were rotated between different firms and in a large number of cases, the amounts were converted in to cash and delivered to either Shri Kalpesh Daftary/SCPL, Shri Dharmesh Gathani/PAPL or to other firms and persons on the instructions of Shri Kalpessh Daftary or Shri Dharmesh Gathani and the cash was sent through Angadias for delivery to the concerned persons.

202. I find that the cash transactions related to angadia activity was also confirmed by Shri Vishal Jagannath Wadkar, Employee of Shri Sashin Koradia in his statement dated 03.06.2010. On perusal of a specific entry, he stated that against the entry dtd.15/10/2007 of Rs.10,00,000/- the particulars were indicated as 'ATM from moneymore – Amd Angadia'. On being asked to explain the said particulars, he stated that an amount of Rs.10 lakhs was received from Moneymore and sent to Ahmedabad through Soma Kanchan Angadia (SK Angadia). He also stated in his statement that all the transactions were actually planned by Shri Kalpesh Daftary but executed by him on paper.

203. Shri Piyush Viramgama in his statements admitted to having received an amount of Rs.1.75 crores for his role in the forgery out of which about Rs. 60 lakhs was received by him in the account of his firm M/s. Krish Overseas from M/s. SCPL and the balance amount was received by him in cash from the account of M/s. Shivangi Enterprise, Rajkot. When Shri Kalpessh Daftary was questioned in this regard, he disagreed with the statement of Shri Piyush Viramgama and stated that Shri Piyush Viramgama had in fact got about Rs. 10 crores for his role in the forgery of the licences. Shri Kalpessh Daftary explained the distribution of the sale proceeds as under:-

> *20% of the original licence value of the licence was given to Niyaz, 20% of the original licence value was taken by Piyush, and as the licences were normally sold at 90% of the original value, he got 50% of the original value of the licence. The money received from the sale of the forged licences was transferred by the companies of Sashinbhai i.e. M/s. Punjab Chemical and Crop Protection Ltd or M/s. Hindustan Continental Ltd., M/s. Osatwal Trading to the bank account of Shivangi Enterprise only to extent of the share of Niyaz and Piyush i.e. 40% of the original value of the licence. Part of his share of the money was withdrawn in cash by Sashinbhai from his companies i.e. M/s. Punjab Chemical and Crop Protection Ltd or M/s. Hindustan Continental Ltd., M/s. Osatwal Trading and paid to him in cash and part of the money was transferred to M/s. Sunkkalp Creations Pvt Ltd by these firms. Though his share in the sale of the forged licences was 50% of the original value of the licence, he effectively got only 40% because about 10% was the charges of Sashinbhai for arranging the billings, making cash payments etc.*

204. I find that Shri Kalpessh Daftary in his further statement recorded on 09/02/2011, 07/03/2011 and 08/03/2011 stated that Shri Dharmesh Gathani was given 20% of the sale proceeds of the forged licences as his share and that initially Shri Dharmesh Gathani had asked for 40% share of the sale value of the forged licences and he had agreed to the same. Later he and Shri Piyush Viramgama discussed the matter and found that in giving 40% share to Shri Dharmesh Gathani they were facing loss and therefore, he had informed Shri Dharmesh Gathani that they could not afford giving him 40% in view of the

expenses incurred in converting the money to cash and that they would give him only 20% share. Shri Dharmesh Gathani informed him that he was agreeable to 20% share on the condition that if a Release Advice verification letter was faxed from Dahej to the RA issuing port, they would have to manage at the RA issuing port end and all the expenses in this regard would be on their account. He had discussed the matter with Shri Piyush Viramgama and they agreed to the condition of Shri Dharmesh Gathani. Substantiating his admission that 20% is paid to Shri Dharmesh Gathani, Shri Kalpessh Daftary explained the manner in which the 20% share of Shri Dharmesh Gathani from the sale proceeds of the forged licence was paid to him. As per his understanding with Shri Dharmesh Gathani, Director of M/s.Padmavati Agencies Pvt Ltd. he (Shri Dharmesh Gathani) used to make part payment of the licence value to M/s. Sunkkalp Creations Pvt Ltd by cheque out of which 20% was returned to him in cash. This 20% was his (Shri Dharmesh Gathani) share of the proceeds of the sale of forged licences. After receiving his share of 20% Shri Dharmesh Gathani would make further payment by cheque to M/s.Sunkkalp Creations Pvt Ltd and he would again return back 20% in cash to Shri Dharmesh Gathani. By this way after receiving back his share of 20% of the licence value, Shri Dharmesh Gathani would make payment by cheque to the firm/company which had issued the sale invoice/debit note to M/s. Padmavati Agencies Pvt Ltd or their other firm M/s. Vrinda Agencies Pvt Ltd. The details of the ledger accounts of M/s. SCPL and M/s. PAPL & M/s VAPL and the sale/purchase transactions of licences between these two firms indicated that during 2008-2009 and 2009-2010 the sales and purchase transaction was to the tune of about Rs.30 crores. As against this it is seen from the ledger accounts that the total transaction between M/s PAPL and M/s SCPL during 2008-09 and 2009-2010 was about Rs.66 crores and between M/s VAPL and M/s SCPL it was about Rs. 8.40 crores i.e. a total of Rs. 74.40 crores. Summary of the sale purchase transactions and payments made by these firms is tabulated as under:

Nature of transaction	**2008-2009 and 2009-2010**	**2008-2009 and 2009-2010**	
	Amount	Payments made by SCPL	Payments received by SCPL
Licences sold by M/s.SCPL to M/s.PAPL	Rs.13.84 crores	----	Rs.54 crores
Licences purchased by M/s.SCPL from M/s.PAPL	Rs.9.42 crores	Rs.48 crores	-----
Licences sold by M/s.SCPL to M/s.VAPL	Rs.0.44 crores	------	Rs.0.55 crores

Licences purchased by M/s.SCPL from M/s.VAPL	Rs.6.51 crores	Rs.6.55 crores	------

From the above table and facts discussed hereinabove, I find that the financial transaction in excess of the sale/purchase of licences between the firms of Shri Dharmesh Gathani and Shri Kalpessh Daftary is to the tune of about Rs.44.40 crores.

205. I further note that statements of Shri Kalpesh Daftary suggested payments against the forged licences to M/s.Vani Exports, M/s.Merill Impex etc were consciously delayed by M/s.PAPL/VAPL till the receipt of payments of 20% share in cash which was their share of the sale proceeds of the forged licences from Shri Kalpessh Daftary. It was only after getting their 20% share in cash which was their share of the sale proceeds of the forged licences, M/s.PAPL/VAPL made payments to the firms which had issued them the sales invoices for the forged licences. The excess financial transaction to the tune of about Rs.44.40 crores between M/s SCPL and M/s PAPL/VAPL also corroborated above stated position. For M/s PAPL to get their 20% in cash, they would have to first pay M/s SCPL which has been done by them through cheque/RTGS. The amount so received by M/s SCPL through cheque/RTGS was then converted to cash by Shri Kalpessh Daftary by using the services of Shri Sashin Koradia and then returned to Shri Dharmesh Gathani. The disclosure made by Shri Kalpessh Daftary that Shri Dharmesh Gathani was a party to the sale of the forged licences and was getting 20% sales proceeds as his share in cash gets further substantiated from the accounts maintained by Shri Sashin Koradia detailing the cash transactions between Shri Kalpessh Daftary and Shri Dharmesh Gathani. Shri Sashin Koradia was maintaining the account in respect of the transactions carried out on behalf of Shri Kalpessh Daftary under the code name of “zoo”. Shri Sashin Koradia in the course of his statement recorded on 11/06/2010 submitted copy of the said ‘zoo’ account and identified the transactions between M/s SCPL and M/s PAPL/VAPL which amounted to Rs.92.40 crores. Shri Sashin Koradia stated that the cheque and RTGS transactions were to the tune of Rs.76.60 crores and out of this, the amount cashed out (converted to cash) was Rs.55.07 crores. Further, Shri Sashin Koradia in his statement recorded on 06/08/2010 also identified the cash transactions of M/s SCPL arising out of the sale and purchase of licences, which amounted to Rs.62.25 crores. Shri Sashin Koradia further stated that out of the said amount,

Rs. 60.63 crores was paid in cash to different persons as per instructions of Shri Kalpessh Daftary. Shri Kalpessh Daftary was, in the course of his statement recorded on 18/07/2010, shown the 'zoo' account submitted by Shri Sashin Koradia and asked to identify the cash transactions from the said account. The cash transactions identified by Shri Kalpessh Daftary totally amounted to Rs. 60 crores. Shri Daftary further stated that out of Rs. 60 crores, Rs. 40 crores pertained to the sale of forged licences to M/s.Hindalco Industries Ltd and M/s.Reliance Industries Ltd. Of this, Rs.28 crores was his profit from the sale of forged licences to M/s. Hindalco Industries Ltd and M/s. Reliance Industries Ltd. From the remaining amount of Rs.12 crores, Rs. 10 crores was paid by him in cash to Shri Piyush Viramgama and Rs.2.0 crores was paid in cash to Shri Niyaz in Mumbai. The amount of Rs.40 crores was cashed by Shri Shashinbhai from the various firms in whose names he arranged billings for sale and purchase of licences.

206. Shri Kalpessh Daftary in his voluntary statement recorded on 08/03/2011, stated that for paying the 20% share of Shri Dharmesh Gathani, conversion to cash was done through Shri Sashin Koradia who maintained his account in the name of 'zoo'. As per the transactions identified by Shri Kalpessh Daftary, he had overall paid an amount of Rs7,68,22,000/- in cash to M/s PAPL which was the share of M/s PAPL in respect of the sale proceeds of the forged licences. Shri Sashin Koradia in the course of his statement recorded on 27/04/2011 also identified the cash transaction between Shri Kalpessh Daftary/SCPL and Shri Dharmesh Gathani/PAPL and confirmed that an amount of Rs.7,68,22,000/- was paid in cash by M/s. Sunkkalp Creations Pvt Ltd/ Shri Kalpessh Daftary to M/s. Padmavati Agencies Pvt Ltd/ Shri Dharmesh Gathani. Shri Sashin Koradia further stated that the cash payments were made by Shri Kalpessh Daftary or by his employees on his instructions either directly to Shri Dharmesh Gathani or to the employees of Shri Dharmesh Gathani or the persons nominated by Shri Dharmesh Gathani.

207. Shri Piyush Viramgama in his statement dtd.12/05/2010 stated that the payments, were made to Shri Niyaz Ahmed, M/s. Indiyana Shoes, Shri Ashok Gupta etc. in respect of the forged licences. Shri Vijay Gadhiya, Proprietor of M/s. Shivangi Enterprise, Rajkot from whose account the payments were made, had in his statement dtd.17/09/2010 stated that whatever amount was debited from his bank account in the name of (i) Indiyana Marketing (ii) Indiyana Shoes (iii) Niyaz Ahmed (iv)

Nizam Ahmed (v) Qamar Jahan (vi) Ashok Kumar Gupta (vii) Unique Fabricator (viii) A.K.Gupta & Sons (ix) A.K.Gupta (x) Indiyana Enterprise (xi) Indiyana have all been transferred to Shri Niyaz Ahmed at Kanpur. During the course of the investigations it was found that M/s. Shivangi Enterprise, Rajkot was having another account bearing No. 910020005728774 with Axis Bank Ltd, Rajkot. It was seen that payments have been made to Shri Niyaz Ahmed and others from this account too.

208. I find that in the present case, the facts of the case is admitted by the noticees in their voluntary statements recorded by the DRI under section 108 of the Customs Act, 1962. The law on the validity of the statements recorded under section 108 of the Act has been well settled in catena of decisions. Firstly, such statements made to the customs officers are admissible in evidence and not hit by section 24 of the Evidence Act as the customs officers are not police officers. Further, I find that the statement recorded by the DRI is not considered as statement recorded by the police and the same is admissible in the eyes of law. The same view has been upheld by the Hon'ble Supereme Court as well as other courts in various judicial pronouncements. In support of my contentions, I rely on the following judgements:

(a) Raj Kumar Karwal v. Union of India (1990) 2 SCC 409: The Hon'ble Supereme Court held that:

"the officers of the Department of Revenue Intelligence who have been vested with powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him".

