	आयुक्त सीमाशुल्क (निवारक) का कार्यालय सीमाशुल्क भवन, जामनगर-राजकोट हाइवे, विक्टोरिया ब्रिज के पास, जामनगर- (गुजरात) ३६०००१
<hr style="border-top: 1px dashed black;"/> Office of the Commissioner of Customs (Preventive), 'Seema Shulk Bhavan', Jamnagar – Rajkot Highway, Near Victoria Bridge, Jamnagar (Gujarat) – 361 001	
Email: commr-custjmr@nic.in; adj-custjmr@nic.in	

DIN-20240871MM0000717967

1.	फाइलक्रमांक / File Number	F. No. CUS/868/2024-ADJN
2.	मूलआदेशक्रमांक / Order-in-Original No.	05/Additional Commissioner/2024-25
3.	द्वारापारित/ passed by	चुना राम / Chuna Ram अपरआयुक्त/ Additional Commissioner, (सीमाशुल्क) निवारक /Customs (Preventive) जामनगर/ Jamnagar.
4.	Date of Order/आदेशदिनांक Date of issue / आदेशजारीकिया	13/08/2024 13/08/2024
5.	कारणबताओनोटिसक्रमांक एवंदिनांक Show Cause Notice Number & date	No. ADC-26/2023-24 dated 08.04.2024
6.	नोटिसीकानाम/ Name of Noticee	1. M/s. Sora Jewels, 2 nd Floor Office No. 202, Plot No. 225/230,Giriraj Building, Shaikh Memon Street , Zaveri Bazar, Kalbadevi, Mumbai- 400002 2. Shri Aditya Mahendra sanghvi, Authorised Power of Attorney Of M/s.Sora Jewels , 2 nd Floor Office No. 202, Plot No. 225/230,Giriraj Building, Shaikh Memon Street ,Zaveri Bazar, Kalbadevi, Mumbai- 400002
01	इस आदेश की मूल प्रति संबंधित व्यक्ति को निशुल्क प्रदान की जाती है। The original copy of this order is provided free of cost to the person concerned	
02	इस मूल आदेश से व्यथित कोई भी व्यक्ति सीमा शुल्क अधिनियम, 1962 की धारा 128A(1)(a), सीमा शुल्क (अपील) नियम, 1982 के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिनों के भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है। फॉर्म सीए-1 में अपील का प्रपत्र, दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। (जिनमें से कम से कम एक प्रमाणित प्रति हो)।	

	<p>आयुक्त अपील ४ वी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद - 380 009</p>	<p>Commissioner (Appeals), 4th Floor, Hudco Bhavan, Ishvar Bhavan Road, Navrangpura, Ahmedabad - 380 009</p>
	<p>Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above mentioned address. The form of appeal in Form No. CA.-1 shall be filed in duplicate 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).</p>	
03	<p>अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये 0.50 (पचास पैसे केवल) का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची - I, मद 6 के तहत निर्धारित किया गया है।</p>	
	<p>The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.</p>	
04	<p>अपीलीय ज्ञापन के साथ शुल्क भुगतान/ जुर्माना/ अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962, की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।</p>	
	<p>Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.</p>	
05	<p>अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क (अपील) नियम, 1982 और सिस्टेट प्रक्रिया (प्रोसीजर) नियम, 1982 के सभी नियमों का पूरा पालन हुआ है।</p>	
	<p>While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.</p>	
06	<p>इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के 7.5% के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।</p>	
	<p>An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.</p>	

Brief Facts of the Case:

Acting on a specific intelligence, the officers of Customs (Preventive) Commissionerate, Jamnagar intercepted three (3) individuals at Wankaner Railway Station identified as Shri Dhruv, Shri Dipesh and Shri Sonu while they were en route from Mumbai to Rajkot in train No. 22945 (Saurashtra Mail) on October 4, 2023. During the search of their accompanied luggage, officers found various packages containing gold jewelry, silver jewelry, diamond, Apple Watch, Apple I-phone, gold bars, silver bars, etc. out of which some of the gold and silver articles appeared to be imported or of foreign origin. The individuals along with their respective luggage were brought to the HQ Office at Jamnagar. For ascertaining the quantity, value and origin of the gold and silver articles, an approved valuer of the Union Bank of India was called for. During search, it was also found that the goods were not accompanied with legitimate bills/documents and accordingly, the same were detained under Panchnama dated 04.10.2023. The approved valuer carried out the inspection of Gold and silver articles and also ascertained market value, origin and weight under Panchnama proceedings dated 04.10.2023. Detailed inspection of total 48 articles in possession of Shri Sonu were recorded under Panchnama dated 4.10.2023 which includes Sr No. A-21 of Imported Gold Bar weighing 203 Gram having value of Rs.11,87,550/-.

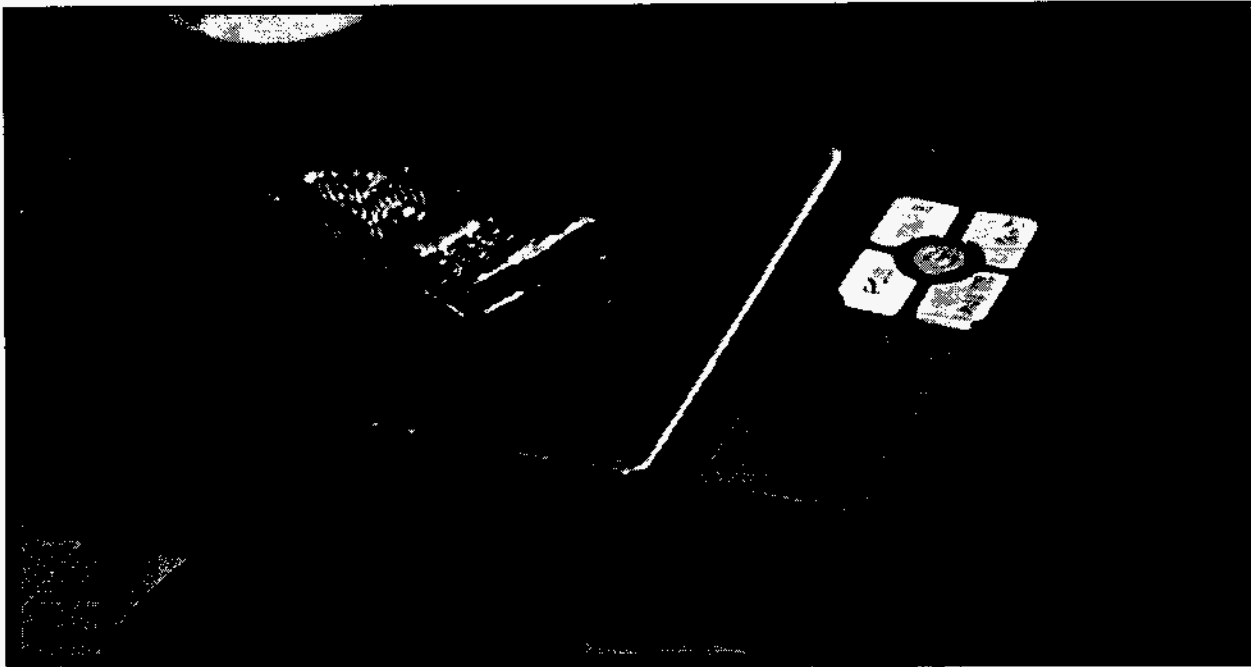
2. Shri Dhruv and Shri Dipesh disclosed during the panchnama proceedings that they were tasked with delivering the goods to Shri Bunt Singh of M/s. Surya Logistics, Rajkot, India. Shri Sonu disclosed that he was tasked to deliver the goods to Shri Parasbhai of M/s. Swami Narayan Parcel Services, Rajkot, India. Accordingly, Summons was issued to Shri Parasbhai under section 108 of the Customs Act, 1962. Therefore, a statement of Shri Parth Singh (Paras Bhai), Proprietor of M/s. Swaminarayan Parcel Services (GSTIN:- 27MUGPS9925L1ZF) was recorded under Section 108 of Customs Act, 1962 on 06.10.2023 wherein he, inter-alia, stated that Shri Sonu is an employee of M/s. Swaminarayan Parcel Services and has been working in his firm since one and half years; that his firm was an angadia service provider having registered place of business at Mumbai and a branch at Rajkot. He produced the description of the items, sender details, receiver details, invoices/voucher No. along with date as provided by the respective sender and stated that Shri Sonu, the employee of his firm used to collect the delivery from Mumbai and also receives parcel en route Surat from Shri Dilipbhai for delivery at Rajkot office. He further stated that they received the parcel in the packed condition; that in respect of Gold parcels/ packets the name of sender and receiver was written along with the

phone number, value and weight; that in respect of Silver packets the name of sender & receiver, Phone number and weight were mentioned.

3. A further statement of Shri Parth Singh (Parasbhai), Prop: of M/s. Swaminarayan Parcel Services, Rajkot was recorded on 10.10.2023 wherein he inter-alia further produced documents in respect of total 33 items with description, sender details, receiver details, invoices/voucher No. along with date as provided by the respective sender on his mobile No. which includes following details in respect of parcel detained on 4.10.2023 and marked as Sr No. A-21 in respect of Imported God Bar weighing 203 gram:

S. No.	Description	Sender Name	Recipient Name	Inv. No.	Issue Voucher/Delivery Challan/Material Out/Debit Note/Karighar Issue	Date
33	Gold Bar	Sora Jewels, Mumbai	Tanvi Findings, rajkot		DC/23-24/669	03.10.2023
	Gold Bar	Mantr Jewels, Mumbai	Sora Jewels, Mumbai	MH/3054/MJ/2023		27.09.2023

4. It appeared that Shri Parth Singh, Proprietor of M/s. Swami Narayan Parcel Services, Rajkot receiver of the goods from Shri Sonu could not provide the legitimate documents evidencing the origin of goods and/or the import documents evidencing the import duty payment of the goods. The goods were detained on 4.10.2023 on reasonable belief that the said goods were smuggled. However, in spite of been given sufficient time on dates 06.10.2023, 10.10.2023 & 14.10.2023, the detained goods were placed under seizure on 16.10.2023 vide seizure memo dated 16.10.2023 under the provision of Section 110 of the Customs Act, 1962 under the reasonable belief that the same were liable to confiscation under section 111 of Customs Act, 1962. The seized goods kept at Godown of Customs Division, Jamnagar at Room No. 236, 2nd floor, Seema Shulk Bhavan, Jamnagar-Rajkot Highway, Near Victoria Bridge, Jamnagar. The seizure includes parcel at Sr No. A-21 of 203 gram gold bar having value of Rs. 11,87,550/-. Copy of the Image is reproduced below:-



5. On the basis of the details provided by Shri Parth Singh, Proprietor of M/s. Swaminarayan Parcel Services, Rajkot, summon was issued to M/s. Sora Jewels GSTIN:- 27ARRPJ5532A1ZV, 2nd Floor, Office No. 202, Plot-226/230, Giriraj Building, Shaikh Memon Street, Zaveri Bazar, Kalbadevi, Mumbai, Maharashtra, 400002 (hereinafter referred to as "the noticee" for the sake of brevity) and a statement of Shri Aditya Mahendra Sanghvi, Authorised Power of Attorney by Smt. Alisha Aditya Sanghvi, Proprietor of M/s. Sora Jewels GSTIN:- 27ARRPJ5532A1ZV), was recorded under Section 108 of Customs Act, 1962 on 15.12.2023. Shri Aditya Sanghvi in his statement, inter-alia, stated that he was associated with this firm since May, 2019; that he was the business head of the firm M/s. Sora Jewels GSTIN:- 27ARRPJ5532A1ZV; that his wife Smt. Alisha Aditya Sanghvi was the proprietor; that he submitted the copy of Power of Attorney given by his wife and registered by the Department of Registry, Mumbai; that his firm purchases gold bar from suppliers of Gold bullion and send the gold bars for job work to different job workers; that one parcel i.e., A-21 of 203 grams of single Gold bar seized vide seizure memo dated 16.10.2023 belonged to his firm; that he claimed to be the owner of the parcel No. A-21 of 203 grams of single gold bar seized on 16.10.2023; that he had purchased 600 grams of Gold Bar from M/s. Mantr Jewels, Mumbai (GSTIN:- 27AANFM9606K1ZO) vide tax invoice No. MH/3054/MJ/2023 dated 27.09.2023. Further, he stated that M/s. Mantr Jewels, Mumbai has purchased 15Kg of Gold Bars from M/s. MMTC-PAMP India Pvt. Ltd., Mumbai (GSTIN:- 27AAFCM3576K1Z1) vide tax invoice bill No. MH0223TI00001063 dated 27.09.2023. He further stated that the Gold Bar purchased is of purity 99.5% which is not of 24 Ct. Further, he stated that M/s. MMTC-PAMP India Pvt. Ltd,