(b) Ramesh Chandra Mehta vs The State of West Bengal [(1969) AIR 381, 1969 SCR (2) 461]: The Hon'ble Supereme Court held that:

For reasons set out in the judgment in Criminal Appeal No. 27 of 1967 and the judgment of this Court in Badku Joti Savant's case (1), we are of the view that a *Customs Officer is under the Act of 1962 not a police officer within the meaning of s. 25 of the Evidence Act and the statements made before him by a person who is arrested or against whom an inquiry is made are not covered by s. 25 of the Indian Evidence Act.*

(c) In case of ***Shri Naresh J. Sukhawani* v. *Union of India***, as reported at 1996 (83) E.L.T. 258 (S.C.), Hon'ble Supreme Court of India had 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.*

(d) In ***Illias* v. *Collector of Customs, Madras* - 1983 (13) E.L.T. 1487 (S.C.) = 1969 (2) SCR 613** the Hon'ble Supreme Court had held that Customs authorities have been invested under the Act with many powers of a police officer in matters relating to arrest, investigation and search, which the Customs Officers did not have under the Sea Customs Act. Even though the Customs Officers have been invested with many of the powers which an officer in charge of a police station exercises while investigating a cognisable offence, *they do not, thereby, become police officers within the meaning of Section 25 of the Evidence Act and so the confessional statements made by the accused persons to Customs officials would be admissible in evidence against them.*

(e) In ***State of Punjab* v. *Barkat Ram* - (1962) 3 SCR 338** a three-Judge Bench of the Hon'ble Supreme Court as per majority held that the confession made to the Customs Officer and conviction on the basis of such confession under the Land Customs Act, 1924 was held valid.

209. Shri Kalpesh Daftary in his defence denied the charges made in the show cause notice. Further, in most of his reply portion, he made allegations on other conspirators who happened to be his associates when the offence was committed. Such allegations on other associates are not reproduced here in view of the fact that it has got nothing to do with the charges made in the show cause notice against Shri Daftary. Further, Shri Kalpessh himself admitted that in case of various statements recorded by the DRI, they have not implicated him in their statements and therefore he did not comment on these statements.

209.1. He claimed that it is case of Padvamati Agencies (P) Ltd., in connivance with Custom Officers of the port issuing and confirming the licenses and forged the documents and used the same for their personal gain. Shri Daftary argued that Shri Dharmesh Gathani of Padmavati

Agencies Pvt. Ltd in his statement has stated that they have been supplying licences to Reliance Industries Ltd. Therefore, Shri Dharmesh Gathani was having easy access to Xerox copies of these used licenses by Reliance Industries Ltd at Dahej or Magdala port. In this regard, I find that fact of the matter, however, is that in the forged licences supplied to M/s Hindalco, there are many forged licences, genuine licences of which were not supplied to M/s Reliance. Further, Shri Dharmesh Gathani and Shri Piyush Viramgama has disclosed in their statements that the Xerox copies of the license were arranged by Shri Kalpesh Daftary. Further, the same was also accepted by Shri Kalpessh Daftary in his voluntary statements. Therefore, I do not find any force in the argument of the noticee and I reject the same.

209.2. Shri Kalpessh Daftary has contended that he requested cross-examination of 40 witnesses; however, the Adjudicating Authority allowed cross-examination of only 19 witnesses, out of which only 7 were ultimately offered for cross-examination. He asserted that the oral evidence of these 7 witnesses alone could be relied upon to sustain the allegations against him, while the oral evidence of the remaining 33 witnesses should not be considered for drawing any adverse inference in the proceedings.

I observe that Shri Kalpessh Daftary, vide his letter dated 03.01.2024, submitted a list of 40 individuals for cross-examination. However, he failed to provide specific reasons or justification for seeking the cross-examination of such a large number of witnesses. It is a well-established principle of law that the right to cross-examine witnesses, while an essential component of natural justice, is neither unfettered nor absolute. The noticee is required to demonstrate the necessity and relevance of cross-examination by providing cogent reasons. The Hon'ble Tribunal, while remanding the matter for fresh adjudication, directed compliance with the principles of natural justice, including affording the right to cross-examine witnesses. However, this direction did not confer an unconditional right to cross-examine all witnesses merely upon request. In the present case, Shri Kalpessh Daftary's submission of an extensive list of 40 individuals, without assigning specific grounds, appears to be an attempt to misuse the opportunity granted under the remand order. The adjudicating authority is not bound to permit cross-examination based on a blanket request; rather, it is within its discretion to require the noticee to establish the relevance and necessity of cross-

examining particular witnesses. This position is supported by various judicial pronouncements. In K.L. Tripathi v. State Bank of India (1984) 1 SCC 43, the Hon'ble Supreme Court held that the principles of natural justice do not mandate cross-examination in every situation. The requirement for cross-examination depends on the facts and circumstances of each case, and the demand must be justified with valid reasons. Reference is also made to the relevant case laws discussed in paragraph 155 above, which are not reproduced here.

Further, in his submission dated 17.02.2025, in response to the para-wise objections, Shri Kalpessh Daftary stated that certain individuals, namely (1) Shri Prakash Changela, Proprietor of M/s Reliance Enterprises, (2) Shri Hiten Parekh, and (3) Smt. Bindi Vora, among others, had not implicated him in their statements. Despite this, he included these individuals in his request for cross-examination without furnishing any justification. I find that this contradictory stance further underscores the lack of bona fide grounds for the broad request for cross-examination, which is inconsistent with the judicial requirement to provide specific reasons. I further find that the initial list of 40 witnesses submitted by Shri Kalpessh Daftary did not include the name of Shri Somnath Chaudhary, the Investigating Officer. Subsequently, vide his letter dated 21.10.2024, he sought to cross-examine Shri Somnath Chaudhary, but only after cross-examining all other witnesses. This was the first instance in the proceedings where cross-examination of the Investigating Officer was specifically requested. Recognizing the importance of adhering to natural justice and the Tribunal's directions, this request was considered, and notices were issued to the witnesses, including Shri Somnath Chaudhary, for cross-examination. I find that efforts were made in good faith to facilitate the cross-examination of witnesses. Multiple notices, spanning four to five instances, were issued to secure the witnesses' appearance. However, on several occasions, neither Shri Kalpessh Daftary nor his authorized representative attended the scheduled cross-examination. Conversely, in some cases, the witnesses themselves failed to appear despite being summoned. It is important to note that the adjudicating authority, as a quasi-judicial body, is not representing the interests of the revenue or the noticee. It is duty-bound to ensure that the noticee is granted a fair opportunity to defend their case. However, the authority cannot compel witnesses to appear if they refuse to do so. The absence of cross-examination due to non-availability of witnesses, despite reasonable

efforts, does not automatically invalidate their statements, especially when such statements are corroborated by other material evidence. Applying these principles to the present case, I find that Shri Kalpessh Daftary was provided with ample opportunity to cross-examine witnesses. I find that non-completion of cross-examination does not render the statements void or inadmissible. The statements of witnesses, corroborated by the noticee's statements, co-noticees, and other circumstantial evidence, retain their evidentiary value. Having provided sufficient opportunities to Shri Kalpessh Daftary, I am not inclined to disregard the statements solely due to the non-appearance of witnesses for cross-examination, particularly when their statements are corroborated by other evidence. The principles of natural justice require a fair opportunity to be given but do not mandate that proceedings be indefinitely stalled at the noticee's behest. Therefore, the contention that the statements of the remaining 33 witnesses should be disregarded is devoid of merit.

209.3. Shri Kalpessh Daftary contended that he had retracted all his statements at the first available opportunity. Thus, the retracted statements could not be considered as an admissible evidence during the course of proceedings to arrive at any guilt against the noticee. On going through the records of the case, I find that the statements dated 14/15/16/17/18.07.2010, 09.02.2011, 07.03.2011, and 08.03.2011, made by Shri Kalpessh Daftary, were provided by him in his own handwriting and in a language known to him. I find that in these statements, *he disclosed detailed information about his past business activities, establishment of his proprietorship firm, M/s Bansi Overseas, and the employment of Shri Piyush Viramgama under him. He further mentioned the death of his father and his strained relationship with his wife, which led to their divorce in 2006. He also described his association with Shri Dharmesh Gathani, Director of M/s PAPL, his meetings with Shri Paresh Parekh, and his appointment as a Director in M/s Sankallp Creation Private Limited. Shri Kalpessh Daftary provided a comprehensive explanation of the entire process involved in selling DEPB/VKGUY licences, including verification and payment receipt. He elaborated on the documents required for the sale and subsequent use of a DEPB license, such as Original License, Forwarding Letter from DGFT, List of Shipping Bills accompanying the license, and the Transfer Letter from the exporter, duly attested by a bank officer. He explicitly detailed the scheme of forging DEPB/VKGUY licences and the step-by-step execution of the same, along*

with the specific roles played by each of the noticees in the forgery, and the manner in which profits were distributed in cash among them. I further find that the statement dated 09.02.2011 was recorded while Shri Kalpessh Daftary was in Sabarmati Jail, wherein he disclosed the details regarding cash transactions and their settlement involving him, Shri Piyush Viramgama, and particularly Shri Dharmesh Gathani. The statements recorded on 07.03.2011 and 08.03.2011 were obtained by the Directorate of Revenue Intelligence (DRI) under the permission of the Additional Chief Magistrate, at the DRI office. In these statements, he disclosed crucial facts, including details regarding cash settlements among the noticees. At the material time, Shri Kalpessh Daftary was under police protection, and it is improbable that, under such circumstances, while he was in judicial custody, any coercion, threat, or undue influence could have been exerted upon him for the purpose of obtaining his statements. I find that the statements of Shri Kalpessh Daftary contain specific and intricate details, procedure of sale and purchase of licenses, distribution of the profit receive from forgery of the DEPB/VKGUY licences, which could only have been furnished based on his personal knowledge and could not have been invented by the officers who recorded the said statements. Moreover, the statement of Shri Kalpessh Daftary have been confirmed by the statements of the other co noticees, in their respective statements given before the DRI Officers. Even otherwise there is nothing on record that might cast slightest doubt on the voluntary statements in question.

I also observe that the initial statements of Shri Kalpessh Daftary were recorded on 14/15.07.2010, and he was arrested on 16.07.2010. However, he filed his retraction only on 03.08.2010, i.e., fifteen days after the recording of his statements, and the said retraction was addressed to the Additional Chief Magistrate. Statements recorded under Section 108 of the Customs Act, 1962, are presumed to be voluntary and admissible in the eye of law. If a noticee alleges that his statement was obtained under threat, coercion, or pressure, he is expected to retract it immediately, or at least within a reasonable time, after the recording of such a statement. Shri Kalpessh Daftary had ample opportunity to disclose any alleged coercion at the time of his production before the Judicial Magistrate after his arrest. However, he did not retract his statement until fifteen days later. The delayed retraction, addressed to the Additional Chief Magistrate instead of the DRI, further raises doubts about its genuineness. It is a well-established legal principle that

retraction of a statement should be made promptly, preferably before the same authority that recorded the statement, or at the earliest opportunity. In the present case, the delay of fifteen days in filing the retraction and the fact that it was not addressed to the DRI suggests that the retraction was merely an afterthought, aimed at evading the consequences of the violations committed by him. I further find that the 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 Hon'ble Supreme Court as well as other courts as discussed under:

a) In the case of **Surjeet Singh Chhabra reported at 1997 (89) ELT 646 (SC)** the Hon'ble Supreme Court has observed that:

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.*

b) In the case of Rajesh Kumar Vs CESTAT reported at 2016 (333) ELT 256 (Del), the Hon'ble High Court of Delhi has observed as under:

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.

c) 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:

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.*

d) The Hon'ble Supreme Court in the case of K.T.M.S. Mohd. v. Union of India - (1992) 3 SCC 178 held as under:

"34. We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the Custom Authorities or the officers of Enforcement under the relevant provisions of the respective Acts is a sine qua non to act on it for any purpose and if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means that statement must be rejected brevi manu. At the same time, it is to be noted that merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise etc. to establish that such improper means has been adopted. However, even if the maker of the statement fails to establish his allegations of inducement, threat etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is not completely relieved of his obligations in at least subjectively applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, this Court in several decisions has ruled that even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or the Customs Act etc. the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated..."