Mumbai (GSTIN:-27AAFCM3576K1Z1) is an Indian refinery and gold sold by them is of domestic nature. He submitted the bank statement of his firm having Account No. 50200041942623, IFSC Code HDFC0001105 in HDFC Bank, Mumbai wherein on date 27.09.2023, payment of Rs.39,98,500/- has been made to M/s. Mantr Jewels through RTGS. He stated that they purchased 600 grams with the said payment and out of that 203 grams of purity 99.5% has been issued to M/s. Tanvi Findings, Rajkot (GSTIN:-24AAPFT6409D1Z5) for labour job work under invoice No. IV/23-24/94 dated 03.10.2023. On being asked about the documents with regard to its legitimate purchase and or Customs duty paid documents, he stated that the goods are of domestic nature which he had purchased in his firm from M/s. Mantr Jewels, Mumbai (GSTIN:-27AANFM9606K1ZO), who in-turn has purchased from M/s. MMTC-PAMP India Pvt. Ltd, Mumbai (GSTIN:-27AAFCM3576K1Z1) and it is a domestic gold and no customs duty is involved in it. On being asked that the documents submitted by him did not prove that the said Gold piece/ bar of A-21 of 203 grams was not smuggled goods, to which he stated the said parcel A-21 of 203 grams of Gold bar was of domestic nature.

6. In terms of Section 123 (1)(b) of the Customs Act, 1962, the burden of proof in case of 'Gold' that they are not smuggled goods shall be (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized. It appeared that Shri Aditya Mahendra Sanghvi, Authorised Power of Attorney of M/s. Sora Jewels GSTIN:- 27ARRPJ5532A1ZV has admitted in his statement dated 15.12.2023 that he is the owner of the goods under parcel No. A-21 consisting of 203 grams gold piece/ bar and that the said gold piece/ bar is of domestic nature and no customs duty is involved. However, he could not provide any legitimate documents so as to prove that the said gold piece/ bar of 203 grams wrapped in parcel No. A-21 (seized vide seizure memo dated 16.10.2023), is of domestic nature and also could not provide any documents so as to prove that the said gold piece/ bar of 203 grams is not smuggled.

6.1 It appeared that the noticee claimed to be purchased 600 (Six Hundred) grams of GOLD BAR from M/s. Mantr Jewels, Mumbai (GSTIN:-27AANFM9606K1ZO) vide tax invoice No. MH/3054/MJ/2023 dated 27.09.2023 and M/s. Mantr Jewels, Mumbai had purchased 15 (Fifteen) Kgs of GOLD BARS from M/s. MMTC-PAMP India Pvt. Ltd, Mumbai (GSTIN:-27AAFCM3576K1Z1) vide tax invoice No. MH0223TI00001063 dated 27.09.2023. It was also claimed that gold sold by M/s. MMTC-PAMP India Pvt. Ltd, Mumbai was an Indian refinery who deals in domestic nature of Gold. As per the purchase of 15 (Fifteen) Kgs of GOLD BARS by M/s. Mantr Jewels the invoice clearly mentions

the bifurcation i.e., 5 (Five) Nos of 1 (One) Kg GOLD BAR having Sr. No. 304723 to 304727 and 10 (TEN) Nos. of 1 (One) Kg of GOLD BAR having Sr. No. 304728 to 304737.

6.2 M/s. Sora Jewels has purchased 600 (Six Hundred) grams of GOLD BAR from M/s. Mantr Jewels. In the said purchase of 600 (Six Hundred) grams of GOLD BAR under Invoice No. MH/3054/MJ/2023 dated 27.09.2023 **Sr. No. 304732** is mentioned, which apparently establishes that M/s. Mantr Jewels have sold 1 (One) GOLD BAR from the 10 (Ten) Nos. of GOLD BAR having **Sr. No. 304728 to 304737**. The said seized gold piece of 203 (Two Hundred Three) grams has an embossed three digit No. which appears as "338 (Three Three Eight)" which clearly indicates that the said seized ONE GOLD PIECE is actually not purchased from M/s. Mantr Jewels which the noticee said to have purchased and produced during his voluntary statement dated 15.12.2023. It appeared that the Noticee had made the gold bar cut to pieces to deceive its smuggled identity and appeared to be smuggled into India illegally in contravention of the provisions, prohibitions, restrictions, regulations under Customs Act, 1962 as no documents proving the legal possession or import of the said seized A-21 parcel containing 203 (Two Hundred Three) Grams of gold piece/ bar could be produced by Shri Aditya Mahendra Sanghvi, Authorised, Power of Attorney of M/s. Sora Jewels GSTIN:- 27ARRPJ5532A1ZV.

6.3 Thus, it appeared that the Noticee has purposefully submitted the bill to show that it is a domestic purchase. Since, the nature of the said ONE GOLD PIECE being domestic as claimed by Shri Aditya Mahendra Sanghvi, Authorised, Power of Attorney of M/s. Sora Jewels was not established from the documents/ evidences submitted by them, therefore, the said parcel A-21 containing ONE GOLD PIECE/ BAR weighing 203 (Two Hundred Three) grams appeared to be treated as 'Prohibited Goods' as defined under Section 2(33) of the Customs Act, 1962 and 'Smuggled Goods' as defined under Section 2(39) of the Customs Act, 1962, and liable to confiscation under Section 111(d), 111(i) and 111(l) of the Customs Act, 1962. It further appeared that purchasing, possessing, keeping and carrying 'Smuggled Goods', which are liable to confiscation under Section 111(d), 111(i) and 111(l) of the Customs Act, 1962, was conscious and intentional.

6.4 Shri Aditya Mahendra Sanghvi, the Authorised Power of Attorney of M/s. Sora Jewels and business head of the said firm, indulged in smuggling of gold into India illegally and illicitly in contravention of the provisions, prohibitions, restrictions, regulations etc. imposed at relevant time, as discussed hereinabove,

has rendered the subject smuggled ONE GOLD PIECE of 203 (Two Hundred Three) Grams valued at Rs.11,87,550/- liable to confiscation under Section 111(d), 111(i) and 111(l) of the Customs Act, 1962. It therefore appeared that acts of omission and commission made on his part for the smuggling of gold, rendered Shri Aditya Sanghvi liable to penalty under Section 112 of the Customs Act, 1962.

7. Therefore, a Show Cause Notice No ADC-26/2023-24 dated 8.4.2024 was issued to:

(1) M/s. Sora Jewels GSTIN:- 27ARRPJ5532A1ZV, FLOOR-2nd, Office No. 202, PLOT-226/230, Giriraj Building, Shaikh Memon Street, Zaveri Bazar, Kalbadevi, Mumbai, Maharashtra, 400002 as to why:-

(i) The seized foreign origin smuggled Gold Piece contained in parcel number A-21, weighing 203 grams valued at Rs.11,87,550/- (Rs. Eleven Lakhs Eighty Seven Thousand and Five Hundred and Fifty only) should not be confiscated absolutely under Section 111(d), 111 (i) and 111(l) of the Customs Act, 1962;

(ii) Penalty should not be imposed upon them under Section 112 of the Customs Act, 1962.

(2) Shri Aditya Mahendra Sanghvi, Authorised Power of Attorney of M/s. Sora Jewels GSTIN:- 27ARRPJ5532A1ZV, as to why:-

(i) Penalty should not be imposed upon him under Section 112 of the Customs Act, 1962.

DEFENSE SUBMISSION:-

8. The Noticee vide their email dated 30.05.2024 submitted their defense reply dated 15.04.2024 wherein they inter alia submitted as under:-

8.1 That they submitted (1) Tax Invoice No. MH/3054/MJ/2023 dated 27.09.2023 from M/s. Mantr Jewels, Mumbai of 600.00gms Gold bar and (2) Tax Invoice NO. MH/3054/MJ/2023 dated 27.09.2023 in respect of 15 Kgs of Gold purchased by M/s. Mantr Jewels, Mumbai from M/s. MMTC PAMP India Ltd, Mumbai; that Gold Bars generally received in 100gms and 1000gm; that other weights are 1gm, 2gm 5 gm, 10gm, 50gm and 100 gm which are not generally Trade items in bullion traders; that it is not compulsory for a trader to buy full piece of gold bar as they buy as per their requirement in fractions of weight for manufacture of gold ornaments; that in this case M/s. Mantr Jewels

purchased 600 gms cut piece of Gold Bar; that Imported Gold bars are being sold by nominated agencies with brands of Valcambi Suisse, Argor Herasus Switzerland, Munze Osterreich, Australia Pert, PAMP Suisse; that these brands are available in India seized Cut piece shows side cut of a brand as appearing in the image reproduced in the Show Cause Notice: that whole image can be seen at the website <https://www.pamp.com/product/cast-bars/goldcast-bar-1kg>. ; that imported Gold bar comprising of 999 and it can not be made in India; that gold bar in parcel number A 21 is of purity of less than 999; that there is a panel of approved valuer for the Customs Commissionerate Ahmedabad; that authorized assayer of Union bank of India is not approved valuer of this panel who has categorized the gold in this case booked by the Jamnagar customs.

9. That as per guidelines issued by the Bureau of Indian Standard in 2019 vide Specification for "Refined Gold and Silver Bars for Good Delivery -(IS 17278 :2019", it is clearly mentioned at page 4 that *"Gold bar should be marked on large size of two main surfaces (the cast surface at the top of the mould) using conventional (pressure) stamping or dot matrix (pneumatic punching). If pneumatic punching is used the mark should be no less clear and at least as durable as if conventional stamping had been used."*; that the serial number on gold bar should always on below front side of gold bar in dot matrix, whereas in the image of seized piece of Gold bar produced in the Show Cause Notice it is exact below the brand logo and not a conventional stamp or dot matrix but only a punching stamp which generally used in Gold industry for identification. It is their submission that they punched the stamp to identify the Gold Bar for its purchase, from whom it was purchased, its purity as at the time of providing it to job worker it is not possible to have this details on every cut piece. It is further contended that the noticee can provide fraction of gold bar piece for job work only, not required to provide entire piece to job worker; that there no binding circular, rule, guidelines or laws which restricts appellant to procure and provide only full piece of gold bar for job work; that Gold industry does not functions as per view of the department; that if job worker required only 203.000 gms of gold bar only, then also there is no precise device or technique through which any trader can cut such precise weight of 203 gms gold bar; that in this case they provided 203.040 gms for job work and it was not possible to provide serial number to every cut piece from single gold bar sent to job work; that the noticee was ready to accept any selected way, if department can provide, in further business activity to protect their right in view of department.

10. That HSN code for Imported Gold Bar is 71081200; that for reference, a Tax Invoice No. OD23GCGMUM433 dated 23.10.2023 was produced for parcel

A-18 as regards Parcel Number A-18 seized under same seizure memo dated 16.10.2023 which was verified by the Customs Division as confirmed by M/s. Brink India Pvt Ltd on behalf of the Kotak Mahindra Bank Ltd; that HSN code for Imported Gold Bar is 71081300 and Invoice No. MH 0223TI0001063 dated 26.09.2023 of MMTC PAMP India Ltd was submitted in this case by Shri Aditya Sanghvi, Power of Attorney Holder of M/s. Sora Jewels which shows HSN 71081300 showing domestic nature. They referred Notification 44/2023 dated 20.11.2023 (amendment in Import policy) which says Gold Import under HSN 71081200 is restricted and import is allowed through nominated agencies specified by DGFT or RBI, Qualified Jewelers specified by IFSCA through India International Bullion Exchange (IIBX), valid INDIA UAE TRQ holders as notified by IFSCA through IIBX; that Circular No. 2023509-2 dated 9.5.2023 of IIBX specifies that IIBX will be launching UAEGDTRQ GOLD 999 purity indicating that imported gold bar should be having 999 purity with HSN 71081200; that International Financial Service Centers Authority (IFSCA) provide guidelines vide Circular No. 415/Consolidated Operating Guidelines /2023-24 dated 23.12.2023 specifies import of Gold Bar under HSN 71081200 and HSN 71089000 through IIBX suggesting that imported gold bar invoice contains HSN 7108200.