(emphasis supplied)

e) Further, burden is on the accused to prove that the statement was obtained by threat, duress or promise like any other person as was

held in **Bhagwan Singh v. State of Punjab - AIR 1952 SC 214, Para 30**.

In light of the above judicial pronouncements, the argument of Shri Kalpessh Daftary to the effect that retracted statement has no evidentiary value is not maintainable. I am, therefore, of the view that the statements in question were given by Shri Kalpessh Daftary voluntarily in explanation of the plethora of documents seized from the business/residential premises of the noticees and contain those details which he wished to state and the same is admissible in the present proceedings.

209.4. Shri Kalpessh Daftary further contended that, during the course of cross-examination of Shri Sarjerao Parbati Mojar @ Chhotu, the latter stated that his statement was recorded in English, a language he did not understand, and that he was frightened and had signed the document without reading or knowing its contents. Shri Sarjerao, by way of a letter dated 02.01.2025, also submitted a copy of an affidavit dated 27.07.2010, wherein he had alleged ill-treatment. On this basis, Shri Daftary argued that the statement of Shri Sarjerao Parbati Mojar @ Chhotu could not be treated as admissible evidence in the proceedings against him. However, upon examination of the facts and circumstances, I find that the statement of Shri Sarjerao Parbati Mojar @ Chhotu was recorded on 18.06.2010, wherein he disclosed detailed facts about his association with Shri Paresh Parekh for over 25 years, the separation of directors of M/s Trident India Limited, the shifting of the company's offices, the creation of a new firm, M/s Splendid Overseas, the change of name from M/s Trident India Limited to M/s SCPL, and the present directors of M/s SCPL. He further admitted to working for M/s SCPL, undertaking personal assignments, receiving and booking transactions with various angadia firms, and collecting cash from these firms on the instructions of Shri Kalpessh Daftary, particularly during the period when Shri Paresh Parekh was unwell and Shri Daftary was overseeing the firm's operations. Although Shri Sarjerao later claimed during cross-examination that he was unaware of the contents of his statement as it was recorded in English, which he did not understand, and that he had signed it under duress but I find this assertion unconvincing. Notably, the affidavit dated 31.07.2010, submitted as evidence of ill-treatment, makes no reference to the statement recorded on 18.06.2010. Further, there is no record indicating that the affidavit was submitted to the

Directorate of Revenue Intelligence or any other competent authority at the relevant time. The mere execution of an affidavit more than a month after the statement was recorded holds little evidentiary value, especially when it was not presented before the authority that recorded the statement. Moreover, while Shri Sarjerao claimed inability to understand English, it is pertinent to note that the affidavit dated 31.07.2010 is itself typed in English, raising serious doubts about the authenticity of his claims during cross-examination.

I further find that Shri Daftary relied on a letter dated 02.01.2025, purportedly authored by Shri Sarjerao Parbati Mojar @ Chhotu and addressed to the Superintendent, Adjudication. However, it is perplexing how Shri Daftary came into possession of this letter, which indicates his continued influence over Shri Sarjerao. I further note that Shri Sarjerao in his letter mentioned about cross examination of Shri Vishal Vyas, which in regular course has no connection with the cross examination of Shri Sarjerao and I find it a deliberate attempt to divert the adjudication in favour of Shri Kalpessh. This inference is further supported by the fact that Shri Kalpessh Daftary, in his statement dated 14.07.2010, described Shri Sarjerao as one of the oldest and most loyal employees of the company. The close association between the two suggests that Shri Sarjerao is acting under the direction and influence of Shri Daftary, particularly in his attempts to retract his initial statement. Furthermore, Shri Sarjerao's detailed disclosure during the investigation included facts predating the existence of M/s SCPL, which he could not have fabricated without intimate knowledge gained from his longstanding association with the firm. These statements bear the hallmarks of truth, made at a time when his allegiance to Shri Daftary was likely less compromised by the exigencies of the present proceedings. It is apparent that Shri Sarjerao is now attempting to retract his earlier truthful statement under influence of Shri Daftary. In view of the foregoing, I find no merit in the contention raised by Shri Daftary regarding the inadmissibility of Shri Sarjerao Parbati Mojar @ Chhotu's statement, and I accordingly reject the same.

209.5. Shri Kalpessh further contended that during the cross-examination, Shri Vishal Vyas stated that he was not fluent in English, and the statements recorded in English were not explained to him. He also clarified that the work relating to the trading of licenses was handled by Shri Paresh Parekh, while he only coordinated the sale and purchase of licenses under the instructions and supervision of Shri Paresh Parekh.

The printouts of emails shown to him were not taken in his presence, and the emails were sent under the instructions of Shri Paresh Parekh. He also confirmed that no laptop, pen drive, hard disk, or any other digital media was seized during the search conducted by DRI at the premises of M/s Sunkkalp Creation Pvt. Ltd. These facts make it clear that he had no involvement in the trading of licenses, and his name appears in the proceedings solely because he was one of the directors at the relevant time. Shri Vishal vide letter dated 02.01.2025, submitted that he had filed a police complaint before the Senior Police Officer, Azad Maidan Police Station, Mumbai for ill treatment by DRI officers.

It is observed that the statements of Shri Vishal Vyas, an employee of M/s SCPL, were recorded by the DRI on 28.05.2010, 25.06.2010, and 26.06.2010. During recording of his statements, Shri Vyas disclosed that he was 12th class passed and described his role in M/s SCPL. He specifically stated that the sale and purchase transactions related to DEPB/VKGUY licences of M/s SCPL were handled by Shri Kalpesh N. Daftary, who also operated and controlled the e-mail ID info@sunkkalp.com. Upon being shown various printouts of emails sent by him to different persons, Shri Vyas identified and explained the details of these emails, which pertained to the sale and purchase of various licenses. When questioned about the issuance of two invoices for the same licenses, he categorically stated that it was done under the instructions of Shri Kalpesh Daftary. I observe that Shri Vyas lodged a complaint dated 19.06.2010, wherein he alleged misbehavior by DRI officers on 18.06.2010 and mentioned signing upon the statement of his office colleague, Shri Sarjerao Parbati Mojar @ Chhotu. However, the complaint did not contain any allegation that his own statements were recorded under threat, pressure, or coercion. Furthermore, I find that his statements were recorded both before and after the date of the complaint i.e. on 28.05.2010, 25.06.2010, and 26.06.2010, which clearly indicates that the complaint is unrelated to the veracity or voluntariness of his statements in the present proceedings. There is also no record of any retraction of his statements for approximately 14 years. It is only now, for the first time, that he changed part of his statement during cross examination. I further find that during cross-examination, Shri Vyas himself confirmed the accuracy of the facts stated in his statements, except for his attempt to resile from his assertion that sale and purchase transactions were handled by Shri Kalpesh Daftary. I find that the timing and nature of this deviation, after such a long gap, cast doubt on its

credibility and strongly suggest external influence. Notably, a letter dated 19.09.2024, issued to Shri Vyas for his appearance for cross-examination, was returned by postal authorities with the remark "Left." Additionally, when a third letter was issued to Shri Sarjerao Parbati Mojar @ Chhotu, he responded by stating that he would appear along with Shri Vyas, despite Shri Vyas having left the employment of M/s SCPL in 2011. Moreover, the letters dated 02.01.2025, submitted by both Shri Vyas and Shri Mojar, are drafted in identical language and convey nearly identical facts, further suggesting coordination between the two. It is pertinent to note that Shri Kalpesh Daftary made reference to the letter dated 02.01.2025, which was addressed by Shri Vyas to the Superintendent (Adjudication). The manner in which Shri Daftary came into possession of this letter raises serious concerns and demonstrates his continued influence over Shri Vyas. This close association and the apparent control exercised by Shri Daftary over Shri Vyas strongly suggest that the latter's attempt to retract his earlier statements is not voluntary but is a result of the undue influence and pressure exerted by Shri Daftary. Furthermore, the detailed disclosures made by Shri Vyas during the investigation were corroborated by the statements of other witnesses and co-noticees, and such intricate details could not have been informed without intimate knowledge of the company's business operations. These facts affirm the credibility of his original statements, which were made at a time when his allegiance to Shri Daftary was likely less influenced by the present proceedings. The circumstances clearly indicate that Shri Vyas is now making a belated and motivated attempt to retract his truthful statements under the influence and direction of Shri Daftary. Therefore, I find no merit in the contentions raised by Shri Daftary challenging the admissibility and veracity of Shri Vyas's statements. Accordingly, the objections raised by Shri Daftary are rejected.

209.6. Shri Kalpessh Daftary contended that during cross-examination, Shri Dharmesh Gathani provided evasive and misleading responses, obstructing the objective of establishing true facts and not disclosed the true and correct facts. He further contended that Shri Dharmessh was in association with Shri Piyush and Shri Niyaz and he has not stated true and correct facts before the DRI. He further contended that Shri Dharmessh has given different statement before the Dahej Police & CBI. Further, Shri Dharmessh also hide the bank account details of HDFC Bank, Rajkot from the

department. These facts undermine the reliability of his statements. Further, statement of co-noticee require independent corroboration, which is absent in the present case and therefore, his uncorroborated statement alone cannot be relied upon as conclusive evidence against the noticee.

I observe that during the course of investigation, multiple statements of Shri Dharmesh Gathani, Director of M/s. PAPL, were recorded under Section 108 of the Customs Act, 1962, on various dates, including 22.04.2010, 20.05.2010, 10.07.2011, 19.07.2011, 26.09.2011, 10.10.2011, 11.10.2011, 12.10.2011, and 21.10.2011. In these statements, he elaborately described the procedure, facts, and circumstances relating to the sale and purchase of licenses with M/s. SCPL, and highlighted the role of Shri Kalpessh Daftary. He stated that in the case of licenses purchased through M/s. Sunkkalp Creations Pvt. Ltd., Mumbai, on their buyers request for verification of RAs, they used to ask M/s SCPL for follow-up of the verification with the RA issuing port and M/s SCPL in turn used to get it done at their end and forward a copy of the verification letter to them which was in turn sent by them to the importer/buyer by Fax and sometimes a scanned copy was also sent by email. Further, Shri Dharmesh Gathani stated that although they were provided with sale invoices indicating a purchase price of 65% to 74% of the face value, the actual price paid to Shri Kalpessh Daftary was at market rates, i.e., 90% to 95%. The differential amount was paid in cash to Shri Kalpessh Daftary within a month of purchase. This cash amount was sourced through Shri Sashin Koradia of Mumbai. I also find that on being asked regarding the purchases in respect of the 85 licences, he stated that Shri Kalpessh Daftary used to provide them with the sale invoices of the firms namely i.e. M/s.Vani Exports, Kolkata, M/s.Merril Impex Pvt Ltd, Kolkata and M/s.Emend Technology, Kolkata. The involvement of Shri Kalpessh Daftary in the forgery of licenses and the cash transactions was further corroborated by the statements of other individuals, including Shri Vishal Vyas, Shri Sarjerao Mojar @ Chhotu, Shri Vishal Wadkar, Shri Piyush Viramgama, Shri Girish Ghelani, Shri Sashin Koradia, and others. This was supported by incriminating documents collected during the investigation, such as emails, records maintained by Shri Sashin Koradia, rubber stamps, blank letterheads of Customs, courier records for sending of set of licenses with other documents, fax transmissions from Shri Kalpessh Daftary's office, and details of cash transactions etc.

These collectively established the nexus between Shri Kalpessh Daftary and the forgery of licenses subsequently utilized by Hindalco to evade customs duty. The contention that Shri Dharmesh Gathani's statement should be discarded due to discrepancies in his statements before the CBI and Police, and his concealment of bank account details, is not sustainable. It is noted that the earlier adjudicating authority, after detailed examination, found Shri Dharmesh Gathani guilty and imposed penalties of Rs. 3,40,00,000/- under Section 112 and Rs. 1,45,00,000/- under Section 114AA of the Customs Act, 1962, equivalent to the penalties imposed on Shri Kalpessh Daftary and Shri Piyush Viramgama. It is a settled legal position that statements recorded under Section 108 of the Customs Act, 1962, have evidentiary value and are admissible as evidence under the Indian Evidence Act, 1872. Statements recorded by the Police under Section 161 of the Code of Criminal Procedure, 1973, or by the CBI, do not carry the same evidentiary value in Customs adjudication proceedings. This view finds support in the judgment of *Naresh J. Sukhwani v. Union of India* (1996) 4 SCC 488, wherein the Supreme Court held that statements recorded under Section 108 of the Customs Act are admissible evidence and can be relied upon without formal proof. Similarly, in *Surjeet Singh Chhabra v. Union of India* (1997) 89 ELT 646 (SC), it was held that a confession made under Section 108 is not hit by the bar of Section 25 of the Evidence Act. Moreover, I find that Shri Dharmesh Gathani has not retracted his statements till date and therefore, the statements given before the DRI has proper evidentiary value. Considering the evidence on record and the corroborative statements of other persons, I find that Shri Kalpessh Daftary has played prominent role in the forgery of the licenses, which was subsequently utilized by M/s Hindalco. The claim that the entire case is based solely on the statement of a co-noticee is not true, as the financial transactions, cash distributions, statements of other witnesses as well as co-noticees and other documentary evidence independently substantiate the allegations. Therefore, I find that the statements made by Shri Dharmesh Gathani under Section 108 of the Customs Act, 1962, are found to be credible and applicable in the present proceedings.

209.7. Shri Kalpessh Daftary also contended that the CBI had also investigated the matter concerning the utilization of forged licenses at Dahej Port. He submitted that, in the charge sheet filed by the CBI, certain documents were produced, which, according to him, clearly revealed gross negligence and misconduct on the part of the Customs

officers at Dahej at the relevant time. He further asserted that the officers had acted in a manner that benefited M/s Hindalco.

Upon consideration of this submission, I observe that there is nothing on record to indicate that the CBI conducted any investigation specifically concerning the present matter. It is also pertinent to observe that the CBI is an independent agency, and the investigation carried out by it, along with its findings, has no direct relevance to the present proceedings. It is not uncommon for two different agencies to form different opinions on a similar issue, depending on their respective mandates and priorities. Moreover, Shri Kalpessh Daftary has not disclosed the final outcome of the CBI investigation, nor has he clarified his own role or involvement in the matter identified by the CBI. I find that his submissions are confined to allegations of negligence on the part of the officers. I further find that Shri Kalpessh has placed on record only selective portions of the CBI charge sheet. I do not find any reason to rely on such incomplete and fragmented documents to draw a fair conclusion in the matter.

209.8. Shri Kalpesh further submitted that the panchnama at RUD 103 was drawn in the presence of Mrs. Dayaben Vinodbhai Varmura, the house owner, and not in the presence of any authorized representative of Shri Vijay Gadhiya. Notably, Annexure-B to the panchnama contains impressions of certain stamps allegedly recovered from the premises, which are in English. However, the signatures of the panchas and the house owner indicate that none of them appeared to be familiar with the English language. It is also noted that the panchas were a grocery shop owner and a carpenter by profession. He contended that reliance cannot be placed on the recovery of such impressions if the panchas did not understand the nature of the articles recovered during the search.

Upon careful examination, I observe that the panchnama dated 27.04.2010 was, in fact, drawn at the residential premises of Shri Vijay Gadhiya. During the panchnama proceedings, various incriminating evidences, including rubber stamps and round seals of the DGFT, Rajkot, round seals of Mangalore Customs, stamps of different banks, and other similar articles, were recovered from the premises. The significance of this recovery is further corroborated by the voluntary statement of Shri Vijay Gadhiya dated 12.05.2010, recorded under Section 108 of the Customs Act, 1962. In his statement, upon being shown the panchnama dated 26.04.2010, along with the seized articles

such as rubber stamps, negatives of rubber stamps, and butter paper prints, Shri Vijay Gadhiya admitted that these items were kept at his residence on the instructions of Shri Piyush Viramgama. I find that he also explained that this was done at the time when the office premises of M/s Krish Overseas was being shifted from Somnath Complex to Krish Business Planet. I further find that the statement of Shri Vijay Gadhiya was subsequently affirmed by the co-noticees. Shri Piyush Viramgama, in his voluntary statement dated 13.05.2010, recorded under Section 108 of the Customs Act, 1962, confirmed the facts stated by Shri Vijay Gadhiya. Additionally, Shri Kalpesh Daftary himself, in his voluntary statement dated 15.07.2010, also recorded under Section 108 of the Customs Act, 1962, after perusal of the statement of Shri Vijay Gadhiya, likewise confirmed the facts mentioned therein. In light of these facts, I find that the contention raised regarding the understanding and competence of the panch witnesses is devoid of merit. The argument that the panchas, being a carpenter and a grocery shop owner, and the house owner, were not familiar with the English language and therefore could not comprehend the details of the recovered articles, is not tenable. The panchnama was prepared in Gujarati, and the panchas signed it in Gujarati, which is a common practice as individuals usually sign documents in the language in which the content is written. Furthermore, Annexure-B merely contains brief descriptions of various rubber stamps, primarily in the form of one-liners or short phrases, and it does not require advanced proficiency in English to understand impressions of stamps. Any person with a basic familiarity with English can comprehend the simple contents or impressions of rubber stamps. Therefore, I find that the assertion that the panchas were incapable of understanding the nature of the recovered items is baseless and without substance. The fact that the recovery and the panchnama were subsequently accepted and affirmed by Shri Vijay Gadhiya and further confirmed by Shri Piyush Viramgama and Shri Kalpesh Daftary reinforces the credibility of the panchnama proceedings and the recovery made thereunder. Hence, I hold that the objections raised on these grounds are without merit and liable to be rejected.

209.9. Shri Kalpesh Daftary further submitted that, in the proceedings before the Court initiated on the basis of complaint filed by the CBI, Shri Neeraj Jadwani, the email domain supplier confirmed that the email password of Sunkkalp had been reset on numerous occasions by Shri Vishal Wadkar. It was also brought on record that a complaint regarding this issue

had been made by Shri Kalpessh in December 2009. This cross-examination establishes that the email account of Sunkkalp was being accessed and potentially misused by Shri Vishal Wadkar through repeated password resets. He contended that in view of the above facts it cannot be said that documents or details, recovered from the e-mail I.D. of Sunkkalp were created by Sunkkalp itself.

Upon a detailed examination of the submissions made by Shri Kalpesh Daftary, I find that he placed reliance on the cross-examination of Shri Neeraj Jadwani. In his testimony, Shri Neeraj confirmed that the domain "Sunkkalp.com" had been provided to Shri Kalpesh Daftary, who was the director of M/s SCPL. Further, Shri Neeraj categorically stated that the email account associated with M/s SCPL was managed by its Manager, Shri Vishal Wadkar. This specific statement holds significant weight as it establishes that Shri Neeraj was well aware that Shri Vishal Wadkar held the position of Manager at M/s SCPL and was entrusted with the management of the company's email accounts. Additionally, from the evidence on record, it is noted that Shri Neeraj, in his deposition, referred to an incident in 2009-10, when Shri Kalpesh Daftary had lodged a complaint regarding issues with the company's email account, stating that emails were being automatically sent. Upon receiving this complaint, Shri Neeraj reset the password to the email account and handed over the new password to Shri Vishal Wadkar. This sequence of events, as narrated by Shri Neeraj, is of considerable importance as it reaffirms his familiarity with Shri Vishal Wadkar and his understanding that Shri Vishal was acting in his capacity as Manager of M/s SCPL. Although Shri Kalpesh Daftary asserted that he had made a complaint in December 2009 regarding unauthorized access to the email account, however, I find that he failed to produce any documentary evidence substantiating the existence or contents of such a complaint. In the absence of such proof, it cannot be conclusively established as to the precise nature or subject matter of the alleged complaint. What emerges clearly from the statements made by Shri Neeraj Jadwani is that he had unequivocal knowledge of Shri Vishal Wadkar's role as Manager of M/s SCPL. Even after the alleged complaint was lodged by Shri Kalpesh Daftary, Shri Neeraj continued to reset the email password and provide the same to Shri Vishal Wadkar. This fact substantially weakens the contention of Shri Kalpesh Daftary, as it indicates that Shri Vishal Wadkar was acting in an official capacity on behalf of M/s SCPL and had legitimate access to the company's email account. In light of the

aforementioned facts and the deposition of Shri Neeraj Jadwani, it is evident that the attempt by Shri Kalpesh Daftary to dissociate himself from the emails and documents retrieved from the Sunkkalp domain lacks credibility. His argument that the email account was being misused appears to be a mere afterthought, devised to evade the implications of the incriminating evidence obtained from the said email account. The continuous resetting of the password and its subsequent handover to Shri Vishal Wadkar, who was known and recognized as the Manager of M/s SCPL by Shri Neeraj Jadwani, strongly suggests that the emails and documents generated from the said account were either created by Shri Kalpesh Daftary himself or by his authorized representative including Shri Vishal Wadkar, in the normal course of business. Therefore, considering the entirety of the evidence and the statements placed on record, the explanation offered by Shri Kalpesh Daftary appears to be a feeble excuse aimed at disowning the crucial documentary evidence obtained from the email account associated with the domain "Sunkkalp.com" and I therefore find that the contention raised by Shri Kalpesh Daftary is devoid of merit and I hereby reject the same.

209.10. Shri Kalpessh further contended that regarding the fax header, it is important to note that only mention of a fax number does not conclusively prove that a fax was sent from the number indicated in the header. He argued that it is within the prerogative of the sender to adjust or manipulate the fax number as per their choice, as per the circumstances. Further, during the investigation, the CBI requested MTNL Mumbai to provide details of the telephone number 26121841. MTNL Mumbai informed the authorities that no information was available regarding the installation of a fax machine on the said telephone number. As the relevant authorities have confirmed that no fax was associated with the mentioned telephone number, the issue of sending a fax from that number does not arise and any adverse inference based on the fax number mentioned in the header under RUD 130 should not be taken against him.

I find that this contention of Shri Kalpessh Daftary is not tenable in light of the evidence on record. I find that the existence and active use of a fax machine at the office of M/s Sunkkalp Creations Pvt. Ltd. have been corroborated by multiple statements, including that of Shri Kalpessh Daftary himself. I observe that his employee, Shri Vishal Vyas, in his statement dated 28.05.2010, stated that buyers would forward copies of Customs letters requesting confirmation of the genuineness of

documents. These letters were received either by fax or by email with a scanned attachment. The same were then forwarded to their agents at the port of registration. Upon verification, the agents would send back confirmation letters, which were again received either by fax or email. Shri Vishal Vyas specifically mentioned that the *fax number of M/s SCPL was 022-26121841*. Furthermore, I find that Shri Kalpessh Daftary, in his statements dated 14/15.07.2010, admitted that Shri Piyush Viramgama forged the Mangalore Customs verification letters and *faxed them to his office at M/s SCPL*. These forged letters were then *faxed from M/s SCPL to M/s PAPL* and subsequently to M/s Hindalco Industries Ltd. He further stated that confirmation letters regarding the genuineness of all forged licenses were prepared and faxed by Shri Piyush from Rajkot to M/s SCPL's office in Mumbai, from where they were again faxed to M/s Hindalco Industries or to Customs at Dahej. This sequence of events clearly demonstrates that the fax facility at M/s SCPL was operational and actively used during the relevant period. Additionally, I note that Shri Prashant Kumar Chowta, Customs Clerk of M/s Ganesh Shipping Agency, Mangalore, in his statement dated 22.10.2010, disclosed that Shri Kalpessh Daftary used to send transfer letters by courier and he in turn would fax request letters to their office. Shri Piyush Viramgama, in his statement, also admitted that letters confirming the genuineness of the Release Advices were prepared by Shri Kalpessh Daftary and either mailed or faxed to him. Upon receiving the fax, he affixed a counterfeit round seal of Custom House, Mangalore, and then *re-faxed or emailed the forged documents back to Shri Kalpessh Daftary*. Furthermore, during the investigation conducted by the Directorate of Revenue Intelligence (DRI), letters purportedly issued by Mangalore Customs confirming the genuineness of 93 Release Advices, which were utilized by M/s Hindalco at Dahej Port, were examined. Several of these letters bore the fax number 26121841. This further substantiates that the fax number in question was actively used in connection with the activities under investigation. In view of the corroborative statements from various individuals and the documentary evidence, there is sufficient proof to establish that the fax facility at M/s SCPL, bearing number 26121841, was indeed in use at the relevant time. The claim that no fax was associated with the said telephone number, as asserted based on MTNL's response, is thus rendered inconsequential in light of the overwhelming evidence to the contrary. Therefore, the contention raised by Shri Kalpessh Daftary is devoid of merit and stands rejected.