11. The Noticee further referred case laws of (i) M/s. DI Gold Designer Jewellery Vs. Commissioneer of Customs (Preventive), Delhi, (ii) Shri Nitya Gopal Biswas Vs Commr. Of Customs (Prev), Kolkata and (iii) M/s. Jitendra Bhauprasad Soni Vs Ahmedabad Customs to submit that even if imported gold bar is seized from market and not seized from customs area, then in those cases also it has been held as under:-

- (i) All the foreign marked gold being bought and sold in India is not of smuggled nature;
- (ii) Reasonable doubt of smuggled nature of foreign marked gold may be sufficient for the purpose of seizure of gold by virtue of section 123 of the Customs Act, 1962 but the same not sufficient for confiscation under Section 125 of the Customs Act, 1962
- (iii) Merely because the foreign marked gold is involved, the same is wrongly held to be smuggled one.

PERSONAL HEARING:

12. Personal hearing in the matter was held on 03.07.2024. Shri Chirag Dhanak, C.A. attended the hearing on behalf of the Noticee. He re-iterated submissions dated 29.04.2024, made additional submission dated 03.07.2024 and requested to decide the case based on merits.

12.1 In their submission dated 03.07.2024 the noticee relied upon following Case Laws to submit that the Noticee has discharged onus casted upon them under Section 123 of the Customs Act, 1962 and the seized Gold is legally procured by them and can not be held to be smuggled Gold.

- 1 Dhanishtha Gold -2019 (369) E.L.T. 688 (Tri. - Ahmd.)
- 2.Ashok Kumar Agarwal- 2017 (348) E.L.T. 555 (Tri. - Kolkata)
- 3.S.K. Chains -2001 (127) E.L.T. 415 (Tribunal)
- 4.Giridharai Dubey- 2002 (149) E.L.T. 427 (Tri. - Kolkata)]

DISCUSSION AND FINDINGS:

13. I have carefully gone through the case records including Show Cause Notice, submission dated 15.04.2024, records of personal hearing and additional submission dated 03.07.2024.

14. The issue to be decided in the matter is:-

- (i) Whether seized 203 Gram of Gold Bar is liable to confiscation under 111(d), 111 (i) and 111(l) of the Customs Act, 1962 and Penalty under Section 112 of the Customs Act, 1962 is to be imposed upon the Noticee or not?
- (ii) Whether Shri Aditya Mahendra Sanghvi is liable to penalty under Section 112 of the Customs Act, 1962 or not?

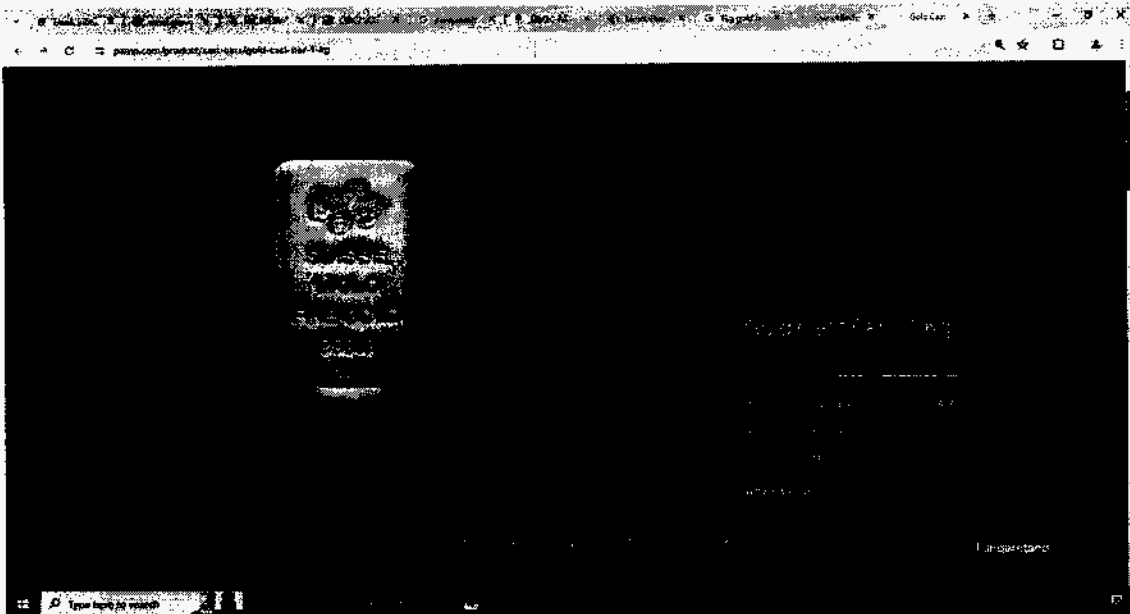
15. The crux of the matter is that it is department's case that the seized imported cut piece of Gold Bar is restricted goods and liable to confiscation under Section 111 of the Customs Act, 1962 in absence of supporting import documents. The Noticee has contended that the goods are not imported by them but purchased locally and produced purchase bills as under:-