209.11. Shri Kalpessh Daftary contended that, during the process of verifying the genuineness of the forged 93 Release Advices (RAs), the statements of the Assistant Commissioner and the Superintendent of Customs, Mangalore, were recorded. He argued that these officers had denied the signatures on the RAs were theirs, but objected that the investigation had concluded the signatures were forged without obtaining an expert opinion. He questioned the credibility and reliability of the statements of the officers, asserting that without expert examination, the investigation could not be conclusively determined that the officers were providing true and correct facts.

From the records of the case, I find that during the verification process statements of the officers of the RA issuing port were recorded by the DRI regarding the authenticity of the licenses and RAs. Shri Srinivas S. Aigal, Superintendent of Customs & Central Excise, Mangalore, who was posted in the Export Section of Mangalore Custom House from 01.06.2008 to 05.06.2009, was shown the forged licenses used by M/s. Hindalco, which bore his purported signature. It is a matter of record that Shri Srinivas Aigal was transferred from the Export Section to Central Excise, Bangalore, on 05.06.2009. The fact that forged licenses bearing his signature were purportedly registered with Mangalore Customs after his transfer on 05.06.2009 is, in itself, sufficient to conclude that the said licenses were forged and fabricated. I further find that Shri Srinivas Aigal categorically confirmed that the signatures appearing on 85 licenses were not his and that the rubber stamps affixed on those licenses were also fake. I further observe that statement of Shri Sukumaran revealed that the rubber stamp appearing on the RAs corresponding to the 85 VKGUY licenses used by M/s. Hindalco was not genuine, as there was no such post as Assistant Commissioner (Docks) in Mangalore Custom House. He further affirmed that the signatures on the 85 RAs were not his and had been forged. With respect to the RAs concerning 8 DEPB licenses used by M/s. Hindalco, Shri Sukumaran similarly stated that both the stamp and the signatures were forged and not genuine. The statements of other Superintendents, whose signatures were purportedly on the RAs for the 93 licenses used by M/s. Hindalco, were also recorded. All of these officers uniformly confirmed that the signatures and rubber stamps on the said 93 RAs were forged and not made by them. The contention raised regarding the necessity of expert verification lacks merit when the officer in question was not even posted in the relevant section during the time the documents were allegedly

signed. I find that in such circumstances, the very existence of documents bearing his signature after his transfer renders the documents invalid and establishes their forged nature. Moreover, the statements of the officers were recorded under Section 108 of the Customs Act, 1962, which is admissible as evidence. I further find that when the statements are corroborated by facts on record, including the absence of the concerned officer in the relevant section during the disputed period, there arises no need for further cross-verification by a handwriting expert. The corroborative evidence, coupled with the officers' own statements, is sufficient to establish the fraudulent nature of the documents beyond doubt. Hence, I find that the objection raised by Shri Kalpessh Daftary is found to be baseless and lacking in reasoning and consequently, his argument is dismissed.

209.12. Shri Kalpessh contended that the investigation conducted in the present case was flawed and compromised, raising specific concerns regarding the role and conduct of the investigating officer, Shri Somnath Chaudhary. He asserted that Shri Somnath Chaudhary was not offered for cross-examination during the adjudication proceedings, thereby violating the principles of natural justice. He further referred to his cross-examination before the CBI Court on 23.03.2023, highlighting that during the investigation into the alleged misuse of forged licenses at Dahej Port, Shri Somnath Chaudhary failed to recall or identify the names of key co-noticees. Shri Kalpessh also referred to his arrest by DRI in a separate case and mentioned the involvement of CBI in a similar matter, suggesting that the investigation in the present case was conducted with malafide intent to shield the primary individuals responsible for the misuse of forged licenses.

Upon careful examination of the records of the case, I find that the list submitted by Shri Kalpessh Daftary vide letter dated 03.01.2024, seeking cross-examination of 40 witnesses, did not initially include the name of Shri Somnath Chaudhary. However, subsequently, by way of his letter dated 21.10.2024, he expressed his intention to cross-examine Shri Somnath Chaudhary after completing the cross-examination of other witnesses. This was the first explicit request in the present proceedings for the cross-examination of the investigating officer. In light of the principles of natural justice and in compliance with the directions of the Hon’ble Tribunal, the request was duly considered, and accordingly, Shri Somnath Chaudhary was directed to appear for cross-examination. He appeared on 08.11.2024; however, neither Shri

Kalpessh Daftary nor his authorized representative was present to conduct the cross-examination. Subsequently, another opportunity was provided to cross-examine Shri Somnath Chaudhary on 26.12.2024. On this occasion as well, Shri Kalpessh Daftary, vide his letter dated 26.12.2024, sought an extension, thereby further delaying the cross-examination. It is pertinent to note that the adjudicating authority, being a quasi-judicial body, is obligated to ensure a fair opportunity is provided to the noticee to defend their case but is not required to allow indefinite adjournments at the noticee's request. Shri Kalpessh Daftary was granted sufficient opportunities to cross-examine the investigating officer, and the repeated failure to avail such opportunities cannot be construed as a denial of natural justice. Regarding the allegations made by Shri Kalpessh Daftary concerning the arrest of Shri Somnath Chaudhary and the registration of a CBI case against him, I find that these incidents occurred in 2019, nearly nine years after the investigation in the present matter was conducted. The mere fact of subsequent allegations or proceedings against the investigating officer does not automatically vitiate the investigation conducted in the past. A person's conduct at a later stage cannot retrospectively cast doubt on the integrity of their previous work. I note that Shri Somnath Chaudhary was previously awarded the Presidential Medal for his meritorious service, which also lends credibility to his professional conduct during the period relevant to the present investigation. I further note that any criminal misconduct on the part of Shri Somnath Chaudhary in a separate case does not confer immunity upon the individuals against whom cases were initiated during his tenure as an investigating officer. Each case must be assessed on its own merits, and mere allegations against the officer do not invalidate the findings of every investigation conducted by him. As regards the contention of malafide intention in implicating Shri Kalpessh Daftary, I find that no credible evidence or specific material has been produced to substantiate such an allegation. Mere assertions of bias or improper motive, without tangible proof, are insufficient to undermine the investigation. From the discussion hereinabove, I hold that Shri Kalpessh Daftary was afforded ample opportunity to cross-examine the investigating officer. The proceedings have, therefore, adhered to the principles of natural justice. The invocation of the subsequent arrest and allegations against Shri Somnath Chaudhary bears no material relevance to the present case, particularly when viewed in light of his professional recognition during the relevant period. The investigation cannot be deemed compromised merely based on unsubstantiated allegations, and

the assertion of malafide intent remains unproven. Therefore, I find that the contention of Shri Daftary is without merit and liable for rejection.

209.13. Shri Kalpesh submitted that during the investigation, the DRI has seized digital media, including a pen drive and other electronic storage devices, from various locations. The data retrieved from these devices has been relied upon to support the allegations against the noticee. He contended that the data obtained from the pen drive does not constitute substantive evidence, and no adverse inference can be drawn against the noticee solely on the basis of such data. It is further contended that the email communications relied upon in the present case are inadmissible, as the requirements of Section 65B of the Evidence Act, have not been satisfied.

Upon careful consideration of the material on record, I find that the allegation against Shri Kalpessh Daftary is not solely based on digital evidences. I find that the allegation is supported by statements of various witnesses, co-noticees, and employees of Shri Daftary, along with his own voluntary statements and several incriminating documents seized during the investigation. Further, the evidences recovered from various emails were corroborated by his employee, Shri Vishal Vyas, who specifically identified the transactions and explained the purpose behind them. He also accepted that some emails were sent by him on directions of Shri Kalpessh Daftary. These details are consistent with the statements of other individuals and are further supported by corroborative evidence. Additionally, the authenticity of the email records was verified by both the sender and the recipients, including an employee of Shri Kalpessh Daftary. In view of the foregoing factual and legal position I find that the contention raised by the noticee is untenable and liable for rejection.

209.14. He also contended that the entire proceeding against him is vitiated by an error of law, as it is based on mere presumptions and assumptions, without any factual support. He further contended that both the residential and office premises of the noticee were searched during the investigation, yet no direct or indirect evidence linking the noticee to the alleged misconduct was found or brought on record. The evidence relied upon consists solely of third-party statements and documents recovered from third-party premises. Such statements and documents, in the absence of corroborative evidence, cannot be treated as admissible proof to draw an adverse inference against the noticee.

Upon careful examination of the material evidence and arguments presented, I find the contention of the noticee to be untenable. The claim that the proceedings are based solely on presumptions and assumptions is devoid of merit. I find that the investigation conducted by the Directorate of Revenue Intelligence has established concrete evidence demonstrating the role of Shri Daftary in the forgery and misuse of licenses for evasion of customs duty. Notably, M/s Hindalco has already paid an amount of Rs. 48,42,80,828/- along with applicable interest of Rs. 10,10,83,066/-, thereby acknowledging the liabilities arising out of the fraudulent transactions. Moreover, M/s Hindalco has lodged an FIR and filed a civil suit against the sellers concerning the forgery of licenses. The investigation has further revealed that Shri Kalpessh Daftary played a pivotal role in orchestrating the forgery. The DRI apprehended him along with other individuals involved in the scheme. During the course of searches conducted by the DRI, various incriminating pieces of evidence were recovered, including but not limited to:

- Emails and printouts detailing fraudulent transactions,
- Records of cash transactions maintained by Shri Sashin Koradia,
- Rubber stamps and blank letterheads of Customs authorities,
- Courier records evidencing the transmission of forged licenses and other documents,
- Fax transmissions from Shri Kalpessh Daftary's office containing forged letters,
- Documentary evidence detailing cash transactions linked to the fraudulent scheme.

I find that the evidentiary value of these materials was further strengthened by the voluntary statements of third-party individuals from whose premises these documents were recovered. Notably, the individuals concerned confirmed the authenticity of the documents and the underlying transactions in their statements. Furthermore, Shri Kalpessh Daftary himself, in his voluntary statements, provided a detailed disclosure of the entire scheme of forgery, including its planning, execution, and the distribution of profits arising from the forgery of licenses. Additionally, records of emails retrieved during the investigation were corroborated by Shri Vishal Vyas, an employee of Shri Kalpessh Daftary, who specifically identified the fraudulent transactions and provided detailed explanations regarding their purpose. This independent corroboration further substantiates the allegations against Shri Kalpessh Daftary. I note that the Hon'ble Supreme Court and various High Courts

have consistently held that circumstantial evidence, when corroborated by other material evidence and voluntary statements, can be sufficient to establish guilt. In K.I. Pavunny v. Assistant Collector (1997) 3 SCC 721, the Hon'ble Supreme Court ruled that voluntary confessions made under Section 108 of the Customs Act, 1962, are admissible evidence and can be relied upon in proceedings against the accused. Further, in Kanhaiyalal v. Union of India (2008) 4 SCC 668, the Apex Court reiterated that evidence collected from co-accused and accomplices, when supported by other corroborative evidence, is sufficient to hold a person guilty of customs violations and fraud. In view of the above judgements and findings, it is evident that the proceedings against the noticee are not based on mere assumptions or presumptions but are supported by tangible evidence, including financial records, cash transactions, excess financial transactions of more than Rs. 40 Crores between M/s SCPL & M/s PAPL, payment made by M/s PAPL to original license holders on behalf of M/s SCPL, witness statements, and documentary evidence. The contention that the case relies solely on third-party data and their statements is incorrect. The allegations against the noticee are independently substantiated by multiple sources of corroborative evidence, including documentary proof, voluntary confessions, and the statements of co-noticees and other witnesses. The evidence on record conclusively establishes his involvement in the fraudulent activities relating to the forgery and misuse of licenses, leading to the evasion of customs duty by M/s Hindalco. Therefore, I find no merit in the arguments raised by Shri Kalpessh Daftary and accordingly reject his contention.