gash

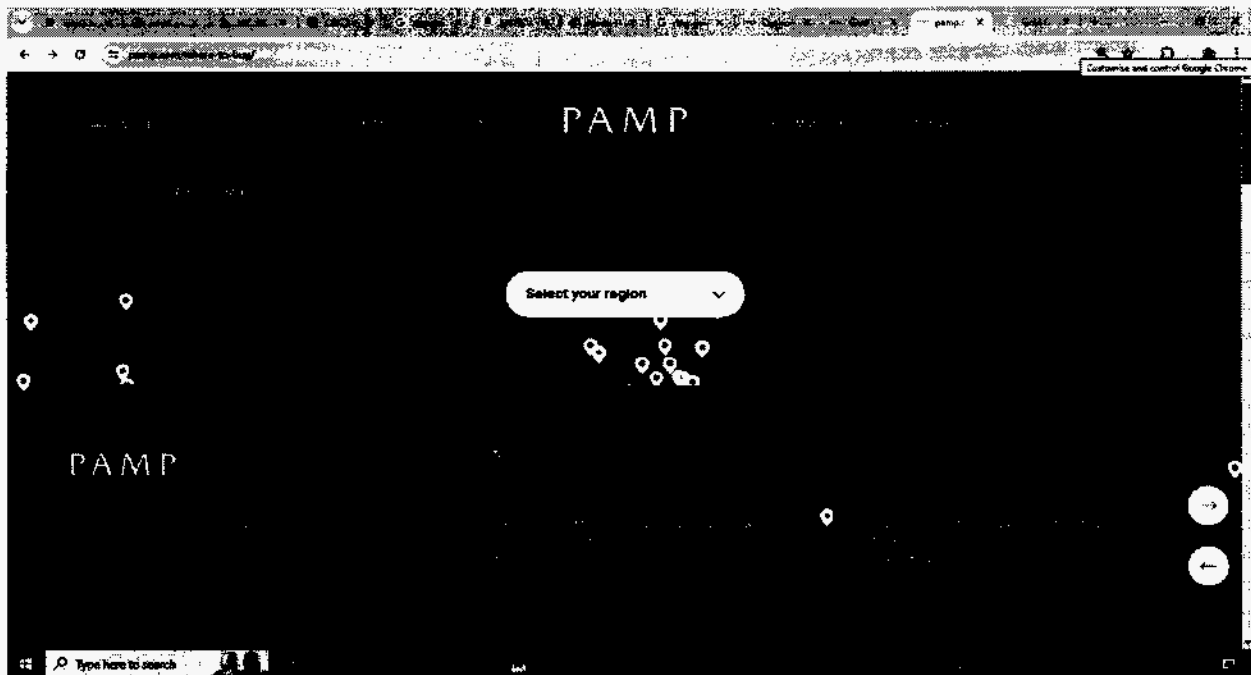
- (1) Tax Invoice No. MH/3054/MJ/2023 dated 27.09.2023 from M/s. Mantr Jewels, Mumbai of 600.00gms Gold bar; and
- (2) Tax Invoice No. MH/3054/MJ/2023 dated 27.09.2023 in respect of 15 Kgs of Gold purchased by M/s. Mantr Jewels, Mumbai from M/s. MMTC PAMP India Ltd, Mumbai.

15.1 It is noticee's contention that the Gold was purchased by them from one M/s. Mantr Jewels, Mumbai on 27.09.2023 and part of it was being sent for Job work to Rajkot through Angadia. They further produced Tax Invoice issued by M/s. MMTC PAMP India Ltd, Mumbai in favour of M/s. Mantr Jewels, Mumbai. I observe that the noticee has furnished chain of documents i.e. Purchase Invoices in support of procurement of the said Gold Bar. The invoices submitted by the noticee during the investigation are neither disputed nor challenged by means of any other evidence or revelations to negate the legitimate procurement of Gold. The Show Cause Notice alleges discrepancy in the marking on the Gold Bar as it contains a three digit "338" (Three Three Eight) as against mention of Sr No. of 304732 in Invoice No. MH/3054/MJ/2023 dated 27.09.2023 issued by M/s. Mantr Jewelers to the Noticee. In this regard it is contended that serial number in the 1 Kg bar should always at bottom front side of a Gold Bar stamped in dot matrix exact below the brand logo. The Noticee explained that in this case the number "338" (Three Three Eight) was punched by them to identify it as per their entry at the time of their purchase and it was not a conventional or dot matrix stamp but punching stamp. In support of their contention about pattern of number punching on a Gold Bar, they referred Bureau Of Indian Standards 2019 Specification for Gold and Silver Bars for Good Delivery – (IS 17278 :2019). I also observed from the copy of the Image of Gold Bar on website <https://www.pamp.com/product/cast-bars/goldcast-bar-1kg> produced by the Noticee that the Gold bar has Printed Serial Number stamped at bottom of the Bar in dot matrix.





15.2 I further observe that “where to buy” Tab on the website further shows “MMTC PMP” with address of New Delhi India screenshot of which is reproduced below:-



15.3 Therefore, going by the above revelations, the noticee justified the explanation about the number “338” (Three Three Eight) appearing in the seized gold bar to say that it was not the serial number stamped by the assayer as it should be at the bottom of the Bar below the Brand Logo and the number “338” punched subsequently which is adjacent to the Brand Logo, image of which is as produced in the Show Cause Notice and at Para 4 of this order. It transpires therefore that the number ‘338’ is not serial number of a Gold Bar and hence on this count alone, the cut piece of gold bar cannot be said to be de-linked with

[Handwritten signature]

purchase invoice produced by the Noticee. Further no other incriminatory material obtained either from the Angadia person or in course of interrogation is before me that would indicate that the said goods were sourced from outside India by the Noticee. Therefore, I find it a plausible explanation to the discrepancy noticed during the investigation as alleged in the Show Cause Notice. I am therefore of the view that the Noticee justified in establishing their local purchase in absence of other evidence against them.

16. I further took note of the fact that the Gold bar was seized from the mainland area of the country and not from customs area or at entry point in India to suggest indulgence of the Noticee themselves in smuggling activity. Also, the gold was in a 'cut piece' under Transit and seized from a person representing Registered Angadia firm and not from a random person who disown the act. These circumstantial facts in corroboration to chain of invoices supplied by the Noticee, in my view, goes in favour of the noticee and against the allegation of illegal procurement of imported gold by the Noticee. Therefore, the contention of the noticee that gold bar in question was purchased in the normal course of business under proper bills/invoices is justified and hence it can not be said that the cut piece of a gold bar in question was smuggled. In absence of any evidence contradicting the submissions made by the Noticee leads to a view point that initial burden casted upon noticee is proved by them and hence the facts does not goes against the Noticee at all. It therefore cannot be held that the goods were smuggled goods based on presumption and without independent evidence. I therefore, hold that the Noticee has discharged onus of burden of proof placed by virtue of Section 123 of the Customs Act, 1962 that the seized Gold bar is not smuggled one and procured locally with legitimate invoice. The only point before me was marking of a three digit number and hence discrepancy in markings is only "a mere suspicion" without there being any substantive proof and on this basis alone, the gold bar in question cannot be confiscated. I find also that in the absence of any independent evidence to bring home a charge of smuggling, the charges of smuggling and the seized gold being smuggled one does not sustain and survive.

17. The Noticee has vehemently relied upon the order of the Hon'ble CESTAT in an similar matter of M/s. Dhanishtha Gold Vs CC, Ahmedabad reported as 2019 (369) E.L.T. 688 (Tri. - Ahmd.). In this case a few parcel of Gold bars sent for making jewelry were seized from car en route from Mumbai to Ahmedabad. Subsequently, the seized gold was ordered for confiscation majorly on the ground of non co-relation of seized gold with invoices including on the basis of



serial number and minor weight differences. Documents, including related to purchases, were produced before investigating officer as well as to adjudicating authority in respect of different transactions. In this case the Hon'ble CESTAT has held that in case of production of document showing legal procurement of gold, burden lies upon revenue to show that gold was procured from elsewhere or to show that documents / records produced are false/ fabricated. The Hon'ble CESTAT also held that gold can not be confiscated on the ground that the purchase invoice is not a foolproof evidence of legitimacy. The Relevant Para of the Order reads as under:-

"12. In respect of 100.001 gms of gold serial No. AG 190942 owned by Appellant Shri Satish Mehta and seized from M/s. PGP Joyeria, we find that the adjudicating authority has held that there was no correlation between the invoice of M/s. Raksha Bullion the supplier of goods and the seized gold bar and that the invoice does not mention the serial number of gold bar. That the invoice was issued by M/s. Raksha Bullion on 20-10-2016 whereas the gold was seized on 1311-2016 and it would not be possible for jeweller to hold goods for so long period. We find that the above instance cannot be reason to hold that the goods are of smuggled nature. The Appellant has produced the invoice No. 1995, dated 20-10-2016 of M/s. Raksha Bullion. Out of this part quantity was handed over to Shri Prakash Duggar under Transfer voucher dated 12-11-2016 for giving delivery to M/s. PGP, Ahmedabad for manufacture of jewellery. There is no contrary evidence to this fact. Also the one month gap between the purchase of gold and sending it for manufacture of jewellery cannot be held to be basis of confiscation of gold on the ground of same being illegally procured. Thus we do not find any reason to confiscate the seized gold.

13. A quantity of 190.002 gms of gold said to be owned by Appellant Shri Satish Mehta and seized from PGP Joyeria has been ordered to be confiscated on the ground that there was no relation between the invoice of M/s. TBZ produced by the Appellant and said gold and that the transfer Voucher/challan Serial No. 17, dated 12-11-2016 mentions weight as 190.030 whereas the seized gold was 190.001 gms. We find that the Appellant had sent the gold through Shri Prakash Duggar to deliver it to PGP, Ahmedabad. The purchase invoice of gold issued by TBZ was addressed to Alma Jewels which is brand of PGP. Even if there is a meagre difference of some milligrams it cannot be said that the gold was procured illegally. Also the revenue has not shown otherwise procurement of goods from the statement of any persons. Thus the above grounds taken by the adjudicating authority cannot be ground for confiscation.

14. A quantity of 4 half cut pieces weighing 505 grams recovered from possession of Smt. Seema devi and said to be owned by Shri Satish Jain has been ordered to be confiscated on ground that the purchase invoice No. 19110964, dated 11-11-2016 issued by M/s. TBZ is not fool proof evidence of legitimacy and the travel voucher shows the weight of gold pieces as 505.470 gms whereas the seized gold pieces 505 gms. We find that M/s. Prakash Gold Palace, Mumbai had purchased four gold pieces from TBZ, Mumbai under invoice and the same was addressed to Alma Jewels the brand name of M/s. PGP, out of this a quantity of 505.470 has been given to Shri Nitin jain to deliver to PGP Ahmedabad for manufacture of jewellery. The travelling documents i.e. Travelling Voucher and transfer note were issued for such transfer which shows that the gold was legally acquired. There is no statement of any person that the



gold is of smuggled nature and hence there is no reason to confiscate the same.

15. We thus hold that the confiscation of seized gold and the skoda car in which some of the gold was carried is not correct. We therefore set aside the confiscation of seized goods. For the same reason we hold that the penalty imposed upon all the Appellants is also not sustainable and the same is also set aside. **We thus set aside the impugned order and allow the appeals with consequential reliefs, if any arise, in accordance with law.**

17.1 The Noticee relied upon decision of the Hon'ble CESTAT in the matter of Ashok Kumar Agarwal reported as 2017 (348) E.L.T. 555 (Tri. - Kolkata). In this case the Hon'ble CESTAT has held that once purchase bills are produced before the department, then the burden under Section 123 of the Customs Act, 1962 stands discharged. Relevant portion of the Para 4 of the order is reproduced here for ease of reference:

"4. Heard both sides,.....

.....Once respondent has produced such a bill then the burden under Section 123 of the Customs Act, 1962 stands discharged. It has also been observed by Hon'ble Calcutta High Court in second last Para of order dated 22-2-2016, quoted above, that department is required to do something more to demonstrate that the gold bars confiscated were not purchased by the respondent under the documents produced. Revenue is not able to demonstrate with documentary evidence that the seized gold bars were procured from any other source, except raising some suspicion. It is a well settled legal proposition that a case cannot be held to be established on the basis of assumptions, presumptions and surmises. In view of the above observations there is nothing wrong in the findings of first appellate authority, as contained in Para 10 of OIA dated 10-8-2001 and no interference is called for to set aside the same.