209.15. I have gone through the lengthy submission made by Shri Kalpesh Daftary vide his letter dated 16.01.2013, 06.02.2013 & 17.02.2025. At the outset, I find that the focous of his reply is to make allegations of other conspirators which has got nothing to do with the allegations made in the show cause notice, therefore I do not find it necessary to consider the reply relating to such allegations and counter allegations.

210. The defence submission made by Shri Piyush Viramgama vide his letter dated 28.03.2013 does not have any substance. In fact, he has not seriously contested the allegations made in the notice and simply denied the charges. Further, so far as his request for cross examination of other noticees or witnesses in this case is concerned, I find that after receipt of

the Hon'ble Tribunal order dated 10.08.2022, two opportunity for personal hearing on 15.09.2023 and 19.10.2023 was provided to Shri Piyush Viramgama. However, in response to both the personal hearings, Shri Piyush Viramgam has neither turned up for the hearing on the scheduled date nor submitted any reply in this regard. I further find that in order to follow the principles of natural justice, letter dated 28.10.2024 was issued to Shri Piyush Viramgama, for seeking the list of witnesses whom he wish to cross examined within seven days. Shri Piyush has acknowledged and received the said letter in person on 29.10.2024. I find that despite of providing the list of person to be cross-examine within the stipulated time, Shri Piyush, vide letter dated 07.11.2024, has requested for one-month extension without adducing any specific reason. Without any presupposition, it is imperative to mention that such casual approach of postponement is not appreciable and may adversely affect the adjudication process to complete in a reasonable time in the interest to safeguard the Govt. Revenue. I further find that subsequent to his request for an extension, further communications, including a letter dated 08.11.2024 and reminders dated 19.11.2024 and 04.12.2024, were issued to Shri Piyush Viramgama, requesting him to submit the list of witnesses for cross-examination. I find that although, the very fact reveals that the opportunity of cross-examination is not being taken in serious manner which reflects the contradictory approach of Shri Piyush Viramgama towards the opportunity provided by the Hon'ble Tribunal to controvert statements and cross examine the statements on which the department places its reliance. Taking into consideration the above facts and circumstances, I note that several opportunities have been granted to Shri Piyush Viramgama to participate in the adjudicating proceedings and to submit the list of witnesses he wishes to cross examine, however, in each and every occasion, Shri Piyush Viramgama has failed to avail opportunity of representing their contentions with the support of corroborative evidence before the adjudicating authority.

210.1. I have carefully examined the submission dated 28.03.2013 made by Shri Piyush Viramgama and find that it is factually incorrect to say that the charges leveled against him in the Show Cause Notice notice are on the basis of statements of other individuals. Fact of the matter is that in the statements recorded on various dates by DRI under Section 108 of the Customs Act, 1962, Shri Piyush Viramgama himself has categorically explained the procedure from forging the licenses to receipt of their

share. He also admitted his role in the entire episode of forging the licences and other allied documents. I find that the above said admission made by Shri Piyush Viramgama gets substantiated from various incriminating documents/articles recovered from his office as well as residential premises during the course of searches in these premises which include:

i) Rubber stamp of Oriental Bank of Commerce,
ii) Rubber stamp of HDFC Bank Ltd,
iii) Rubber stamp of one V.NAGARAJAN (329), Chief Manager.
iv) Negative for preparing rubber stamp of Union Bank of India, Kollam Civil Stn.Branch
v) Negative for preparing rubber stamp of The Federal Bank Ltd, Kollam
vi) Negative for preparing rubber stamp of ING Vysya Bank Ltd, Kollam
vii) Negative for preparing rubber stamp of Indian Bank, Kollam
viii) Negative for preparing rubber stamp of Bank of Baroda.
ix) Negative for preparing rubber stamp of The Catholic Syrian Bank
x) Negative for preparing rubber stamp of Axis Bank Ltd, Kollam.
xi) Negative for preparing rubber stamp of The South Indian Bank Ltd, Kollam
xii) Negative for preparing rubber stamp of State Bank of India, Kollam
xiii) Negative for preparing rubber stamp of Emmanuel Cashew Industries
xiv) Negative for preparing rubber stamp of Abbas Cashew Company
xv) Negative for preparing rubber stamp of Quilon Export Enterprises
xvi) Negative for preparing rubber stamp of Bola Raghvendra Kamath & Sons.
xvii) Negative for preparing rubber stamp of Lekshmi Enterprises.
xviii) Negative for preparing rubber stamp of Poornachandra Cashew Co
xix) Negative for preparing rubber stamp of Peniel Cashew Co.

Apart from above incriminating documents/articles, Shri Piyush Viramgama in the course of his statement recorded on 06/09/2010 submitted the bills of Shree Maruti Courier Service Pvt. Ltd., Rajkot, in respect of documents / parcels sent from his firm M/s Krish Overseas, Rajkot to various persons / firms. The said bills contained datewise consignee name to whom documents were sent. From the details contained in the said bills it is seen that there are a number of consignments sent to Shri Niyaz Ahmed, Kanpur. This corroborates the statements of Shri Piyush Viramgama and Shri Kalpessh Daftary that the photocopies of the genuine licences were sent to Shri Niyaz Ahmed

for preparing a forged set of licences. Additionally the account of M/s. Krish Overseas, Rajkot submitted by M/s. Sunny International, Rajkot, a travel agent, vide their letter dtd.12/07/2012 indicates quite a number of air ticket bookings made for Shri Niyaz Ahmed and his associates by Shri Piyush Viramgama. The payments in respect of these air tickets have been made by M/s. Krish Overseas, Rajkot of Shri Piyush Viramgama. I also find that Shri Prashant Chowta, an employee of M/s. Ganesh Shipping Agency, Mangalore, in his statement dated 22.10.2010 disclosed that during August-September,2008 Shri Kalpesh Daftary told him over telephone that one of his employee was coming to Mangalore in connection with TRA of some licence. After some time, one person called him and in the meeting the said person introduced himself as Shri Kamlesh and informed that he was the partner of Shri Kalpessh Daftary. On being shown the photographs of various person, he identified the photograph of Shri Piyush Viramgama as Shri Kamlesh. Upon being informed that the person who introduced himself as Kamlesh was actually Shri Piyush Viramgama, Shri Chowta stated that he was unaware of the person's true identity. I find that this act of impersonation by Shri Piyush clearly indicates his malicious intent and dubious character.

210.2. I further find that Shri Piyush Viramgama had in his statements admitted of having received an amount of Rs.1.75 crores for his role in the forgery out of which about Rs. 60 lakhs was received by him in the account of his firm M/s. Krish Overseas from M/s. SCPL and the balance amount was received by him in cash from the account of M/s. Shivangi Enterprise, Rajkot. I also find that Shri Kalpessh Daftary in his statement disclosed that Shri Piyush Viramgama has received an amout of Rs. 10 Crores as a share from this forgery of licenses.

210.3. I also do not find any merit in the submission made by Shri Viramgama that the show cause notice is time-barred. I find that no worthwhile reason has been put forward substantiating the claim of time bar except by saying that he was arrested and therefore DRI was aware about the forged nature of the licences, hence extended period was not available for issuance of show cause notice after disclosure of facts on the basis of which he was arrested. According to Section 28(4) of the Customs Act, 1962, where any duty has not been levied or has been short-levied by reason of collusion or any wilful mis-statement or suppression of facts by the importer, the proper officer can within five

years from the relevant date, serve notice on the person chargeable with duty which has not been so levied or which has been so short-levied or short-paid. Thus, in the instant case, the notice has been issued within the time limit prescribed under Section 28(4) of the Customs Act, 1962. The Customs Act, 1962 does not prescribe any time limit for the other actions proposed in the show cause notice such as confiscation of the goods and imposition of penalty. Therefore, the issue of time-bar raised by Shri Virmgama is devoid of substance and hence the same is rejected.

210.4. Shri Piyush Viramgama has contended that reliance has been placed on his statement recorded during a period when he was imprisoned and did not have access to legal counsel or documentary evidence. He further asserts that he retracted this statement immediately thereafter. In this regard, I find that legal assistance is not a prerequisite for providing a statement unless the questions posed pertain to highly technical matters. In the present case, the statements recorded were general in nature and did not involve any intricate technicalities related to the goods or procedures. Furthermore, as discussed in para 209.3 supra, I have already examined the evidentiary value of statements that have been retracted at a later stage. In light of this discussion and relevant judicial pronouncements, I find that the statements recorded under Section 108 of the Customs Act, 1962, even if subsequently retracted, retain their probative value and can be used as evidence against Shri Piyush Viramgama and other co-noticees. Therefore, I hold that the ontention of the noticee regarding lack of legal guidance at the time of recording the statement does not hold merit and I reject the same.

210.5. I further find that other submissions made by Shri Viramgama are not relevant to the case as it has got nothing to do with the charges leveled against him in the show cause notice.

211. Further, I find that Shri Kalpessh Daftary and Shri Piyush Viramgama have quoted and relied on various case laws/judgments in their defense submission to support their contention on some issues raised in the Show Cause Notice. I am of the view that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances, and cannot apply here directly. Therefore, I find that

while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135(SC)* has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)]* wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)],* it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.

212. From the above facts and circumstances as discussed hereinabove, I find that Shri Kalpessh Daftary and Shri Piyush Viramgama alongwith other persons had conspired and forged the 85 VKGUY licences and 08 DEPB licences which were ultimately sold to M/s. Hindalco by PAPL of Shri Dharmesh Gathani. The total duty credit involved in these 93 forged licences is Rs.48,42,80,689/-. This duty credit was utilized by M/s. Hindalco for paying duty in respect of the goods imported by them under the bills of entry, as per the show cause notice. However, in view of the fact that these 85 VKGUY licences and the 08 DEPB licences were forged/fake licences which were neither issued by the DGFT nor registered with the Customs authorities, these documents were void *ab inito.* Accordingly, the benefit of the said notifications was not admissible in as much as the exemption (debit of duty from the licences) under these notifications was undisputedly available only to genuine licences issued by the DGFT and which were registered with the Customs authorities. Further, the Release Advices in respect of these 93 licences presented before Customs, Dahej too have been established to be forged/fake documents and, therefore, these Release Advices too were void *ab inito* and not valid documents. Therefore, the exemption under the said notification was wrongly claimed and availed by M/s. Hindalco.

213. It clearly and categorically emerges from the evidences discussed and findings recorded hereinabove that Shri Kalpessh Daftary and Shri Piyush Viramgama alongwith others had conspired and decided to forge the 85 VKGUY and 08 DEPB licences and sell it through M/s PAPL to Hindalco. Shri Kalpesh Daftary was instrumental for providing copies of corresponding genuine licences, RA and other allied documents for facilitating forgery of the licences and other allied documents. He was also managing the cash transactions with the help of Shri Sashin Koradia. Piyush Viramgama alongwith others forging the licenses, RA, Customs letter verifying genuineness of RA, signature of Customs Officers, Bank Officers, DGFT etc and Shri Dharmesh Gathani was instrumental of selling such forged licences and other allied documents to Hindalco.