17.2 The Noticee further placed reliance on the case law of M/s. S. K. Chains [2001 (127) ELT 415 (Tri-Mum)] wherein the Hon'ble CESTAT has held that in the era of liberalized policy once source of acquisition is declared and transaction is not challenged, burden of proof stands discharged. The relevant part of the judgment reads as under:—

"6. As a result of such liberalisation there was ample availability of foreign marked gold in the market. In the absence of any serial numbers on the gold bars it became impossible to distinguish the gold imported legally and that imported illegally.

7. Thus, today there exists a very peculiar situation. On the one hand the Customs Act considers it necessary to ask a person to establish the legality of the origin of the gold seized from him while on the other hand in pursuance of the relaxations made in the Import Policy and the Baggage Rules framed under that very Act, there is a flood of foreign marked gold in the town. Such gold changes hands several times on importation. Since the repeal of the Gold (Control) Act in 1968, there is no legal requirement for the buyers and sellers of gold to maintain any registers nor is there any requirement to issue invoices under any Central Act.



8. The defence of the present Appellants is that they had acquired foreign marked gold during normal course of trade. The gold was raw material for manufacture of gold chain. Gold jewellery is excisable under sub-heading 7101.40 of the Central Excise tariff but is exempted from payment of duty in terms of Notification No. 167/86-C.E. dated 1-3-1986 as amended when made without aid of power. Where it is made with power it enjoys exemption under Sr. No. 191 of Notification No. 4 of 99 dated 28-2-1999 as amended. Under the earlier Notifications also such benefit was available. Such manufacturers are exempt from licensing controls and are not required to maintain any registers or to issue invoices under the Central Excise Act also.

9. In this background we would examine the discharge of the burden placed upon the Appellants. Shri Kothari in his statement claimed that foreign marked gold under seizure was duly recorded in the firm's stock register. He named two sources of acquisition. One was a gold dealer's firm by the name, Sanghavi Dandrup Devji & Co., and the other was one passenger by the name of Dilip Bhulchandani. The representative of the dealers deposed that 33 foreign marked gold pieces were sold by them under four invoices to the Appellants. Although the Show Cause Notice says no documents were produced by M/s. Sanghavi D. Devji & Co., to show the legal import of this gold sold to the present Appellants, curiously they have not been made the noticees to the Show Cause Notice. The Show Cause Notice does not allege that the transaction between the appellant and the dealer was fake or questionable. However, the allegation is made that the appellant, Shri Kothari failed to produce the licit importation of this gold purchased by him from M/s. Sanghavi. Therefore, it has to be held that as far as this quantity is concerned the burden of proof on the appellants stands discharged.

17.3 In the case of Giridharai Dubey, [2002 (149) E.L.T. 427 (Tri. - Kolkata)] the Hon'ble CESTAT in the matter relating to co relating seized foreign marked gold (brands) with the invoice has held as under:-

"3.

(c) In view of our findings we would set aside the order of confiscation of 32 pcs. of gold also relying at the findings of this Tribunal in the case of S.K. Chains reported in 2001 (127) E.L.T. 415 wherein in Para 10 of the reported decision the Tribunal has considered the effects of the liberalized policy as regards import and dealing in gold and thereafter concluded that that onus as placed under Section 123 was discharged in the facts of that case. We would also considering the onus under Section 123 has been discharged in the facts of this case by the appellants. If the Revenue wants that the gold dealers indulging in sale and purchase of foreign marked gold in India, should indicate the brand names and that discharge under Section 123 shall be only with respect to each brand then foreign marked gold should have been declared as one of the items under Chapter IVA of the Customs Act. We find that no such notification of placing foreign marked gold exists. Therefore the confiscation of the foreign marked gold for non satisfactory brandwise accounting as arrived at in the facts of this case was not called for."

18. Thus, in my considered view, the entire case on hand is fully factual and, in my opinion, has no substantial evidence on record hence not sustainable and survive absolute confiscation of the Gold in question. My views are well supported by the above case laws and therefore, taking guidance from the orders of the Hon'ble CESTAT discussed as above, I left

with no option except to drop the charges leveled against the Noticee M/s. Sora Jewels, Mumbai. As a consequence no question arises for imposition of penalty upon Shri Aditya Mahendra Sanghvi, Authorised Power of Attorney of M/s. Sora Jewels, Mumbai.

19. In view of the above, I pass the following order:

ORDER

I drop the proceedings initiated vide the Show Cause Notice No. ADC-26/2023-24 dated 08.04.2024 against (1) M/s. Sora Jewels GSTIN:-27ARRPJ5532A1ZV, FLOOR-2nd, Office No. 202, PLOT-226/230, Giriraj Building, Shaikh Memon Street, Zaveri Bazar, Kalbadevi, Mumbai, Maharashtra, 400002 and also against (2) Shri Aditya Mahendra Sanghvi, Authorized Power of Attorney of M/s. Sora Jewels, Mumbai.

Chuna Ram
13.08.2024

(चुना राम / Chuna Ram)
अपरआयुक्त/Additional Commissioner

F. No. CUS/868/2024-Adjn.

Date: 13.08.2024

1. M/s. Sora Jewels GSTIN:- 27ARRPJ5532A1ZV, 2nd Floor, Office No. 202, Plot-226/230, Giriraj Building, Shaikh Memon Street, Zaveri Bazar, Kalbadevi, Mumbai, Maharashtra, 400002.
2. Shri Aditya Mahendra Sanghvi, Authorised Power of Attorney of M/s. Sora Jewels, 2nd Floor, Office No. 202, Plot-226/230, Giriraj Building, Shaikh Memon Street, Zaveri Bazar, Kalbadevi, Mumbai, Maharashtra, 400002.

Copy to:

1. The Commissioner, Customs (Preventive), Jamnagar.
2. The Additional Commissioner of Customs (Prev.), Jamnagar.
3. The Deputy Commissioner (Prev.), Customs (Preventive) HQ, Jamnagar.
4. The Deputy Commissioner, Customs Division, Jamnagar.
5. The Superintendent (RRA), Customs (Prev.) HQ, Jamnagar.
6. The Superintendent (Recovery), Customs (Prev.) HQ, Jamnagar
7. The Superintendent (Systems) Customs (Prev.) HQ, Jamnagar
8. Guard File.