214. I find that evidences available on records indicate that initially Shri Kalpesh Daftary thought of doing the business of forged transferrable licences and discussed this idea with Shri Piyush Viramgama who was an old associate of Shri Kalpesh Daftary from his days in Rajkot. Once having decided to forge the licences, it was Shri Piyush Viramgama who introduced Shri Niyaz Ahmed of Kanpur to Shri Kalpesh Daftary. Shri Niyaz Ahmed was already into the business of forging such licences. Thereafter Kalpesh Daftary and Shri Niyaz Ahmed had met on number of occasions and decided to go ahead with forging licences. Shri Kalpesh Daftary was already into the trading business of genuine licences and by that way he had access to genuine licences, so he had agreed to Shri Niyaz Ahmed to supply photo copies of genuine licences based on which Niyaz Ahmed agreed to forge parallel fake licences. Shri Kalpesh Daftary knew Shri Dharmesh Gathani since long and was having good relation with him. It is also evident from records that during March, 2008, Shri Kalpesh Daftary and Shri Dharmesh Gathani had met in his office at Mumbai to discuss about sale of the forged licences to M/s Hindalco Industries Ltd at Dahej. The idea was that as Dahej was a non-EDI port, it would be easy to utilize the forged licences there. It also clearly emerges from the records that in the said meeting, they had discussed as to how verification of RA by Customs Dahej to be managed. Further, it was also found that Shri Dharmesh Gathani insisted for VAT free bills and therefore, Shri Kalpessh Daftary has arranged the billings from M/s Vani Exports, Kolkata, though M/s Vani Exports was not at all in possession of the original licenses and they have not purchased it from any of the exporter or traders. Finally, Shri Dharmesh Gathani informed

Shri Daftary that he would try to manage that the fax for verification of the Release Advices is not sent to the issuing port. Shri Dharmesh Gathani had asked for 40% share of the sale value of the forged licences. Evidences also indicate that subsequently Shri Kalpessh Daftary talked to Shri Dharmesh many times over phone and agreed to give him 40% share. In the initial lot of 8 licences Shri Dharmesh Gathani was given 40% of the realized value of the forged licences. Later Shri Kalpessh Daftary and Shri Piyush Viramgama discussed the matter and found that in giving 40% share to Shri Dharmesh Gathani they were facing loss. He had informed Shri Dharmesh Gathani that they could not afford to give him 40% in view of the expenses incurred in converting the money to cash and that they would give him only 20% share. Shri Dharmesh Gathani had enquired as to who was preparing the forged licences and he had told him that he would ask Shri Piyush Viramgama and inform him. After enquiry with Shri Piyush Viramgama, he had informed Shri Dharmesh Gathani that the forged licences were supplied by Shri Niyaz Ahmed of Kanpur. Shri Dharmesh Gathani had informed him that he was agreeable to 20% share on the condition that if a Release Advice verification letter was faxed from Dahej to the RA issuing port, they would have to manage at the RA issuing port end and all the expenses in this regard would be on their account. Shri Kalpessh Daftary had discussed the matter with Shri Piyush Viramgama and they agreed to the condition of Shri Dharmesh Gathani. Thereafter they started showing sale of the forged licences through M/s. Shivangi Enterprise and its bank account with HDFC bank. Thereafter the sale of the forged licences in lots of about Rs.5 crores each was started and the same was sold by Shri Dharmesh Gathani to Hindalco Industries Ltd.

215. Based on the evidence at hand, it is clear that Shri Kalpessh Daftary, Shri Piyush Viramgama, Shri Vijay Gadhiya, and Shri Niyaz Ahmed conspired to forge 85 VKGUY licenses, 08 DEPB licenses, and the corresponding release advices and other related documents. From the voluntarily statements of Shri Piyush Viramgama and Shri Kalpessh Daftary, it is evident that the licenses were forged by Shri Niyaz Ahmed, while the release advices and the letters confirming the authenticity of the release advices were forged by Shri Piyush Viramgama. Furthermore, the forged rubber stamps and signatures of Customs officers on the reverse side of the licenses were also fabricated by Shri Piyush Viramgama, as he admitted in his statement recorded under Section 108 of the Customs Act, 1962. These facts were further corroborated by Shri

Kalpessh Daftary in his statement, where he indicated that the forged licenses were printed by Shri Niyaz Ahmed, while other documents, including transfer letters, release advices, and bank signatures, were forged by Shri Piyush Viramgama. The incriminating evidence recovered, such as the rubber stamps of the DGFT, Rajkot, the round seal (rubber stamp) of Mangalore Customs, rubber stamps of various banks, and negatives for preparing rubber stamps of the firms whose licenses were forged, substantiates these statements. Additionally, Shri Vijay Gadhiya, in his statement, categorically admitted that he had prepared the rubber stamps, which were subsequently affixed to the transfer letters, on the reverse side of the licenses, and on the Customs letters confirming the authenticity of the release advices, all on the instructions of Shri Piyush Viramgama. There are evidences to hold that sales proceeds of such forged licences were shared amongst Shri Kalpessh Daftary and Piyush Viramgama among others.

216. Therefore, from the findings above, I find that 408 licenses, 85 VKGUY licenses and 8 DEPB licenses used by M/s Hindalco were forged in connivance by Shri Kalpesh Daftary and Shri Piyush Viramgama in the manner above. Accordingly, I also find that the Commissioner, Customs, Ahmedabad [earlier adjudicating authority] vide Order-in-Original No. 2/Commr/DRI/2014 dated 28.04.2014 confiscated goods valued at Rs. 314,91,25,623/- involved in 93 fake licenses under Section 111(d), (j) and (o) of the Customs Act, 1962 and ordered recovery of Customs Duty to the tune of Rs.48,42,80,689/- debited utilizing the said licenses under Section 28(8) of the Customs Act, 1962 along with appropriate interest from M/s Hindalco. The Customs duty amount of Rs.48,42,80,828/- and Rs.10,10,83,066/- of interest voluntarily paid by M/s Hindalco was also appropriated in the said OIO.

217. From the facts and evidences discussed in the earlier paras, I summarize the entire case and the culpability of both the noticees as under:-

(i) M/s Sabari Quality Foods sold, amongst other 408 licenses, 85 VKGUY licenses and 8 DEPB licenses to M/s Sunkkalp Creations Pvt. Ltd. through Shri Kalpessh Daftary, one of the Directors of M/s Sunkkalp Creations Pvt. Ltd.

(ii) Investigations has revealed that Shri Kalpessh Daftary with the help of Shri Piyush viramgama and others faked/forged the 85 VKGUY

licenses and 8 DEPB licenses and further sold to M/s Hindalco Ltd., who used these licenses for import; These licenses were purchased from M/s Padmavati Agencies Pvt. Ltd. and M/s Vrinda Agencies Pvt. Ltd.,;

(iii) Forgery of licenses was done by Shri Niyaz Ahmed of M/s Indiyana Shoes, Kanpur, in connivance with Shri Kalpessh Daftary and Shri Piyush Viramgama;

(iv) Forgery was effected by changing port of registration from Cochin Sea, Tuticorin, ICD Bangalore to Mangalore Sea;

(v) Corroboration was received from DGFT, Trivandrum and other Regional Units Chennai, Bangalore and Mumbai where the genuine Licenses and Release Advices issued against them were tallied and it was found that the 85 VKGUY licenses and 8 DEPB licenses were forged and none of the DGFT or the RA issuing port has issued these license in favour of M/s Hindalco Industries Limited;

(vi) Statements of concerned customs officers working in the relevant Custom Houses confirmed that the signatures appended in the Release Advices were not theirs, which proved that the Release Advices were forged; Shri Piyush Viramgama used to forge the signatures of the customs officers on the verification report and fax it to Shri Kalpessh Daftary, which in turn faxed it to M/s Padmavati for onward submission at DAHEJ port;

(vii) Rubber stamps of DGFT, Banks and various firms/companies were recovered from the residential premises of Shri Vijay Gadhiya, employee and associate of Shri Piyush Viramgama. Letters of signature verification by the bank officers to be used for forgery was also recovered;

(viii) In addition to the forged licenses, transfer letters of original license holders, Release Advices, letters of jurisdictional Customs House confirming the genuineness of Release Advices issued in favour of M/s Hindalco was also found to be forged. Letters requesting confirmation of genuineness issued by Mangalore Customs were not received from Dahej Customs fax machine but was handed over to Shri Jigar Shah of M/s Hindalco by the employees of M/s Kshitij Marine Services Pvt. Ltd., which proves the act of forgery;

(ix) None of the exporters to whom the genuine licenses were issued deposed that the ultimate user of the licenses was M/s Hindalco;

(x) Documentary evidences of the letters showing issuance by Mangalore Customs to confirm the genuineness of Release Advices used by M/s Hindalco at Dahej Port were found to be forged. The top side of such letters contained the fax number of M/s Sunkkalp Creations Pvt. Ltd, which showed that the forged Release Advices were being sent by Shri Kalpessh Daftary;

(xi) Purchase invoices of various non-existent companies, like M/s. Shivangi Enterprises, Bangalore, M/s New Planet Trading, Kolkata, M/s Krish Overseas, Rajkot etc., were provided to M/s Padmavati Agencies Pvt. Ltd. by Shri Kalpesh Daftary by obtaining the corresponding sales invoices from M/s Vani Exports on commission basis, as they require VAT free sales bills. These companies merely issued invoices without physical movement of the licences reinforces the forgery.

(xii) The bank account of Shri Vijay Gadhiya of M/s Shivangi Enterprise, Rajkot was used for rotating the funds in respect of sale of the forged licenses;

(xiii) Shri Kalpesh Daftary took the services of Shri Sashin Koradia of Mumbai for billing purpose to carry out the financial transactions involved in the sale of the forged licenses, who provided details of firms i.e. M/s Hindustan Continental Ltd., M/s Punjab Chemical and Protection Pvt Ltd., M/s Mac Alloys Ltd., M/s Ostwal Trading etc. The amounts were converted into cash and delivered to Shri Kalpessh Daftary by way of angadiya. Shri Kalpessh Daftary and Shri Piyush Viramgama admitted to have received significant amount for their role in the forgery. Details of fund being transferred from M/s Shivangi Enterprises, Rajkot to Shri Niyaz Ahmed & others were recovered from the office premises of Shri Piyush Viramgama, which showed the financial benefits to the conspirators.

(xiv) Shri Kalpesh confirmed that out of total Rs.40 Crores, Rs.28 Crores was his profit from the sale of forged licences and Rs.10 Crores was paid to Shri Piyush Viramgama and Rs. 2 Crores was paid to Shri Niyaz as instructed by Shri Piyush;

(xv) The amount of Rs.40 Crores was cashed by Shri Sashinbhai from the various firms in whose names the billings for sale and purchase of forged licences were arranged;

(xvi) Shri Kalpesh has used Rs.90 lakhs for purchase of shares of M/s. Siddhant Estate Pvt. Ltd., and Rs.3.10 Crores transferred to M/s.Sonbar Developers and Investment Pvt. Ltd., in which he was a Director;

(xvii) There are evidences that sales proceeds of such forged licences were shared amongst Shri Kalpessh Daftary and Piyush Viramgama among others;

(xviii) Statements of Shri Kalpessh Daftary, Shri Piyush Viramgama and associate Shri Vijay Gadhiya, corroborative statements of various other persons narrated in the earlier paras and other documenratary evidences confirms the conspiracy by the two kingpins, Shri Kalpessh Daftary, Shri Piyush Viramgama in the instant case;

(xix) It is undoubtly clear that the 93 forged licenses were used and M/s Hindalco had voluntarily paid an amount of Rs. 48,42,80,828/- alongwith applicable interest of Rs.10,10,83,066/-, which concludes the fact that the forgery has been done in the present case.

218. I have also taken into consideration cross-examination of several persons as sought by Shri Kalpessh Daftary and from the examination, nothing concrete has emerged so as to exonerate his actions in the entire case. In case of Shri Piyush Viramgama, I find that ample opportunities have been granted to him for cross examination as mentioned in my earlier paras, however, he did not even bother to respond to the opportunities given to him to represent his case or to submit the list of persons to whom he wish to cross examine.

219. From the foregoing paras, it is quite evident that a well-thought-out strategy was devised to forge the licences. The deliberate selection of Dahej Port, a non-EDI port, as the conduit for this illicit activity, underscores the meticulous and calculated planning executed by Shri Kalpessh Daftary and Shri Piyush Viramgama. The cunning nature of this forgery is evidenced by the creation of a fake company with a name identical to an existing firm, i.e., M/s Shivangi Enterprise, which was actually a proprietorship firm of Shri Vijay Gedhiya, an employee of Shri Piyush Viramgama. The fabricated entity, M/s Shivnagi Enterprise, Bangalore, was then instrumentalized for generating bogus invoices without actual procurement or supply of licences. Additionally, the masterminds behind this fraud used a chain of four level intermediary

firms to give a false appearance of authenticity to the forged licences. Their deceptive enterprise extended to leveraging M/s Vani Exports of Kolkata upon discerning that M/s PAPL required VAT-free billings. This demonstrates their constant efforts to adapt their fraudulent methods to suit different requirements. It is evident that Shri Kalpessh Daftary and Shri Piyush Viramgama, along with others, knowingly participated in evading customs duties by selling these forged VKGUY/DEPB licences to M/s Hindalco Industries Limited. The elaborate deception and falsification involved confirm their active role in defrauding the customs authorities. Shri Kalpessh Daftary and Shri Piyush Viramgama had also actively and knowingly engaged in violating the prohibition imposed under Rule 14 of the Foreign Trade (Regulation) Rules, 1993, inasmuch as they had knowingly indulged in creating and selling of such forged VKGUY/DEPB licences along with a complete set of documents, viz., Release Advices and letters confirming the genuineness of the Release Advices used by M/s. Hindalco Industries Limited at Dahej for the importation of goods. By doing so, the aforementioned individuals have rendered themselves liable to punishment under Section 135 of the Customs Act, 1962, for which I find that Shri Kalpessh Daftary, Shri Piyush Viramgama, and Shri Vijay Gadhiya were arrested under Section 104 of the Customs Act, 1962, by the DRI during the course of the investigation.

220. From the foregoing, it is evident that the aforementioned individuals, through their acts of commission and omission in forging and selling forged DEPB/VKGUY licences to M/s. Hindalco Industries Limited, caused the evasion of customs duty amounting to Rs. 48,42,80,689/-. Consequently, the goods imported by M/s. Hindalco Industries Limited have become liable to confiscation under the provisions of Section 111(d), (j), and (o) of the Customs Act, 1962. By engaging in such conduct, the aforementioned individuals have rendered themselves liable to penal action under Section 112(a) as well as under Section 114AA of the Customs Act, 1962.

221. According to 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, is liable to a penalty under this section. After elaborate discussion hereinabove, I have already held that by the various fraudulent acts committed by the aforementioned individuals, viz., Shri Kalpessh

Daftary, Shri Piyush Viramgama alongwith others, the goods imported and cleared by M/s. Hindalco Industries Limited by debiting forged DEPB/VKGUY licences are liable to confiscation under Section 111 of the Customs Act, 1962. Consequently, the aforementioned individuals are liable to a penalty under Section 112(a) of the Customs Act, 1962.

I find that Shri Kalpessh Daftary, in his defence, relied on the judgment of the Hon'ble Gujarat High Court in *Commissioner of Customs v. Sanjay Agarwal*, wherein it was held that a penalty under Section 112(a) cannot be imposed on a trader or broker in cases involving forged licenses. Similar observations were made in *Commissioner of Customs v. Shah Alloys Ltd., 2011 (169) ELT 323 (Guj.).* He further argued that for a penalty to be imposed, there must be evidence demonstrating his knowledge or involvement in the contravention of law, which, according to him, was absent in the present case. The evidence on record, including statements from multiple co-noticees, individuals, email correspondences, cash transaction records, courier logs, and rubber stamps used in the creation of forged documents, unequivocally establishes Shri Daftary's role in the fraudulent scheme. Shri Kalpessh Daftary played a key role in providing copies of genuine licenses, RAs, and other related documents, which facilitated the forgery of licenses and allied documents. In most instances, he personally procured the original licenses but failed to make payments to the sellers. After the forged licenses were created, he directed M/s PAPL to make payments directly to the original license holders, and M/s PAPL, acting on his instructions, duly made these payments. I further find that he orchestrated cash movements in collusion with Shri Sashin Koradia and distributed illicit gains among other co-noticee. I also find that Shri Kalpessh Daftary provided an amount of Rs. 7.68 crore in cash to Shri Dharmesh Gathani as part of his share and also paid Rs. 10 crore to Shri Piyush Viramgama. I note that he remained silent on the issue regarding excess transaction of Rs. 44 crore between M/s. SCPL and M/s. PAPL. His involvement in the forgery of DEPB/VKGUY licenses was further corroborated by the statements of individuals including Shri Vishal Vyas, Shri Sarjerao Mojar @ Chhotu, Shri Vishal Wadkar, Shri Girish Ghelani, and others. Supporting documents such as emails, records of cash transactions maintained by Shri Sashin Koradia, various rubber stamps, blank letterheads of Customs, courier records for the transmission of forged licenses, and fax transmissions from Shri Daftary's office collectively establish his role in the forgery.I further find that the reliance

placed by Shri Daftary on the judgment in Sanjay Agarwal is misplaced, as the factual matrix in that case differs significantly from the present case. In the present case, there is substantial and corroborative evidence establishing Shri Kalpessh Daftary's active and instrumental role in the forgery and fraudulent utilization of DEPB/VKGUY licenses, which distinguishes this matter from the case laws mentioned by him in his defence. I note that in case of K.I. International Ltd. versus Commissioner of Customs, Chennai, reported in 2012 (282) E.L.T. 67 (Tri. - Chennai), the South Zonal Bench of the Tribunal upheld the penalty imposed under Section 112 of the Customs Act, 1962, on traders, brokers, and sub-brokers involved in forging and fraudulently obtaining Telegraphic Release Advice. Therefore, the contention raised by Shri Kalpessh Daftary is not tenebale and I reject the same.

As I have already held the subject goods are liable for confiscation under Section 111 of the Customs Act, 1962, therefore, I find and hold that for their acts and commissions, Shri Kalpessh Daftary and Shri Piyush Viramgama are liable for penalties each under Section 112(a) of the Customs Act, 1962.

222. According to 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. In the instant case, Shri Kalpessh Daftary and Shri Piyush Viramgama had indulged in making, signing and causing the forging and utilisation of forged documents for import of goods by M/s Hindalco. By doing so, Shri Kalpessh Daftary and Shri Piyush Viramgama, have become liable for separate penalty under Section 114AA of the Customs Act, 1962.

I find that Shri Kalpessh Daftary in his defence contended that in the present case, there is no evidence to held that he had any knowledge of the licenses being forged; not made any false statements; duty is already paid alongwith interest; not looking after the sales and purchase of licenses in M/s SCPL; penalties under Sections 112(a), 114(A), and 114(AA) cannot be imposed simultaneously; entire action against him is based on statement of the co-noticees; penalty should not be imposed when the noticee did not act deliberately in defiance of law; confession

alone cannot serve as the basis of imposing a penalty without independent and tangible evidence to support it and therefore he is not liable for penalty. He has also relied upon on some judgements in support of his contention. I find that the show cause notice prescribes a penalty under Sections 112 and 114AA of the Customs Act, 1962, rather than under Section 114A. As discussed in the preceding paragraphs, it is unequivocally established that Shri Kalpessh Daftary played a pivotal role in the forgery of DEPB/VKGUY licenses. His direct involvement is evident, as he provided copies of the original licenses, facilitating their forgery and consequently leading to the evasion of customs duty amounting to ₹48,42,80,689/-. This substantial amount was subsequently remitted by M/s Hindalco, accompanied by the applicable interest of ₹10,10,83,066/, following the initiation of an investigation by the Directorate of Revenue Intelligence. Had Shri Kalpessh Daftary not supplied the original licenses, the fraudulent activity could not have been orchestrated. Additionally, his receipt of financial benefits from the forged licenses underscores his active complicity. I further find that the allegations against him are not based on mere conjecture or the statements of co-noticees but are substantiated by a multitude of evidentiary materials meticulously compiled by the DRI. His assertion that he was unaware of the forgery lacks credibility and is entirely untenable. The financial gains he derived from these fraudulent transactions serve as irrefutable proof of his involvement. Furthermore, in the wake of the investigation, he deliberately evaded appearing before the DRI. I note that despite being physically present in India and visiting his office, he strategically instructed his staff to mislead government officials by claiming he was out of the country. Such conduct unequivocally indicates his awareness of the fraud and his deliberate attempts to evade accountability, further reinforces his complicity. With regard to his contention that a mere admission of fact cannot serve as the foundation for imposing a penalty, it is pertinent to note that his statement, recorded under Section 108 of the Customs Act, possesses legal evidentiary value. Moreover, it is corroborated by a plethora of supporting evidence. The ratio of case laws he has relied upon are inapplicable, as the facts and circumstances of the present matter are distinct. I find that the penalty is not being imposed solely based on statements from co-noticees; rather, it is backed by corroborative documents and concrete evidence. I note that judicial precedents have consistently held that mens rea and intent are integral to the imposition of penalties, and in the present case, there exists ample evidence of his

deliberate participation in the forgery of DEPB/VKGUY licenses. Consequently, I find that his contentions stand meritless and accordingly I reject the same.

In light of the foregoing deliberations, I find and hold that Shri Kalpessh Daftary and Shri Piyush Viramgama are liable for separate penalties under Section 114AA of the Customs Act, 1962.

223. Accordingly, I pass the following order:-

ORDER

1. I impose a penalty of Rs. 3,50,00,000/- (Rs Three Crore, Fifty Lakh Only) on Shri Kalpessh Daftary of M/s Sunkkalp Creations Pvt. Ltd., under Section 112 (a) of the Customs Act, 1962.

2. I impose a penalty of Rs. 1,50,00,000/- (Rs. One Crore, Fifty Lakh Only) on Shri Kalpessh Daftary of M/s Sunkkalp Creations Pvt. Ltd., under Section 114AA of the Customs Act, 1962.

3. I impose a penalty of Rs. 3,50,00,000/- (Rs Three Crore, Fifty Lakh Only) on Shri Piyush Viramgama of M/s Krish Overseas and M/s Bansi Overseas under Section 112 (a) of the Customs Act, 1962.

4. I impose a penalty of Rs. 1,50,00,000/- (Rs. One Crore, Fifty Lakh Only) on Shri Piyush Viramgama of M/s Krish Overseas and M/s Bansi Overseas under Section 114AA of the Customs Act, 1962.

224. 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.

225. The Show Cause Notice issued from F.No. DRI/AZU/INQ-03/2010 dated 05.11.2012 is disposed off in above terms.

27.02.2025

SHIV KUMAR SHARMA
Principal Commissioner
Customs, Ahmedabad

DIN: 20250271MN000000200C
By Regd.Post A/D.
F.No.VIII/10-20/Commr/O&A/DRI/2012-Pt.I Dated: 27.02.2025

To

1) Shri Kalpessh Daftary, 301, Shubhangam, 14, Swastik Society, 2nd JVPD Scheme, Vileparle (West), Mumbai – 400 056.

2) Shri Piyush Viramgama, (i) Aashiyana, Fulwadi Park Plot No.16, Street No.2, Nana Mauva, Nr. Shastri Nagar, 150 Ft Ring Road, Rajkot & (ii) House No. 820, Street No. 4, Bandh Sheri, Saurashtra Kala Kendra Co Operative Housing Society, Rajkot, 360007

Copy to:

1) The Chief Commissioner of Customs, Gujarat Zone, Customs House, Near All India Radio, Navrangpura, Ahmedabad.

2) The Additional Director General, Directorate of Revenue Intelligence Zonal Unit, Ahmedabad.

3) The Assistant Commissioner of Customs, Dahej.

4) The Superintendent (Systems), Customs, HQ., Ahmedabad (for uploading in Department's web-site).

5) Guard File